2008 ANNUAL REPORT
OF THE
PRESIDENT OF THE UNITED STATES
ON THE
TRADE AGREEMENTS PROGRAM

II. THE WORLD TRADE ORGANIZATION

A. Introduction

At the core of U.S. trade policy is a steadfast support of a rules-based multilateral trading system. Working through the World Trade Organization (WTO), the United States remains in a leadership role in securing the reduction of trade barriers in order to expand global economic opportunity, raise standards of living, and reduce poverty. The WTO Agreement also provides the foundation for high standard U.S. bilateral and regional agreements that make a positive contribution to a dynamic and open global trading system based on the rule of law. On a day-to-day basis, the WTO provides opportunities for U.S. interests to be advanced through the more than 20 standing Committees (not including numerous additional Working Groups, Working Parties, and Negotiating Bodies). These groups meet regularly to provide robust fora for Members to exchange views, work to resolve questions of Members' compliance with commitments, and develop initiatives aimed at systemic improvements.

This chapter outlines the work of the WTO in 2008 and the work ahead in 2009 – including on the multilateral trade negotiations launched at Doha, Qatar in November 2001, known as the Doha Development Agenda (DDA or Doha Round). This chapter details the work under the DDA as well as that of the WTO standing Committees and their subsidiary bodies and provides a review of the implementation and enforcement of the WTO Agreement. It also covers the critical accession negotiations to expand the WTO's membership to include new Members seeking to reform their economies and join the rules-based global trading system. In 2008, Ukraine and Cape Verde became Members of the WTO.

The DDA is the ninth round of multilateral trade negotiations to be carried out since the end of World War II. The DDA negotiations remain, along with the day-to-day implementation of the rules governing world trade, a U.S. priority reflecting the imperative of continued multilateral trade liberalization as part of the foundation that ensures stability and growth in a dynamic world economy.

Throughout 2008, the United States worked to advance the Doha Round trade negotiations and the implementation of the WTO Agreement. The United States continued to lead the effort to move the DDA forward toward a successful final agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows. Building on Chair-led work in Geneva in the first half of the year, a group of approximately 30 Ministers met in Geneva in July in an effort to achieve breakthroughs in modalities in agriculture and non-agricultural market access (NAMA) that would thereby allow commencement of the final phase of negotiations. Ministers also conducted a services "signaling" conference to advance work on that market access pillar of the overall Doha Round negotiations. While significant progress was made in July, it fell short of the needed breakthrough. Seeking to build on progress made in July, senior officials resumed work toward agriculture and NAMA modalities in early September, and Chairs resumed broader multilateral meetings in October. These meetings continued through the end of the year.

In fall 2008, Members' focus turned to the emerging global economic crisis and the contributions the WTO should make toward ensuring the mistakes of history would not be repeated in the form of countries turning inward and creating new barriers to trade and investment as a response to the crisis. At a November 12 meeting of the major providers of trade finance at the WTO, the potential effect of the global economic situation on access to trade credit was reviewed, and a newly created WTO Secretariat Task Force was instructed to follow-up on the issue. At the November 15 Summit on Financial Markets and the World Economy in Washington, G-20 Leaders underscored the critical importance of rejecting

protectionism and not turning inward in times of financial uncertainty, specifically committing themselves not to raise trade barriers for a twelve month period and to strive to reach an ambitious and balanced conclusion to the Doha negotiations:

> *We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports.*

However, in the days and weeks following the G-20 summit, a number of countries faltered in their commitments: Indonesia placed new licensing restrictions on at least 500 products; Argentina and Brazil sought to raise Mercosur tariffs on a range of agriculture and textiles products (although one month later, they backed away from taking such an action); on November 18, India increased the duty on crude soybean oil by 20 percent and the tariff on a range of iron and steel products by 5 percent; Russia increased taxes on certain imported foreign cars to a minimum of 35 percent; and France outlined plans to launch a state fund to protect French companies from foreign takeovers. At a December meeting of the WTO General Council, Members decided that the WTO would monitor and report on newly imposed restrictive trade measures, utilizing the WTO's existing Trade Policy Review Body to fulfill the task.

As 2008 drew to a close, the economic crisis highlighted the importance of maintaining and expanding open markets, setting the stage for further efforts in 2009 to successfully conclude the Doha Round negotiations. All of the Doha Round negotiating groups is expected to resume their work early in 2009. There will also be a more robust, public monitoring by the WTO of new trade measures by Members aimed at restricting trade, in order to support the G-20 Leaders' commitments to resist protectionist measures.

B. The Doha Development Agenda under the Trade Negotiations Committee

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

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, oversees the agenda and negotiations in cooperation with the WTO General Council. The WTO Director General serves as Chairman of the TNC and worked closely with the 2008 Chairman of the General Council, Ambassador Bruce Gosper of Australia. Through formal and informal processes, the Chairman of the General Council, along with WTO Director General Pascal Lamy, plays a central role in steering efforts toward progress on the DDA. (Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council.)

As 2008 began, WTO Members were continuing to work towards agreement on modalities – the key framework of variables that would define the depth of tariff cutting and the extent of so-called flexibilities in agriculture and non-agricultural market access (NAMA), and set the stage for schedules and texts to be

put on the table in order to start the final stage of negotiations. In mid-2007, the Chairs of the agriculture and NAMA negotiating groups issued draft modalities texts, and followed up in the second half of 2007 with formal and informal consultations. In February 2008, the Chairs of these negotiating groups issued revised texts reflecting their views of the progress made on key issues resulting from the consultations. In addition, the Chair of the Services negotiating group issued an initial report that outlined key areas of convergence as well as areas needing further discussion by Members. Following additional consultations with Members in the first half of the year, the agriculture and NAMA Chairs issued revised texts in May and July 2008. The Chair of the Services negotiating group issued a revised report in May 2008.

Approximately 30 Ministers met in Geneva from July 19 to 29 in an effort to complete work on the modalities. They achieved significant progress in further narrowing the issues on agriculture and NAMA modalities, but fell short of a comprehensive agreement. The Ministers also held a constructive "signaling conference" on Services, at which they previewed offers to be exchanged after agreement is reached on agriculture and NAMA modalities.

On the third day of the July meetings, Director General Lamy convened a "G7" leadership group to tackle the most difficult issues on agriculture and NAMA. This was a significant development, effectively providing China, Brazil and India with a seat at this leadership table, in addition to the United States, the European Communities, Japan and Australia. The inclusion of the three key emerging markets represented an important step forward, moving the overall negotiating dynamic to more closely reflect the dynamic economic reality of today's trading system. As today's fastest growing economies, China, Brazil and India have enjoyed a new level of influence and will be expected to take-on an increased level of responsibility to make the trade liberalizing decisions and contributions that would benefit not only their own economic interests, but also promote global economic growth and development to the benefit of all developing countries.

Five days into the meetings, WTO Director General Lamy put forward to the G7 a package of proposed solutions for approximately 10 of the toughest issues that had divided the membership during the Doha Round negotiations on agriculture and NAMA. The solutions were an attempt to capture a balance that shared the pain and gain of the proposed outcomes. Six of the seven members of the leadership group, including the United States, initially indicated that while some of the proposed solutions set out in the Lamy package would be difficult to accept, they could support it as a compromise package. India was initially the only hold-out in accepting the Lamy package, but was subsequently joined by China. These Members' objections focused primarily on two elements of the proposed packages: (1) their opposition to participating in the negotiation of industrial sectoral initiatives aimed at increasing the ambition of the industrial tariff negotiations through further tariff cuts on certain designated industrial goods such as chemicals, industrial machinery, and electronics; and (2) their insistence on further flexibilities from tariff cuts by lessening disciplines on the so-called "Special Safeguard Mechanism" (SSM), a new measure that would be created under the Doha Round agriculture negotiations, allowing developing countries to raise tariffs beyond their existing allowable WTO limits.

Several developing country exporters also opposed the further flexibilities sought by India and China that could have resulted in diminished market access for agricultural goods. There was a clear divergence between the economic interest and, therefore, the negotiating positions of different developing countries. The continuing move away from a simplistic north-south dichotomy was also seen in the NAMA negotiations, where the "middle ground" developing countries of Chile, Colombia, Costa Rica, Hong Kong China, Israel, Mexico, Pakistan, Peru, Singapore, and Thailand maintained a longstanding objective of more ambitious NAMA tariff-cutting coefficients and flexibilities than what was sought by NAMA hardliners such as India, Argentina, and South Africa.

The SSM issue in the Doha Round agriculture negotiations received extensive attention from Ministers and senior officials during the course of the last few days of the July meetings. Despite intensive efforts, a compromise could not be reached that would ensure that application of the SSM would not be abused. The impasse ultimately led to the conclusion that modalities would not be immediately reached, and the nine days of meetings were concluded on July 29, 2008.

Discussions resumed in September among senior officials of the G7 leadership group, and broadened in October as the agriculture and NAMA Chairs resumed consultations with Members in various configurations. These discussions continued through year's end. On November 15, leaders at the G-20 meeting in Washington instructed their trade ministers to work to agree on modalities by the end of the year that would lead to an ambitious and balanced Doha Round outcome. They also noted the need for each country to make the positive contributions necessary to achieve this result. LDC (Least Developed Countries) Ministers and APEC Leaders issued similar statements on November 20 and 22, respectively.

In light of the further narrowing of differences which emerged in the closing months of 2008, the agriculture and NAMA Chairs issued revised texts on December 6. However, in light of remaining wide gaps over several key issues, Director General Lamy chose not to call another meeting of Ministers until further convergence could be achieved, and thereby present greater potential that such a meeting would achieve a successful outcome.

During the final TNC meeting in 2008 on December 17, Director General Lamy recommended that the Chairs of the agriculture and NAMA negotiating groups resume work at the beginning of 2009, focusing on the areas which remain open and helping Members forge consensus. The Chairs of other Doha Round negotiating groups were also instructed to proceed with their work.

In the December 17 TNC meeting, with respect to wider WTO work, Director General Lamy noted the WTO's responsibility to follow up on the trade measures taken in the wake of the economic crisis, highlighting the work to be done by the Secretariat Task Force to produce regular updates of these measures and the Trade Policy Review Body in monitoring new trade measures. Lamy also recommended that the Secretariat Task Force keep reviewing developments in the area of trade finance and that the WTO develop a clear roadmap for work on Aid for Trade that would culminate with the second Aid for Trade Global Review in June 2009.

Prospects for 2009

As the negotiations under the DDA begin in 2009, the linchpin to Doha Round success will remain securing meaningful market access commitments in agriculture, NAMA and services, particularly from key advanced developing countries that have been the fastest growing economies and are increasingly key players in the global economy. To generate the kind of economic growth, development, and poverty alleviation that WTO Members committed to when they launched the Doha Round in 2001, key emerging markets must take on the additional responsibilities that come with their increased influence in the global economy and make commitments that result in meaningful new trade flows.

The United States will continue to play a leadership role and work with other WTO Members in pursuit of a successful conclusion to the DDA that opens new markets and creates new trade flows. The challenge in 2009 will continue to be how to translate the expressions of political will, into concrete and specific details that will enable WTO Members to complete the work begun with the launch of negotiations at the Doha meeting. Monitoring new trade measures and encouraging Members to uphold their commitments to reject protectionism will also be key areas of WTO work in 2009.

1. Committee on Agriculture, Special Session

Status

Negotiations in the Special Session of the Committee on Agriculture are conducted under the mandate agreed upon at the Fourth WTO Ministerial Conference in Doha, Qatar that calls for "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." This mandate, calling for ambitious results in three areas (so-called "pillars"), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005.

In early 2007, the United States engaged in discussions on agriculture with Brazil, the European Union and India as part of the broader "G4" process. When the G4 process broke down in June 2007, the central focus of the Doha negotiations returned to the multilateral process in Geneva. Ambassador Falconer tabled his draft text on agriculture in July on his own initiative, attempting to reflect progress in the negotiations and to narrow differences. Reflecting to some degree the state of play in the agriculture negotiations in July 2007, one concern with the draft text was the uneven handling of the three "pillars" in agriculture. While the domestic support and export competition pillars sections of the text were highly developed, many key topics in the market access pillar remained conceptual at best – with regard to both developed and developing country market access.

After a preliminary exchange of views on the draft text in July, Ambassador Falconer undertook numerous discussions and consultations through the remainder of 2007 on all aspects of his draft text, with considerable focus on the outstanding market access issues. The intensive process enabled the Chair to produce additional working documents on specific topics for Members' review and further consideration in his "Room E" consultations.

Major Issues in 2008

Throughout 2008, the United States worked to advance the Doha Round trade negotiations and the implementation of the WTO Agreement. The United States continued to lead the effort to move the DDA forward toward a successful final agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome.

The United States participated actively in the intensive consultations on the agriculture text chaired by Ambassador Falconer, resulting in an updated draft text in February 2008. The February text reflected Ambassador Falconer's perception of the progress made in his consultations in previous months. Although the Geneva process addressed all areas of the negotiations, considerable attention had been given to the area of market access. The February text contained possible structural elements for the Sensitive Products, Special Products, Special Safeguard Mechanism, and other key market access modalities. Yet the text continued to leave a number of open issues affecting the level of ambition for each of these key topics in the market access pillar.

Intensive discussions on agriculture continued in Geneva during the first half of 2008. Again, all areas of the negotiations were examined, with particular attention on the architecture for the key elements in the market access pillar. In addition to the consultations that he chaired, Ambassador Falconer asked a group of developed and developing country Members (including the United States) to work together on data and methodological issues affecting the use of a "partial designation" approach to implement the new tariff-

rate quotas that would be created for Sensitive Products, and to report progress to the broader consultative process under his direct auspices.

Ambassador Falconer produced a second update to his draft agriculture text in May 2008 that reflected his perspective on the discussions in early 2008 as well as on the input from Members on the partial designation methodology. Ambassador Falconer tabled another update to his text in July 2008 which he intended to be used as a basis for Ministers' discussions in July.

Seeking to build on progress at the July meeting, Senior Officials resumed work on modalities for agriculture in early September, and Ambassador Falconer chaired numerous meetings of Senior Officials in October and November. Ambassador Falconer produced an updated text on December 6, 2008, along with three "working documents" addressing topics where he considered progress had been made since July 2008, but the issues were not yet at the point where he considered there to be a basis to incorporate "fully defined wording" within the text.

Prospects for 2009

The U.S. objectives for agriculture reform will continue to focus on the principles of greater harmonization across WTO Members, substantial overall reforms, and specific commitments of interest in key developed and developing country Member markets. The United States seeks balanced, ambitious results for each of the three pillars; an ambitious outcome is the best way to fulfill the promise of the Doha Round.

2. Council for Trade in Services, Special Session

Status

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000, pursuant to the Uruguay Round mandate of the General Agreement on Trade in Services (GATS), to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001, recognizing the work already undertaken in the services negotiations, directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners and set deadlines for initial market access requests and offers. The services negotiations thus became one of the core market access pillars of the Doha Round, along with agriculture and non-agricultural goods. A strong and ambitious result in services is essential for a successful outcome of the Doha Round.

The Hong Kong Ministerial Declaration called for the negotiations to proceed to conclusion with a view to promoting the economic growth of all trading partners, with due respect for the right of Members to regulate their domestic markets. The Hong Kong Declaration provided a framework for intensifying the negotiations, with the goal of expanding the sectoral and modal coverage of commitments and improving their quality. To complement the existing bilateral request-offer process, the Hong Kong Declaration also encouraged negotiations to proceed on a plurilateral basis. Members subsequently developed a "plurilateral request process," through which like-minded Members joined together to develop collective market access requests for 21 sectors and issues of interest. The United States joined in co-sponsoring 13 of these requests in the following areas: architectural, engineering and integrated engineering services; audiovisual services; computer and related services; construction and related engineering services; distribution services; private education services; energy services; environmental services; financial services; legal services; Mode 3 (commercial presence); postal/courier services including express delivery; and telecommunication services.

Major Issues in 2008

The United States engaged actively in bilateral and plurilateral negotiations, pressing Members for a high level of ambition for services liberalization in such key sectors as computer, distribution, energy, environmental, express delivery, financial, and telecommunication services.

In order to maintain parity with the Agriculture and NAMA work on modalities, a number of Members agreed to participate in a services signaling conference to be held in parallel with the July 2008 Minister-level meetings on modalities. On July 26, 2008, a group of roughly 32 trade ministers engaged constructively on services market access requests, indicating their plans for new or improved commitments as well as their expectations from others. Based on the information shared at the signaling conference, Members were able to better gauge the progress in the services market access negotiations with a view to refining their requests in advance of the next round of revised offers and final offers. The United States and other delegations signaled improvements, but overall progress was incremental and more work will be necessary in order to achieve the extent of services liberalization necessary for a positive outcome.

In addition to the signaling conference, the United States and other Members pressed the Chair of the CTS-SS to produce a services text that would be released in parallel with the agreed modalities for Agriculture and NAMA. The United States pushed for a strong statement of ambition for services market access, on a par with that in the agriculture and non-agricultural goods negotiations, including improvements that respond to bilateral and plurilateral requests; a binding of current levels of liberalization, and new market access in key service sectors; elimination of barriers to establishment, such as foreign equity requirements; and removal of limitations on the cross-border supply of services. The Chair issued a draft report on May 26 that outlined key areas of convergence as well as areas needing further discussion by Members. After further consultations with the Chair, all but four Members agreed on a compromise report on elements required to conclude the services negotiations. On July 23, 2008, the Chair indicated that he considered the resulting services text to be complete, while noting the dissent of four Members. However, because Members were unable to reach agreement on modalities in other negotiating groups, the services text has yet to be finalized.

Throughout the negotiations, the United States has recognized the importance of modalities for the special treatment of least-developed country Members in the negotiations on trade in services (LDC Modalities) and the need to expedite consultations on an effective mechanism, pursuant to paragraph 9 of Annex C of the Hong Kong Ministerial Declaration. In cooperation with other Members, and through close cooperation with the LDCs, the United States supported an approach to LDC Modalities that would meaningfully address the requests of LDC Members. However, as an integral part of the negotiations for a services text, the issue of an agreed mechanism to implement the LDC Modalities remains unresolved.

Prospects for 2009

The United States will continue to seek a high level of ambition and pursue aggressively its priority market access objectives, including opening up foreign markets to world-class service providers by having Members remove equity limitations, quantitative restrictions, and other barriers to trade in services.

3. Negotiating Group on Non-Agricultural Market Access (NAMA)

Status

In the NAMA negotiations, which cover industrial goods, fish, and fish products, the United States is seeking significant new competitive opportunities for U.S. businesses through cuts in applied tariff rates, and the reduction of non-tariff barriers.

The outcome of these negotiations is crucial for trade in industrial goods, which accounts for over 75 percent of total global trade in goods and more than 90 percent of total U.S. goods exports. In 2008, U.S. exports of industrial goods grew to an annualized $1.2 trillion (based on data from January to September) – more than 9 times the level of U.S. agricultural exports. This figure is up 16 percent from 2007 and up 166 percent from 1994.

Tariff Profiles for Selected WTO Members

Markets	% of Tariffs with WTO Ceiling	WTO Ceiling Tariff Average*	2006 Applied Tariff Average
United States	100%	3.9	3.9
European Union	100%	4	4
Argentina	100%	30.6	10.5
Brazil	100%	29.4	10.8
China	100%	9	8.9
Egypt	99.2%	28.7	12.8
India	70.4%	33.5	14.8
Philippines	62.2%	22.8	6.8
South Africa*	96.3%	16	8

Source: WTO IDB and CTS Databases

* This calculation excludes products with no legal WTO ceiling rate.

The Doha Round provides an opportunity to lower tariffs in key emerging markets like India and Egypt, which still retain ceiling tariff rates as high as 150 percent. Likewise, developing country Members, which currently pay over 70 percent of duties collected to other developing countries, will directly benefit from tariff reductions made as a result of the Doha Round.

Major Issues in 2008

In 2008, Members focused on a number of substantive elements relating to tariff liberalization in NAMA: (1) the tariff-cutting formula and specifics on the level of ambition to be achieved by developed and developing country Members; (2) the scope of exceptions available to developing countries applying the tariff-cutting formula; (3) flexibilities to be provided for least-developed country (LDC) Members and other developing country Members; (4) a sectoral tariff component; and (5) work on non-tariff barriers.

Members attempted to finalize these elements at the WTO Ministerial in Geneva in July 2008, but consensus on these issues continued to be elusive. Discussions resumed in September and continued to the end of the year in an effort to further narrow differences on the various NAMA issues.

The key U.S. NAMA objective is to achieve an ambitious outcome that results in significant new market access through cuts in applied tariff rates in both developed and key developing country Member markets. The United States therefore supports a combination of tariff cuts achieved through applying a Swiss formula with different coefficients[1] for developed and developing Members and sectoral tariff elimination initiatives to most effectively achieve the objectives laid out in the Doha mandate. The United States also believes that all the elements of NAMA from the Framework in the July 2004 Package must be

[1] A Swiss formula is a progressive non-linear formula under which high tariffs are cut more than low tariffs. The Swiss coefficient sets a ceiling that tariffs approach but never reach, thus determining the overall level of ambition of the formula. The lower the number, the more aggressive the tariff cuts. Members are negotiating the coefficients to be used in the Swiss formula to determine the depth of tariff cuts for developed country Members and the depth of the tariff cuts for developing country Members.

considered in tandem. There is an inextricable link between the formula, flexibilities, and sectoral initiatives.

In negotiations leading up to the July 2008 meeting of Ministers, the formula coefficients and flexibility options were a primary area of discussion. With regard to coefficients, Members discussed options that reflect the appropriate levels of ambition, through the depth of tariff cuts they will produce, for developed and developing countries. The Chair's text from December 2008 proposed a choice for developing countries between three coefficients (20, 22 and 25 depending on the level of flexibilities taken) and a coefficient of 8 for developed countries.

In the current NAMA negotiating text, approximately thirty self-designated developing countries[2] are expected to apply the tariff cutting Swiss formula, choosing between the three available coefficients in the Chair's text, each linked with a different level of flexibilities. These countries include nine members of the so-called NAMA-11[3], which has advocated a high developing country coefficient in the formula and expanded flexibilities for developing countries, as well as the members of Middle Ground group[4], which has generally supported stronger market opening results and more limited exceptions to the formula. Also among the countries expected to apply a developing country coefficient are the four Recently Acceded Members (RAMs)[5] that are not considered small, vulnerable economies or Very Recently Acceded Members (VRAMs).

Work is continuing on the following sectoral tariff initiatives, proposed by various Members:

- chemicals;
- electronics/electrical products;
- industrial machinery;
- forest products;
- healthcare products (pharmaceuticals and medical equipment);
- fish and fish products;
- autos and related parts;
- bicycles and related parts;
- gems and jewelry;
- sports equipment;
- textiles, clothing and footwear;
- hand tools;
- raw materials; and
- toys

Discussions also continued on flexibilities, or special and differential treatment for developing country Members, including "less than full reciprocity," with a number of specific and general approaches under consideration. Decisions on the levels of flexibility for developing countries will be integrally linked to the outcome of negotiations on the formula and sectoral agreements.

Small, vulnerable economies, whose share of world trade in industrial goods is less than 0.1 percent, as well as Members that have low levels of tariff bindings[6] (the so-called "Paragraph 6 countries") have raised concerns regarding their contributions to a final outcome and will be required to make smaller commitments. In addition, several developing country Members continue to raise their concerns with the potential erosion of preferences or loss of government revenue due to tariff cuts.

Further progress was made on sectoral tariff initiative discussions in 2008. The United States continued efforts to inform other Members of the benefits of sectoral liberalization and proposed specific flexibility

[2] Argentina; Bahrain; Brazil; Chile; China; Chinese Taipei; Colombia; Costa Rica; Croatia; Egypt; Hong Kong China; India; Indonesia; Israel; Korea; Kuwait; Malaysia; Mexico; Morocco; Oman; Pakistan; Peru; Philippines; Qatar; Singapore; South Africa; Thailand; Tunisia; Turkey; Venezuela; and UAE. Note: There is some discussion on the development status of Chinese Taipei, Korea, and Croatia for the purposes of these negotiations.

[3] Argentina; Brazil; Egypt; India; Indonesia; Namibia (non-formula applying country); Philippines; South Africa; Tunisia; and Venezuela.

[4] WTO Members affiliated with the Middle Ground group include: Chile; Colombia; Costa Rica; Hong Kong China; Israel; Mexico; Pakistan; Peru; Singapore; and Thailand.

[5] China; Chinese Taipei; Croatia; and Oman.

[6] Cameroon; Congo; Cote d'Ivoire; Cuba; Ghana; Kenya; Macao; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe

options for developing country Members based on sensitivities they raised in sector-specific discussions. The United States worked with other sponsors of sectoral initiatives to refine sectoral proposals and draft the structure of individual sectoral agreements. To date, Members have proposed fourteen sectors that are being considered for such agreements.

Non-tariff barriers remain an integral and equally important component of the NAMA negotiations. In line with the Hong Kong Ministerial Declaration, WTO Members continued to consider how NTBs could be addressed horizontally (i.e., across all sectors), vertically (i.e., pertaining to a single sector), and through a bilateral request/offer process. In 2008, the United States tabled three draft proposed texts – (1) on transparency in export licensing, (2) on non-tariff barriers pertaining to safety and electromagnetic compatibility for electronic products, and (3) on non-tariff barriers relating to technical barriers to trade for automotive products. The latter two, as well as five other NTB proposals (including the U.S. proposal on remanufactured products and the U.S. proposal to facilitate and harmonize labeling requirements for textiles, clothing, footwear, and travel goods) were identified by Members in July 2008 as priorities for further negotiation to reach legal agreements.

NTB proposals addressing the following issues and sectors identified in July 2008 as priorities for further negotiation by Members:

- Procedures for the facilitation of solutions to NTBs;
- Remanufactured goods;
- Chemical products and substances;
- Electronics;
- Electrical safety and electromagnetic compatibility (EMC) of electronic goods;
- Labeling of textiles, clothing, footwear and travel goods;
- Standards, technical regulations and conformity assessment procedures for automotive products

Prospects for 2009

In 2009, the United States will continue to seek an ambitious NAMA outcome that will deliver new market access in key developed and developing country Member markets, while supporting elements of flexibility for developing country Members that does not operate to undermine the overall level of ambition. The United States remains committed to the view that true development gains can best be achieved through further real market liberalization by both developed and developing Members.

4. Negotiating Group on Rules

Status

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives. Ministers also directed that the negotiations take into account the needs of developing and least-developed country Members. The Doha Round mandate also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted over 200 formal papers and over 150 elaborated informal proposals to the Group.[7] In 2004, the Group began a

[7] Both sets of Rules papers are publicly available on the WTO website: the formal papers may be found using the "TN/RL/W" document prefix, and the elaborated informal proposals may be found using the "TN/RL/GEN" prefix.

process of in-depth discussions of proposals in informal session to deepen the understanding of the technical issues raised by these proposals. In 2005, the Rules Chairman began holding a series of plurilateral consultations with smaller groups of interested Members, in order to have more intensive and focused technical discussions on elaborated proposals. In 2005, the Chairman also established a Technical Group as part of the Rules Group's work to examine in detail issues relating to antidumping questionnaires and verification outlines.

At the Hong Kong Ministerial Conference in December 2005, Ministers directed the Rules Group to intensify and accelerate the negotiating process in all areas of its mandate, on the basis of detailed textual proposals, and to complete the process of analyzing proposals as soon as possible. On fisheries subsidies, Ministers acknowledged broad agreement on stronger rules, including a prohibition of the most harmful subsidies contributing to overcapacity and overfishing, and appropriate effective special and differential treatment for developing country Members. Ministers also directed the Rules Chairman to prepare consolidated texts of the Antidumping and SCM Agreements, taking account of progress in other areas of the negotiations. In accordance with the Hong Kong Declaration, the Rules Group accelerated its work in early 2006, and had completed analysis of most submitted proposals when work on the Doha Round was suspended in July 2006. Work in the Rules Group resumed in late 2006, and continued in 2007, focusing on in-depth analysis of several new or revised textual proposals submitted.

In November 2007, the Chairman of the Rules Group, Ambassador Guillermo Valles Galmés of Uruguay, issued draft consolidated texts on antidumping and on subsidies and countervailing measures, including fisheries subsidies. The texts were in the form of proposed revisions to the existing WTO Agreements on Antidumping and Subsidies and Countervailing Measures. Shortly after the text was issued, the United States publicly stated that it was very disappointed with important aspects of the draft text, but believed that it provided a basis for further negotiations.

The Rules Group met five times in the first half of 2008. In May, the Chairman issued a working document, which compiled alternative textual proposals made by Members and summarized Members' reactions to the Chairman's text. In the Chairman's cover note to this working document, he indicated that while it was his firm intention to issue a revised text, he did not yet have a sufficient basis to do so as he had not received from Members any indication of possible middle ground approaches. In conclusion, the Chairman made it clear that all proposals and issues remained on the table and that revised draft texts will eventually be necessary.

Prior to the meeting of Ministers in July 2008, the Chairman of the Rules Group issued a report to the Trade Negotiating Committee. In this report, the Chairman stated his intention to circulate revised texts on antidumping and horizontal subsidies as soon as possible after modalities were achieved, even though Members' positions on key issues remained far apart. The Chairman stated that these texts would reflect a bottom-up approach and would include draft legal language in areas of consensus and other areas where he believed convergence could potentially be achieved. The Chairman cautioned, however, that the new texts would not offer any "magic solutions" in the many areas where Members' positions differ dramatically. Regarding fisheries subsidies, the Chairman stated that further input was necessary from Members before he issued a revised text. The Chairman noted that, to facilitate the process, he would issue a specific "road map" for moving forward, at the same time as he issues revised texts in antidumping and horizontal subsidies. This road map would identify key questions that need to be addressed in order to advance the negotiations towards a new fisheries text. Because modalities were not agreed to in July, the Chairman has not issued revised texts in antidumping and horizontal subsidies or the road map in the context of the fisheries subsidies negotiations.

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing Regional Trade Agreements (RTAs) under the existing WTO provisions. To that end, the

General Council in December 2006 adopted a decision for the provisional application of the "Transparency Mechanism for Regional Trade Agreements" to improve the transparency of RTAs. A total of 33 RTAs have been considered under the Transparency Mechanism since then. Pursuant to its mandate, in the past, the Rules Group has explored the establishment of further standards governing the relationship of RTAs to the global trading system. However, such discussions have failed to produce common ground on how to clarify or improve existing RTA rules.

Major Issues in 2008

Antidumping: In the first half of 2008, the Chair held several plenary, plurilateral and small group meetings to discuss his November 2007 draft text. The U.S. proposal to address the issue of offsets for non-dumped sales comparisons in antidumping proceedings, often referred to as "zeroing," has continued to engender the most discussion and controversy in the Rules negotiations. A group calling itself the "Friends of Antidumping Negotiations" (FANs) has been very active in the Rules area since the beginning of the negotiations, generally seeking to impose limitations on the use of antidumping remedies. The FANs group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey. Most of the FANs, as well as certain other Members such as India, have been harshly critical of the Chairman's November 2007 draft text because of the inclusion of provisions that would permit zeroing in certain circumstances. These critics have been calling for the Chairman to issue a revised text that explicitly bans zeroing. The United States has maintained the position that any final Antidumping Agreement must address the issue of zeroing.

In February 2008, the Africa Pacific Caribbean Group (ACP) and the Africa Group introduced a joint proposal calling for special and differential treatment for developing countries in trade remedies cases. In addition to the provision of technical assistance to developing countries, the proposal would require developed countries to explore the use of "constructive remedies" before applying antidumping measures to imports from developing countries. The constructive remedies are defined to include the lesser duty rule; non-application of provisional measures where exporters undertake to revise their prices or cease exports; acceptance of price undertakings sufficient to eliminate the "margin of injury;" and longer timeframes for responding to questionnaires. The proposal would also permit developing country governments to assist their domestic industries with respect to data collection, to help them satisfy standing requirements, and to self-initiate trade remedies cases. The technical assistance elements of the proposal received measured support from some members, but significant concerns were expressed regarding the substantive aspects of the proposal.

After the issuance of the Chairman's draft text in November 2007, members of the FANs Group also submitted modified versions of previously-submitted proposals on a variety of issues, including: increasing the standing threshold from 25 percent to 50 percent of domestic production; increasing the *de minimis* dumping margin standard from two percent to five percent; increasing the negligible imports threshold for injury purposes by calculating import volumes as a percentage of total domestic consumption rather than import share; including a public interest test; including a mandatory lesser duty rule; and requiring authorities to "separate and distinguish" the effects of dumped versus non-dumped imports for causation purposes. To date, none of these proposals has led to a convergence of positions.

The United States has continued working to build support among Members for other proposals it had previously submitted, including those on issues such as injury causation, anticircumvention, new shipper reviews, facts available, and seasonal and perishable products, as well as a number of proposals aimed at improving transparency and due process in antidumping proceedings.

Subsidies/CVD: In the first half of 2008, the Chair held several small plurilateral meetings to discuss his November draft text as well as Members' proposals that were not included in the draft text. The Chair's draft text makes only relatively modest changes to the existing SCM Agreement. The text does include important clarifications to the existing rules by firmly establishing the "benefit-to-recipient" approach to the calculation of subsidy benefits, a position long advocated by the United States. In principle, these clarifications have not been controversial, although several refinements were suggested by the United States and others. Other areas of the Chair's text discussed in 2008 included: subsidy calculation methodologies, "dual pricing" practices (an issue of long-standing interest to the United States), state-owned banking practices, export credits and benefit pass-through. The provisions in the Chair's text on subsidy calculation methodologies – derived from a U.S. proposal – largely represent a technical advancement in the rules that elaborate upon important principles for the measurement of subsidy benefits. The issues of dual pricing and state-owned banking practices were discussed at several meetings during which Members expressed a wide range of positions. The Chair's text on export credits was reviewed in detail and alternative text was considered. However, many Members, including the United States, expressed serious reservations regarding the provisions in the Chair's proposed draft text as it would very significantly change the existing rules that have been developed over time and have generally functioned well.

Members' proposals that were not included in the Chair's draft text but discussed in 2008 included: appropriate "benchmarks" for use in subsidy determinations (Brazil); redefining the concept of "export competitiveness" in the SCM Agreement (India); amending the rules on duty drawback (India); and the definition of *de facto* export subsidies and "withdrawal" of subsidies found to be prohibited (Australia).

As a general matter, the United States continued to argue in 2008 that the Chair's draft text would result in little strengthening of the current general subsidy disciplines, despite the Doha Round negotiating mandate to clarify and improve the rules and address trade-distorting practices. Specifically, the United States has stated that the text regrettably does not reflect the U.S. proposal on prohibited subsidies or other proposals that would significantly strengthen the rules, such as the reinstatement of the Article 6.1 "dark amber" provisions. The United States has urged the Chair to rectify these deficiencies in subsequent versions of the text. The United States has also strongly advocated that the process of determining which provisions of the AD draft text might be appropriate for inclusion in the SCM Agreement start as soon as possible, given that each potential change would need to be assessed in light of the object and purpose of the SCM Agreement.

Fisheries Subsidies: In the first part of 2008, the Rules Group had several meetings to discuss the Chair's November 2007 draft text on fisheries subsidies, which would be an annex to the SCM Agreement. The text sets out a broad range of prohibited subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries, as well as a prohibition of subsidies that affect fishing on "overfished" stocks. The text also provides for a limited list of general exceptions available to all Members and additional exceptions for developing countries. Subsidies under both sets of exceptions would remain actionable under the existing SCM Agreement. In addition, the text requires Members not to cause depletion of or harm to, or create overcapacity with respect to, the fisheries resources of another Member. Finally, the text contains provisions concerning fisheries management systems, peer review through the UN Food and Agricultural Organization (FAO), notification and surveillance of Members' fisheries subsidies, dispute settlement, and transition arrangements.

The United States and other Friends of Fish (including Australia, Argentina, Chile, Ecuador, Mexico, New Zealand and Peru) supported the level of ambition in the Chair's text and contributed extensively to the technical discussion of its provisions. Japan, Korea, Chinese Taipei and the European Union continued to object to the scope of the Chair's prohibition, particularly with respect to subsidies to cover operating costs such as fuel. However, the negotiations made progress in several areas, including

widespread agreement on the importance of a general discipline not to cause overcapacity or harm to the fisheries resources of other Members, provisions on fisheries management, treatment of arrangements for developed country access to the fishing waters of developing countries, and the need for improved transparency provisions, including enhanced notification and meaningful surveillance.

The issue of appropriate and effective treatment for developing countries was an important focus of the negotiations and continued to prove very difficult. The Chair's text provided considerable flexibility for subsistence level and small scale developing country fishing. However, India, joined by Indonesia, introduced a proposal for much broader exceptions that could cover not only subsistence and small scale fishing, but also developing country industrial fishing. Specifically, the proposal would exempt quite large developing country vessels (up to 82 feet long) from meaningful disciplines. A revised proposal, joined by China, would extend the exceptions so that they would cover virtually all developing country fishing, including even larger vessels in distant water industrial fleets. The United States and other Friends of Fish (including developing countries) strongly resisted this proposal.

In July 2008, prior to the meeting of Ministers on modalities, the United States, with Australia and New Zealand, submitted a broad overview paper that reviewed progress in the negotiations to date and reaffirmed their commitment to achieve an ambitious and effective fisheries subsidies agreement. Also in July, Argentina, Chile, Colombia, Ecuador, Mexico and Peru submitted a complementary paper from a developing country perspective, supporting a more balanced approach to developing country exceptions than that put forward by India, Indonesia, and China.

Regional Trade Agreements: Discussions on regional trade agreements in the Rules Group focused on ways in which the WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved.

In July 2008, the Rules Group Chairman held an informal meeting to discuss the implementation of the "Transparency Mechanism for Regional Trade Agreements" (WT/L/671). The General Council agreed that during the initial year of implementation of this provisional transparency mechanism, Members, with the assistance of the WTO Secretariat, would try to pinpoint any legal aspects that arise in the course of implementation. However, based on input received from Members, Chairman Valles in his July 2008 report to the TNC (TN/RL/22) noted that it was premature to conduct such a review of the Transparency Mechanism, because Members had not yet had sufficient experience applying the mechanism, in particular since the first Enabling Clause agreement was only to be reviewed in the Committee on Trade and Development in October 2008.

Prospects for 2009

In 2009, the United States will continue to pursue an aggressive affirmative agenda building upon the U.S. proposals submitted thus far with respect to, *inter alia*, preserving the effectiveness of the trade remedy rules; improving transparency and due process in trade remedy proceedings; and strengthening the existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work to further improve and refine many of the provisions included in the Chair's draft text.

On RTAs, the transparency mechanism will continue to be applied in the consideration of additional RTAs, likely through 2009. The initial substantive review of the mechanism, as foreseen by the Chair of the General Council, may take place subject to Members' views on whether enough agreements have been reviewed under the mechanism so as to provide a basis for identifying areas where the mechanism may be improved. The United States will continue to advocate increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system.

5. Negotiating Group on Trade Facilitation

Status

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched under the August 1, 2004 Decision by the General Council on the Doha Work Program. The inclusion of negotiations on Trade Facilitation has greatly enhanced the market access aspect of the Doha Round negotiating agenda. Opaque border procedures and unwarranted delays faced at the borders of key export markets can add costs that are the equivalent of a significant tariff and are the non-tariff barriers that are most frequently cited by U.S. exporters.

The agreed negotiating mandate includes the specific objective of "further expediting the movement, release and clearance of goods, including goods in transit," while also providing a path toward ambitious results in the form of modernized and strengthened WTO commitments governing how border transactions are conducted.

Major Issues in 2008

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2008 broad-based and constructive participation by Members of all levels of development – a positive negotiating environment that is seen as offering "win-win" opportunities for all. Of particular note was the continued emergence within the NGTF of leadership from Members representing significant emerging markets, including India, Brazil, the Philippines, and China which, by working closely with the United States and others, has helped to steer the negotiations forward in a practical, problem-solving manner. The "Colorado Group", consisting of the United States, Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong China, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland, also played a valuable role in the negotiations.

For many developing country Members, results from the negotiations that bring improved transparency and an enhanced rules-based approach to border regimes will be an important element of broader ongoing domestic strategies to increase economic output and attract greater investment. There is also a growing understanding that such an outcome would squarely address one of the factors holding back increased regional integration and south-south trade. Most Members see the negotiations as bringing particular benefits to the ability of small- and medium-sized businesses to participate in the global trading system.

The modalities for conducting the trade facilitation negotiations, set forth as part of the August 1, 2004 General Council decision launching the negotiations, include the following: "Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues."

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

During 2008, the NGTF continued its work on addressing the challenge of implementing the results of the negotiations that will face many developing country Members. The WTO and assistance organizations, including the U.S. Agency for International Development, continued training exercises with developing

country Members to help them undertake assessments of their individual situations regarding capacity and how to progress toward implementing the proposals submitted. There has also been intensified work on issues related to technical assistance and special and differential treatment, such as the process for establishing implementation schedules and the potential role for a future Committee. The Member assessments have made it apparent that many of the developing country Members have implemented – or are taking steps to do so – a number of the concrete measures proposed as new WTO commitments. At the same time, it is also clear that a number of developing country Members openly recognize that they have an "offensive" interest in seeking implementation by their neighbors of any future new commitments in this area. This realization has led to broad developed and developing country Member alliances on some of the proposals. A similar dynamic emerged toward taking up how to address "special and differential" treatment as part of the negotiating outcome, with concrete and creative proposals emerging out of informal joint cooperative work by various developed and developing country Members.

As the recent Free Trade Agreements (FTAs) undertaken by the United States have been implemented, there has been a positive synergy with the WTO negotiations on Trade Facilitation. With partners as diverse as Chile, Singapore, Australia, Morocco, Bahrain, South Korea, Peru, Panama, Costa Rica, and Colombia, each FTA negotiated by the United States has included a separate, stand-alone chapter that contains significant commitments on customs administration. Each of the United States' current and future FTA partners has become an important partner and champion in Geneva for moving the negotiations ahead and toward a rules-based approach to trade facilitation.

The proposals by Members for specific new and strengthened WTO commitments submitted thus far to the NGTF generally reflect measures that would capture forward-looking practices that would bring improved efficiency, transparency, and certainty to border regimes, while diminishing opportunities for corruption. Notably, the submission of many of these proposals, as well as their initial discussions within the negotiating group, has featured alliances not traditionally seen at the WTO. Examples include a U.S. joint proposal with Uganda calling for elimination of consularization formalities and fees.

The work of the NGTF during 2008 was characterized by intensive, Member-driven, text-based negotiations. Members submitted and revised textual proposals in an effort to narrow differences and build support. The approach of crafting a draft text through a "bottom up" Member-driven process, rather than through a chair-issued text, continued to enjoy strong support among Members. Among the proposals discussed, the TFNG devoted considerable time and attention to proposals on transparency, streamlining border procedures, special and differential treatment and trade-related technical assistance. An example includes the U.S. proposal on expedited shipments, which gathered support over the course of the year.

Prospects for 2009

2009 will likely bring a continuation of the NGTF's text-based, Member-driven "focused drafting mode," in a process aimed at achieving a timely conclusion of text-based negotiations. As negotiations toward new and strengthened disciplines move forward, it will remain important that work proceeds in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations -- including with regard to the issues of special and differential treatment and technical assistance. It is possible that some further specific proposals may be submitted, but it is likely that much of the work will involve the consideration of the proposals listed below as part of a process leading to refinement and, ultimately, articulation of some into an agreed text.

MEASURES PROPOSED BY WTO MEMBERS RELATED TO GATT ARTICLES V, VIII, AND X[8]

A. Publication and Availability of Information
    - Publication of Trade Regulations and Penalty Provisions
    - Internet Publication
    - Establishment of Enquiry Points
    - Notification of Trade Regulations
B. Prior Publication and Consultation
C. Advance Rulings
D. Appeal Procedures
    - Right of Appeal
    - Appeal Mechanism in a Customs Union
E. Other Measures to Enhance Impartiality and Non-Discrimination
    - Import Alerts/Rapid Alerts
    - Detention
    - Test Procedures
F. Fees and Charges Connected with Importation and Exportation
    - Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
G. Release and Clearance of Goods
    - Pre-arrival Processing
    - Separating Release from Clearance Procedures
    - Risk Management /Analysis, Authorized Traders
    - Post-Clearance Audit
    - Expedited Shipments
    - Establishment and Publication of Average Release and Clearance Times
H. Prohibition of Consular Transaction Requirement
I. Border Agency Cooperation
J. Formalities Connected with Importation and Exportation
    - Periodic Review of Formalities and Requirements
    - Reduction/Limitation of Formalities and Documentation Requirements
    - Use of International Standards
    - Acceptance of Commercially Available Information and of Copies
    - Single Window/One-time Submission
    - Elimination of Pre-Shipment Inspection
    - Use of Customs Brokers
    - Same Border Procedures Within a Customs Union
    - Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union
    - Option to return rejected Goods to Importer
K. Tariff Classification - Objective Criteria for Tariff Classification
L. Matters Related to Goods in Transit

[8] As set out in the report of the Negotiating Group on Trade Facilitation to the Trade Negotiations Committee (TN/TF/3; November 21, 2005), endorsed by the Ministers at the December 2005 Hong Kong Ministerial and included in Annex E of the Hong Kong Ministerial Declaration. *See also,* WTO Negotiations on Trade Facilitation: Compilation of Members' Textual Proposals (TN/TF/W/43/Rev.15; July 9, 2008).

- Scope
- Basic Freedom of Transit
- Exceptions, Regulations, Restrictions and Non-Discrimination
- Disciplines on Fees and Charges
- Disciplines on Transit Formalities and Documentation Requirements
- Bonded Transport Regime and Guarantees
- Regional Transit Agreements or Arrangements
- Improved Coordination and Cooperation
- Disciplines on Restrictions to Freedom of Transit

MEASURES RELATED TO COOPERATION BETWEEN CUSTOMS AND OTHER AUTHORITIES ON TRADE FACILITATION AND CUSTOMS COMPLIANCE

M. Exchange and Handling of Information

MEASURES RELATED TO SPECIAL & DIFFERENTIAL TREATMENT, TECHNICAL ASSISTANCE & CAPACITY BUILDING, CAPACITY ASSESSMENT AND OTHER IMPLEMENTATION MATTERS

N. Implementation Mechanism
O. Regional Approaches
P. Institutional Arrangements

6. Committee on Trade and Environment, Special Session

Status

Following the 2001 WTO Ministerial Conference at Doha, the TNC established a Special Session of the Committee on Trade and Environment (CTE) to implement the mandate in paragraph 31 of the Doha Declaration. Paragraph 31 of the Doha Declaration includes a mandate to pursue negotiations, without prejudging their outcome, in three areas:

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

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

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

Major Issues in 2008

In 2008, the CTE in Special Session (CTESS) met both formally and informally, focusing primarily on DDA sub-paragraph 31(iii) of the negotiating mandate. Members also had more detailed discussions under sub-paragraph 31(i), attempting to find areas of convergence and being invited to explore whether

there was any room for accommodation with respect to some proposals that had not garnered broad support.

The CTESS Chairman, Ambassador Manuel Teehankee (Philippines), submitted a summary report of the CTESS' work to the TNC in July (TN/TE/18). The report provides for a detailed work plan under sub-paragraph 31(iii), and calls for text-based negotiations to begin under sub-paragraphs 31(i) and 31(ii) based on Members' proposals. However, the CTESS' implementation of the Chair's plans has been delayed due to the impasse at the July 2008 meeting of Ministers.

Regarding sub-paragraph 31(i) on the relationship between MEAs and WTO rules, a large majority of Members, including the United States, Australia, and Argentina, have underscored the value of experience-sharing to enhance the mutually supportive relationship of trade and environment, as well as the importance of national coordination between trade and environment experts, and believe that these elements should form an integral part of any outcome under sub-paragraph 31(i). These same Members have opposed outcomes that would go beyond the sub-paragraph 31(i) and paragraph 32 mandates by altering Members' WTO rights and obligations (e.g., a proposal from the EU would reduce the independence of WTO panels when deciding disputes involving environmental matters). Two new papers were filed under this subparagraph by Norway (a proposed draft Ministerial Decision) and by the Africa group (proposing that developing countries receive technical assistance to ensure that they implement their MEA obligations in a WTO-compatible manner).

Regarding sub-paragraph 31(ii), discussions have progressed significantly; however, there remain a few outstanding issues that will require further consultations (e.g., a proposal from the EU for automatic observer status to be granted to a number of MEA Secretariats that have participated in the CTESS' work).

Regarding sub-paragraph 31(iii), there continues to be, at this stage, a divergence of views among Members as to which goods would ultimately fall within the mandate. Nor is there any agreement among delegations at this stage on the particular modalities for cutting tariffs. The Chair's proposed work plan is without prejudice to the proposals currently on the table. As a first step, the Chair has invited Members to submit to the Secretariat "environmental goods of interest to them identified across as many categories as possible; and/or environmental goods identified in any requests/offers they would have made to other Members." The Chair has followed-up his invitation with a format for Members to use in submitting such goods of interest, but in light of the impasse at the July Ministerial meeting, has not provided a new timeline for receiving such new submissions, and none have been submitted.

Prospects for 2009

In 2009, the CTESS is expected to continue to move toward fulfillment of all aspects of the mandate under Paragraph 31 of the Doha Declaration, taking into account the progress made in related negotiating groups. Under sub-paragraph 31(i), Members are expected to rely on previous discussions of their real world experiences in the negotiation and implementation of STOs set out in MEAs to draw conclusions for any text-based negotiations. The United States continues to view this experience-based exchange as the best way to explore the relationship between WTO rules and STOs contained in MEAs and maintains that these national experiences should form the basis for an outcome in the negotiations.

Discussions under sub-paragraph 31(ii) are likely to move to text in the coming year, as many Members feel that this is an area that is ready for progress. Several Members have also noted their interest in exploring linkages between sub-paragraphs 31(i) and (ii), in light of the view that enhanced cooperation between the WTO and MEA secretariats could contribute to improving both international and national

coordination, and could further contribute to a mutually supportive relationship between trade and environment regimes.

Finally, the CTESS is expected to remain active in discussing the importance of liberalization in both environmental goods and services in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development. The Chair's work plan, including the identification of environmental goods of interest, sets out a widely-supported way forward. The United States will continue to show leadership in advancing a robust outcome in the negotiations, including further development of an environmental goods and services agreement (EGSA), which we proposed in November 2007 in an effort to open markets for environmental goods and advance Members' environmental and development policies.

7. Dispute Settlement Body, Special Session

Status

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

Major Issues in 2008

The DSB-SS met six times during 2008 in an effort to implement the Doha mandate. In previous phases of the review of the DSU, Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions to the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals.

The United States has advocated two proposals. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public as the norm and give greater public access to submissions and panel reports. In addition to open hearings, public submissions and early public release of panel reports, the U.S. proposal calls on WTO Members to consider rules for "*amicus curiae*" submissions -- submissions by non-parties to a dispute. WTO rules currently allow such submissions, but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In addition, the United States and Chile submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among Members. The joint proposal

contained specifications aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so. As part of this proposal, the United States has also proposed guidance for WTO Members to provide to WTO adjudicative bodies in three particular areas where important questions have arisen in the course of various disputes.

Prospects for 2009

In 2009, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2009.

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

Status

With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) on the implementation of Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ministers agreed at the 2001 Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. At the 2005 Hong Kong Ministerial Conference, Ministers agreed to intensify their work in order to complete these negotiations within the overall time-frame for the conclusion of the Doha negotiations. This topic is the only issue before the Special Session of the TRIPS Council.

Major Issues in 2008

The TRIPS Council Special Session held one formal meeting in 2008 (April 29), as well as several informal consultations. There was no significant shift, during the course of the year, in currently-held positions among WTO Members, nor any movement towards bridging sharp differences between competing proposals. Key positions are reflected in a 2005 WTO Secretariat document (TN/IP/W/12) which contains a side-by-side presentation of the three proposals before the Special Session; the Secretariat expanded upon this document in May 2007, with an addendum detailing the various arguments and questions raised by proponents of these proposals (TN/IP/W/12/Add. 1). In a July 2008 report to the TNC (TN/IP/18), the Chairman of the TRIPS Council Special Session highlighted, in particular, ongoing divergences with respect to participation in the multilateral register system (*i.e.*, whether the system would apply to all Members or only to those opting to participate in it) and to the nature of the legal obligations provided for in the system (*i.e.*, the extent to which legal effects at the domestic level determine the effect of registration of a GI for a wine or spirit in the system).

The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Nicaragua, Paraguay, and Chinese Taipei continued to support the Joint Proposal under which Members would notify their GIs for wines and spirits for incorporation into a register on the WTO website. During 2008, the Republic of Korea and the Republic of South Africa formally associated themselves as co-sponsors of the Joint Proposal. Several Joint Proposal co-sponsors have submitted a Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits to the Special Session to set out clearly in draft legal form, a means by which Members could implement the mandate from paragraph 18 of the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement. Members choosing to use the system would agree to consult the

system when making any decisions under their domestic laws related to GIs or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations – with regard to GIs – on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat.

The EU together with a number of other Members continued to support their alternative proposal for a binding, multilateral system for the notification and registration of GIs for wines and spirits. The current EU position is reflected in a June 2005 document in the form of draft legal text that combines two proposals: the multilateral GI register for wines and spirits and an amendment to the TRIPS Agreement to extend Article 23-level GI protection to products beyond wines and spirits. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would be automatically protected as a GI throughout the world with very few permissible grounds for objection. In addition, the notified GI would be presumed valid against a competing rightholder, including a prior rightholder. Essentially, the system proposed by the EU could, as a practical matter, enable one Member to mandate GI protection in another Member simply by notifying that GI to the system. Such a proposal would negatively affect pre-existing trademark rights, as well as investments in generic food terms, and would directly contradict the principle of territoriality with respect to intellectual property in favor of a system based upon the unilateral and extraterritorial application of domestic law and national intellectual property regimes. While the EU has informally indicated possible modifications to its June 2005 proposals, these have not been presented formally within the negotiations.

A third proposal, from Hong Kong China, remains on the table, although it was not actively discussed during 2008.

Prospects for 2009

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, and will seek a more flexible and pragmatic approach on the part of the EU, so that the negotiations can be completed.

9. Committee on Trade and Development, Special Session

Status

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

As part of the S&D review, developing countries Members have submitted 88 proposals to augment existing S&D provisions in the WTO agreement. Following intensive negotiations in 2002 and 2003, the CTD-SS agreed *ad referendum* on nearly a third of those proposals for consideration at the Fifth Ministerial Conference in Cancun, Mexico in 2003. Due to the breakdown of the DDA negotiations, these proposals were not adopted at Cancun. Since Cancun, WTO Members have taken no action to adopt them, and in November 2005, the Africa Group submitted a paper to the CTD-SS repudiating the agreed texts of these proposals. In 2004 and early 2005, the focus of the CTD-SS shifted to discussions

on new approaches to address the mandate more effectively, and reflected a desire to find a more productive approach than that associated with the specific proposals that individual Members or groups tabled. Despite extensive discussions, Members were unable to reach agreement on an alternative framework for approaching the mandate of the CTD-SS.

Leading up to the 2005 Hong Kong Ministerial, Members focused in the CTD-SS on five S&D proposals put forth by the LDC Members. These included proposals on: access to WTO waivers; coherence; duty-free and quota-free treatment (DFQF) for LDC Members; Trade Related Investment Measures (TRIMS); and flexibility for LDC Members that have difficulty implementing their WTO obligations. At the Hong Kong Ministerial Conference, Members reached agreement in these five areas. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration.

Major Issues in 2008

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough "accounting" of the remaining agreement-specific proposals. Though the number of proposals had been reduced considerably since their introduction in 2002 and 2003, divergences among Members' positions on the remaining proposals were quite wide. In 2008, the Chairman of the CTD-SS continued to work closely with the Chairs of the other negotiating groups and Committees to which the proposals had been referred due to their technical complexity. The Chairs reported that there has been very little development on these proposals. However, some of the Chairs of the negotiating bodies indicated that a number of the issues raised in the proposals form an integral part of the ongoing negotiations. In addition, there are a number of bodies in which discussions on the proposals are continuing on the basis of revised language tabled by the proponents.

With respect to the remaining proposals still under consideration in the CTD-SS, Members have continued to focus their text-based discussions on seven of the 16 remaining Agreement-specific proposals. These proposals cover issues relating to Article 10.2 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), Article 10.3 of the SPS Agreement and Article 3.5 of the Agreement on Import Licensing. At the request of the proponents, work relating to Article XVIII of the GATT has been put on hold while they consider revising the language of the proposal. No consensus on these proposals emerged during the discussions in 2008. The nine remaining Agreement-specific proposals that have been set aside at the instruction of the Chair will not be addressed until new ideas or new language is tabled.

The Hong Kong Declaration directs the CTD-SS to "resume work on all other outstanding issues, including the cross-cutting issues, the Monitoring Mechanism and the architecture of WTO rules." In 2008, the possible elements of a Monitoring Mechanism continued to be discussed. During formal and informal meetings, Members have continued to emphasize the need for the mechanism to be simple, practical and forward looking. There continues to be disagreement as to whether the mechanism requires a new bureaucratic structure to function and whether the scope of the mechanism should be broadened to include monitoring the implementation and effectiveness of special and differential provisions.

Prospects for 2009

In 2009, work will continue on the remaining S&D proposals and on the underlying issues inherent in them. As in 2008, much of the practical work on S&D in 2009 is likely to take place in the other Negotiating Groups, for example the Negotiating Groups on Agriculture, Non-Agricultural Market Access, Services, and Trade Facilitation. However, it is also likely that discussions will continue in the CTD-SS toward a mechanism to monitor implementation of S&D provisions and other cross-cutting issues.

C. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt, and Finance

Status

Ministers at the 2001 Doha Ministerial Conference established the mandate for the Working Group on Trade, Debt, and Finance (WGTDF). Ministers instructed the WGTDF to examine the relationship between trade, debt, and finance, and to examine and make recommendations on possible steps, within the mandate and competence of the WTO, to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed country Members. Ministers further instructed the WGTDF to consider possible steps to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

Major Issues in 2008

The WGTDF held two formal meetings in 2008. The first meeting was held in July 2008. During this meeting, Members raised issues for discussion relating to the general availability of trade finance, the impact of the full implementation of Basel II bank requirements on the availability of trade finance for developing countries, and the effect of new indebtedness of poor developing countries on their ability to participate in trade. The Members also discussed a paper prepared by the WTO Secretariat that summarized a WTO-hosted expert group meeting on trade finance.

The second meeting was held in November 2008. During this meeting, Members discussed the submissions made by Brazil and Hong Kong China, a representative from the Secretariat of the Basel Committee on Banking Supervision made a presentation on certain important implications of the Basel II framework for trade financing, and the WTO Secretariat debriefed the Working Group on the outcome of the second meeting of the Expert Group on Trade Finance convened by the WTO in November.

Prospects for 2009

In 2009, the WGTDF will examine its mandate concerning the relationship between trade, debt, and finance, and may make recommendations on possible steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and LDC Members.

2. Working Group on Trade and Transfer of Technology

Status

During the 2001 Doha Ministerial Conference, WTO Ministers agreed to an "examination… of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries." In fulfillment of that mandate, the TNC established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, which would report on its progress to the 2003 Ministerial Conference at Cancun. At that meeting, the WGTTT's mandate was extended. During the 2005 Hong Kong Ministerial Conference, WTO Ministers recognized "the relevance of the relationship between trade and transfer of technology" and further agreed that, "building on the work carried out to date, this work shall continue on the basis of the mandate contained in paragraph 37 of the

Doha Ministerial Declaration." Members have not reached consensus on any recommendations. The WGTTT met four times in 2008, continuing its work under the Doha Ministerial mandate to examine the relationship between trade and the transfer of technology.

Major Issues in 2008

In the period since the Doha Ministerial, the WGTTT has considered submissions from the Secretariat, WTO Members, other WTO bodies, and other inter-governmental organizations.

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

During discussions in the WGTTT, the United States and other Members consistently argued that market-based trade and investment are the most efficient means of promoting technology transfer, and that governments should generally not mandate the transfer of technology. The United States has also argued that the contribution of commerce to technology transfer reinforces the case for continued trade and investment liberalization. The United States and other Members suggested that developing country Members take steps to enhance their ability to absorb foreign technologies and described how technical assistance could promote technology transfer and absorption. Finally, the United States and other Members expressed the view that many of the issues raised might be addressed more effectively in the WTO or other multilateral bodies with expertise on the particular subject matter.

During 2008, the working group continued its discussion on the basis of presentations by Members and outside bodies on their experience and research regarding technology transfer, and on the basis of proposals by Members. In March, the World Bank presented its 2008 Global Economic Prospects Report which drew four broad conclusions. These conclusions are largely consistent with the view of the United States. First, technological progress in general in developing countries has outpaced that of high-income countries, due to increasing adaptation of technologies. In contrast, however, high-income countries remain the drivers of new technologies. Second, the pace of technology diffusion has increased rapidly. Third, issues such as trade, foreign direct investment (FDI), direct access to information, and exports are all important drivers of technology transfer. The World Bank Report indicates that lowering tariffs on intermediate inputs drives productivity and increased competition from imports spurs advances. Finally, factors such as the macroeconomic environment, the structure of the financial sector and the regulatory environment, and technological literacy/education all affect a country's ability to absorb new technologies.

In mid-2008, India, Pakistan, and the Philippines returned to the discussion of their proposal for "Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries" originally presented in October 2005. During 2008, these Members focused on their ideas for improving the WTO web site to facilitate research on technology transfer programs, and to set up a page for Members to post information about technological needs which could be accessed by the private sector. The United States and other Members have expressed appreciation for the constructive ideas being advanced by the proponents and are continuing to explore the feasibility of some of these ideas.

Prospects for 2009

As of December 2008, no WGTTT meetings have been scheduled in 2009. It is expected that, in response to a request from the Chairman of the Group, developing country Members will make presentations of their national experience with technology transfer, and that the group will continue its examination of issues raised in the October 2005 India/Pakistan/Philippines paper.

3. Work Program on Electronic Commerce

Status

Pursuant to the Hong Kong Ministerial Declaration, Members continue to explore ways to advance the Work Program on Electronic Commerce. To that end, Members are considering development-related issues and the trade treatment, *inter alia*, of electronically delivered software. In addition, the moratorium on imposing customs duties on electronic transmission, first agreed to in 1998, continues until the next Ministerial Conference.

Since 2001, the Work Program on Electronic Commerce has held several dedicated discussions under the auspices of the General Council. These informal discussions examined cross-cutting issues that the various sub-bodies of the General Council identified as affecting two or more of the various WTO legal instruments. The most controversial cross-cutting issue has been whether to classify electronically-delivered products (e.g., software, music and video) as a good or a service. Resolution of that issue has not been reached, but Members may examine it more thoroughly in the coming year.

Major Issues in 2008

The Work Program on Electronic Commerce remains an item in the Doha mandate. There have been no follow-up dedicated discussions since the meeting in November 2005 during which Members examined two issues raised by the United States – the trade treatment of electronically delivered software and the customs duties moratorium on electronically transmitted products. No sessions of the Work Program were held in 2007. Electronic Commerce issues did figure prominently, however, in the symposium held in February 2008 to mark the tenth anniversary of the Basic Telecommunications Agreement. Many presenters at this symposium focused on the developmental benefits that competitive telecommunications markets brought, particularly relating to Internet-enabled applications.

Prospects for 2009

The United States remains committed to advancing meaningful trade policies that promote the growth of electronic commerce. Indeed, the focus of work in all negotiating groups has been to advance market openings in key information technology product and service sectors. Market access for these products and services will further encourage the expansion of electronic commerce. The United States continues to support extending the current practice of not imposing customs duties on electronic transmissions and is in the process of examining ways to make the moratorium permanent and binding in the future. Furthermore, the United States will work to focus Members' attention on the growing importance of maintaining a liberal trade environment for electronically-delivered software and other digitally-delivered products. Depending on progress in the overall Doha Round in 2009, Members would renew their efforts under the Work Program to work toward those objectives.

D. General Council Activities

Status

The WTO General Council is the highest-level decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet no less than once every two years.

Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit amendments to the Agreements for consideration by Members, and grant waivers of obligations. The General Council or the Ministerial Conference must approve the terms for all accessions to the WTO. Technically, both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are General Council meetings that are convened for the purpose of discharging the responsibilities of the DSB and TPRB, respectively.

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee (TNC). In addition, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups which have been given mandates to report to the General Council, such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. These mandates are part of DDA and their work is reviewed in the *Working Group on Trade, Debt, and Finance* and *Working Group on Trade and Transfer of Technology* sub-sections of Section C.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building. Throughout 2008, the Chairman of the General Council, together with the Director General, conducted extensive informal consultations with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view towards making progress on the core issues in the DDA, as well as towards resolving outstanding issues on the General Council's agenda. In 2008, the main focus of work in the DDA negotiations was in the individual negotiating groups and reports on those groups are set out in other sections of this chapter.

Major Issues in 2008

Ambassador Bruce Gosper of Australia served as Chairman of the General Council in 2008. In addition to work on the DDA, activities of the General Council in 2008 included:

Accessions: Capping over 13 years of work, the General Council approved the terms of accession for Ukraine in February 2008. (See section on Accessions.) The General Council also approved a request from Equatorial Guinea to initiate accession negotiations.

China Transitional Review Mechanism: In December, the General Council concluded its seventh annual review of China's implementation of the commitments that China made in its Protocol of Accession. The United States and other Members commented on China's progress as a WTO Member, while also raising concerns in areas such as intellectual property rights enforcement, and urged China to make further progress toward the institutionalization of market mechanisms, fairness, transparency, and predictability in its trade regime

Bananas: During 2008, the General Council considered complaints from several banana-producing Latin American Members regarding the effect of enlargement and tariffication of quotas under the EU banana regime and the EU's non-recognition of negotiating rights under Articles XXIV:6 and XXVIII of the GATT 1994. This issue remains unresolved.

Waivers of Obligations: The General Council approved a request from the EU for a waiver concerning the application of the European Union Autonomous Preferential Treatment to Moldova and from Senegal providing a waiver from the provisions on minimum values of the Customs Valuation Agreement until 30 June 2009. The General Council also adopted waivers for the Harmonized System 1996 changes to WTO schedules of tariff concessions for Argentina and Panama. Annex II contains a detailed list of Article IX waivers currently in force.

Prospects for 2009

The General Council is expected to be more active in 2009 as Members endeavor to bring the DDA negotiation to its concluding phase. In addition to its management of the WTO and oversight of implementation of the WTO Agreements, the General Council will continue to closely monitor work on all aspects of the DDA negotiations.

E. Council for Trade in Goods

Status

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

The CTG is the forum for discussing issues and decisions which may ultimately require the attention of the General Council for resolution or a higher-level discussion, and for putting issues in a broader context of the rules and disciplines that apply to trade in goods. The use of the GATT 1994 Article IX waiver provisions, for example, is considered in the CTG and the CTG gave initial approval to waivers for trade preferences granted to ACP countries and the Caribbean Basin Initiative (CBI) countries by the EU and the United States, respectively.

Major Issues in 2008

In 2008, the CTG held four formal meetings, in March, May, July, and November. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions that individual Members had taken with respect to the operation of goods-related WTO Agreements. Many of these

complaints were resolved through consultation. In addition, three major issues were debated extensively in the CTG in 2008:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules, and the EU's request for a waiver concerning the application of the European Union Autonomous Preferential Treatment to Moldova. In addition, the CTG took up waiver requests for which discussions are continuing: the United States' request concerning the African Growth and Opportunity Act (AGOA), Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Promotion Act (ATPA); the EU's request for an extension of its ACP banana tariff rate quota; and Senegal's request for an extension of its waiver for continued use of minimum values for customs valuation purposes.

China Transitional Review: On November 18, the CTG conducted the seventh annual Transitional Review Mechanism (TRM) review of China, as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information and answered questions that Members posed, and the CTG reviewed the TRM reports of CTG subsidiary bodies. (See Chapter III Section E on China for a more detailed discussion of China's implementation of WTO commitments.)

Textiles: The CTG met several times to review a proposal by small exporting Members, including Turkey, to find ways to assist them with post-Agreement on Textiles and Clothing (ATC) adjustment problems. These Members argued that the elimination of quotas resulted in a disastrous loss of market share from small suppliers to the large exporters such as China and India. They asked that the CTG study this adjustment issue with a view to adopting proposals to ease the transition. These proposals were blocked by the large exporting Members, such as China and India. They argued that 40 years of textile restraints were long enough and it was necessary for this sector to return to normal trade rules. China and India contended that any attempt to ease the transition to a quota-free environment would perpetuate the distortions which had characterized this sector for so long.

Prospects for 2009

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Post-ATC adjustment and the outstanding waiver requests will be prominent issues on the agenda.

1. Committee on Agriculture

Status

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

Since its inception, the Agriculture Committee has proven to be a vital instrument for the United States to monitor and enforce agricultural trade commitments that were undertaken by other Members in the Uruguay Round. Members agreed to provide annual notifications of progress in meeting their

commitments in agriculture and the Committee has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

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

Major Issues in 2008

The Agriculture Committee held three formal meetings in March, September, and December 2008 to review progress on the implementation of commitments negotiated in the Uruguay Round. At the meetings, Members undertook reviews based on notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

In total, 28 notifications were subject to review during 2008. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. The Committee proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States used the review process to raise concerns about Nigeria's import bans on certain agricultural products and its use of reference prices for custom valuation purposes instead of actual declared values. Subsequently, Nigeria eliminated several import bans, though not all, and additionally reduced tariffs on several products, including some of interest to U.S. exporters. The United States also raised concerns about Switzerland's domestic purchase requirement for bovine semen and asked for an explanation of how Pakistan's administered price system for wheat functions. In addition, the United States used the review process to state its support for questions from Argentina and Australia requesting the European Union to propose multilateral negotiations to establish the bound Aggregate Measurement of Support (AMS) level corresponding to the actual number of EU Member States since its enlargement. The United States also used the review process to request that the European Union notify food assistance provided by Member States.

The United States also raised questions concerning elements of domestic support programs used by Albania, Armenia, Canada, Japan, and Taiwan.

During 2008, the Agriculture Committee addressed a number of other agricultural implementation-related issues, such as: (1) development of internationally-agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (2) review of Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision[9] regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner; (3) annual monitoring of the Marrakesh NFIDC decision on food aid of April 15, 1994; and (4) annual consultations, under Article 18.5 of the Agriculture Agreement, concerning Members' participation in the normal growth of world trade in agricultural products within the framework of commitments on export subsidies.

Also during 2008, the Committee conducted the seventh annual Transitional Review Mechanism for China, which is required under the protocol for China's accession to the WTO. The United States asked about China's domestic support for its pork industry, VAT exemptions, export VAT rebates, and administration of its TRQ regime for bulk agricultural commodities.

[9] WT/L/384 General Council - Implementation-Related Issues and Concerns - Decision of 15 December 2000.

Prospects for 2009

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

2. Committee on Market Access

Status

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

Major Issues in 2008

The MA Committee held two informal sessions followed by formal meetings in April and October 2008 to discuss the following topics: (1) the ongoing multilateral review of WTO schedules of Members' tariff concessions to accommodate updates to the Harmonized System (HS) 2002 tariff nomenclature and any other tariff modifications; (2) the WTO Integrated Data Base (IDB); and (3) finalizing consolidated schedules of WTO tariff concessions in HS 2002 and 2007 nomenclature. The Committee also conducted its seventh annual Transitional Review of China's implementation of its WTO accession commitments.

Updates to the HS nomenclature: The MA Committee examines issues related to the transposition and renegotiation of the schedules of certain Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the HS nomenclature has been modified by the World Customs Organization in 1996, 2002, and 2007. Using agreed examination procedures, WTO Members have the right to object to any proposed nomenclature change that affects the level of another Member's tariff rates on bound items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of Members have completed the process of implementing HS 1996 changes, but Argentina and Panama continue to require waivers, and additional information is needed from Venezuela in order to finalize certification of its HS1996 documentation.

In 2005, the MA Committee agreed to new procedures using the Consolidated Schedule of Tariff Concessions (CTS) database and assistance from the Secretariat for the introduction into Members' schedules and verification of the 373 amendments to HS nomenclature that took effect on January 1, 2002 (HS 2002). Work on this conversion to HS 2002, which is essential to laying the technical groundwork for analyzing the tariff implications of the DDA negotiations, continued throughout 2008.

In January 2007, the HS 2007 documentation was circulated to the WTO Membership, including the procedures and layout for the transposition from tariff schedules in HS 2002 to HS 2007. The Committee began discussions of the process of the transposition of Members' schedules to HS 2007. At the

Committee's meeting in October 2008, the Secretariat reported that it had not yet begun work on the HS 2007 transposition, due to the ongoing review, verification, and certification process for the HS2002 transpositions, as well as heavy Secretariat workload on the DDA negotiations.

Integrated Data Base (IDB): The MA Committee addressed issues concerning the IDB, which is updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. The United States continues to take an active role in pressing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members. As a result, participation has continued to improve, although as of October 2008, the following Members had not yet submitted tariff and trade information to the IDB: Cambodia, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, Guinea Bissau, Haiti, Mozambique, Saudi Arabia, and Vietnam.

Consolidated Schedule of Tariff Concessions (CTS): The MA Committee continued work on implementing an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflect Uruguay Round tariff concessions; HS 1996 and 2002 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables. The CTS has been linked to the IDB and serves as the vehicle for conducting the DDA negotiations in agriculture and non-agricultural market access.

China Transitional Review: In October 2008, the MA Committee conducted its sixth annual review of China's implementation of its WTO commitments on market access. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation in the areas of export quotas on raw materials and value-added tax exemptions.

Prospects for 2009

The ongoing work program of the MA Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will continue to explore technical assistance needs related to data submissions and to finalize Members' amended schedules based on the HS 2002 revision. In addition, the Committee will continue to organize and begin conducting the conversion of Members' schedules to HS 2007.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The Committee on the Application of Sanitary and Phytosanitary Measures (the SPS Committee) provides a forum for the implementation and administration of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), consultation on Members' existing and proposed SPS measures, technical assistance, other informational exchanges, and the participation of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: for food, the Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (OIE); and for plant health, the International Plant Protection Convention (IPPC).

The SPS Committee also discusses specific provisions of the SPS Agreement. These discussions provide an opportunity to develop procedures to assist Members in meeting specific SPS obligations. For

example, the SPS Committee has issued procedures or guidelines regarding: notification of SPS measures; the "consistency" provisions under Article 5.5 of the SPS Agreement; equivalence; transparency regarding the provisions for special and differential treatment; and regionalization.

Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments engaged in negotiating their accession to the WTO may attend Committee meetings as observers. In addition, representatives from a number of international organizations attend Committee meetings as observers on an *ad hoc*, meeting by meeting basis, including: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the Codex; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA), and the World Bank.

Major Issues in 2008

In 2008, the SPS Committee held meetings in April, June, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions regarding transparency, equivalence, and regionalization, including Members providing information on their efforts to declare areas of their country free from specified pests and diseases.

The United States views these exchanges as positive developments as they demonstrate a growing familiarity with the provisions of the SPS Agreement and increased recognition of the value of the SPS Committee as a forum for the Members to discuss SPS-related trade issues. Many Members, including the United States, utilized these meetings to raise concerns regarding new and existing SPS measures of other Members. In 2008, the United States raised a number of concerns with measures imposed by other Members, including India's avian influenza restrictions, Japan's maximum residue limit enforcement policies, the EU ban on the use of pathogen reduction treatments on imported poultry meat, and Taiwan's ban on the use of the growth additive, ractopamine, in swine. Further, the United States, with a view to transparency, informed the SPS Committee of various U.S. measures, both new and proposed, such as the U.S. Food and Drug Administration's proposed Food Protection Plan.

Bovine Spongiform Encephalopathy (BSE): During the April, June, and October meetings, Members were encouraged to resume trade in U.S. beef and beef products based on OIE guidelines. At various times, the United States, the EU, and the OIE made floor interventions to emphasize this point. In April, the United States acknowledged the recognition of certain Members, including Barbados, Indonesia, and the Philippines, that the United States has qualified as a Controlled Risk Country for BSE by the OIE.

Avian Influenza: Various Members raised concerns during SPS Committee meetings with certain Members' measures that do not appear to comply with OIE guidelines for avian influenza. The United States remains particularly concerned when measures are imposed when outbreaks of low pathogenic avian influenza are notified to the OIE despite OIE guidance that bans are only to be imposed in instances of a high pathogenic outbreak.

China's Transitional Review Mechanism: The United States and the EU submitted questions for the SPS Committee's seventh review of China's implementation of its WTO obligations as provided for in China's WTO Accession Protocol. The United States asked questions regarding China's BSE restrictions, requested information on the status of revision to China's sampling plans and microbiological criteria for food-born pathogens, and expressed concerns that China had banned ractopamine without conducting a risk assessment. The United States also raised its concern that China's import bans related to low pathogenic avian influenza, which adversely affect the states of Arkansas and Virginia, do not appear to comply with OIE guidelines. Finally, the United States asked how China plans to boost its food safety regulations, especially with regard to the recent melamine-related problems, and whether such

regulations would be notified to the WTO in accordance with the SPS Agreement. China responded orally to questions and concerns raised by Members during the review and restated its commitment to implement fully the provisions of the SPS Agreement.

Regionalization: The SPS Committee finalized a decision on guidelines for the implementation of regionalization by Members. Regionalization is the process by which a Member recognizes the existence of regions of a trading partner's country that are disease-free or pest-free (or that at least have a lower disease or pest incidence than other regions). Regionalization can be an effective means to reduce restrictions on trade due to animal or plant health concerns by ensuring that Members do not go farther than necessary to achieve their appropriate level of protection. In many cases, country-wide import prohibitions can be reduced to state or county-wide prohibitions, depending on the characteristics of the pest or disease at issue as well as other factors. The Committee decision encourages Members to develop transparent processes for regionalization decisions, including the publication of the relevant regulations.

As evidence of the United States' support for the implementation of the regionalization provisions of the Agreement, this year the United States reported its recent recognition of 20 municipalities in Brazil as being free of the South American cucurbit fly, a major pest of melons. This recognition acknowledges that Brazil has instituted appropriate measures to create areas free of cucurbit fruit fly, consistent with international standards, and certified these regions as pest-free. The U.S. recognition process was done through a streamlined procedure for evaluating imported fruit and vegetables, as notified in G/SPS/N/USA/1307 and addenda.

Technical Assistance: The United States presented an update to document G/SPS/GEN/181 on SPS trade capacity building efforts to document that between June 2006 and May 2008 the United States sponsored 420 SPS technical assistance projects in 124 developing countries. At the Committee's June meeting, the representatives of Chinese Taipei and the Dominican Republic thanked the United States for the technical assistance provided to them during that Committee meeting.

Notifications: Because it is critical for trading partners to know and understand each other's laws, the SPS notification process, with the Committee's consistent encouragement, is becoming an increasingly important mechanism in the facilitation of international trade. The process also provides a means for Members to report on determinations of equivalence and special and differential treatment. The United States made 270 SPS notifications to the WTO Secretariat in 2008 and submitted comments on 119 SPS measures notified by other Members.

Private and Commercial Standards: In October, the Committee established a working group to discuss private standards and their possible effects on international trade. The working group consists of the 30 Members that responded to the Secretariat's July questionnaire on this issue. As a participant in the working group, the United States plans to monitor the working group's activities closely. The working group will begin by collecting specific examples of where private SPS-related standards may have had an impact on a country's ability to export products. The Secretariat plans to distribute a questionnaire in February 2009 to solicit specific examples for the working group's review with responses due the following June. The working group will report regularly to the Committee on its progress.

Prospects for 2009

The SPS Committee will hold three meetings in 2009 with informal sessions anticipated to be held in advance of each meeting. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The SPS Committee will continue to monitor Members' implementation activities and the discussion of specific trade concerns will continue to be an important

part of the Committee's activities, including exchanges on BSE, AI, food safety measures, and technical assistance.

In 2009, the Committee will undertake the Third Review of the Operation and Implementation of the SPS Agreement consistent with the Doha Declaration commitment to undertake such reviews at least every four years. The United States anticipates that the SPS Committee will also focus on furthering priorities identified in the second review, including the issuance of guidance regarding *ad hoc* consultations under Article 12.2 of the Agreement, and the provision of technical assistance and special and differential treatment. Finally, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC. A working group of the SPS Committee will also discuss the proliferation of private and commercial standards.

4. Committee on Trade-Related Investment Measures

Status

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

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

Major Issues in 2008

The TRIMS Committee held one formal meeting during 2008.

As part of the review of special and differential treatment provisions, the TRIMS Committee continued to consider several TRIMS-related proposals submitted by a group of Members from Africa. One proposal argued that Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by African Members to safeguard their balance of payments. A second proposal argued that LDC or other low-income Members experiencing balance-of-payments difficulties should be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. A third proposal would require the CTG to grant new requests from certain African Members for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS. Although these proposals remain on the agenda of the TRIMS Committee, there has been little movement toward consensus on these issues. There was no substantive discussion of these proposals during the formal meeting.

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its seventh annual review in 2008 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main objectives in this review were to obtain information and clarification regarding China's WTO compliance efforts. During the October meeting of the TRIMS Committee, China addressed such issues of interest to the United States as its automobile and steel policies, as well as its guidance for foreign investment. U.S. agencies are analyzing China's policies in an effort to decide whether and how to pursue these issues in the future.

Prospects for 2009

The United States will engage other Members in efforts to promote compliance with the TRIMS Agreement and avoid weakening the disciplines of that Agreement.

5. Committee on Subsidies and Countervailing Measures[10]

Status

The Agreement on Subsidies and Countervailing Measures (the SCM Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action – to address subsidized trade that causes harmful commercial effects. Subsidies contingent upon export performance and subsidies contingent upon the use of domestic over imported goods are prohibited. All other subsidies are permitted, but are actionable (through CVD or WTO dispute settlement actions) if they are (i) "specific", i.e., limited to a firm, industry, or group thereof within the territory of a WTO Member, and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another Member.

Major Issues in 2008

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held three formal meetings in 2008, in April, July, and October. The Committee continued to review the consistency of Members' domestic laws, regulations, and actions with the SCM Agreement's requirements, as well as Members' notifications of their subsidy programs to the Committee. During the October meeting, the Committee held its seventh review of China's implementation of the SCM Agreement, pursuant to the Transitional Review Mechanism provided by China's protocol of WTO accession. Other issues addressed in the course of the year included: the examination of specific export subsidy program extension requests for certain developing country Members, approval of new members for the Permanent Group of Experts, and the updating of the methodology for Annex VII (b) of the SCM Agreement. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of: (1) new or amended CVD legislation and regulations; (2) CVD investigations initiated and decisions taken; and (3) Members' subsidy programs. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the SCM Committee at the meetings in April and October.

In reviewing notified CVD legislation and subsidies, SCM Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified

[10] For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2009.

measures and their relationship to the obligations of the Agreement. At the end of 2008, 88 WTO Members (counting the 27 members states of the EU as one) have notified that they currently have CVD legislation in place, or have notified that they have no such legislation; 38 Members have not, as yet, made a notification. In 2008, the Committee reviewed the notifications of CVD laws and regulations of Albania, Canada, China, Costa Rica, Egypt, El Salvador, the EU, Guatemala, Nicaragua, the United States and Ukraine.[11]

As for CVD measures, five Members notified CVD actions they took during the latter half of 2007, and nine Members notified actions they took in the first half of 2008. Specifically, the SCM Committee reviewed actions taken by Australia, Brazil, Canada, Costa Rica, the EU, Japan, Mexico, New Zealand, Peru, South Africa, Turkey, and the United States.

The Committee examined eighteen new and full 2007 subsidy notifications and two new and full 2005 subsidy notifications. Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed country Members. Notably, the Committee continued the review of China's first new and full subsidy notification, originally submitted in April 2006 (see *China Transitional Review* below). In 2007, the United States submitted its 2005 new and full subsidies notification, detailing over 40 federal programs and nearly 400 state programs. Several written sets of questions and answers were exchanged regarding the U.S. notification, which was reviewed by the SCM Committee at both the spring and fall meetings.

China Transitional Review: At the October meeting, the SCM Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the seventh annual Transitional Review with respect to China's implementation of its WTO obligations in the areas of countervailing measures, subsidies, and pricing policies.

Following increasing pressure from the United States and other WTO members, China finally submitted its long-overdue subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification reported on over 70 subsidy programs, it was notably incomplete, as it failed to notify any subsidies, *inter alia*, provided by provincial and local government authorities. The United States has devoted significant time and resources to researching, monitoring and analyzing China's subsidy practices, which helped to identify the very significant omissions in China's subsidy notification and lay the groundwork for the further pursuit of several issues. In the context of the Transitional Review, the United States reiterated its concerns as to the lack of provincial and local programs in China's subsidy notification and pressed China to submit a full notification as soon as possible. The United States also informed the Committee that it had uncovered certain unreported subsidies that appeared to be export subsidies formulated by the central government and implemented by provincial and local governments, and stated that any export subsidies currently in place had to be terminated without delay.

Extension of the transition period for the phase out of export subsidies: Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the SCM Agreement allows for the SCM Committee to grant an extension of this deadline. If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

To address the concerns of certain small developing country Members, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the Fourth Ministerial Conference in 2001. Members meeting all the qualifications for the agreed-upon special procedures were eligible for annual

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

extensions for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under these special procedures.

Following a request for a further extension, in 2007, the SCM Committee decided to recommend to the General Council that it extend the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The General Council adopted the recommendation of the SCM Committee in July 2007.

Specific export subsidy program extension requests under the new procedures were made in 2008 by all of the developing country Members listed above. These requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the SCM Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the extension requests were granted.

Permanent Group of Experts: Article 24 of the SCM Agreement directs the Committee to establish a Permanent Group of Experts (PGE) "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the SCM Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

In the beginning of 2008, the Permanent Group of Experts only had two members: Yuji Iwasawa (Japan) and Mr. Asger Petersen (Denmark). The SCM Committee had been unable to reach a consensus as to the appointment of new members to succeed Mr. Hyung-Jin Kim (Korea), Mr. Terence P. Stewart (United States), and Professor Okan Aktan (Turkey), whose terms expired in 2005, 2006 and 2007, respectively. Mr. Iwasawa's term expired in the spring of 2008. Following informal consultations held in March and April 2008, the Chairman announced at the 2008 spring meeting that Members had reached an understanding on the procedures to be followed to fill the four vacant positions. Pursuant to these procedures, the Committee elected four experts at a special meeting held in July 2008: Dr. Chang-fa Lo (Chinese Taipei); Dr. Manzoor Ahmad (Pakistan); Mr. Zhang Yuqing (China); and Mr. Jeffrey A. May (United States), with terms until 2010, 2011, 2012 and 2013, respectively.

The Methodology for Annex VII (b) of the SCM Agreement: Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment. Specifically, the export subsidies of these Members are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as "least developed countries" (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita

GNP under $1,000 per annum and are specifically listed in Annex VII(b).[12] A country automatically "graduates" from Annex VII (b) status when its per capita GNP rises above the $1,000 threshold. At the Fourth Ministerial Conference, decisions were made which led to the adoption of an approach to calculate the $1,000 threshold in constant 1990 dollars. The WTO Secretariat updated these calculations in 2008.[13]

Prospects for 2009

In 2009, the United States will continue to focus on China's subsidy programs and the Transitional Review Mechanism to ensure that China meets its obligations under its Protocol of Accession and the SCM Agreement. The United States will bring to the Committee's attention unreported subsidies in China and, in particular, any subsidies that appear to be prohibited. At its spring 2009 meeting, the SCM Committee should complete its review of the United States' 2005 subsidy notification. Finally, the Committee will undertake an examination of possible changes to the standard format for semi-annual reports on countervailing duty actions and the minimum information to be provided in reports on preliminary and final countervailing duty actions in light of recent changes agreed upon in the Committee on Anti-Dumping Practices.

6. Committee on Customs Valuation

Status

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

Major Issues in 2008

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2008. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO) with a view to ensuring, at the technical level, uniformity in interpretation and application of the Valuation Agreement. The Technical Committee also held two meetings in 2008.

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Customs Valuation Committee continued to provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

[12] Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.
[13] See G/SCM/110/Add.5.

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement, continues to diminish as more developing country Members undertake full implementation of the Agreement. The United States has used the Customs Valuation Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors - including agriculture, automotive, textile, steel, and information technology products - that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the Agreement.

Achieving universal adherence to the Valuation Agreement in the Uruguay Round was an important objective of the United States. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the Agreement, avoiding arbitrary determinations or officially-established minimum import prices, is essential for the realization of market access commitments. Just as important, the implementation of the Agreement also often represents the first concrete and meaningful steps taken by developing country Members toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

An important part of the Customs Valuation Committee's work is the examination of implementing legislation. As of October 2008, 80 Members had notified their national legislation on customs valuation (this figure does not include the 27 individual EU Members); 46 Members have not yet notified their national legislation on customs valuation. During 2008, the Committee concluded the examinations of the legislations of Kuwait, Saudi Arabia and Oman. At the Committee's October 2008 meeting, the Committee undertook its examination of the custom valuation legislations of Albania, Bahrain, Belize, Egypt, Nigeria, Oman, Tanzania, and continued its examination of the legislation of Thailand. The Committee's examination of these Members' customs valuation legislation will continue in 2009.

Working with information provided by U.S. exporters, the United States played a leadership role in these examinations, submitting in some cases a series of detailed questions as well as suggestions toward improved implementation, particularly with regard to customs valuation practices of Egypt, India, Indonesia, Nigeria, and Thailand.

In 2008, the Customs Valuation Committee concluded China's Seventh Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During 2008, the United States again sought clarifications about China's customs-related regulatory measures and legislation. The United States has been concerned about the implementation of these measures by China's customs personnel. At the October 2008 Customs Valuation Committee meeting, China provided oral answers to the United States questions. China will submit the answers in writing prior to the May 2009 Customs Valuation Committee meeting where they will be thoroughly reviewed.

The Customs Valuation Committee's work throughout 2008 continued to reflect a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post-implementation needs of developing country Members.

Prospects for 2009

The Customs Valuation Committee's work in 2009 will include reviewing the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. In this regard, the Committee will continue to

provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Valuation Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority.

7. Committee on Rules of Origin

Status

The objective of the Agreement on Rules of Origin (the ROO Agreement) is to increase transparency, predictability and consistency in both the preparation and application of rules of origin. The ROO Agreement provides important disciplines for conducting preferential and non-preferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders within 150 days of that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work Programme (HWP) is more complex than initially envisioned under the Agreement, which originally provided for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2008 and will continue into 2009.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2008, and held informal consultations throughout the year. The Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The ROO Agreement also established a Technical Committee on Rules of Origin with the World Customs Organization to assist in the HWP.

Major Issues in 2008

As of the end of 2008, 79 Members notified the WTO concerning non-preferential rules of origin. In these notifications, 37 Members notified that they had non-preferential rules of origin and 42 Members notified that they did not have a non-preferential rule of origin regime. Forty-seven Members have not notified non-preferential rules of origin.

Eighty-six Members have notified the WTO concerning preferential rules of origin, of which 82 notified their preferential rules of origin and four notified that they did not have preferential rules of origin. Forty Members have not notified preferential rules of origin.

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that are not transparent, allow discrimination, and lack predictability. Substantial attention has been given to the implementation of the ROO Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices."

Many of the ROO Agreement's obligations, such as issuing binding rulings upon request of traders in advance of trade, have frequently been cited as a model for more broad-based commitments that could emerge from future WTO work on Trade Facilitation.

The ROO Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the ROO Committee has been active in its review of the

Agreement's implementation. The ongoing HWP leading to the multilateral harmonization of non-preferential product-specific rules of origin has attracted a great deal of attention and resources. Significant progress has been made toward completion of this effort, despite the large volume and magnitude of complex issues which must be addressed for hundreds of specific products.

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

In addition to the April and October 2008 formal meetings, the ROO Committee conducted several informal consultations related to the HWP negotiations. The Committee's work in 2008 proceeded in response to the July 28, 2006 General Council extension of the deadline for completion of work on the 94 core policy issues. The General Council then agreed that following resolution of the core policy issues, the Committee would complete its remaining work on the HWP by December 2007. Notwithstanding this deadline, the HWP has not been completed.

While the ROO Committee made some progress towards fulfilling the mandate of the ROO Agreement to establish harmonized non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues including many product-specific rules of origin for agricultural and industrial goods, and the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin.

This issue and the remaining "core policy issues" are among the most difficult and sensitive matters for the Members and continued commitment and flexibility from all Members will be required to conclude the work program and implement the non-preferential rules of origin.

Because of the impasse among Members on (i) the product-specific rules related to the 94 core policy issues, (ii) the absence of a common understanding of scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and (iii) the growing concern among Members that the final result of the HWP negotiations would not produce a result consistent with the objectives of the HWP set forth in Article 9 of the ROO Agreement, the General Council recognized that its guidance was needed on how to resolve these issues. At the July 2007 General Council meeting, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the above-mentioned issues. The General Council also agreed with the recommendation of the Chair of the ROO Committee that the Committee would continue its work with a view to resolving all technical issues as soon as possible and report periodically to the General Council on its efforts in this regard. The Chair reported to the Council for Trade in Goods in December 2008 that the ROO Committee had continued work on technical issues as directed by the General Council in 2007.

In the two 2008 ROO Committee meetings, the Members focused on the technical issues, including the technical aspects of the overall architecture that would be used for applying the rules of origin. The architecture is the hierarchy for applying the different rules for determining origin.

Prospects for 2009

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues", to reaching a consensus on the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and achieving a result that is consistent with the objectives set forth in Article 9 of the Agreement on Rules of Origin. In accordance with the decision taken by the General Council in July 2007 and subject to further guidance from the General Council in the future, the ROO Committee will continue to focus on technical issues, including the technical aspects of the overall architecture of the HWP product-specific rules, through informal consultations as well as bilateral and small-group meetings. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these technical issues.

8. Committee on Technical Barriers to Trade

Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The aim of the TBT Agreement is to prevent the use of technical requirements as unnecessary barriers to trade.

Although the TBT Agreement applies to a broad range of industrial and agricultural products, sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. TBT Agreement rules help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations, and conformity assessment procedures are to be developed and applied on a nondiscriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

The Committee on Technical Barriers to Trade (the TBT Committee)[14] serves as a forum for consultation on issues associated with the implementation and administration of the TBT Agreement. The role of the TBT Committee includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures proposed or maintained by a Member that are creating adverse trade consequences and/or are perceived to raise concerns under the Agreement. It also includes an exchange of information on Member government practices related to implementation of the TBT Agreement and relevant international developments.

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

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

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

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/...". Notifications by Members of proposed technical regulations and conformity assessment procedures that are available for comment are issued as: *G/TBT/N* (the "N" stands for "notification")/*USA* (which in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/*X* (where "x" will indicate the numerical sequence for that Member).[15] Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the TBT Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (*e.g.*, statements, informational documents, proposals, etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). Decisions and recommendations adopted by the TBT Committee are contained in G/TBT/1/Rev.9. As a general rule, written information that the United States provides to the TBT Committee is submitted on an "unrestricted" basis and is available to the public on the WTO website. The WTO Secretariat has expanded the information it provides on its "technical barriers to trade" website that is available to the public, including summaries of meetings, agendas, workshops, technical assistance, and key documents.

With the implementation of the Marrakesh Agreement establishing the WTO, *all* Members assumed responsibility for compliance with the TBT Agreement. Although a predecessor to the TBT Agreement existed as a result of the Tokyo Round, known as the Standards Code, the expansion of its applicability to all Members as a result of the Uruguay Round negotiations was significant and resulted in new obligations for many Members. As a result of the TBT Agreement, interested parties in the United States have the right to receive information on proposed standards, technical regulations, and conformity assessment procedures being developed by other Members. The TBT Agreement also provides an opportunity for interested parties to influence the development of such measures by taking advantage of the opportunity to provide written comments on drafts. Among other things, this opportunity helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve the operation of the provisions on transparency are

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

ongoing. Other disciplines and obligations, such as the prohibition of discrimination and the call for measures not to be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

The TBT Committee also plays an important monitoring and oversight role. It has served as a constructive forum for discussing and resolving issues, which has perhaps alleviated the need for more dispute settlement undertakings. Since its inception, an increasing number of Members, including developing countries, have used the Committee to highlight trade problems.

Article 15.4 of the TBT Agreement requires the Committee to review the operation and implementation of the TBT Agreement every three years. Four such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13 and G/TBT/19), and the Fifth Review is currently underway. From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling, and good regulatory practice.

Major Issues in 2008

The TBT Committee met three times in 2008, March (G/TBT/M/44), July (G/TBT/M/45), and November (G/TBT/M/46). At some of these meetings, Members made statements informing the Committee of measures they had taken to implement the TBT Agreement and to administer measures in compliance with the Agreement. Members also used Committee meetings to raise concerns about specific technical regulations or conformity assessment procedures that affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. The number of specific trade concerns brought to the attention of the TBT Committee set a record in 2008 with 53 different concerns raised with regard to Members' implementation and administration of the TBT Agreement. EU measures, such as REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) and the classification of borates, nickel carbonates, and nickel compounds under the Dangerous Substances Directive, continue to draw significant attention in the Committee, as do China's proposed measures on the information security of IT products.

Following the adoption of the Fourth Triennial Review in November 2006, in 2008, the Committee continued its exchange of experiences on the future work items identified in that Review, including good regulatory practice, conformity assessment procedures, transparency, technical assistance, and special and differential treatment.

At its March 2008 meeting, the TBT Committee completed the Thirteenth Annual Review of the Implementation and Operation of the TBT Agreement and the Thirteenth Annual Review of the Code of Good Practice for the Preparation, Adoption, and Application of Standards. This work was based on the following background documents: a list of standardizing bodies that have accepted the Code in 2007 (G/TBT/CS/1/Add.12), a list of standardizing bodies that have accepted the Code since January 1, 1995 (G/TBT/CS/2/Rev.14), and the Thirteenth edition of the WTO TBT Standards Code Directory prepared by the ISO/IEC Information Centre.

At the November meeting, the TBT Committee also completed the Seventh Annual Transitional Review mandated in the Protocol of Accession of the People's Republic of China. The United States (G/TBT/W/292), Japan (G/TBT/W/293), and the EU (G/TBT/W/300) submitted written comments and questions. China's submission is contained in G/TBT/W/296. The Committee's report on the Review is contained in G/TBT/24.

During the 2008 meetings of the TBT Committee, representatives of the Codex, IEC, ISO, ITC, OECD, OIML, UNECE, and UNIDO (observers to the Committee) updated the Committee on their activities relevant to its work, including on technical assistance.

Prospects for 2009

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The number of specific trade concerns raised in the Committee appears to be increasing. Aside from the specific trade concerns, the Committee will continue work on the Fifth Triennial Review, including holding a workshop highlighting the role of relevant international standards in economic development on the margins of the March 18-19, 2009 meeting. Discussion of new issues will be driven by Member statements and submissions. In 2009, U.S. priorities are likely to continue to focus on good regulatory practice, transparency, encouraging the use of the TBT Committee Decision on Principles for the Development of International Standards, and the need to consider available scientific and technical information and the intended end uses of products when regulating.

9. Committee on Antidumping Practices

Status

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

The Antidumping Committee is an important venue for reviewing Members' compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experiences with respect to Members' application of antidumping remedies.

The Working Group on Implementation (the Working Group) is an active body which focuses on practical issues and concerns relating to implementation. Based on papers submitted by Members on specific topics for discussion, the activities of the Working Group permit Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the provisions of the Antidumping Agreement. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses which it forwards to the Antidumping Committee for consideration. To date, the Antidumping Committee has adopted Working Group recommendations on five antidumping topics.

The Working Group has drawn a high level of participation by Members and, in particular, by capital-based experts and officials of antidumping administering authorities, many of whom are eager to obtain insight and information from their peers. Since the inception of the Working Group, the United States has submitted papers on most topics and has been an active participant at all meetings. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Antidumping Agreement's provisions and exploring options for improving practices among antidumping administrators.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention (the Informal Group). Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision by Ministers.

Major Issues in 2008

In 2008, the Antidumping Committee held meetings on April 28 and October 27 and 28. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2008:

Notification and Review of Antidumping Legislation: To date, 70 Members have notified that they currently have antidumping legislation in place and 28 Members have notified that they maintain no such legislation. In 2008, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Albania, China, Costa Rica, Egypt, El Salvador, Guatemala, Nicaragua, and Ukraine. The Committee also continued its review of previously-reviewed legislative notifications submitted by Albania, Canada, China, Costa Rica, the European Communities, Guatemala, and the United States. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Antidumping Committee meetings.

Notification and Review of Antidumping Actions: In 2008, 23 Members notified that they had taken antidumping actions during the latter half of 2007, whereas 21 Members did so with respect to the first half of 2008. (By comparison, 30 Members notified that they had not taken any antidumping actions during the latter half of 2007, and 30 Members notified that they had taken no actions in the first half of 2008). These actions, as well as outstanding antidumping measures currently maintained by Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion (The semi-annual reports for the second half of 2007 were issued as "G/ADP/N/166," and the semi-annual reports for the first half of 2008 were issued as "G/ADP/N/173."). At its April and October 2008 meetings, the Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

China Transitional Review: At the October 2008 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its seventh annual Transitional Review with respect to China's implementation of the Antidumping Agreement. The United States and Japan presented written questions to China with respect to China's antidumping laws and practices. China orally provided information in response to the questions posed by the United States and Japan.

Working Group on Implementation: The Working Group held meetings in April and October 2008. Beginning in 2003, the Working Group has held discussions on four agreed-upon topics: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; and (4) judicial, arbitral or administrative reviews under Article 13. The discussions in the Working Group on these topics have focused on submissions by Members describing their own practices, including past submissions by the United States on all four topics. In 2008, the Working Group discussed a draft paper

prepared by New Zealand on price undercutting. Several Members posed questions to New Zealand on the issues raised in the paper, and it was agreed that further discussion would resume at the next Committee meeting in the Spring of 2009.

Informal Group on Anticircumvention: In 2008, the Informal Group held meetings in April and October. The Informal Group continued to discuss the first three items of the agreed framework of: (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent can circumvention be dealt with under the relevant WTO rules, and what other options may be deemed necessary.

Prospects for 2009

Work will proceed in 2009 on the areas that the Antidumping Committee, the Working Group and the Informal Group addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Antidumping Committee is important for ensuring that Members' antidumping laws are properly drafted and implemented, thereby contributing to a well-functioning, rules-based trading system. Since notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members that should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2009. The semi-annual reports are accessible to the general public from the WTO website, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This transparency promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation will continue to play an important role, as more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in clarifying the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. For these reasons, the United States will continue to use the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws as written, but also the operational practices that Members employ to implement them. In 2009, the Working Group will continue its discussion of two topics that it has been discussing since 2003: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; and (2) foreign exchange fluctuations under Article 2.4.1, while beginning discussion of a new topic; (3) Article 3.2 – How do Members determine whether there has been a significant price undercutting by dumped imports? In addition, the Working Group will continue its discussion of the draft recommendation on the conduct of antidumping verifications.

The work of the Informal Group on Anticircumvention will also continue in 2009, according to the framework for discussion on which Members agreed. However, given the focus on anticircumvention issues in the WTO Rules negotiations under the Doha Development Agenda, it is possible that there may be relatively little activity on these issues in the Informal Group in 2009.

10. Committee on Import Licensing

Status

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with the mutually agreed rules for the application of these widely used measures set out in the Agreement. The Import Licensing Committee normally meets twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations set out in the Agreement. The Committee also receives questions from Members on the licensing regimes of other Members, whether or not these regimes have been notified to the Committee. The Committee meetings also address specific observations and complaints concerning Members' licensing systems. These reviews are not intended to substitute for dispute settlement procedures; rather, they offer Members an opportunity to focus multilateral attention on licensing measures and procedures that they find problematic, to receive information on specific issues and to clarify problems, and possibly to resolve issues before they become disputes.

Since the accession of China to the WTO in December 2001, the Committee also has conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism (TRM) provided for in China's Protocol of Accession. China's seventh review concerning its import licensing procedures was conducted at the October 2008 meeting of the Committee.

The Import Licensing Agreement sets out rules for all Members that use import licensing systems to regulate their trade, and includes guidelines for what constitutes a fair and non-discriminatory application of such procedures. Its provisions protect Members from unreasonable requirements or delays associated with a licensing regime. These obligations are intended to ensure that the use of import licensing procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Import Licensing Agreement's provisions discipline licensing *procedures*). While the Agreement does not directly address the WTO consistency of the underlying measures, Members are required to have WTO justification for any licensing requirements established. The notification requirements and the system of regular Committee reviews established by the Agreement seek to increase the transparency and predictability of Members' licensing regimes.

The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems, under which certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions such as quotas and tariff-rate quotas (TRQs), or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Import Licensing Agreement.

Major Issues in 2008

At its meetings in April and October 2008, the Import Licensing Committee reviewed 81 new submissions from 36 Members,[16] including initial or revised notifications, completed questionnaires on

[16] The Members submitting notifications during 2008 were: Albania, Argentina, Armenia, Bangladesh, Brazil, Canada, China, Colombia, Cote d'Ivoire, European Communities, Guatemala, Honduras, Hong Kong, India, Indonesia, Jamaica, Japan, Lesotho, Macao, Madagascar, Malaysia, Mauritius, Moldova, Morocco, Norway, Oman,

procedures, and questions and replies to questions. This count exceeded the number of notifications submitted to the Committee during 2007 due to a large number of questions and replies as well as a large number of annual replies to the Licensing Procedures Questionnaire. The Chairman reported that by the end of 2008, two additional Members (Lesotho and Ukraine) had made initial notifications, and that only 21 of 126 Committee Members had never submitted a notification to the Committee, including one newly acceded member, Cape Verde.[17] This brings the percentage of Members with at least an initial notification to the Committee to over 83 percent. Despite this progress, the Chairman and some Committee Members continued to express concern that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement. The Committee Chairman reminded Members that notifications were required even if only to report that no import licensing system existed and that the WTO Secretariat was prepared to assist Members in developing their submissions.

The United States remained one of the most active members of the Import Licensing Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. The U.S. representative brought a number of new issues to the Committee's attention as well as continuing to press Committee Members on issues where satisfactory information has not yet been provided.

The United States observed that India had not fully notified its import licensing requirements for non-insecticidal boric acid, and submitted a number of specific questions on the import licensing procedures for non-insecticidal boric acid (HS code 2810) for response. The United States noted that the stringent requirements applied to imports did not appear to be in place for domestic producers of non-insecticidal boric acid, as only importers were required to obtain an activity license for trade in boric acid for insecticide production, whether or not this was the designated end use. India was asked to explain. India promised to respond to these questions and comments in writing. Responding to the observation by the U.S. representative that its licensing fees for import and activity licenses were based on the value of the import, not on the cost of the services rendered in processing the licensing applications, and therefore not consistent with WTO provisions. India defended these *ad valorem* fees as aligned with the ability of its poorer importers to pay. The United States will continue to pursue this issue in the Committee and other appropriate fora.

The United States also expressed concerns related to Vietnam's recently applied licensing requirements on a large number of imported products. The issues raised included the purpose of these requirements and the failure to approve supposedly "automatic" import licenses in all cases as required by the Agreement. The United States asked that Vietnam provide information on the procedures and their application in line with normal notifications to the Committee as soon as possible. Finally, the United States asked for confirmation that these licensing requirements would expire on 31 December 2008. Vietnam indicated that it would respond to these interventions in writing.

The United States continued to press Brazil to provide information on its system of quotas and non-automatic licensing for imports of certain lithium compounds, *i.e.*, lithium carbonate and lithium hydroxide. Neither of these measures had been notified to the Committee. U.S. firms report that Brazil is using import licensing to enforce artificial customs valuation levels for certain imports, and ultimately

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Qatar, Saint Lucia, Singapore, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, the United States, and Zimbabwe.

[17] The EU and its member states are recorded by the Committee as a single Member for the purposes of submissions to the Committee. The Members that have never submitted a notification to this Committee are Angola, Belize, Botswana, Cambodia, Cape Verde, Central African Republic, Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Mauritania, Mozambique, Myanmar, Nepal, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, Tanzania, Tonga, and Vietnam.

refusing to issue the licenses, bringing trade to a halt. China noted that the licensing requirements on toys were being administered in a manner inconsistent with the Agreement, and causing severe delays in customs clearance. Brazil claimed that lithium compounds are used in the production of nuclear power and therefore its Government maintained these restrictions for national security purposes. Brazil had no additional information on the licensing measures enforcing customs valuation, including those noted on toy imports, but observed that it applied licensing requirements for toy imports based on technical regulations to support toy safety.

The United States again noted Indonesia's non-automatic licensing system for selected textile products. A complaint was also lodged concerning licensing restrictions being applied to sugar, restricting imports and directing importers to use local substitutes instead. Both measures restricted imports. The U.S. representative pressed Indonesia for an explanation for their application and, ultimately, for their removal. Thailand supported the U.S. intervention, noting the impact of the restrictions on its sugar exports. Indonesia did not respond directly, but indicated that an official response would be forwarded to the United States as soon as possible. Indonesia added that current licensing requirements were based on a Decree by the Ministry of Trade issued in 2004. The Indonesian government was funding a sugar refinery revitalization program, the aim of which was to increase domestic production to match domestic demand for sugar. Noting a recent public statement supporting sugar self-sufficiency for Indonesia by the Minister of Trade, Indonesia clarified that once the program was completed in 2009, Indonesia might not need to import refined sugar as the local producers would be able to meet local demand.

After the Committee meeting, the United States also submitted written questions to Indonesia on new licensing restrictions on a number of other products (including electronics, household appliances, textiles and apparel, footwear, toys, and food and beverage products), special registration requirements, pre-shipment inspection, limited port access and a discretionary assessment for approval that could include consultations with domestic producers. The demarche included a request that Indonesia explain how this licensing system was consistent with its WTO obligations. Subsequent bilateral consultations did not resolve the issue, which will be raised in Committee meetings in 2009.

The United States also raised questions about Argentina's import licensing procedures for toys, asking for additional information on how import licences were allocated and on how the verification procedure was administered. No further information was given on how applications for these licences were actually considered.

Seventh Transitional Review of the Accession of the People's Republic of China

At its October meeting, the Committee conducted its seventh annual Transitional Review of China's implementation of its WTO accession commitments in the area of import licensing procedures. The United States raised questions about China's new requirement that foreign exporters of cotton obtain a registration certificate from the Chinese agency in charge of standards and technical regulations, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) before engaging in the export of cotton to China, or face preshipment inspection requirements.

Canada noted that China had greatly expanded the number of tariff headings covered by "automatic" import licenses for monitoring imports and collecting statistics (*e.g.*, for imports of coal, iron and steel, copper, aluminum waste and scrap, aluminum ores and concentrates, iron ores and concentrates and mineral or chemical fertilizers). While China claimed that there were no restrictions applied under "automatic" import licensing programs, Canada wanted to know why the monitoring was necessary and how the statistics are used. Canada also asked for information on the criteria for adding or removing a tariff heading from the list.

Australia sought information on China's licensing requirements relating to imports of iron ore. China responded that these requirements are automatic, and that any more stringent requirements were administered by the importing firms themselves.

Prospects for 2009

The administration of import licensing continues to be a significant topic of discussion in the context of the DDA, as well as in the day-to-day implementation of current obligations. As tariffs are liberalized, it becomes more critical that Members use import licensing procedures properly, particularly in the administration of agricultural TRQs, and to ensure that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the application of safeguard measures, technical regulations, and sanitary/phytosanitary requirements applied to imports as well. The proliferation of automatic licensing requirements raises additional concerns, as many such requirements appear to be administered in a manner that restricts trade. The Import Licensing Committee will continue to be the point of first contact in the WTO for Members with complaints or questions on the licensing regimes of other Members and as a forum for discussion and review.

The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Import Licensing Agreement, with renewed focus on securing timely revisions of notifications and questionnaires, and timely responses to written questions, as required by the Agreement.

11. Committee on Safeguards

Status

The Committee on Safeguards (the Safeguards Committee) was established to administer the WTO Agreement on Safeguards (the Safeguards Agreement). The Safeguards Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994. Effective safeguards rules are important to the viability and integrity of the multilateral trading system. The availability of a safeguards mechanism gives WTO Members the assurance that they can act quickly to help industries adjust to import surges, providing them with flexibility they would not otherwise have to open their markets to international competition. At the same time, WTO safeguard rules ensure that such actions are of limited duration and are gradually less restrictive over time.

The Safeguards Agreement incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). Among its key provisions, the Safeguards Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions of the criteria for injury determinations; requires that safeguard measures be steadily liberalized over their duration; establishes maximum periods for safeguard actions; requires a review no later than the mid-term of any measure with a duration exceeding three years; allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements.

The Safeguards Agreement requires Members to notify the Safeguards Committee of their laws, regulations, and administrative procedures relating to safeguard measures. It also requires Members to notify the Safeguards Committee of various safeguards actions, such as (1) the initiation of an investigatory process; (2) a finding by a Member's investigating authority of serious injury or threat

thereof caused by increased imports; (3) the taking of a decision to apply or extend a safeguard measure; and (4) the proposed application of a provisional safeguard measure.

Major Issues in 2008

During its two regular meetings in April and October 2008, the Safeguards Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required under Article 12.6 of the Safeguards Agreement. The Committee reviewed the national legislation of Albania, Costa Rica, Egypt, El Salvador, Guatemala, Malaysia, Nicaragua, Turkey, and Ukraine.

The Safeguards Committee reviewed Article 12.1(a) notifications, regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, from the following Members: Australia on swine meat; Brazil on CD-Rs and DVD-Rs; Egypt on blankets; Indonesia on ceramic tableware and dextrose monohydrate; Philippines on steel angle bars; Turkey on certain electrical appliances and cotton yarn; and Ukraine on casing and pump-compressor seamless steel pipes.

The Safeguards Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Australia on swine meat; Egypt on blankets; Moldova on beet sugar; Panama on BOPP and PVC films; South Africa on lysine; Turkey on certain electrical appliances, spectacle frames, and travel goods; and Ukraine on casing and pump-compressor seamless steel pipes.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply a safeguard measure from the following Members: Egypt on blankets; Moldova on beet sugar; Panama on BOPP and PVC films; Philippines on ceramic floor and wall tiles, figured glass, float glass and glass mirrors; South Africa on lysine; Turkey on certain electrical appliances, spectacle frames and travel goods; and Ukraine on casing and pump-compressor seamless steel pipes.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from Egypt on blankets and Turkey on cotton yarn.

The Safeguards Committee received notifications from the following Members of the termination of a safeguard investigation with no definitive safeguard measure imposed: from Australia on swine meat; Turkey on certain electrical appliances (partial); and Ukraine on PVC sections for windows and doors.

China Transitional Review: At the October 2008 meeting, the Safeguards Committee undertook its seventh annual Transitional Review with respect to China's implementation of the Safeguards Agreement. Given that China reported no new safeguards legislation or safeguards actions taken in the past year, the United States did not submit any questions, and the discussion was very brief.

Prospects for 2009

The Safeguards Committee's work in 2009 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards legislation. At the suggestion of the Chairman, the Committee will also work toward establishing standards for more meaningful notifications of safeguard actions by Members.

12. Working Party on State Trading Enterprises

Status

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding) defines a state trading enterprise more narrowly for the purposes of providing a notification that is required under the Understanding. Members must notify the Working Party of enterprises in their respective territories that meet this definition, whether or not such enterprises have imported or exported goods. Members are required to submit new and full notifications to the Working Party for review every two years.

The Working Party on State Trading Enterprises (WP-STE) was established in 1995 to review, *inter alia*, Member notifications of STEs and the coverage of STEs that are notified, and to develop an illustrative list of relationships between Members and their STEs and the kinds of activities engaged in by these enterprises.

Major Issues in 2008

The WP-STE held one formal meeting in October, 2008. Prior to that meeting, the United States responded to questions from Australia concerning previous notifications of U.S. state trading enterprises.

At the October meeting, STE notifications were reviewed for Argentina, Armenia, Australia, Chile, Hong Kong China, Latvia, Macao China, Singapore, Switzerland, Chinese Taipei, Thailand, Trinidad and Tobago, Turkey, Ukraine, the United States, and Zimbabwe. Each of these Members had submitted STE notifications in 2008. Of these Members, Australia, Chile, Thailand, Chinese Taipei, Turkey, Ukraine and Trinidad and Tobago notified STEs under the definition contained in paragraph one of the Article XVII Understanding. All other Members submitting notifications indicated that they did not have STEs under the definition set out in the Understanding.

The United States' notification included updated information on the Commodity Credit Corporation, Isotopes Production and Distribution Program, Power Administrations, and Strategic Petroleum Reserve.

The WP-STE also focused its attention on Member compliance with the notification obligation. Members indicated the need to reflect further on the reasons for Member non-compliance and possible options to increase compliance and agreed to hold further informal consultations on the matter. The WP-STE also adopted its Annual Report to the Council for Trade in Goods for the year 2008.

Prospects for 2009

The WP-STE is scheduled to meet in October, 2009. As part of the agriculture negotiations in the Doha Round, the United States proposed specific disciplines on export agricultural STEs that would increase transparency, improve competition and tighten disciplines for these entities. In 2009, the WP-STE will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information could be submitted as part of the notification process to enhance transparency of STEs.

F. Council on Trade Related Aspects of Intellectual Property Rights

Status

The WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement.

The TRIPS Agreement sets minimum standards of protection for copyrights and related rights, trademarks, geographical indications (GIs), industrial designs, patents, integrated circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights (IPRs) through civil actions for infringement, actions at the border and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions. The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods.

Developed country Members were required to fully implement the obligations of the TRIPS Agreement by January 1, 1996, and developing country Members generally had to achieve full implementation by January 1, 2000. LDC Members have had their deadline for full implementation of the TRIPS Agreement extended to July 1, 2013, as part of a package that also requires them to provide information on their priority needs for technical assistance in order to facilitate TRIPS Agreement implementation. This action is without prejudice to the existing extension, based on a proposal made by the United States at the Doha Ministerial Conference, of the transition period for LDC Members to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, until January 1, 2016. In 2002, the WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for LDC Members to provide exclusive marketing rights for certain pharmaceutical products, if those Members did not provide product patent protection for pharmaceutical inventions.

Major Issues in 2008

In 2008, the TRIPS Council held three formal meetings. In addition to continuing its work reviewing the implementation of the Agreement, the TRIPS Council's work in 2008 focused on the relationship of the TRIPS Agreement to the Convention on Biological Diversity, as well as ongoing consideration of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health. Some Members, including the United States, also sought to have the TRIPS Council continue to examine issues related to the enforcement provisions of the TRIPS Agreement.

Review of Developing Country Members' TRIPS Implementation: During 2008, the TRIPS Council continued to devote time to reviewing the TRIPS Agreement's implementation by developing country Members and newly acceded Members, as well as to providing assistance to developing country Members so they can implement fully the Agreement. In particular, the TRIPS Council continued to urge developing country Members to respond to the questionnaires already answered by developed country Members regarding their protection of GIs and implementation of the TRIPS Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. The United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation by highlighting

specific concerns regarding individual Member's implementation of the Agreement's obligations, particularly with regard to China's efforts.

The Transitional Review Mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China has been an important means to raise concerns about China's implementation of the TRIPS Agreement. This process has been instrumental in helping to understand the levels of protection of IPRs in China, and provides a forum for addressing the concerns of U.S. interests in this process. The United States has been active in seeking answers to questions on a wide range of intellectual property matters and in raising concerns about enforcement of IPRs.

During 2008, the TRIPS Council undertook a review of the implementing legislation of Vietnam, in addition to the above-referenced review of China.

Intellectual Property and Access to Medicines: The August 30, 2003 solution (the General Council Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", in light of the statement read out by the General Council Chairperson) continues to apply to each Member until the formal amendment to the TRIPS Agreement replacing its provisions takes effect for that Member. The amendment text adopted by the General Council in December 2005 and the statement by the Chairperson preserve all substantive aspects of the August 30, 2003 solution and do not alter the substance of the previously agreed solution. The United States was the first Member to submit its acceptance of the amendment to the WTO. At the end of 2008, a total of 18 Members had accepted the amendment, which will enter into force, for those Members that have accepted it, upon its acceptance by two-thirds of the membership of the WTO. At its October 2008 meeting, the TRIPS Council reviewed implementation of the August 30, 2003 solution. Several members commented on the importance of the solution and reported on preparations to formally accept the amendment. Pursuant to a December 2007 Decision of the WTO General Council, the period in which Members may accept the amendment remains open until December 31, 2009.

TRIPS-related WTO Dispute Settlement Cases: In April 2007, the United States initiated WTO dispute settlement proceedings over deficiencies in China's legal regime for the protection and enforcement of IPRs by requesting consultations with China. On September 25, 2007, the WTO Dispute Settlement Body established a panel to consider the dispute. The U.S. panel request alleges breaches of various provisions of the TRIPS Agreement related to three aspects of China's IPR regime. First, the panel request challenges quantitative thresholds in China's criminal law that must be met in order for willful acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties. These thresholds provide pirates and counterfeiters in China a safe harbor to avoid criminal liability. Second, the panel request addresses the rules for disposal of IPR-infringing goods seized by Chinese customs authorities. Those rules appear to permit goods to be released into commerce following the removal of fake labels or other infringing features, when WTO rules dictate that these goods normally should be kept out of the marketplace altogether. Third, the panel request addresses the denial of copyright protection and enforcement to creative works that are awaiting or have not received Chinese censorship approval.

During 2008, the United States continued to monitor EU compliance with a 2005 ruling of the WTO Dispute Settlement Body (DSB) that the EU's regulation on food-related GIs is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

The United States continues to monitor the compliance of WTO Members with their TRIPS Agreement obligations and will consider the further use of the WTO dispute settlement mechanism as appropriate.

Geographical Indications: The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of the level of protection provided under Article 23 of the TRIPS Agreement to GIs for products other than wines and spirits and to report to the Trade Negotiations Committee (TNC) by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chairperson should report to the TNC on the issues related to the extension of Article 23-level protection to GIs for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on GIs and other implementation issues, the TNC Chairperson closed the discussion by saying he would consult further with Members. At the December 2005 Hong Kong Ministerial Conference, the Ministers directed the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of Article 23-level protection to GIs for products other than wines and spirits. Consistent with this mandate, the Director-General appointed a Deputy Director-General to hold a number of such consultations with Members on the issue of extension.

Throughout 2008, the United States and many like-minded Members maintained the position that the *demandeurs* had not established that the protection provided GIs for products other than wines and spirits was inadequate, and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have a longstanding statutory regime for the protection of GIs, that the benefits accruing to those few Members that have longstanding statutory regimes for the protection of GIs would represent a windfall, and that other Members with few or no GIs would receive no counterbalancing benefits. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23-level protection to products other than wines and spirits. The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations.

In the context of the July 2008 meeting of WTO trade ministers held in Geneva, some Members sought to establish a new mandate to negotiate the extension of Article 23-level protection to products other than wines and spirits. The United States and other Members opposed these proposals. No action was taken on this question at the July 2008 meetings.

Review of Article 27.3(b), Relationship Between the TRIPS Agreement and the Convention on Biological Diversity, and Protection of Traditional Knowledge and Folklore: As called for in the TRIPS Agreement, the TRIPS Council initiated a review of Article 27.3(b) of the TRIPS Agreement (permitting Members to except from patentability plants and animals and biological processes for the production of plants and animals). Most developing country Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b).

The Doha Declaration directs the TRIPS Council, in pursuing its work program under the review of Article 27.3(b), to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. Consideration of this set of issues also continues to be guided by the direction of Ministers in the Hong Kong Declaration, that all implementation issues (including the relationship of the TRIPS Agreement and the CBD) should be the subject of consultations facilitated by the WTO Director-General. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

A number of developing country Members continue to advocate for amending the patent provisions of the TRIPS Agreement to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In 2006, a

group of developing country Members submitted draft text for such an amendment to the TRIPS Agreement. There is, however, no consensus in the TRIPS Council that an amendment should be pursued.

The United States, with support from other Members, continues to maintain that there is no conflict between the TRIPS Agreement and the CBD, that an amendment to the TRIPS Agreement is neither necessary nor appropriate, and that shared objectives with respect to genetic resources and traditional knowledge (such as prior informed consent and effective access and benefit-sharing arrangements) can best be achieved through mechanisms outside of the patent system. The United States has also advocated for a discussion in the TRIPS Council that is fact-based and focused on national experiences in areas such as access and benefit-sharing and prior informed consent.

In the context of the July 2008 meeting of WTO trade ministers held in Geneva, some Members sought to establish a new mandate to negotiate towards the type of patent disclosure amendment to the TRIPS Agreement described above. The United States and other Members opposed these proposals. No action was taken on this question at the July 2008 meetings.

Technical Cooperation and Capacity Building: As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building (see IP/C/W/517/Add.3). In addition, and in accordance with the November 29, 2005, decision of the TRIPS Council, two LDC Members (Uganda and Sierra Leone) submitted information on their priority needs with regard to technical cooperation related to their implementation of the TRIPS Agreement. These submissions were discussed in the TRIPS Council as well as in informal consultations.

Implementation of Article 66.2: Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation-related Issues and Concerns and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation. Developed country Members are required to provide detailed reports every third year, with annual updates, on these incentives. In October 2008, the United States provided an updated report on specific U.S. government institutions and incentives, as required.

Prospects for 2009

In 2009, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in the Doha Declaration, including issues related to the extension of Article 23-level protection for GIs for products other than wines and spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as other relevant new developments.

U.S. objectives for 2009 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue its efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue regarding the technical assistance and capacity-related needs of developing countries in connection with TRIPS Agreement implementation;

- continue to encourage a fact-based discussion within the TRIPS Council on the enforcement provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

G. Council for Trade in Services

Status

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

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

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

Major Issues in 2008

The CTS met twice in 2008 - in June and December. The CTS elected the delegate from Belgium as its new Chairperson in June.

During the June meeting of the CTS, Australia raised its ongoing concerns related to the entry into force of the EC-25 schedule of commitments pursuant to GATS Article XXI and the procedures outlined in S/L/80 and S/L/84. The EU explained that the EC Council required each individual Member State to ratify the relevant agreements and called for a consultation by the European Parliament. Entry into force of the EC-25 schedule is now dependent on the outcome of those proceedings. At the time of the meeting, only eight EU Member States had ratified the agreement according to their national procedures.

As part of China's Transitional Review Mechanism, the CTS held its seventh annual review of China's implementation of its services commitments in December 2008. The United States and other Members used the opportunity to raise questions and express concerns with regard to China's implementation of certain commitments.

The CTS received a number of notifications pursuant to GATS Article III.3 (transparency), GATS Article V (economic integration), and GATS Article VII (recognition). Albania, Armenia, Central African Republic, and Senegal made notifications under Article III.3. Notifications pursuant to GATS Article V

were made by China and Hong Kong, China; and China and Macao, China. Pakistan and Malaysia, and Panama and Chile made notifications pursuant to GATS Article VII.

Prospects for 2009

The CTS will continue discussions pursuant to the Annex on Air Transport Services review and other mandated reviews, and various notifications related to GATS implementation.

1. Committee on Trade in Financial Services

Status

The Committee on Trade in Financial Services (CTFS) provides a forum for Members to explore financial services market access or regulatory issues, including implementation of existing trade commitments.

Major Issues in 2008

The CTFS met twice in 2008 – in June and December. During its June 2008 meeting, the Committee elected the delegate from the United Kingdom as the new Chairperson.

Brazil, Jamaica, and the Philippines are the only remaining participants in the negotiations on the 1997 Financial Services Agreement that have not yet ratified their commitments from those negotiations and accepted the Fifth Protocol (which is necessary for these commitments to enter into effect under the GATS). Members continue to urge those three countries to take the necessary steps to accept the Fifth Protocol as quickly as possible. The Chair invited these countries to give some information on the status of their domestic ratification efforts; Brazil and the Philippines provided updates to the Committee.

In December 2008, as part of China's Transitional Review Mechanism, the CTFS carried out its seventh annual review of China's implementation of its WTO financial services commitments. The United States and other Members used that opportunity to raise questions and express concerns with China's implementation of certain commitments concerning insurance, banking and related services, securities, pensions, and financial information services.

The CTFS also provided a forum for discussion of other topics, both on a formal basis and through informal consultations. These topics include technical issues and recent developments in financial services trade.

Prospects for 2009

The CTFS will continue to use its broad and flexible mandate to discuss various issues, including ratification of existing commitments and market access and regulatory issues.

2. Working Party on Domestic Regulation

Status

GATS Article VI:4, on Domestic Regulation, provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards and licensing requirements and procedures. A Ministerial Decision assigned priority to the professional services sector, and Members

subsequently established the Working Party on Professional Services (WPPS). In May 1997, the WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998. The texts are available at http://www.wto.org.

In May 1999, the CTS established a new Working Party on Domestic Regulation (WPDR) which took on the work of the predecessor WPPS and its existing mandate. The WPDR is charged with determining whether any new disciplines are deemed necessary beyond those negotiated for the accountancy sector. At the December 2005 Hong Kong Ministerial Conference, Ministers directed the WPDR to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations.

Thereafter, the pace of negotiations increased dramatically. In April 2007, the WPDR Chair issued an informal note on possible new disciplines for domestic regulation. The informal note was an attempt to consolidate elements of Members' proposals with a view to moving Members closer to a consensus on basic threshold issues, such as the appropriate level of ambition for disciplines applied to all services sectors, whether or not to submit any new disciplines to an operational "necessity test," how to balance the goal of diminishing regulatory trade barriers with the fundamental right to regulate, and how to address different levels of development.

Major Issues in 2008

In January 2008, the Chair released a second informal note in the form of a draft text setting forth possible disciplines on domestic regulations. This second informal note was based upon meetings and consultations with the Chair held throughout 2007, during which Members engaged in intensive review and revision of the proposed disciplines with a view to producing an acceptable negotiating text that would reflect majority views on major threshold issues.

Members welcomed the January 2008 text as a useful step forward in negotiations, although it is clear that Members continue to have concerns about the basic threshold issues. In an informal document of March 2008, the Chair noted eight of the remaining controversial issues, and invited comments on those issues. In addition, during a July 2008 meeting, Members indicated additional issues which they believe warranted further discussion. Thus far, none of the proposed new disciplines have been agreed to by Members.

During the 2008 review sessions, the United States engaged actively and constructively with other Members and continued to negotiate on the basis of its June 2006 position paper on the WPDR (http://www.ustr.gov/assets/Trade_Sectors/Services/asset_upload_file142_1037.pdf). The United States considers that the horizontal or sector-specific application of any new disciplines should depend on the nature of the proposed disciplines, and that strong disciplines are not feasible on a horizontal basis. For that reason, the United States' priority in 2008 continued to be horizontal disciplines for regulatory transparency. Such disciplines are appropriate for horizontal implementation because they involve universal principles that promote governmental accountability, rule of law, and good governance. The United States also joined many other Members in voicing strong caution about submitting domestic regulations to an operational "necessity test" or its equivalent, or other intrusive disciplines that could have negative implications for Members' rights to regulate.

Prospects for 2009

Future work in the WPDR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPDR may continue to work in informal and *ad hoc* meetings on the basis of the January 2008 informal note, and the areas of controversy noted by the Chair and by Members.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules (WPGR) provides a forum to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, and subsidies in the context of the GATS in accordance with the Doha Work Program resulting from the Hong Kong Ministerial Conference in December 2005. That program called for Members to intensify their efforts to conclude the negotiations on rule-making under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies).

Major Issues in 2008

The WPGR held its only formal meeting in June 2008 and no new submissions were made by Members. The WPGR resumed ongoing discussions of emergency safeguard measures, government procurement, and subsidies. During its June meeting, the WPGR also elected the delegate from New Zealand as its new Chairperson.

Regarding emergency safeguard measures, Members continued discussion on the basis of an informal communication from a group of ASEAN Members that proposed legal language establishing rules for the use of emergency safeguard measures in services. Issues raised during these largely informal discussions included the relationship of an emergency safeguard measure to market access commitments, modal application, conditions of application, how to establish a causal link, and special and differential treatment. Members continue to express divergent views on the various aspects raised in relation to emergency safeguard measures, and the United States and other Members continue to question the desirability and feasibility of any such measures.

On government procurement of services, delegations continued their discussion of a proposal by the EU regarding a legal text for an Annex to the GATS. Members exchanged views on this proposal, and raised issues relating to possible benefits of opening procurement markets, procedural rules, special and differential treatment, the relationship to the plurilateral Government Procurement Agreement, and MFN application. The United States continues to engage on this issue, but has questioned the need for a government procurement annex to the GATS in light of the fact that the Agreement on Government Procurement already covers services.

With respect to subsidies, Members discussed an informal communication from Hong Kong, China and Mexico and a follow-up document from Hong Kong, China on non-actionable subsidies.

Prospects for 2009

Future work in the WPGR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPGR may continue focused discussions in all three areas, including technical and procedural questions relating to the operation and application of any possible emergency

safeguard measures in services; proposals by Members concerning government procurement of services; and further discussion of how to facilitate a productive information exchange on subsidies.

4. Committee on Specific Commitments

Status

The Committee on Specific Commitments (CSC) examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees the application of the procedures for the modification of schedules under GATS Article XXI. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral body, which is currently the case for all sectors except financial services. The CSC also works to improve the classification of services, so that scheduled commitments reflect the service activity, particularly with regard to new or evolving services.

Major Issues in 2008

The CSC held its only meeting on June 3, 2008 and no new submissions were made by Members. The CSC resumed previous discussion of classification and scheduling issues, and the relationship between old and new commitments. During the meeting, the CSC also elected the delegate from Colombia as its new Chairperson.

Classification: The Chair recalled last year's discussion of classification issues related to computer and related services and distribution services and encouraged Members to continue this dialogue and consider any other classification issues that may be useful for the Committee to address.

Scheduling issues: One Member raised the possibility of holding a workshop on scheduling commitments to complement work being done to revise offers. The Secretariat was prepared to hold a workshop, but raised logistical and timing issues. The Chair suggested that the incoming Chair hold consultations on the proposed workshop, including logistics and timing, and revisit this issue at the next meeting.

Relationship between old and new commitments: Discussions continued on the relationship between existing schedules and the new commitments resulting from the current negotiations**.** One Member emphasized the importance of dealing with this issue now, and remained supportive of the informal note from Canada, circulated in 2006, that proposed having a legal instrument with explicit recognition of the old schedules as a proper source for interpreting commitments in the new schedules. The Chair recommended this issue be taken up at the next meeting.

Prospects for 2009

Work will continue on technical issues and other issues that Members raise. The CSC will likely continue to examine classification and scheduling issues as well as the relationship between old and new commitments, particularly as Members prepare final offers**.** Once the Doha Round concludes, the CSC will work to review offers for consistency with negotiated outcomes.

H. Dispute Settlement Understanding

Status

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

The DSU is administered by the Dispute Settlement Body (DSB), which consists of representatives of the entire membership of the WTO and is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by consensus.

Major Issues in 2008

The DSB met 18 times in 2008 to oversee disputes and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and non-governmental panelists.

Roster of Governmental and Non-Governmental Panelists: Article 8 of the DSU makes it clear that panelists may be drawn from either the public or private sector and must be "well-qualified," such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. Since 1985, the Secretariat has maintained a roster of non-governmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating candidates' qualifications and encouraging the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2008, the DSB approved by consensus a number of additional names for the roster, including an updating of the names nominated by the United States. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

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

Rules of Conduct for the DSU: The DSB completed work on a code of ethical conduct for WTO dispute settlement and on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2008.

The Rules of Conduct elaborate on the ethical standards built into the DSU to maintain the integrity, impartiality, and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect

conflicts of interest prior to their involvement in the proceedings and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts.

The Rules of Conduct also provide parties an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the URAA, which directed USTR to seek conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also: (1) arbitrators; (2) experts participating in the dispute settlement mechanism (*e.g.*, the Permanent Group of Experts under the Agreement on Subsidies and Countervailing Measures (SCM Agreement)); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body ("TMB") and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

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

Appellate Body: The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999, and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. On November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Professor Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006. On November 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista of the Philippines and Ms. Jennifer Hillman of the United States as members of the Appellate Body for four years commencing on December 11, 2007, and to appoint Mr. Shotaro Oshima of Japan and Ms. Yuejiao Zhang of China as members of the Appellate Body for four years commencing on June 1, 2008. On

November 12, 2008, Mr. Baptista notified the DSB that he was resigning for health reasons, effective in 90 days. The names and biographical data for the Appellate Body members during 2008 are included in Annex II of this report.

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two-year term for the first Chairperson, and one-year terms for subsequent Chairpersons. In 2001, the Appellate Body amended its working procedures to provide for no more than two consecutive terms for Chairperson. Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi served as Chairperson from December 17, 2004 to December 16, 2005; Mr. Ganesan served as Chairperson from December 17, 2005 to December 16, 2006; Mr. Sacerdoti served as Chairperson from December 17, 2006 to December 17, 2007; Mr. Baptista served as Chairperson from December 18, 2007, to December 17, 2008; and Mr. Unterhalter's term runs from December 18, 2008, to December 11, 2009.

In 2008, the Appellate Body issued 12 reports, 7 of which involved the United States as a party and are discussed in detail below.

Dispute Settlement Activity in 2008: During the DSB's first fourteen years in operation, WTO Members filed 388 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, 14 in 2007, and 19 in 2008). During that period, the United States filed 80 complaints against other Members' measures and received 113 complaints on U.S. measures. Several of these complaints involved the same issues (4 U.S. complaints against others and 26 complaints against the United States). A number of disputes commenced in earlier years remained active in 2008. What follows is a description of those disputes in which the United States was a complainant, defendant, or third party during the past year.

Prospects for 2009

While there were improvements to the multilateral trading system's dispute settlement system as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2009, we expect the DSB to continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. Participants will continue to consider reform proposals in 2009.

a. Disputes Brought by the United States

In 2008, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2008 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes by invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

China–Measures Affecting Imports of Automobile Parts (DS340)

On March 30, 2006, the United States requested consultations with China regarding China's treatment of motor vehicle parts, components, and accessories ("auto parts") imported from the United States. Although China's WTO commitments limit its tariffs on imported auto parts to rates that are significantly below China's tariffs on finished vehicles, China implemented regulations that impose a charge on imported auto parts equal to the tariff on complete automobiles, if the final assembled vehicle in which the parts are incorporated fails to meet certain local content requirements. The United States is concerned that these regulations impose a tax on U.S. auto parts beyond that allowed by WTO rules and result in discrimination against U.S. auto parts. These regulations appear inconsistent with several WTO provisions including Articles II and III of the GATT 1994 and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. The EU (WT/DS/339) and Canada (WT/DS/442) also initiated disputes regarding the same matter. The EU, Canada, and the United States requested the establishment of a panel on September 28, 2006, and a single panel was established on October 26, 2006 to examine the complaints. On January 29, 2007, the Director-General composed the panel as follows: Mr. Julio Lacarte-Muró, Chair, and Mr. Ujal Singh Bhatia and Mr. Wilhelm Meier, Members.

The panel circulated its report on July 18, 2008. The report upheld U.S. claims that China's regulations were inconsistent with China's WTO obligations. In particular, it found that China's regulations impose discriminatory internal charges and administrative procedures on imported auto parts resulting in violation of Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994, and that certain aspects of the regulations are inconsistent with specific commitments made by China in its WTO accession agreement.

On September 15, 2008, China appealed the panel findings to the WTO Appellate Body. On December 15, 2008, the Appellate Body issued its report. The Appellate Body upheld the panel's findings with respect to Articles III:2 and III:4 of the GATT 1994, and, after upholding the panel's findings that the measures imposed internal charges and regulations, found that the specific commitment in China's WTO accession agreement regarding tariff treatment was not implicated.

China–Measures affecting the protection and enforcement of intellectual property rights (WT/DS362)

On April 10, 2007, the United States requested consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights in China. The issues of concern included: (1) the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties; (2) the disposal by Chinese customs authorities of goods that infringe intellectual property rights and that have been confiscated by those authorities, in particular the disposal of such goods following removal of their infringing features; (3) the denial of copyright and related rights protection and enforcement to creative works of authorship, sound recordings, and performances that have not been authorized for publication or distribution within China; and (4) the scope of coverage of criminal procedures and penalties for unauthorized reproduction or unauthorized distribution of copyrighted works. The Chinese measures at issue appear to be inconsistent with China's obligations under several provisions of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the TRIPS Agreement).

The United States and China held consultations on June 7-8, 2007, but they did not resolve the dispute. On August 13, 2007, the United States requested the establishment of a panel with respect to issues (1) through (3) in the consultation request, and a panel was established on September 25, 2007. On December 13, 2007, the Director-General composed the panel as follows: Mr. Adrian Macey, Chair, and Mr. Marino Porzio and Mr. Sivakant Tiwari, Members.

China–Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (WT/DS363)

On April 10, 2007, the United States requested consultations with China regarding certain measures related to the import and/or distribution of imported films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications). On July 10, 2007, the United States requested supplemental consultations with China regarding certain measures pertaining to the distribution of imported films for theatrical release and sound recordings.

Specifically, the United States is concerned that certain Chinese measures: (1) restrict trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual home entertainment products, sound recordings, and publications and (2) restrict market access for, or discriminate against, imported films for theatrical release and sound recordings in physical form, and foreign service providers seeking to engage in the distribution of certain publications, audiovisual home entertainment products, and sound recordings. The Chinese measures at issue appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and *General Agreement on Trade in Services* (GATS), as well as specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on June 5-6, 2007 and July 31, 2007, but they did not resolve the dispute. On October 10, 2007, the United States requested the establishment of a panel, and on November 27, 2007, a panel was established. On March 27, 2008, the Director-General composed the panel as follows: Mr. Florentino P. Feliciano, Chair, and Mr. Juan Antonio Dorantes and Mr. Christian Häberli, Members.

China–Prohibited subsidies (WT/DS358)

On February 2 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because they are offered on the condition that enterprises purchase domestic over imported goods, or on the condition that enterprises meet certain export performance criteria, these subsidies appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures*, Article III:4 of the *General Agreement on Tariffs and Trade 1994*, and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. Mexico also initiated a dispute regarding the same subsidies.

Because consultations did not resolve the disputes, the WTO Dispute Settlement Body, at the request of the United States and Mexico, established a single dispute settlement panel on August 31, 2007 to hear both disputes.

On December 19, 2007, the United States and China informed the DSB that they had reached an agreement with respect to this matter and circulated a copy of the agreement. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures as well as the adoption of new measures, that would eliminate by January 1, 2008, the import substitution and export subsidies challenged by the United States. The agreement also commits China not to re-introduce those subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008. Mexico reached a similar agreement with China with respect to Mexico's dispute on the same subsidies.

China–Measures affecting financial information services and foreign financial information suppliers (WT/DS373)

On March 3, 2008, the United States requested WTO dispute settlement consultations with China concerning China's treatment of foreign financial information suppliers. China's regulatory regime requires foreign financial information suppliers to operate through a government-designated distributor and prohibits them from establishing local operations to provide their services. In addition, the agency designated by China to regulate these services appears to have a conflict of interest, as it is closely connected to a commercial operator in China. This regime appears inconsistent with several WTO provisions, including Articles XVI, XVII, and XVIII of the *General Agreement on Trade in Services*, as well as specific commitments made by China in its WTO accession protocol.

The EU also requested WTO consultations with China on the same measures. The United States, the EC, and China held joint consultations on April 22-23, 2008. On June 20, 2008, Canada requested consultations with China regarding the same measures.

On December 4, 2008, the United States and China informed the DSB that they had reached an agreement with respect to this matter and provided a copy of the agreement for circulation. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures, as well as the adoption of new measures, to respond to the United States' concerns regarding the absence of an independent regulator and the imposition of unfair requirements and restrictions on U.S. financial information service suppliers operating in China. China's commitments under the agreement include the establishment, by January 31, 2009, of an independent regulator for foreign financial information service suppliers, and the implementation of new non-discriminatory and transparent regulations by June 1, 2009. The EU and Canada reached identical agreements with China with respect to their disputes on the same matter.

China– Grants, loans and other incentives (DS387)

On December 19, 2008, the United States requested consultations with China regarding government support tied to China's industrial policy to promote the sale of Chinese brand name and other products abroad. This support is provided in the form of cash grant rewards, preferential loans, research and development funding, and payments to lower the cost of export credit insurance. Because these subsidies are offered on the condition that enterprises meet certain export performance criteria, they appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures* and Articles 3, 9, and 10 of the *Agreement on Agriculture*, as well as specific commitments made by China in its WTO accession agreement. In addition, to the extent that the grants, loans and other incentives also benefit Chinese-origin products, but not imported products, the measures appear to be inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994*. Mexico also initiated a dispute regarding the same subsidies.

European Union–Measures concerning meat and meat products (hormones) (DS26, 48)

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), and that the ban is not based on science, a risk assessment, or relevant international standards.

Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, and again on October 31, 2008, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet.

On November 3, 2003, the EU notified the WTO that it had amended its hormones ban. As discussed below (DS320), on November 8, 2004, the EU requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EU – Hormones dispute.

On December 22, 2008, the EU requested consultations with the United States and Canada pursuant to Articles 4 and 21.5 of the DSU, regarding the EU's implementation of the DSB's recommendations and rulings in the EU – Hormones dispute. In its consultations request, the EU stated that it considered that it has brought into compliance the measures found inconsistent in EU – Hormones by, among other things, adopting its revised ban in 2003.

European Union–Measures affecting the approval and marketing of biotechnology products (DS291)

Since the late 1990s, the EU has pursued policies that undermine agricultural biotechnology and trade in biotech foods. After approving a number of biotech products through October 1998, the EU adopted an across-the-board moratorium under which no further biotech applications were allowed to reach final approval. In addition, six Member States (Austria, France, Germany, Greece, Italy, and Luxemburg) adopted unjustified bans on certain biotech crops that had been approved by the EU prior to the adoption of the moratorium. These measures have caused a growing portion of U.S. agricultural exports to be excluded from EU markets, and unfairly cast concerns about biotech products around the world, particularly in developing countries.

On May 13, 2003, the United States filed a consultation request with respect to: (1) the EU's moratorium on all new biotechnology approvals, (2) delays in the processing of specific biotech product applications, and (3) the product-specific bans adopted by six EU Member States (Austria, France, Germany, Greece, Italy, and Luxembourg). The United States requested the establishment of a panel on August 7, 2003. Argentina and Canada submitted similar consultation and panel requests. On August 29, 2003, the DSB established a panel to consider the claims of the United States, Argentina and Canada. On March 4, 2003, the Director-General composed the panel as follows: Mr. Christian Häberli, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

The panel issued its report on September 29, 2006. The panel agreed with the United States, Argentina, and Canada that the disputed measures of the EU, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the SPS Agreement. In particular:

- The panel found that the EU adopted a *de facto*, across-the-board moratorium on the final approval of biotech products, starting in 1999 up through the time the panel was established in August 2003.

- The panel found that the EU had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in "undue delays" in violation of the EU's obligations under the SPS Agreement.

- The panel identified specific, WTO-inconsistent "undue delays" with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.

- The panel upheld the United States' claims that, in light of positive safety assessments issued by the EU's own scientists, the bans adopted by six EU Member States on products approved in the EU prior to the moratorium were not supported by scientific evidence and were thus inconsistent with WTO rules.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EU notified the DSB that the EU intends to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a reasonable period of time for implementation. On June 21, 2006, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU on a one-year period of time for implementation, to end on November 21, 2007. On November 21, 2007, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU to extend the implementation period to January 11, 2008.

On January 17, 2008, the United States submitted a request for authorization to suspend concessions and other obligations with respect to the EU under the covered agreements at an annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the EU's failure to bring measures concerning the approval and marketing of biotech products into compliance with the recommendations and rulings of the DSB. On February 6, 2008, the EU requested arbitration under Article 22.6 of the DSU, claiming that the level of suspension proposed by the United States was not equivalent to the level of nullification or impairment. The EU and the United States mutually agreed to suspend the Article 22.6 arbitration proceedings as of February 18, 2008. The United States may request resumption of the proceedings following a finding by the DSB that the EU has not complied with the recommendations and rulings of the DSB.

European Union–Regime for the importation, sale and distribution of bananas – Recourse to Article 21.5 of the DSU by the United States (WT/DS27)

On June 29, 2007, the United States requested the establishment of a panel under Article 21.5 of the DSU to review whether the EU has failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request relates to the EU's apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador, Guatemala, Honduras, Mexico, and the United States. That proceeding resulted in findings that the EU's banana regime discriminates against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999. The EU committed

to shift to a tariff-only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EU on January 1, 2006 includes a zero-duty tariff rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas do not have access to this duty-free tariff rate quota and are subject to a 176 euro per ton duty. The United States believes that this new regime is in violation of GATT Articles I:1 and XIII.

Ecuador requested the establishment of a similar compliance panel on February 23, 2007, and a panel was composed in response to that request on June 15. The panel in response to the United States request was established on July 12, 2007. On August 13, 2007, the Director General composed the panel as follows: Mr. Christian Häberli, Chair, and Mr. Kym Anderson and Mr. Yuqing Zhang, members. Mr. Häberli and Mr. Anderson were members of the original panel in this dispute.

The panel granted the parties' request to open the substantive meeting with the parties, as well as a portion of the third-party session, to the public. The public observed these meetings from a gallery in the room in which the meetings were conducted.

The panel issued its report on May 19, 2008. The panel agreed with the United States that the EC's regime was inconsistent with the EC's obligations under Articles I:1, XIII:1, and XIII:2 of the GATT 1994, and that the EU had failed to implement the recommendations and rulings of the DSB.

On August 28, 2008, the EU filed a notice of appeal. The Appellate Body granted a joint request by the parties to open its hearing to the public, and the public was able to observe the hearing via a closed-circuit television broadcast. The Appellate Body issued its report on November 26, 2008. The Appellate Body found that the EU has failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EC's procedural arguments alleging the United States was barred from bringing the compliance proceeding, and agreed with the panel that the EC's duty-free tariff rate quota reserved only for some countries was inconsistent with Article XIII of the GATT 1994. The panel in this dispute had also found that the EC's banana import regime was in violation of GATT Article I. The EU did not appeal that finding.

European Union–Subsidies on large civil aircraft (DS316)

On October 6, 2004, the United States requested consultations with the EU, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Article XVI:1 of the GATT 1994. Consultations were held on November 4, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings.

The United States and the EU were unable to reach an agreement within the 90-day time frame. Therefore, the United States filed a request for a panel on May 31, 2005. The panel was established on July 20, 2005. The U.S. request challenges several types of EU subsidies that appear to be prohibited, actionable, or both.

On October 17, 2005, the Deputy Director-General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair, and Mr. John Adank and Mr. Thinus Jacobsz, Members.

European Communities–Tariff Treatment of Certain Information Technology Products (WT/DS375)

On May 28, 2008, the United States requested consultations with the EU and its Member States regarding the tariff treatment accorded to set-top boxes with a communication function, flat panel displays, "input or output units," and facsimile machines. The United States is concerned that certain EU measures appear to have resulted in the imposition of duties on these products. As a result of the Information Technology Agreement (ITA), the EU and its Member States, in their Schedules of Concessions to the GATT 1994, committed to provide duty-free treatment for these products.

The measures in question appear to be inconsistent with the obligations of the EU and its Member States under Articles II:1(a) and II:1(b) of the GATT 1994. In addition, certain of the actions taken by the EU with respect to set-top boxes appear to be inconsistent with the EC's obligations under GATT 1994 Articles X:1 and X:2.

Japan and Chinese Taipei (on May 28, 2008, and June 12, 2008, respectively) also filed requests for consultations with the EU and its Member States on these measures. On August 18, the United States, Japan and Chinese Taipei jointly requested the establishment of a panel. A panel was established at the meeting of the DSB on September 23, 2008.

India–Alcohol tariffs (WT/DS360)

On March 6, 2007, the United States requested consultations with the Government of India regarding India's additional customs duty and extra-additional customs duty on imports from the United States. The dispute involves alcoholic beverages as well as a number of other products for which India imposes customs duties in excess of bound rates set forth in its Schedule to the GATT 1994. Specifically, in its WTO Schedule, India committed to maintaining ordinary customs duties 150 percent ad valorem or less, and that it would not impose other duties or charges on imports of alcoholic beverages. India, however, has imposed ordinary customs duties on imports of alcoholic beverages from the United States that result in ordinary customs duties on these imports as high as 550 percent. These duties, therefore, appear inconsistent with India's obligation under Article II:1(a) and (b) of the GATT 1994 not to apply ordinary customs duties or other duties or charges in excess of those set forth in its WTO Schedule or to accord less favorable treatment to imports than set forth in its WTO Schedule. India imposes these customs duties by levying an "additional customs duty" and an "extra-additional customs duty" in addition to and on top of a "basic customs duty" on imports of alcoholic beverages. The extra-additional customs duty also appears inconsistent with Article II:1(a) and (b) of the GATT 1994 with respect to a number of imports other than alcoholic beverages, likewise resulting in imposition of customs duties that exceed those set forth in India's WTO Schedule. These products include certain agricultural products such as milk, raisins, and orange juice, as well as various other products.

The United States and India held consultations on April 13, 2007 in Geneva. The EU was joined in the consultations. These consultations failed to result in a mutually satisfactory resolution to this dispute and on May 24, 2007, the United States requested the establishment of a panel. The DSB considered this request at its meetings of June 4 and June 20, 2007, and established the panel on June 20 with standard terms of reference. Australia, Chile, the EU, Japan, and Vietnam reserved third party rights in the dispute. On July 3, 2007, the parties agreed on the panelists, as follows: Mr. Luzius Wasescha, Chair, and Mr. Mateo Diego-Fernández and Mr. Bruce McRae, members.

The establishment of the panel in this dispute (WT/DS360) followed the establishment of a panel on April 24, 2007 to consider similar claims raised by the EU in its separate case against India regarding the additional and extra-additional customs duties on imports of wine and distilled spirits (WT/DS352). On July 3, 2007, the United States along with the EU and India agreed to have the same panelists, working

procedures and schedule for both disputes, but to have separate panel reports. However, on July 13, 2007, the EU requested, pursuant to DSU Article 12.12, that the panel in DS352 suspend its work and the panel granted that request on July 16, 2007. This did not affect the work of the panel requested by the United States.

On June 9, 2008, the panel circulated its report. The panel found that the United States had not established that India's AD and EAD were inconsistent with Article II:1(a) or (b) of the GATT 1994. Specifically, the panel found that for a duty or charge to fall within the scope of those articles, it must be "inherently discriminatory" and that an essential but insufficient criteria for establishing that a duty is inherently discriminatory is establishing that the duty is not a charge equivalent to an internal tax. Because the panel considered the United States to have failed to establish that the AD and EAD were not charges equivalent to an internal tax within the meaning of GATT Article III:2, the United States could not establish that the duties fell within the scope of Article II:1(a) or (b).

On August 1, 2008, the United States appealed the report of the panel to the Appellate Body. The Appellate Body issued its report on October 30, 2008. The Appellate Body reversed the panel's findings on Article II of the GATT 1994. The Appellate Body considered that the additional duty on imports of alcoholic beverages and the extra-additional duty on imports of alcoholic beverages and other products would not be justified as offsetting excise duties and other internal taxes on like domestic products insofar as the duties result in charges on imports that exceed those on like domestic products and consequently, that this would render both the additional and extra-additional duties inconsistent with India's tariff commitments. The Appellate Body report was adopted on November 17, 2008.

Turkey–Measures affecting the importation of rice (DS334)

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice, not permitting imports at the bound rate, and implementing a *de facto* ban on rice imports during the Turkish rice harvest, Turkey appeared to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the GATT 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations were held on December 1, 2005. The United States requested the establishment of a panel on February 6, 2006, and the DSB established a panel on March 17, 2006. On July 31, 2006, the Director-General composed the panel as follows: Ms. Marie-Gabrielle Ineichen-Fleisch, Chair, Mr. Yoichi Suzuki and Mr. Johann Frederick Kirsten, Members. The final report of the panel was circulated to WTO Members and made public on September 21, 2007. In the final report, the panel found that the system by which Turkey decided to deny, or fail to grant, certain certificates required for importing rice outside the tariff rate quota from September 2003 and at certain periods thereafter, constituted a quantitative import restriction as well as a practice of discretionary import licensing inconsistent with Turkey's obligations under Article 4.2 of the Agreement on Agriculture. The panel also found that Turkey's domestic purchase requirement for rice imports accorded less favorable treatment to imported rice than domestic rice and was therefore inconsistent with Turkey's national treatment obligations under Article III: 4 of the GATT 1994. The panel report was adopted by the DSB on October 22, 2007. Turkey informed the DSB at the end of November 2007 that it was in the process of implementing the recommendations and rulings of the DSB in this dispute and that it preserved its rights to a reasonable period of time (RPT) for such implementation.

The United States and Turkey came to an agreement that the reasonable period of time would be six months, expiring on April 22, 2008. On May 7, 2008, the United States and Turkey entered into a sequencing agreement with respect to the procedures that will apply if the United States seeks to establish

a compliance panel or seeks to suspend concessions or other obligations to Turkey in connection with this dispute.

b. Disputes Brought Against the United States

Section 124 of the URAA requires, *inter alia*, that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO: each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2008 in which the United States was a responding party.

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

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

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits to the EU as a result of section 110(5) (B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case is $1.1 million per year. On January 7, 2002, the EU sought authorization from the DSB to suspend obligations vis-à-vis the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration.

However, because the United States and the EU have been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002.

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

United States–Section 211 Omnibus Appropriations Act (DS176)

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the consistency of Section 211 with the TRIPS Agreement, and requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the WTO Director-General composed the panel on October 26, 2000. The Director-General composed the panel as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet; and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002.

The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The panel and Appellate Body reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to implement the recommendations and rulings. The reasonable period of time for implementation ended on June 30, 2005. On June 30, 2005, the United States and the EU agreed that the EU would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

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

Japan alleged that the preliminary and final determinations of the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (USITC) in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 2000, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman, Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, *inter alia*, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report.

The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002, arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, Commerce issued a new final determination in the hot-rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. The reasonable period of time ended on July 31, 2005. With respect to the outstanding implementation issue, on July 7, 2005, the United States and Japan agreed that Japan would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

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

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23, 2001. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair, and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

The panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the panel found that the CDSOA constitutes a specific action against dumping and subsidies and, therefore, is inconsistent with the WTO Antidumping and SCM Agreements as well as Article VI of the GATT 1994. The panel also found that the CDSOA distorts the standing determination conducted by Commerce and, therefore, is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts Commerce's consideration of price undertakings (agreements to settle antidumping and countervailing duty investigations). The panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the panel rejected the complainants' claims under Article X: 3 of the GATT, Article 15 of the Antidumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the panel's adverse findings on October 1, 2002.

The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the Antidumping Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

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

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in

DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004. On December 23, 2004, January 7, 2005 and January 11, 2005, the United States reached agreements with Australia, Thailand and Indonesia that these three complaining parties would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from nine to 30 percent on a list of U.S. products. On September 1, 2005, Japan began imposing additional duties of 15 percent on a list of U.S. products.

On February 8, 2006, the President signed the Deficit Reduction Act into law. That Act includes a provision repealing the CDSOA. Certain of the complaining parties nevertheless continued to impose retaliatory measures because they considered that the Deficit Reduction Act failed to bring the United States into immediate compliance. Thus, on May 1, 2006, the EU renewed its retaliatory measure and added eight products to the list of targeted imports. Japan renewed its retaliatory measure on September 1, 2006, retaining the same list of targeted imports. Mexico adopted a new retaliatory measure on September 14, 2006, imposing duties of 110 percent on certain dairy products through October 31, 2006. After that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

On April 17, 2007, the EU announced that it would renew its retaliatory measure as of May 1, 2007, adding 32 more products to the 2006 list. On September 1, 2007, Japan once again renewed its retaliatory duties. The EU renewed its retaliatory measure again on April 3, 2008, removing 30 products from the 2007 list. On August 22, 2008, Japan announced that it would also renew its retaliatory duties, but those duties would cover only ball bearings and tapered roller bearings, in contrast to the list of 15 products covered in the previous year.

United States–Subsidies on upland cotton (DS267)

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1 and 30 of the SCM Agreement, Article 19 of the Antidumping Agreement, and Article 4 of the DSU. The Brazilian consultation request on U.S. support measures that benefit upland cotton claimed that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994. Consultations were held on December 3, 4 and 19, 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertained to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton" [footnote omitted]. The DSB established the panel on March 18, 2003. On May 19, 2003, the Director-General appointed as panelists Mr. Dariusz Rosati, Chair, Mr. Daniel Moulis and Mr. Mario Matus, Members.

On September 8, 2004, the panel circulated its report to all WTO Members and the public. The panel made some findings in favor of Brazil on certain of its claims and other findings in favor of the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees

for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that the GSM 102, GSM 103, and SCGP export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (*i.e.*, marketing loan, counter-cyclical, market loss assistance, and so-called "Step 2 payments,") were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (*i.e.*, production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs per se cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the Appellate Body; Brazil then cross-appealed. The Appellate Body circulated its report on March 3, 2005. The Appellate Body upheld the panel's findings appealed by the United States.

The Appellate Body also rejected or declined to rule on most of Brazil's appeal issues. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intends to bring its measures into compliance.

On June 30, 2005, the United States announced that it would cease to issue GSM 103 export credit guarantees, and that it was instituting a new fee structure for the GSM 102 export credit guarantee program. Further, on July 5, the United States proposed legislation relating to the export credit guarantee and Step 2 programs. On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in connection with the prohibited export subsidies findings. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, the United States and Brazil agreed to suspend the arbitration. On October 1, 2005, the United States ceased to issue export credit guarantees under the SCGP. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, thereby also

referring that matter to arbitration. On November 21, 2005, the United States and Brazil agreed to suspend the arbitration.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005. That Act includes a provision repealing the Step 2 program as of August 2006.

On August 18, 2006, Brazil requested the establishment of an Article 21.5 panel. On September 28, 2006, the DSB established a panel to consider Brazil's claims. On October 25, 2006, the Director-General composed the panel as follows: Mr. Eduardo Pérez Motta, Chairman, and Mr. Mario Matus and Mr. Ho-Young Ahn, Members. On December 18, 2007, the Article 21.5 panel circulated its report. The panel found, *inter alia*, that: (1) U.S. export credit guarantees issued under the modified GSM 102 program with respect to unscheduled and certain scheduled (rice, pig and poultry meat) commodities constituted prohibited export subsidies; and (2) U.S. marketing loan and counter-cyclical payments for upland cotton were continuing to cause serious prejudice to Brazil by significantly suppressing world upland cotton prices. The panel rejected Brazil's claim that payments under the marketing loan and counter-cyclical payment programs were responsible for an increase in U.S. market share in MY 2005 and thereby caused serious prejudice to Brazil's interests. The panel also found that the United States was not required to have refused to perform on export credit guarantees that were issued prior to the deadline for the implementation of the DSB's recommendations and rulings as to such guarantees (July 1, 2005) and that were still outstanding as of that date.

The United States appealed the compliance panel's adverse findings on February 12, 2008. Brazil filed its notice of other appeal on February 25, 2008. The Appellate Body issued its report on June 2, 2008.

The Appellate Body issued its report on June 2, 2008, in which it:

- upheld the compliance panel's finding that U.S. marketing loan and counter-cyclical payments cause significant price suppression in the market for upland cotton, thereby constituting present serious prejudice to Brazil;

- while agreeing with the United States that the compliance panel erred in dismissing U.S. Government budgetary data showing that U.S. export credit guarantee programs operate at a profit, nonetheless upheld the compliance panel's ultimate finding that GSM 102 export credit guarantees with respect to unscheduled products and certain scheduled products (rice, pig meat, poultry meat) were prohibited export subsidies; and

- upheld the compliance panel's finding that Brazil's claims as to marketing loan and counter-cyclical payments made after September 21, 2005, and Brazil's claims as to GSM 102 guarantees for exports of pig meat and poultry meat, were within the scope of the compliance proceeding.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 20, 2008.

Brazil requested resumption of the arbitration process on August 25, 2008. On October 1, 2008, the United States and Brazil agreed that the arbitrations would be carried out by the following individuals: Mr. Eduardo Pérez-Motta, Chairman, and Mr. Alan Matthews and Mr. Daniel Moulis, Members.

United States–Sunset reviews of antidumping measures on oil country tubular goods from Argentina (DS268)

On October 7, 2002, Argentina requested consultations with the United States regarding the final determinations of Commerce and the USITC in the sunset reviews of the antidumping duty order on oil country tubular goods (OCTG) from Argentina, issued on November 7, 2000 and June 2001, respectively, and Commerce's determination to continue the antidumping duty order on OCTG from Argentina, issued on July 25, 2001. Consultations were held on November 14, 2002, and December 17, 2002. Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director-General composed the panel as follows: Mr. Paul O'Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent Commerce from making a determination as required by Article 11.3 and that Commerce's Sunset Policy Bulletin is inconsistent with Article 11.3 of the Antidumping Agreement. The panel rejected Argentina's claims that the USITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3.

On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

Argentina requested arbitration in order to determine the reasonable period of time for the United States to implement the recommendations and rulings of the DSB. The arbitrator awarded the United States 12 months, until December 17, 2005. On August 15, 2005, Commerce published proposed regulations to implement the finding that the waiver provisions were inconsistent with Article 11.3. Commerce published the final regulations on October 28, 2005, effective October 31, 2005. On December 16, 2005, Commerce issued the redetermination of the sunset review in question.

On March 6, 2006, Argentina requested the establishment of a panel to evaluate whether the United States complied with the recommendations and rulings of the DSB, and a panel was established on March 17, 2006. On November 30, 2006, the panel, comprising the original panelists, circulated its report. The panel concluded that the United States had not brought its measures into compliance. The panel concluded that the redetermination was not consistent with the Antidumping Agreement. The panel also concluded that the United States was obliged to amend the statute, rather than simply the regulations, and that as a result the statute and regulations were inconsistent with the Antidumping Agreement. The United States appealed, challenging the panel's findings concerning the waiver provisions. On April 12, 2007, the Appellate Body issued its report, agreeing with the United States that the waiver provisions had been brought into compliance.

On May 21, 2007, Argentina filed a request for authorization to suspend concessions under Article 22.2 of the DSU. On June 1, 2007, the United States objected to Argentina's request, thus referring the matter to arbitration under Article 22.6 of the DSU. The original panelists agreed to serve as arbitrator.

As a result of the second sunset review on oil country tubular goods, the antidumping duty order was revoked. On June 4, 2007, Argentina made a statement to the DSB that it welcomed news of the May 31, 2007, decision by the USITC to find that revocation of the order would not lead to the continuation or recurrence of injury. On June 21, 2007, the United States and Argentina filed a joint request to suspend the arbitration, and on June 26, 2007, the arbitrator suspended the proceedings.

United States–Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the USITC. Mexico also challenged certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the USITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appeared to be on the analytical standards used by Commerce and the USITC in sunset reviews, although Mexico also challenged certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chair; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members. On June 20, 2005, the panel circulated its report. The panel rejected Mexico's claim that certain aspects of the U.S. administrative review procedures are inconsistent with U.S. WTO obligations, as well as Mexico's claims regarding the USITC's laws and regulations regarding the determination of likelihood of injury and the likelihood determination itself. The panel did find that the Sunset Policy Bulletin and Commerce's likelihood determination itself were inconsistent with Article 11.3 of the Antidumping Agreement.

On August 4, 2005, Mexico filed a notice of appeal regarding the panel's findings on likelihood of injury. The United States appealed the panel's findings regarding the Sunset Policy Bulletin. On November 2, 2005, the Appellate Body issued its report. The report upheld the panel's findings rejecting Mexico's claims regarding likelihood of injury. In addition, the Appellate Body reversed the panel's findings that the Sunset Policy Bulletin breaches U.S. obligations. The DSB adopted the panel and Appellate Body reports on November 28, 2005. Commerce issued a redetermination on June 9, 2006. Mexico filed a consultation request on August 21, 2006, contending that the United States failed to bring its measure into compliance. Consultations were held on August 31, 2006.

On April 12, 2007, Mexico filed a request for the establishment of a compliance panel, and on April 24, 2007, the compliance panel was established. The original panelists agreed to serve on the compliance panel.

As a result of the second sunset review on oil country tubular goods, the antidumping duty order was revoked. On July 5, 2007, Mexico requested the panel, pursuant to Article 12.12 of the DSU, to suspend the proceedings, and on July 11, 2007, the panel informed the DSB that it had suspended the proceedings until further notice. On July 6, 2008, pursuant to Article 12.12 of the DSU, the authority for the establishment of the panel lapsed.

United States–Measures Affecting the Cross-Border Supply of Gambling and Betting Services (DS285)

On March 13, 2003, Antigua & Barbuda ("Antigua") requested consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003.

Antigua requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of the Antigua, the WTO Director-General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§

1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several panel findings. The Appellate Body overturned the panel's findings regarding the state statutes, and found that the three U.S. federal gambling laws at issue "fall within the scope of 'public morals' and/or 'public order'" under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needed to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the panel and Appellate Body reports on April 20, 2005. On May 19, 2005, the United States stated its intention to implement the DSB recommendations and rulings. On August 19, 2005, an Article 21.3(c) arbitrator determined that the reasonable period of time for implementation would expire on April 3, 2006.

At the DSB meeting of April 21, 2006, the United States informed the DSB that the United States was in compliance with the recommendations and rulings of the DSB in the dispute. On June 8, 2006, Antigua requested consultations with the United States regarding U.S. compliance with the DSB recommendations and rulings. The parties held consultations on June 26, 2006. On July 5, 2006, Antigua requested the DSB to establish a panel pursuant to Article 21.5 of the DSU, and a panel was established on July 19, 2006. The Chairperson of the original panel and one of the panelists were unavailable to serve. The parties agreed on their replacements, and the panel was composed as follows: Mr. Lars Anell, Chairperson, and Mr. Mathias Francke and Mr. Virachai Plasai, Members. The report of the Article 21.5 panel, which was circulated on March 30, 2007, found that the United States had not complied with the recommendations and rulings of the DSB in this dispute.

On May 4, 2007, the United States initiated the procedure provided for under Article XXI of the GATS to modify the schedule of U.S. commitments so as to reflect the original U.S. intent of excluding gambling and betting services.

The DSB adopted the report of the Article 21.5 panel on May 22, 2007. On June 21, 2007, Antigua submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua under the GATS and the TRIPS. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration was carried out by the three panelists who served on the Article 21.5 panel.

On December 21, 2007, the Article 22.6 arbitration award was circulated. The arbitrator concluded that Antigua's annual level of nullification or impairment of benefits is $21 million, and that Antigua may request authorization from the DSB to suspend its obligations under the TRIPS Agreement in this amount.

During 2007 and early 2008, the United States reached agreement with every WTO Member, aside from Antigua, that had pursued a claim of interest in the GATS Article XXI process of modifying the U.S. schedule of GATS commitments so as to exclude gambling and betting services. Throughout 2008, Antigua and the United States continued to consult in an effort to achieve a mutually agreeable resolution to this matter.

United States–Laws, regulations and methodology for calculating dumping margins ("zeroing") (DS294)

On June 12, 2003, the EU requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EU requested further consultations on

September 8, 2003. Consultations were held October 6, 2003. The EU requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members. The panel issued its report on October 31, 2005, finding that Commerce's use of "zeroing" in antidumping investigations is inconsistent with U.S. obligations under the WTO, but rejecting the EU's claims that zeroing in other phases of antidumping proceedings is also inconsistent. On January 17, 2006, the EU appealed the panel report. The Appellate Body issued its report on April 18, 2006. In its report, the Appellate Body upheld the panel's finding that the U.S. "methodology" of zeroing in average-to-average comparisons in investigations is subject to challenge "as such" and that such methodology is inconsistent with the Antidumping Agreement. The Appellate Body also reversed the panel and found that the U.S. use of zeroing in certain assessment proceedings was also inconsistent with the Antidumping Agreement. The reasonable period of time for the United States to bring its measures into compliance expired on April 9, 2007.

On July 9, 2007, the EU requested consultations with the United States concerning its compliance with the recommendations and rulings of the DSB. The EU and the United States held consultations on July 30, 2007. On September 13, 2007, the EU requested the establishment of a compliance panel, and on September 25, 2007, the panel was established. The following individuals were named by the Director-General to serve as the panelists: Mr. Felipe Jaramillo, Chair, and Ms. Usha Dwarka-Canabady and Mr. Scott Gallacher, members. Pursuant to a request by the parties, the panel agreed to open its meeting with the parties to public observation.

The panel circulated its report on December 17, 2008. The panel found that the use of zeroing in administrative reviews involving the orders related to measures in the original dispute amounted to a failure to comply with the DSB rulings and recommendations, if the reviews were concluded after the end of the reasonable period of time, even if the reviews involved entries that occurred before the end of the reasonable period of time. The panel also found that the Section 129 determinations related to four original investigations in the original dispute violated Article 3 of the Antidumping Agreement, because the ITC did not revisit its original injury determinations to account for the reduced volumes of dumped imports resulting from the exclusion of certain exporters from the orders as a result of the Section 129 determinations. Finally, the panel found that the continued application of the cash deposit rate from one of the administrative reviews in the original dispute to one company that had not requested a new administrative review amounted to a failure to comply with the DSB rulings and recommendations. However, the panel rejected the EU claims that the liquidation of entries at rates determined using zeroing before the end of the reasonable period of time amounts to a failure to comply, even if such liquidation occurs after the end of the reasonable period of time. The panel rejected or declined to make findings with respect to the other EU claims.

United States–Subsidies on large civil aircraft (DS317)

On October 6, 2004, the EU requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EU alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EU requested the establishment of a panel to consider its claims. The EU filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered.

A panel was established with regard to the October claims on July 20, 2005. On October 17, 2005, the Deputy Director-General established the panel as follows: Ms. Marta Lucía Ramírez de Rincón, Chair, and Ms. Gloria Peña and Mr. David Unterhalter, Members. Since that time, Ms. Ramirez and Mr. Unterhalter resigned from the panel. They have not been replaced.

The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On December 8, 2006, the WTO issued notices changing the designation of this panel to DS353. The summary below of *United States–Subsidies on large civil aircraft (Second Complaint) (DS353)* discusses developments with regard to this panel.

United States–Continued suspension of obligations in the EU - Hormones dispute (DS320)

On November 8, 2004, the EU requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EU – Hormones dispute. The EU argued that EU legislation of 2003 implementing the import ban on beef and beef products produced from animals treated with certain hormones brought the EU into compliance with its WTO obligations. Consultations were held on December 16, 2004. The EU requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director-General composed the panel as follows: Mr. Tae-yul Cho, Chairman, and Ms. Claudia Orozco and Mr. William Ehlers, Members. The panel, in a communication dated August 1, 2005, granted the parties' request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel's meetings with third parties remain closed.

The panel circulated its final report on March 31, 2008. In its report, the panel found that the United States breached Articles 23.2(a) and 23.1 of the DSU by making certain statements at the meetings of the Dispute Settlement Body and by maintaining the suspension of concessions after the EU had announced compliance. The panel also found that because the EC's revised ban of 2003 was not consistent with the SPS Agreement and had not been brought into compliance, the United States had not breached Article 22.8 of the DSU.

The EU filed its notice of appeal in this dispute on May 29, 2008. The United States filed a notice of other appeal on June 10, 2008. The Appellate Body granted the parties' request to open the hearing to the public via closed-circuit television broadcast. The oral hearing, which took place on July 28-29, 2008, was the first Appellate Body hearing ever to be open to the public.

On October 16, 2008, the Appellate Body issued its report. The Appellate Body reversed the panel's findings that the United States had breached Articles 23.2(a) and 23.1 of the DSU. The Appellate Body also reversed several of the panel's findings relating to the SPS Agreement issues concerning the EU's amended ban of 2003. The Appellate Body found that it could not conclude whether or not the EU's amended ban is WTO-consistent. The DSB adopted the Appellate Body report on November 14, 2008.

As discussed above (DS26 and 38), on December 22, 2008, the EU requested consultations with the United States and Canada pursuant to Articles 4 and 21.5 of the DSU, regarding the EU's implementation of the DSB's recommendations and rulings in the EU – Hormones dispute.

United States–Measures relating to zeroing and sunset reviews (DS322)

On November 24, 2004, Japan requested consultations with respect to: (1) Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty

orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the Antidumping Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004. Japan requested the establishment of a panel on February 4, 2005, and a panel was established on February 28, 2005. On April 15, 2005, the Director-General composed the panel as follows: Mr. David Unterhalter, Chair, and Mr. Simon Farbenbloom and Mr. Jose Antonio Buencamino, Members.

The panel report was circulated on September 20, 2006. The panel found that there was one measure, "zeroing," that was applicable in all types of comparisons and all proceedings. The panel agreed with prior reports that zeroing in average-to-average comparisons in investigations is inconsistent with the Antidumping Agreement. However, the panel also found that zeroing in transaction-to-transaction comparisons is not inconsistent with the Antidumping Agreement, and, expressly rejecting the Appellate Body's reasoning in *US – Zeroing (EC),* also found that zeroing in assessment proceedings is not inconsistent with the Antidumping Agreement. Japan appealed the panel report. The United States filed a cross-appeal.

In a report circulated January 9, 2007, the Appellate Body upheld the panel's findings that the United States maintains a single "zeroing procedures" measure applicable to investigations and administrative reviews. The Appellate Body reversed the panel's findings regarding zeroing in transaction-to-transaction comparisons in investigations, and it also reversed the panel's findings concerning zeroing in assessment proceedings. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body, on January 23, 2007. On 20 February 2007, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On May 4, 2007, the United States and Japan informed the DSB that they had agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on 24 December 2007.

On January 10, 2008, Japan requested DSB authorization to suspend concessions on the grounds that the United States had failed to implement the DSB's recommendations and rulings, and on January 18, 2008, the United States objected to the level of suspension and accordingly requested that the matter be referred to arbitration. On March 10, 2008, the United States and Japan informed the DSB that they had reached a sequencing agreement to suspend arbitration pending the completion of compliance proceedings.

On April 7, 2008, Japan requested the establishment of an Article 21.5 panel, which the DSB established at its meeting on April 18, 2008. On May 23, 2008, the parties agreed to constitution of the compliance panel as follows: Mr. José Antonio Buencamino, Chairperson, and Mr. Simon Farbenbloom and Mr. Raúl León-Thorne, Members. The compliance panel agreed to open its meeting with the parties, as well as a portion of the meeting with the third parties, to observation by the public via closed-circuit television broadcast, and the open meeting was held on November 4-5, 2008.

Pursuant to a joint request from the United States and Japan, the arbitration under Article 22.6 of the DSB was suspended on June 9, 2008.

United States—Measures Relating to Shrimp from Thailand (DS343)

On April 24, 2006, Thailand requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from Thailand. In addition, Thailand requested consultations with respect to Commerce's alleged use of "zeroing" in the antidumping investigation that resulted in the order. Thailand has alleged that these measures breach several provisions of the

Antidumping Agreement and the GATT 1994. Consultations were held on August 1, 2006. Thailand requested the establishment of a panel on September 15, 2006, and a panel was established on October 26, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found the use of zeroing in the investigation of shrimp from Thailand to have breached the Antidumping Agreement, and that the additional bond requirement as applied to importers of shrimp from Thailand was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reasonable" security. It rejected or declined to make findings with respect to Thailand's claims on other provisions of the GATT 1994 and the AD Agreement.

On April 17, Thailand appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand did not constitute reasonable security. It rejected Thailand's other claims regarding the panel's interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and Thailand agreed that the reasonable period of time to implement the DSB's rulings and recommendations would be eight months, expiring on April 1, 2009.

United States—Final Anti-dumping Measures on Stainless Steel from Mexico (DS344)

On May 26, 2006, Mexico requested consultations with respect to Commerce's alleged use of "zeroing" in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994 and the WTO Agreement. Consultations were held on June 15, 2006. On October 12, 2006, Mexico filed a request for the establishment of a panel, and a panel was established on October 26, 2006. On December 20, 2006, the Director-General composed the panel as follows: Mr. Albert Dumont, Chair, and Mr. Bruce Cullen and Ms. Leora Blumberg, Members.

On December 20, 2007, the panel circulated its report. The panel found that the use by the United States of "model zeroing" in investigations, including in the particular investigation at issue in this dispute, was inconsistent with U.S. obligations under the Antidumping Agreement. The panel also found, however, that the use by the United States of "simple zeroing" in administrative reviews (including in the administrative reviews at issue in this dispute) was not inconsistent with U.S. obligations under the Antidumping Agreement.

On January 31, 2008 Mexico appealed the panel report with respect to the "as such" and "as applied" claims related to zeroing in administrative review. The Appellate Body issued its report on April 30, 2008. The Appellate Body reversed the panel's findings with respect to administrative reviews, finding that zeroing in administrative reviews is "as such", and "as applied" to the subject administrative reviews, inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the AD Agreement.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on May 20, 2008. At the DSB meeting held on June 2, 2008, the United States notified its intention to comply with its WTO obligations and indicated it would need a reasonable period of time to do so.

On August 11, 2008, Mexico requested that the reasonable period of time be determined through arbitration pursuant to Article 21.3(c) of the DSU. On August 29, 2008, the Director-General appointed Mr. Florentino P. Feliciano as the arbitrator. On October 31, 2008, the arbitrator issued his award, in which he decided that the reasonable period of time would be 11 months and 10 days, ending on April 30, 2009.

United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (DS345)

On April 24, 2006, India requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from India. India has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on July 31, 2006. India requested the establishment of a panel on October 26, 2006, and a panel was established on November 21, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found that the additional bond requirement as applied to importers of shrimp from India was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reasonable" security. It rejected or declined to make findings with respect to India's claims on other provisions of the GATT 1994, the AD Agreement, and the SCM Agreement.

On April 17, India appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from India did not constitute reasonable security. It rejected India's other claims regarding the panel's interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and India agreed that the reasonable period of time to implement the DSB's rulings and recommendations would be eight months, expiring on April 1, 2009.

United States—Continued Existence and Application of Zeroing Methodology (Zeroing II) (DS350) On October 2, 2006, the EU requested consultations with respect to Commerce's alleged use of "zeroing" in four antidumping investigations, 35 administrative reviews, and one sunset review involving certain products from the EU, as well as Commerce's alleged use of a "zeroing" methodology in determining the dumping margin in reviews. The EU claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994 and the WTO Agreement. Consultations were held on November 14, 2006 and February 28, 2007. On May 10, 2007, the European Communities requested the establishment of a panel. At its meeting on June 4, 2007, the DSB established a panel. On July 6, 2007, the Director-General composed the panel as follows: Mr. Faizullah Khilji, Chair, and Ms. Lilia R. Bautista and Mr. Michael Mulgrew, Members. Following the resignation on November 8, 2007, of Ms. Lilia R. Bautista as a Member of the panel, the United States and the EU agreed on November 27, 2007, that Ms. Andrea Marie Brown would replace her.

The panel met with the parties on January 29-30, 2008 and on April 22, 2008, and met with the parties and third parties on 30 January 2008. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third-party session, were open for public observation.

The panel circulated its final report on October 1, 2008. The panel agreed with the United States that the EU had improperly tried to challenge the continued application, or application, of antidumping duties in 18 cases; in addition the panel agreed that the EU had improperly tried to challenge four measures that were not final at the time of panel establishment. The panel also found that the EU had not proved the use of zeroing in seven of 37 administrative reviews, and excluded those reviews from its findings. In addition, although the panel said it tended to agree with the United States and prior panel reports finding zeroing permissible in administrative reviews, and that it found that the U.S. interpretation was "permissible," the panel nevertheless concluded that the United States acted inconsistently with the Antidumping Agreement and the GATT 1994 by using zeroing in 29 administrative reviews, eight sunset reviews, and four original investigations. In doing so, the panel said it felt constrained to follow prior Appellate Body reasoning, even though it expressed doubts about that reasoning.

On November 6, 2008, the EU filed a notice of appeal. The United States filed a notice of other appeal on November 18, 2008. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on December 11-12, 2008, via a simultaneous closed-circuit television broadcast. The Appellate Body's report is expected to be circulated by February 2009.

United States–Subsidies on large civil aircraft (Second Complaint) (DS353)

On June 27, 2005, the EU filed a second request for consultations regarding large civil aircraft subsidies allegedly applied by the United States. The section above on *United States–Subsidies on Large Civil Aircraft (DS317)* discusses developments with regard to the dispute arising from the initial request for consultations. The June 2005, request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On November 22, 2006, the Deputy Director-General composed the panel as follows: Mr. Crawford Falconer, Chair, and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members.

The panel granted the parties' request to open the substantive meetings with the parties to the public via a screening of a videotape of the public session. The sessions of the panel meeting that involves business confidential information and the panel's meeting with third parties are closed.

United States–Agriculture Subsidies (Canada) (WT/DS357)

On January 8, 2007, Canada requested consultations with the United States alleging (1) serious prejudice to the interests of Canada within the meaning of Articles 5 and 6 of the SCM Agreement in that subsidies to U.S. corn producers had caused price suppression for corn in Canada; (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture, and (3) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005. Consultations were held on February 7, 2007.

Canada requested a panel with respect to points (2) and (3) on June 7, 2007. On November 8, 2007, Canada submitted a revised request that covered point (3) only, and on November 15, 2007, Canada withdrew its June 7 request. On December 17, 2007, the DSB established a single panel to hear both Canada's revised claims and Brazil's claims in DS365, discussed below.

United States–Agriculture Subsidies (Brazil) (WT/DS365)

On July 11, 2007, Brazil requested consultations with the United States alleging (1) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005 and (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture. Consultations were held on August 22, 2007.

Brazil requested a panel on November 8, 2007 with respect to point (1) only. On December 17, 2007, the DSB established a single panel to hear both Brazil's claims and Canada's claims in DS357, discussed above.

United States–Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (China) (WT/DS379)

On September 19, 2008, the United States received from China a request for consultations pertaining to definitive anti-dumping and countervailing duties imposed by the United States pursuant to final anti-dumping and countervailing duty determinations and orders issued by the U.S. Department of Commerce (DOC) in investigations on circular welded carbon quality steel pipe, certain pneumatic off-the-road tires, light-walled rectangular pipe and tube, and laminated woven sacks. China claimed that these measures were inconsistent with U.S. commitments and obligations under Articles I and VI of the *General Agreement on Tariffs and Trade 1994*, Articles 1, 2, 10, 12, 13, 14, 19, and 32 of the *Agreement on Subsidies and Countervailing Measures*, Articles 1, 2, 6, 9, and 18 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, and Article 15 of the *Protocol on the Accession of the People's Republic of* China. Specifically, China claimed that DOC erred by finding a subsidy based on DOC's view that certain State-owned enterprises are "public bodies;" by finding the existence of a "benefit" because DOC used an inappropriate benchmark; and by finding that certain subsidies were "specific" to a particular industry. China also challenged DOC's use of a non-market economy methodology in the anti-dumping investigations simultaneously with the determination of subsidization and imposition of countervailing duties on the same subject merchandise. Finally, China alleged that DOC committed multiple procedural errors in the course of the anti-dumping and countervailing duty investigations, including its use of "facts available" on the basis of alleged shortcomings in information provided by respondents.

United States–Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (WT/DS381)

On October 24, 2008, Mexico requested consultations regarding U.S. limitations on the use of a dolphin-safe label for tuna and tuna products. Mexico challenges three U.S. measures: (1) the Dolphin Protection Consumer Information Act (19 U.S.C. § 1385); (2) certain dolphin-safe labeling regulations (50 C.F.R. §§ 216.91-92); and (3) the Ninth Circuit decision in Earth Island v. Hogarth, 494 F.3d. 757 (9th Cir. 2007), and alleges that these measures have the effect of prohibiting Mexican tuna and tuna products from being labeled dolphin-safe. Specifically, Mexico alleges that its tuna and tuna products are accorded less favorable treatment than like products of national origin and like products originating in other countries and are not immediately and unconditionally accorded any advantage, favor, privilege, or immunity granted to like products in other countries. Mexico further alleges that the U.S. measures create unnecessary obstacles to trade and are not based on an existing international standard. Finally, Mexico alleges that the U.S. procedures for assessing conformity with the dolphin-safe labeling requirement create unnecessary obstacles to trade and do not grant access to Mexican suppliers under conditions that are no less favorable than those accorded to suppliers of like products of national origin or originating in any other country under comparable circumstances. Mexico alleges that the U.S. measures appear to be

inconsistent with the General Agreement on Tariffs and Trade 1994, Articles I and III, and the Agreement on Technical Barriers to Trade, Articles 2, 5, 6, and 8.

United States–Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil (WT/DS382)

On November 27, 2008, the United States received from Brazil a request for consultations pertaining to definitive anti-dumping duties imposed by the United States pursuant to the final results issued by the U.S. Department of Commerce (DOC) in the administrative review of the anti-dumping duty order on imports of certain orange juice from Brazil. Brazil claimed that certain actions by DOC and Customs and Border Protection with respect to this administrative review and with respect to any on-going or future antidumping administrative reviews concerning this anti-dumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles II, VI:1, and V:2 of the General Agreement on Tariffs and Trade 1994, Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2, and 18.3 of the Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement), and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization. Specifically, Brazil complained that DOC used "zeroing" in the administrative review of the anti-dumping duty order on imports of orange juice.

United States–Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand (Thailand) (WT/DS383)

On November 26, 2008, the United States received from Thailand a request for consultations pertaining to the application of the so-called "practice of zeroing" in calculating overall weighted average margins of dumping in an investigation by the U.S. Department of Commerce (DOC) on polyethylene retail carrier bags from Thailand. Thailand claimed that the use of "zeroing" in the final antidumping duty determination, amended final determination and order inflated margins of dumping or created artificially margins of dumping where none would otherwise have been found, and was inconsistent with U.S. commitments and obligations under Article VI of the *General Agreement on Tariffs and Trade 1994* and Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

United States–Certain Country of Origin Labeling [COOL] Requirements (Canada) (WT/DS384)

On December 1, 2008, Canada requested consultations regarding U.S. mandatory country of origin labeling (COOL). Canada challenges the COOL provisions in the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), and implemented in the U.S. Department of Agriculture Interim Final Rule published on August 1, 2008. These measures contain an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork. Canada notes that the eligibility of a covered commodity for designation as exclusively U.S. origin occurs only when the covered commodity is derived from an animal that is exclusively born, raised, and slaughtered in the United States. It further notes that such a designation of U.S. origin excludes covered commodities from livestock that is exported to the United States for feed or immediate slaughter. Canada alleges that the U.S. measures appear to be inconsistent with the *General Agreement on Tariffs and Trade 1994 (GATT 1994)*, Articles III:4, IX:4, and X:3, the *Agreement on Technical Barriers to Trade*, Article 2 or in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Article 2. Additionally, Canada alleges these violations nullify or impair the benefits accruing to Canada under those Agreements and further appear to nullify or impair the benefits accruing to Canada in the sense of *GATT 1994*, Article XXIII:1(b).

United States –Certain Country of Origin Labeling Requirements (Mexico) (WT/DS386)

On December 17, 2008, Mexico requested consultations regarding U.S. mandatory country of origin labeling (COOL). Mexico challenges the COOL provisions in the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, and implemented by the regulations published in 7 C.F.R. parts 60 and 65. Mexico notes that for certain products, the determination of national origin of those products differs considerably international norms on country of origin labeling. Mexico alleges that this is not justified to accomplish a legitimate objective. Mexico further alleges that the U.S. measures appear to be inconsistent with the *General Agreement on Tariffs and Trade 1994 (GATT 1994)*, Articles III, IX, and X, the *Agreement on Technical Barriers to Trade*, Article 2 or in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Article 2. Additionally, Mexico alleges these violations nullify or impair the benefits accruing to Mexico under those Agreements and further appear to nullify or impair the benefits accruing to Mexico in the sense of *GATT 1994*, Article XXIII:1(b).

I. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB) is the subsidiary body of the General Council, created by the Marrakesh Agreement Establishing the WTO, to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines domestic trade policies of each Member on a schedule designed to review the policies of the full WTO Membership on a timetable determined by trade volume. The express purpose of the review process is to strengthen Members' observance of WTO provisions and to contribute to the smoother functioning of the multilateral trading system. Moreover, the review mechanism serves as a valuable resource for improving the transparency of Members' trade and investment regimes. Members continue to value the review process, because it informs each government's own trade policy formulation and coordination.

The Member under review works closely with the WTO Secretariat to provide relevant information for the process. The Secretariat produces an independent report on the trade policies and practices of the Member under review. Accompanying the Secretariat's report is the Member's own report. In a TPRB session, the WTO Membership discusses these reports together and the Member under review addresses issues raised in the reports and answers questions about its trade policies and practices. Reports cover the range of WTO agreements -- including those relating to goods, services, and intellectual property -- and are available to the public on the WTO's website at http://www.wto.org. Documents are filed on the website's Document Distribution Facility under the document symbol "WT/TPR."

The TPRB's Report to the Singapore Ministerial Meeting suggested that Members pay greater attention to Least Developed Countries (LDCs) in preparing the TPRB timetable. A 1999 appraisal of the TPRM's operation also drew attention to this matter.

Increasingly, TPRs of LDCs perform a technical assistance function, helping them improve their understanding of the trade policy structure's relationship with the WTO Agreements. The reviews have also enhanced these countries' understanding of the WTO Agreements, thereby better enabling them to comply and integrate into the multilateral trading system. In some cases, the reviews have spurred better interaction between government agencies. The reports' wide coverage of Members' policies also enables Members to identify any shortcomings in policy and specific areas where further technical assistance may be appropriate.

The review process for an LDC now includes a two-to-three-day seminar for its officials on the WTO, in particular on the trade policy review exercise and the role of trade in economic policy. During 2008, the seminars for Lesotho, the Maldives, Mozambique, Solomon Islands and Zambia focused on preparation for such reviews. In addition, similar exercises were conducted in the preparation of the reviews of other Members, including the Dominican Republic and the Southern African Customs Union (SACU).

Major Issues in 2008

During 2008, the TPRB reviewed the trade regimes of Pakistan, Ghana, Mexico, Brunei, Madagascar (an LDC), Mauritius, China, United States, Oman, Singapore, Barbados, Korea, Norway, Jordan, the Dominican Republic, Liechtenstein and Switzerland. Oman and Jordan underwent their first reviews.

From its inception in 1998 to the end of 2008, the TPRM has conducted 264 reviews, covering 135 out of 153 Members and representing some 97 percent of world trade. In June 2008, the latest trade policy review of the United States took place. Of the 32 LDC Members of the WTO, 27 had been reviewed by the end of 2008.

While each review highlights the specific issues and measures concerning the individual Member, certain common themes emerged during the course of the reviews conducted in 2008. These included:

- transparency in policy making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO Agreements;
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including the differences between applied and bound rates;
- customs valuation and clearance procedures;
- the use of contingency measures such as anti-dumping and countervailing duties;
- technical regulations, and standards and their equivalence with international norms;
- sanitary and phytosanitary measures;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- state involvement in the economy and privatization programs;
- trade-related investment policy issues;
- sectoral trade-policy issues, particularly liberalization in agriculture and certain services sectors; and
- technical assistance in implementing the WTO Agreements and experience with Aid for Trade, and the Integrated Framework.

Prospects for 2009

The TPRM continues to meet its transparency goals. It will continue to be an important tool for monitoring Members' compliance with WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. For 2009, the proposed program of reviews is: Japan, EC, Brazil, Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland), Chile, Croatia, El Salvador, Fiji, Georgia, Guatemala, Guyana, Maldives, Morocco, Mozambique, New Zealand, Niger, Senegal, Solomon Islands, and Zambia.

J. Other General Council Bodies/Activities

1. Committee on Trade and Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995, pursuant to the Marrakesh Ministerial Decision on Trade and Environment. Since then, the CTE has discussed many important issues, with a focus on those identified in the Doha Declaration. These issues include: market access associated with environmental measures (sub-paragraph 32(i)); the TRIPS Agreement and the environment (sub-paragraph 32(ii); labeling for environmental purposes (sub-paragraph 32(iii); capacity-building and environmental reviews (paragraph 33); and discussion of the environmental aspects of the Doha negotiations (paragraph 51). These issues identified in the Doha Declaration are separate from those that are subject to specific negotiating mandates that are being taken up by the Committee on Trade and Environment Special Session (CTESS) (discussed elsewhere in this chapter).

Major Issues in 2008

In 2008, the CTE met once, on November 3. In general, Members have been less active in meetings of the CTE, given the increased workload and intensified negotiating schedule of the CTESS. That said, the United States has continued its active role in CTE discussions, as discussed below.

Market Access under Doha Sub-Paragraph 32(i): Members considered how the CTE could move the discussion forward in a more structured way, and, attention was also given to specific sectors, including organic products. The CTE received information regarding regional workshops on environmental requirements related to private, voluntary standards, trade in organic agricultural products and biofuels, as well as other work being conducted by the UN Conference on Trade and Development (UNCTAD).

The *TRIPS Agreement and the Environment under Doha Sub-Paragraph 32(ii):* There were no discussions during 2008 under this agenda item.

Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii): Discussions under this agenda item continued to reflect a lower level of interest. However, there was increased interest in the success of voluntary, performance-based eco-labeling schemes, such as the U.S. Energy Star Program.

Capacity Building and Environmental Reviews under Doha Paragraph 33: Many developing country Members stressed the importance of benefiting from technical assistance related to WTO negotiations on trade and environment, particularly given the complexity of some of these issues. Members held discussions with respect to national environmental reviews, and the Secretariat informed the CTE of its trade and environment technical assistance activities undertaken in 2008 and planned for 2009.

Discussion of Environmental Effects of Negotiations under Doha Paragraph 51: Discussions under this agenda item continued to focus on developments in other areas of negotiations, based on the updates from relevant WTO Secretariat divisions regarding the environment-related issues in the Doha negotiations on Agriculture, NAMA, WTO Rules, and Services (WT/CTE/GEN/8/Suppl.1, WT/CTE/GEN/9/Add.1, WT/CTE/GEN/10/Suppl.1 and WT/CTE/GEN/11/Suppl.1, respectively).

The CTE also received briefings by several multilateral environment agreement (MEA) secretariats regarding recent meetings, including: the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD).

Prospects for 2009

It is expected that the CTE will continue to focus its attention on paragraphs 32, 33 and 51 of the Doha Declaration, and that these discussions may become more structured in 2009.

2. Committee on Trade and Development

Status

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT 1947's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. Since the Doha Development Round was launched, two additional sub-groups of the CTD have been established, a Subcommittee on Least Developed Countries (LDCs) and a Dedicated Session on Small Economies.

The CTD addresses trade issues of interest to Members with particular emphasis on issues related to the operation of the "Enabling Clause" (the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries). In this context, the CTD focuses on the Generalized System of Preferences (GSP) programs, the Global System of Trade Preferences among developing country Members, and regional integration efforts among developing country Members. In addition, the CTD focuses on issues related to the fuller integration of all developing country Members into the international trading system, technical cooperation and training, commodities, market access in products of interest to developing countries, and the special concerns of the LDCs, small, and landlocked economies.

The CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development, rather than the implementation or operation of a specific agreement. Since the initiation of the DDA, the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as expanding trade in products of interest to developing country Members, problems associated with reliance on a narrow export base and on commodities, the WTO's technical assistance and capacity building activities, and an overall assessment of the development aspects of the DDA and sustainable development goals. As directed in the 2005 Hong Kong Ministerial Declaration, the CTD also conducts annual reviews of steps taken by WTO Members to implement the decision on providing duty-free, quota-free (DFQF) market access to the LDC Members.

Work in the Sub-Committee on LDCs and the Dedicated Session on Small Economies has included review of market access challenges related to exports of LDC Members and discussed options for improving export competitiveness in textiles and clothing, and the use of regional bodies to address the trade-related needs of small, vulnerable economies, including island and landlocked states.

Major Issues in 2008

The CTD in Regular Session held five formal sessions in March, May, July, October, and December 2008. Activities of the CTD and its subsidiary bodies in 2008 included:

Technical Cooperation and Training: The CTD took note of the Annual Report on Technical Assistance and Training, 1 January to 31 December 2007 (WT/COMTD/W/165), and of the Technical Cooperation Audit Report for 2007 (WT/COMTD/W/166). The Secretariat provided information on the status of implementation of the Biennial Technical Assistance and Training Plan for 2008 and 2009.

Notifications Regarding Market Access for Developing and Least-Developed Countries: The CTD considered updated GSP notifications from Norway (WT/COMTD/N/6/Add.4) and the United States (WT/COMTD/N/1/Add.6). An exchange of questions and answers on Norway's GSP notification are contained in documents WT/COMTD/65/Add.1 to Add.3. The CTD also discussed the EC's GSP scheme on the basis of questions submitted by Brazil, China, India and Pakistan (WT/COMTD/57/Add.1 to Add.4, respectively) and the responses provided by the EU (WT/COMTD/57/Add.5).

Transparency of Preferential Trading Arrangements (PTAs): In December 2006, the General Council invited the CTD to review the transparency of GSP programs and other preferential agreements under its mandate. The proponents of a Transparency Mechanism for PTAs (Brazil, China, India and the United States) circulated a draft proposal (JOB (08)/103) in October 2008. At the October CTD meeting, the Chairman indicated that important progress had been made, and that he would continue to work with Members on this matter. It was agreed at the December CTD that the Chairman would request that the General Council grant the Committee an extension until July 2009 to consider the matter and report back for appropriate action.

Duty-Free, Quota-Free Market Access for LDCs Members: The Decision taken at the Hong Kong Ministerial Conference on duty-free and quota-free (DFQF) market access for least-developed countries (LDCs) remains a standing item on the CTD's agenda. Under this item, India introduced its Duty-Free Tariff Preference (DFTP) Scheme for LDCs. The CTD conducted its third annual review of the implementation of the Hong Kong Decision, as mandated in Annex F of the Hong Kong Ministerial Declaration. A communication from the United States (WT/COMTD/W/149/Add.5) was considered. The U.S. submission contained a summary of the U.S. domestic legal and consultative process for implementing the DFQF decision. During discussions of DFQF, the LDC Group expressed appreciation to those developed country Members that had fulfilled their obligations under the Decision, and called for the provision of enhanced DFQF market access from others.

Review of Regional Trade Agreements (RTAs) between Developing Country Members: The CTD held its first Dedicated Session on RTAs in October. The Committee considered the Egypt-Turkey Free Trade Agreement (Goods) (WT/COMTD/RTA/1 and its subsequent revisions), pursuant to the provisions of the 14 December 2006 General Council Decision on a Transparency Mechanism for RTAs (WT/L/671).

Dedicated Session on Small Economies: Following on work of the CTD in the Dedicated Session (CTD-DS) to identify the unique characteristics and problems of Small Economies in the trading system, in 2008, the CTD-DS continued to monitor the progress of the small economies' proposals in the negotiating and other bodies. The Dedicated Session held one meeting in December where the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role.

Aid for Trade: The CTD held three sessions on Aid for Trade in 2008, in February, July, and October. Work focused on the Director-General's proposed Aid-for-Trade Roadmap for 2008, and included presentations from the regional development banks, the OECD and UNIDO related to the Roadmap. Work also addressed the outcomes of Standards and Trade Development Facility (STDF) events held in Cambodia, Uganda, and Guatemala; follow-up actions in connection with the results of the Symposium on Monitoring and Evaluation; and the discussion of a paper prepared by the Secretariat on the identification of core indicators to monitor progress and impact of the Aid for Trade work programme (WT/COMTD/AFT/W/9).

LDC Subcommittee: The Subcommittee held three meetings in 2008 where it mainly focused on the implementation of the WTO Work Program for the LDCs adopted by Members in 2002. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity-building initiatives for LDCs; and accession of LDCs to the WTO.

Other CTD Issues: The CTD also considered the declining terms of trade for primary commodities, and its implications for trade and development of primary commodity exporting countries, with presentations provided by UNCTAD. Additionally, the Joint Advisory Group (JAG) on the International Trade Centre UNCTAD/WTO (ITC) provided a report to the CTD on its 41st Session (ITC/AG/ (XLI)/216).

Prospects for 2009

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including those related to technical assistance. Interest in market access is expected to continue. In this vein, the CTD will undertake its responsibility to review steps taken by Members, both developed and developing, to provide DFQF market access to the LDC Members. The CTD will also continue its work on Aid for Trade in preparation for the June 2009 Global Review of Aid for Trade in the WTO General Council. In addition, the CTD's examination of RTAs between developing country Members will continue as new RTAs are notified to the WTO. A new transparency mechanism to facilitate the review of PTAs is also expected to be implemented, and the first arrangements could be reviewed in late 2009.

3. Committee on Balance-of-Payments Restrictions

Status

The Uruguay Round Understanding on Balance-of-Payments (BOP) substantially strengthened GATT disciplines on BOP measures. Under the WTO, any Member imposing restrictions for BOP purposes must consult regularly with the BOP Committee to determine whether the use of such restrictions are necessary or desirable to address a Member's BOP difficulties. The BOP Committee works closely with the International Monetary Fund in conducting consultations. Full consultations involve examining a Member's trade restrictions and balance-of-payments situation, while simplified consultations provide for more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in its balance-of-payments.

Major Issues in 2008

During 2008, no Member imposed new balance-of-payments restrictions. Bangladesh maintained restrictions under Article XVIII: B on salt, chicks, and eggs. In 2007, the Government of Bangladesh declared that it would remove these restrictions by the end of 2008, and on this basis, the Committee concluded that Bangladesh had met its obligations.

The BOP Committee met in November 2008 to conduct its seventh annual review under China's Transitional Review Mechanism. In light of China's balance-of-payments position, there was little discussion.

Prospects for 2009

Should a Member resort to new BOP measures, WTO rules require a thorough program of consultation with this Committee. We expect the BOP Committee to continue to ensure that BOP provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

4. Committee on Budget, Finance and Administration

Status

The Committee on Budget, Finance and Administration (the Budget Committee) is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for Members' approval. The Budget Committee meets throughout the year to address the financial requirements of the organization. The budget process in the WTO operates on a biennial basis. As is the practice in the WTO, decisions on budgetary issues are taken by consensus.

The United States is an active participant in the Budget Committee. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. The assessed contribution of each Member is based on the share of that Members' trade in goods, services, and intellectual property. For the 2009 budget, the U.S. assessed contribution is 13.486 per cent of the total budget assessment, or Swiss Francs (CHF) 24,766,412 (about $22 million). Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2008 and 2009 are provided in Annex II.

Major Issues in 2008

- *WTO Facilities*: In July 2008, the General Council approved the Budget Committee's recommendation regarding the long-term housing needs of the WTO, which had outgrown the main WTO building and annex facilities used to house Secretariat staff and functions. The General Council authorized the Director-General to sign an agreement with the Swiss Confederation, spelling out in detail the renovation, extension, and transitional measures (office premise rental, parking spaces, etc.) required for the renovation and relocation project. A first cost estimate, provided while negotiations were still ongoing in May 2008, was revised in October 2008, primarily due to costs for moving the IT data center and installation of telephones, electricity, cabling and back-up generator. These costs will be absorbed by the existing budget for 2008. The Budget Committee will work in close consultation with the Director-General as design proposals are submitted by candidates in the architectural competition and examined by jury in January 2009.

- *Security Enhancement Program*: In December 2004, the General Council agreed to fund the Secretariat's proposed Security Enhancement Program. This multi-year plan is designed to meet the new realities of the post-9/11 world by, among other things, improving controls on the entrance of goods, vehicles and people to the WTO facilities as well as by improving the technology available to monitor the WTO's facilities and grounds. Implementation of the program will conclude during the 2008-2009 biennium.

- *Critical Review of the Structure of the WTO Secretariat*: The Director-General has been conducting a critical review of the structure of the WTO Secretariat with a view to streamlining it. Implementation of the plan, which began in 2008 and includes discontinuing or merging some divisions with work redistribution and early retirement packages with posts to be filled at lower grades, is expected to result in future savings.

Prospects for 2009

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis. The Budget Committee will actively work with the Director-General on the progress and any and all financial requirements incurred for the planned new facility renovation and relocation for the WTO. It will also be regularly consulted and kept informed of all aspects concerning the finalization and implementation of the restructuring plan and security enhancements.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (the CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party.

The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established in the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

GATT Article XXIV is the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU concerning goods. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the "Enabling Clause," provides a basis for certain agreements between or among developing country Members, also concerning trade in goods. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV of GATT 1994; and Articles V and Vbis of the General Agreement on Trade in Services (GATS), which govern services and labor markets economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment, if certain requirements are met. With respect to goods, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. In addition, duties and commercial measures applied to third countries upon the formation of an FTA or CU must not be higher or more restrictive than was the case before the agreement. If, in forming a CU, a Member exceeds its WTO bound rates, it must so notify the WTO in order to negotiate with other Members compensation in the form of market access concessions. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs should exceed ten years only in exceptional cases.

With respect to trade in services, the CU or FTA must have "substantial sectoral coverage" and prohibit or eliminate substantially all discrimination; in addition, the FTA or CU may not exclude *a priori* any mode of supply from the agreement. As with agreements on goods, barriers or restrictions to trade in services applicable to third parties upon formation of the FTA or CU may not be higher than was the case previously. Finally, a compensation requirement analogous to that in goods agreements exists for services agreements.

Major Issues in 2008

As of November 1, 2008, 418 RTAs have been notified to the GATT or WTO. Of the notified agreements, 227 are currently in force. Of the RTAs in force, 143 are notified as GATT Article XXIV agreements; 27 are notified as Enabling Clause agreements;[18] and 57 are notified as GATS Article V agreements.

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs which was implemented in 2007. The main features of the mechanism, agreed upon in the Negotiating Group on Rules, include the early announcement of any RTA; guidelines regarding the notification of RTAs; the preparation by the WTO Secretariat, on its own responsibility and in full consultation with the parties, of a factual presentation of RTAs to assist Members in their consideration of a notified RTA; timeframes associated with the consideration of RTAs; provisions regarding subsequent notification and reporting of notified RTAs; technical support for developing countries; and the distribution of work between the CRTA – entrusted to implement the mechanism *vis-à-vis* RTAs falling under Article XXIV of GATT 1994 and Article V of the GATS – and the Committee on Trade and Development, entrusted to do the same for RTAs falling under the Enabling Clause.

In the years prior to the adoption of the transparency mechanism, the CRTA had completed the factual examination of a total of 67 agreements, of which 46 were in the area of trade in goods and 21 in trade in services. Since the adoption of the transparency mechanism two years ago, 33 agreements have been examined (15 in 2008). A total of 91 RTAs remain to be reviewed, comprising 46 RTAs for which the factual presentation is under preparation and 45 RTAs (mostly with non-WTO Members) for which the factual presentation is on hold.

In November 2007, the WTO Secretariat circulated the factual presentation of the United States-Morocco FTA. The United States attended the 49th Session of the CRTA in which the United States-Morocco FTA was discussed, and responded to all questions (written and oral); the factual examination was completed during the 49th Session of the CRTA in April 2008.

At the time of the adoption of the Decision on the Transparency Mechanism for Regional Trade Agreements in December 2006, the Chair of the General Council had noted that Members intended to conduct an initial review of the Mechanism within one year. In this context, the Chair of the CRTA, in concert with the Chair of the Negotiating Group on Rules, reported in December 2008 that Members considered that there was not yet enough experience, particularly with regard to RTAs falling under the Enabling Clause, for the review to take place.

Prospects for 2009

Three sessions of the Committee on Regional Trade Agreements are foreseen in 2009. The United States – Bahrain Free Trade Agreement and Dominican Republic-Central America- United States Free Trade Agreement are among those RTAs that are likely to be reviewed under the Transparency Mechanism in 2009.

[18] Consistent with past practice, RTAs notified under the Enabling Clause continue to be reviewed in the Committee on Trade and Development.

6. Accessions to the World Trade Organization

Status

Work on accessions in 2008 progressed rapidly in the first half of the year. Based on momentum developed during 2007, Ukraine became the 152nd WTO Member on May 16, 2008, and Cape Verde followed as 153rd on July 23, 2008. Both had substantially completed their negotiations in 2007, but domestic ratification of the accession packages approved by the General Council on February 5, 2008 and December 7, 2007 respectively, occurred only later in 2008. Through July, bilateral and multilateral work with Russia, Kazakhstan, and Montenegro continued at a rapid pace, but by the end of the year, only Montenegro was near completion of its accession negotiations. Its accession package may be considered for formal approval at the first meeting of the General Council in 2009. After Russia's invasion of Georgia in August and the disruptions of the international financial crisis in September and October, both bilateral and multilateral negotiations with Russia on its accession slowed to a more measured pace. Work on Kazakhstan's accession also lost momentum.

Equatorial Guinea applied for membership in the WTO in February 2008, bringing the number of countries in accession negotiations to twenty nine, over one-third of which are LDCs.[19] Accession applicants are welcome in all formal WTO meetings as observers. There were no other new requests for observer status during 2008.[20]

The Working Parties on the accessions of Algeria, Azerbaijan, Bhutan, Bosnia, Ethiopia, Iraq, Kazakhstan, Laos, Montenegro, Russia, Serbia, Ukraine, and Yemen met formally and informally during 2008 to review the trade regimes of the respective applicants. Additionally, Chairman's consultations, similar to informal Working Party meetings, were convened for Samoa and for Russia. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings. In addition, the United States had bilateral consultations with Lebanon on accession issues. The Working Party meetings in 2008 for Montenegro focused on the draft Working Party report text, including Protocol commitments, and domestic legislative implementation of WTO rules was underway.

Eight of the twenty nine applicants (Afghanistan, Bahamas, Comoros, Equatorial Guinea, Iran, Liberia, Libya, and Sao Tome and Principe) have not yet submitted initial descriptions of their trade regimes, the action necessary to activate their Working Parties and begin negotiations. The Working Parties on the accessions of Andorra, Belarus, Seychelles, Sudan and Uzbekistan remained inactive, although both Seychelles and Belarus have proposed resuming negotiations. In August, Vanuatu notified the WTO Secretariat of its wish to resume its accession process, halted in 2001 when Vanuatu declined to accept the accession package it had negotiated and that had been approved by the Working Party. The Working Parties on the accessions of Lebanon and Tajikistan also did not meet in 2008, but work continued on their accessions. Both Lebanon and Tajikistan submitted new documentation responding to Members' questions in 2008, however, and Working Party meetings for these countries are likely during 2009. The chart included in Annex II reports the current status of each accession negotiation.

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[19] Accession Working Parties have been established for Afghanistan*, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan*, Bosnia and Herzegovina, Comoros*, Equatorial Guinea*, Ethiopia*, Iran, Iraq, Kazakhstan, Laos*, Lebanon, Liberia*, Libya, Montenegro, Russia, Samoa*, Sao Tome and Principe*, Serbia, Seychelles, Sudan*, Tajikistan, Uzbekistan, Vanuatu*, and Yemen* (The 12 countries marked with an asterisk are LDCs).

[20] The Holy See is a permanent observer and, under the terms of its observer status, will not apply for accession.

Background: Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as provided for in Article XII of the WTO Agreement. The accession process, with its emphasis on implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for adoption of policies and practices that encourage trade and investment and promote growth and development.

The accession process strengthens the international trading system by ensuring that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure market access opportunities from acceding countries, to work with acceding Members towards full implementation of WTO obligations, and to address outstanding trade issues covered by the WTO in a multilateral context.

In a typical accession negotiation, an application is submitted to the WTO General Council, which establishes a "Working Party" composed of all interested WTO Members to review the applicant's trade regime and to conduct the negotiations. At the conclusion of its work, the Working Party transmits the agreed results of the negotiations to the General Council. Accession negotiations involve a detailed review of the applicant's entire trade regime by the Working Party and bilateral negotiations for market access of goods and services. Applicants are expected to undertake trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services based on requests from Working Party Members; to make necessary legislative changes to implement WTO institutional and regulatory requirements; and to eliminate existing WTO-inconsistent measures. Most accession applicants take these actions on WTO rules prior to accession.[21]

The terms of accession developed with Working Party Members in bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Report of the Working Party and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and services by foreign suppliers, and agriculture schedules that include commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation for approval to the General Council or Ministerial Conference. After General Council approval, accession applicants normally submit the package to their domestic authorities for acceptance. Thirty days after the WTO receives the applicant's instrument accepting the terms of accession the applicant becomes a WTO Member.

U.S. Leadership and Technical Assistance: As a matter of course, the United States takes a leadership role in all aspects of the accessions, including bilateral, plurilateral, and multilateral negotiations. The objective is to ensure that new Members fully implement WTO provisions and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also provides a broad range of technical assistance to countries seeking accession to the WTO to help them meet the requirements and challenges presented, both by the negotiations and the process of implementing WTO provisions in their trade regimes. This assistance is provided through USAID, USDA and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce.

This assistance can include short-term technical expertise focused on specific issues, e.g., customs procedures, intellectual property rights protection, or technical barriers to trade, and/or a WTO expert in residence in the acceding country or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States, e.g., Albania, Armenia, Bulgaria, Cape Verde, Croatia, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia,

[21] As outlined below, negotiations with LDC applicants are subject to special procedures and guidelines, and do not, as a rule, fully implement WTO provisions prior to accession.

Lithuania, Macedonia, Moldova, Nepal, Ukraine, and Vietnam. Most of these countries had U.S.-provided resident experts for some portion of the process.

Current accession applicants to which the United States has provided a resident or other long-term WTO expert for the accession process include: Afghanistan, Algeria, Azerbaijan, Bosnia and Herzegovina, Ethiopia, Iraq, Lebanon, Montenegro, and Serbia. In addition a U.S.-funded WTO expert resident in Bishkek provides resident WTO accession assistance to Kazakhstan and Tajikistan, as well as post-accession assistance to the Kyrgyz Republic. Russia and Uzbekistan also received U.S. technical assistance in their accession processes. During 2008, the United States has made additional efforts to work with LDCs currently seeking accession to the WTO. In September 2008, Comoros, Ethiopia, Liberia, and Sao Tome participated in a USDA-sponsored workshop on the WTO accession process and Member obligations under the Agreement on Agriculture and the Agreement on the Application of Sanitary and Phytosanitary Measures (Cape Verde and Seychelles, both developing countries, also participated in this workshop). The United States has also provided technical assistance to Iraq, Laos, and Yemen in training government officials on the WTO accession process and the implementation of WTO obligations in 2008.

Major Issues in 2008

Work on accessions continued to focus on those applicant countries--in this case, Russia and Montenegro and to a lesser extent Kazakhstan--that demonstrated progress on market access and either legislative implementation or development of the text of the report of the Working Party. All three countries moved aggressively during the year to conclude bilateral market access negotiations, and Montenegro intensified its efforts to enact legislation to implement the WTO Agreement in its domestic legal regime and to complete the accession process. Members continued to give focused attention to LDC accessions, particularly when those applicants took steps to further advance their accessions, including through the submission of documentation and market access offers. Work on other applicants' accession processes moved forward as well, but more slowly.

Russia: The United States and Russia, with the EU, continued to intensify work on the remaining multilateral issues and requirements for Russia's WTO Membership during the first half of 2008. The long awaited revised draft Working Party report text, the first revision since October 2004, was circulated in April, and was reviewed in an informal meeting of the Working Party in June. Additional informal work among interested delegations in July preceded circulation of a further revision in August. Working Party members continued to discuss the text of the draft Working Party report and Russia's draft Protocol of Accession in the fall of 2008. Russia made scant progress on accomplishing its legislative action plan for implementation of WTO provisions. One exception-- revisions of Part IV of the Civil Code to bring it into conformity with the WTO TRIPS Agreement--were submitted to the Duma for consideration. Russia concluded bilateral negotiations on market access with additional Members (Saudi Arabia and United Arab Emirates), but negotiations continue with Georgia and possibly with Ukraine, which joined Russia's Working Party after its own accession.

Kazakhstan: For the second year in a row, Kazakhstan focused its efforts on bilateral negotiations on market access for goods and services, completing agreements with a number of Members. Although yet unable to conclude these negotiations with the United States, Kazakhstan made significant progress towards that goal in a number of areas. In addition to the remaining issues on goods and services, other bilateral issues affecting market access under discussion include sanitary and phytosanitary barriers to trade, trading rights, and the operation of State-owned and State-controlled enterprises. In 2009, Kazakhstan will likely intensify its market access negotiations with WTO Members, pursue legislative implementation of WTO provisions, and attempt to complete negotiation of its draft WP report and Protocol of Accession.

Montenegro: Montenegro successfully completed its market access negotiations with all Members except Ukraine at the end of 2008, with formal General Council approval of the terms of accession likely for early in 2009. The ups and downs of its accession process have mirrored the twists and turns of its recent history and emergence as an independent country. Montenegro was still part of the Federal Republic of Yugoslavia (FRY) when that country, the last of the former republics of Yugoslavia to do so, applied for accession to the WTO in 2001. In 2003, the FRY became the country of Serbia and Montenegro, with the understanding that the two republics would pursue harmonized economic policies and therefore continue accession to the WTO as a single entity. By 2005, however, it became clear that while the Union State of Serbia and Montenegro might be considered a single country, its two constituent territories were operating as separate economic units. They petitioned jointly to split the accession process and to negotiate their WTO Membership as separate customs territories and in May 2006, Montenegro declared its full independence from Serbia. During the accession process, Montenegro substantially revised the legal basis for its trade regime to bring it into conformity with WTO provisions. This process will be completed prior to its accession. Montenegro's GATT Schedule of tariff commitments will include membership in the Agreement on Trade in Civil Aircraft (ATCA) and full or substantial participation in the Chemical Harmonization Program and a number of other sectoral tariff arrangements that mandate zero duties for hundreds of tariff lines covering U.S. priorities. Montenegro will also become a participant in the Information Technology Agreement (ITA) by no later than 2010. Montenegro will not use agricultural export subsidies and will initiate negotiations for accession to the Agreement on Government Procurement immediately after becoming a WTO Member. Montenegro has offered to undertake broad services commitments focused in particular on liberalizing important infrastructure services. These commitments confirm Montenegro's intent to fully align its trade regime with other developed European economies and establish itself as an independent market-based trading economy.

LDC Accessions: WTO Members continued to emphasize a need for accelerating the accession process of LDCs, and in making WTO accession more accessible to these applicants. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries at the end of 2002 in the WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508). Under these guidelines, the accession process becomes a tool for economic development, incorporating the applicant's own development program and laying out an action plan for progressive implementation of WTO rules. The market access schedules and protocols of accession developed under these guidelines reflect the need to address realistically these countries real trade capacity deficiencies and the difficulties they face in achieving normal WTO accession objectives. Using the guidelines, WTO Members pledged to exercise restraint in seeking market access concessions, and to agree to transitional arrangements for implementation of WTO Agreements. Discussions continued in various WTO fora on how the WTO guidelines on LDC accessions are being implemented. The United States and other developed WTO Members have sought to support the transitional goals established in the accession process with LDCs with technical assistance to meet the benchmarks included in the protocol commitments. In this way, the accession process becomes a development tool and an opportunity to mainstream the gains from international trade in their development programs, to build trade capacity, and to provide a better economic environment for investment and growth.

Prospects for 2009

We expect a great deal of activity on WTO accessions during 2009. Montenegro is completing its accession process and will likely become the 154th WTO Member in 2009. Azerbaijan, Kazakhstan, and Russia have indicated that they would like to complete their work on WTO accession, if not become Members, prior to the end of 2009. Both multilateral and bilateral work with Russia and Kazakhstan intensified in 2008, but remains unfinished to a greater or lesser extent in all aspects of the negotiations. Azerbaijan's legislative action plan calls for substantial progress in WTO implementation by mid 2009, but much work remains to complete goods and services market access negotiations, and to finalize the

text of a Working Party report and Protocol of Accession. Serbia and Bosnia and Herzegovina are also likely to push for additional attention to their negotiations after Montenegro accedes. In addition, Iraq is expected to submit new documentation on its trade regime, provide initial goods and services market access offers, and circulate the new legislation that will bring its trade regime into conformity with the WTO. Efforts to advance the accessions of LDCs will continue. Vanuatu has resumed discussions with a view to completing its accession process, all but finished in 2001, but inactive since then. Special focus on Bhutan and Samoa can be expected, as these negotiations are well advanced, and on Ethiopia, Laos, and Yemen, the other LDC in the accession process that are actively negotiating at this time.

All accession-related negotiations will require attention and resources from WTO delegations. Priority is usually given to applicants that demonstrate a strong desire to move forward through their own efforts, e.g., that submit usable documentation on a timely basis, make necessary legal changes to implement WTO provisions, and move rapidly to negotiate acceptable market access commitments, maximize their opportunities for progress, and bring momentum to the negotiations overall. Thus, for any applicant, the pace of the accession process is largely self-determined.

7. Aid for Trade

Status

The Hong Kong Ministerial Declaration created a new WTO framework in which to discuss and prioritize Aid for Trade. Aid for Trade is an effort to connect the trade priorities of developing countries with trade capacity building assistance -- to help those countries implement trade commitments. At Hong Kong, WTO Members agreed on the need to operationalize Aid for Trade efforts to improve the efficacy and efficiency of these efforts amongst WTO Members and other international organizations.

Ministers at Hong Kong also agreed to pursue the enhancement of the Integrated Framework (IF) for trade-related technical assistance for least-developed countries (both WTO Members and non-Members), as a subset of Aid for Trade designed exclusively for that set of countries. The IF is a multi-organization (including the WTO, World Bank, IMF, UNCTAD, UNDP, and the International Trade Centre), multi-donor program that operates as a coordination mechanism for trade-related assistance to LDCs with the overall objective of integrating trade into national development plans.

Task forces were created to address Aid for Trade questions and the enhancement of the IF. These Task Forces submitted their reports in late 2006. The General Council asked the Director-General to manage the follow-up to these reports.

Major Issues in 2008

Work on Aid for Trade during 2008 focused on technical issues and best practices in delivery of trade-capacity building assistance and prioritization of trade in national development plans. Following the first Global Review of Aid for Trade in November 2007, Members agreed that a subsequent Global Review would take place in mid-2009.

Significant work occurred during 2008 on the development of the monitoring framework envisioned in the Task Force report. The monitoring framework includes global monitoring of aid flows using the data resources of the OECD's Development Assistance Committee, country-level monitoring of progress in mainstreaming/integrating trade in national development plans, and case studies of best practices.

Work continued through the year to finish the legal work necessary to operationalize the Enhanced Integrated Framework for Least Developed countries (EIF). With completion of the monitoring and evaluation framework by the end of 2008, this legal framework will be in full effect and a permanent Board of Directors is expected to take office. The new Executive Director of the EIF, Dorothy Tembo of Zambia, took up her duties in early October. At the same time, UNOPS—the United Nations Office for Project Services—was designated as manager of the EIF Trust Fund.

Prospects for 2009

Work in 2009 on Aid for Trade will focus on the finalization and implementation of the monitoring framework in time for its use at the mid-year Global Review of Aid for Trade. To this end, the WTO Secretariat and its regional development bank partners are planning focused regional discussions of Aid for Trade in Latin America, Africa and Asia with participation from trade, finance, and development officials. Work on efficient and effective ways to evaluate Aid for Trade activities is expected.

With all legal and institutional elements in place at the end of 2008, program activities under the Enhanced Integrated Framework are expected to begin in earnest.

K. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of two WTO plurilateral agreements (along with the Agreement on Government Procurement) that are in force only for those WTO Members that have accepted it.[22]

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, engines, flight simulators, and related parts and components, and to provide these benefits on a nondiscriminatory basis to other signatories. In addition, the Signatories have agreed provisionally to provide duty-free treatment for ground maintenance simulators, although this item is not covered under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

There are 30 Signatories to the Agreement: Canada, the EU[23] (the following 20 EU Member States are also Signatories to the Aircraft Agreement in their own right: Austria, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom), Egypt, Georgia, Japan, Macao China, Norway, Switzerland, Chinese Taipei and the United States. Those WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, the Republic of Korea, Mauritius, Nigeria, Oman, Saudi Arabia,

[22] Additional information on this agreement can be found on the WTO's website at: http://www.wto.org/english/tratop_e/civair_e/civair_e.htm.

[23] Currently comprising 27 Member States: Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.

Singapore, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition, the Russian Federation, the IMF and UNCTAD are also observers.

The Committee on Trade in Civil Aircraft (Aircraft Committee), permanently established under the Aircraft Agreement, provides the Signatories an opportunity to consult on the operation of the Aircraft Agreement, to propose amendments to the Agreement, and to resolve any disputes.

Major Issues in 2008

The Aircraft Committee held one regular meeting on November 10, 2008. At this meeting, the Committee elected Ms. Cecilie Kverme, of Norway, as the next Committee Chairperson. The Committee also discussed the Technical Note prepared by the Secretariat on the possible revisions to the Product Coverage Annex in the light of the Harmonized Commodity and Description System that entered into force in 2007. The Committee agreed to revert to this item at its next regular meeting, but left open the possibility that a meeting to advance the Committee's work might be convened before then depending upon consultations to be undertaken by the Chairperson with the Signatories. The Technical Sub-Committee of the Committee on Trade in Civil Aircraft did not meet during the period under review and neither did the Sub-Committee of the Committee on Trade in Civil Aircraft.

Prospects for 2009

The Aircraft Committee agreed to meet at least once, in the fall of 2009. The United States will continue to encourage Albania, Croatia, and Oman, to become Signatories pursuant to their respective protocols of accession, and will continue to encourage current Committee observers and other WTO Members to become Signatories to the Aircraft Agreement.

2. Committee on Government Procurement

Status

The WTO Agreement on Government Procurement (GPA) is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to the Agreement. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement.

Forty WTO Members are signatories of the GPA: Canada; the EU and its 27 Member States (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom); Hong Kong China; Iceland; Israel; Japan; the Republic of Korea; Liechtenstein; the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States (collectively the GPA Parties).

As of the end of 2008, nine Members are in the process of acceding to the GPA: Albania, China, Chinese Taipei, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, and Panama. Six additional Members have provisions in their respective Protocols of Accession to the WTO or Working Party reports regarding accession to the GPA: Armenia, Croatia, the Former Yugoslav Republic of Macedonia, Mongolia, Saudi Arabia, and the Ukraine.

When China joined the WTO in 2001, it committed to commence negotiations to join the GPA "as soon as possible." In April 2006, China agreed in the Joint Committee on Commerce and Trade (JCCT) to submit its initial offer of coverage by the end of 2007. Based on these commitments, China submitted its application for accession to the GPA and its Initial Appendix I Offer on December 28, 2007. The United States submitted its Initial Request for improvements in China's Initial Offer on May 19, 2008. In the JCCT meeting in September, China committed to table an improved offer as soon as possible. China also submitted its responses to the Checklist of Lists for Provision of Information relating to its GPA accession on September 15, 2008.

With the addition of Bahrain and New Zealand in December 2008, 22 WTO Members, including those in the process of acceding to the GPA, have observer status in the GPA Committee: Albania, Argentina, Armenia, Australia, Bahrain, Cameroon, Chile, China, Chinese Taipei, Colombia, Croatia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, New Zealand, Oman, Panama, Saudi Arabia, Sri Lanka, and Turkey. Four intergovernmental organizations (IMF, International Trade Centre, OECD, and UNCTAD) also have observer status.

Article XXIV:7(b) of the GPA calls for the Parties to undertake further negotiations to improve the Agreement and to expand the procurement that they cover under the GPA. In December 2006, the GPA Committee reached provisional agreement on a substantial revision of the text, subject to a legal check and to a mutually satisfactory outcome in the coverage negotiations. The new GPA text will be used as the basis for negotiations with countries in the process of acceding to the GPA. Most of the work on the legal check of Articles I through XXI of the revised text was completed in 2007. Issues remain on the Final Provisions in Article XXII and related texts, and significant work remains on the draft decisions on arbitration procedures and indicative criteria.

Major Issues in 2008

On December 9, 2008, the GPA Committee adopted a decision approving Chinese Taipei's accession to the GPA. This is the first new accession to the GPA since 1997. With its accession, Chinese Taipei fulfills a commitment when it joined the WTO in 2002. Chinese Taipei will become the 41st WTO member to be covered by the GPA.

During 2008, the GPA Committee held five meetings (in February, May, September, November, and December) during which Parties focused primarily on the accessions of China, Jordan, and Chinese Taipei, and the verification of the linguistic consistency of the English, French, and Spanish versions of the revised text. It also continued negotiations on both coverage and text-related issues. With respect to the revision of the GPA text, the Committee neared completion of verification of the linguistic consistency of the English, French, and Spanish versions of the revised text.

With respect to the negotiations under GPA Article XXIV:7 that are aimed at expanding procurement covered by the Agreement, little progress was made during 2008, other than the submission of several offers. Aruba with respect to the Netherlands submitted its initial offer and the EU, Norway and Switzerland submitted revised offers. As of the end of 2008, 11 Parties had submitted initial offers (the United States, Canada, the EC, Iceland, Israel, Japan, Korea, Norway, Singapore, Switzerland and Aruba), but only 6 Parties had submitted revised offers (the United States, Japan, Korea, the EC, Norway and Switzerland). Initial offers have not yet been submitted by Hong Kong China and Liechtenstein.

The GPA Committee held discussions at informal meetings on China and Jordan's accessions to the GPA. The discussions focused on China's Initial Offer and Responses to the Checklist of Issues and Jordan's updated revised offer and revisions to its responses to a Checklist of Issues. In 2008, Moldova submitted its initial offer in its accession to the GPA as well as new responses to the Checklist of Issues.

Prospects for 2009

The GPA Committee has tentatively scheduled 5 meetings for 2009, with the first set for the week of Feb 22, where it is expected to continue work on the accessions of Jordan, China and Moldova. The Committee also will aim to complete the revision of the GPA during 2009.

3. Committee of Participants on the Expansion of Trade in Information Technology Products

Status

The WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. Original participants in the ITA eliminated tariffs as of January 1, 2000 on a wide range of information technology products, and modified their WTO schedules of tariff concessions accordingly. As of October 2008, the ITA had 44 participants (coverin 71 Members and States or separate customs territories in the process of acceding to the WTO) representing approximately 97 percent of world trade in information technology products.[24] The ITA covers a wide range of information technology products including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments.

Major Issues in 2008

The WTO Committee on the Expansion of Trade in Information Technology Products held one formal meeting in 2008. Work continued on classification divergences affecting ITA products and the Non-Tariff Measures (NTMs) Work Program as well as on drafting a list of conformity assessment procedures for the EMC/EMI (Electromagnetic Compatibility/Electromagnetic Interference) pilot project. The Committee membership reappointed Chairperson Khalid Emara of Egypt. Peru submitted its ITA schedule to participants for verification and approval. The EU introduced a proposal calling for immediate negotiations to review the ITA, under the premise that the existing Agreement is inadequate to address new developments in technology. Several countries, including the United States, raised significant questions and concerns about the EU proposal.

On August 18, the United States, Japan, and Chinese Taipei jointly requested the establishment of a dispute settlement panel to determine whether the EU is acting consistently with its WTO obligations in its tariff treatment of certain ITA products. See the "Dispute Settlement Understanding" section in Chapter II for further information on this case.

[24] ITA participants are: Albania; Australia; Bahrain; Canada; China; Costa Rica; Croatia; Dominican Republic, Egypt; El Salvador; European Communities (on behalf of 27 Member States); Georgia; Guatemala, Hong Kong, China; Honduras, Iceland; India; Indonesia; Israel; Japan; Jordan; Korea; Krygyz Republic; Macao, China; Malaysia; Mauritius; Moldova; Morocco; New Zealand; Nicaragua, Norway; Oman; Panama; Philippines; Saudi Arabia; Singapore; Switzerland (on the behalf of the customs union of Switzerland and Liechtenstein); Chinese Taipei; Thailand; Turkey; United Arab Emirates; Ukraine; Vietnam; and the United States.

Prospects for 2009

The next meeting of the Committee will be scheduled for spring 2009. An agenda has not yet been determined.