VI. Trade Enforcement Activities

A. Enforcing U.S Trade Agreements

Overview

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

- asserting U.S. rights through the mechanisms in the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO Bodies and Committees charged with monitoring implementation and with surveillance of agreements and disciplines;
- vigorously monitoring and enforcing bilateral agreements;
- invoking U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance;
- providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements like the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and
- promoting U.S. interests under the NAFTA through NAFTA's trilateral work program, tariff acceleration, and use, or threat of use, of NAFTA's dispute settlement mechanism, including using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO, the United States has filed 57 complaints at the WTO, thus far successfully concluding 37 of them by settling favorably 19 cases and prevailing on 15 others through litigation in

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

Satisfactory settlements. Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in litigation. Therefore, whenever possible we have sought to reach favorable settlements that eliminate the foreign violation without having to resort to panel proceedings. We have been able to achieve this preferred result in 19 of the 37 cases concluded so far, involving: Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Denmark's enforcement of intellectual property rights; the EU's market access for grains; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When our trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 15 cases so far, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; the EU's import barriers on bananas; the EU's ban on imports of beef; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; Indonesia's measures that discriminated against imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's beef imports; and Mexico's antidumping duties on high-fructose corn syrup.

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

1. WTO Dispute Settlement

2001 Activities

In 2001, the United States filed one new complaint under WTO dispute settlement procedures, involving an import surcharge imposed by the European Union on corn gluten feed, and that dispute was resolved shortly thereafter. The United States also reached an agreement with the EU to resolve the long-standing dispute over bananas; satisfactorily settled the dispute regarding Belgian duties on imports of rice; and reached agreement with Brazil regarding certain provisions of its patent law.

The United States also received favorable WTO dispute panel or Appellate Body rulings in 2001

in cases involving U.S. exports of high fructose corn syrup to Mexico and beef to Korea. These cases, which are described in Chapter II, further demonstrate the importance of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website at www.ustr.gov/enforcement.

2. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

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

During this past year, SEO staff have handled numerous inquiries and met with representatives of U.S. industries concerned about the subsidization of foreign competitors. The SEO's electronic subsidies database, which was fully installed last year, continues to fulfill the goal of providing the U.S. trading community a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website, which can be found at http://ia.ita.doc.gov/esel/eselframes.html, includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases

since 1980, covering more than 50 countries and over 2,000 government practices. This database is updated monthly making information on subsidy programs investigated or reviewed quickly available to the public.

The past year marks an important turning point in the marshaling of government resources to deal with distortive foreign subsidies and other unfair trade practices, and in the intensity and focus of those efforts. A new, Administration-wide trade compliance initiative was launched in 2001, with additional personnel and resources throughout the Executive Branch being dedicated to increased monitoring and enforcement activity as concerns our trading partners' adherence to their bilateral and multilateral trade commitments. In terms of subsidies enforcement, IA has both expanded the reach and strengthened the organization of its resources as part of this broader trade compliance effort.

Last year, IA established a Trade Remedy Compliance Staff for the purpose of addressing the problem of foreign unfair trade practices, particularly those originating in East Asia, in a more pro-active fashion. Pursuant to Congressional directives, IA has assembled a staff of trade analysts with exclusive responsibility for tracking and analyzing government policies, business practices and trade trends in China, Japan and Korea for possible evidence of burgeoning unfair trade problems. These Washington-based analysts will work in coordination with IA officers that the Congress has mandated be stationed in such countries as China, Japan and Korea in order to support administration of the U.S. unfair trade laws, monitor other countries' use of their own trade statutes, and work closely with U.S. industries in order to prevent and impede at an early stage the development of unfair trade problems that could both harm U.S. interests and create unnecessary frictions with our trading partners.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

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

To this end, the Department of Commerce tracks foreign antidumping and countervailing duty actions involving U.S. exporters and gathers information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of antidumping and countervailing duty actions involving U.S. companies. Information about foreign antidumping and countervailing duty actions affecting U.S. exports is accessible to the public via the Department of Commerce's Import Administration website at http://ia.ita.doc.gov/foradcvd/index.html. As noted above, the deployment overseas of IA officers will improve the Administration's ability to monitor the application of foreign unfair trade laws to U.S. exports.

Over the last year, USTR and other senior U.S. officials have met on several occasions with South African officials regarding the South African antidumping order against U.S. exports of certain poultry parts, and hope to resolve this matter early in 2002. The Canadian countervailing duty investigation against U.S. exports of grain corn, in which the U.S. Government actively participated as a separate respondent, ended last year with a finding by the Canadian International Trade Tribunal that U.S.

exports did not cause or threaten to cause injury to the producers of corn in western Canada. This ruling terminated the investigation. Other antidumping investigations of U.S. goods currently being closely monitored include Canada's investigation of fresh tomatoes and China's investigation of lysine.

Twice a year, WTO Members notify the WTO of all antidumping and countervailing duty actions they have taken during the preceding six-month period. The actions are identified in semi-annual reports submitted for discussion in meetings of the relevant WTO committees. Members also notify their preliminary and final determinations to the WTO on a semi-annual basis. Finally, Members are required to notify the WTO of changes in their antidumping and countervailing duty laws and regulations. These notifications are accessible through the USTR and Import Administration website "links" to the WTO's website.

B. U.S. Trade Laws

1. Section 301

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

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

Operation of the Statute

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

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

The range of actions that may be taken under Section 301 is broad and encompasses any action that is within the power of the President

with respect to trade in goods or services or with respect to any other area of pertinent relations with a foreign country. Specifically, the USTR may: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

There were major developments in the following Section 301 investigations during 2001. (*For those investigations involving WTO dispute settlement procedures, see Chapter II.*)

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

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

The United States consulted repeatedly with the Government of Ukraine regarding the matters under investigation. However, the Government of Ukraine made very little progress in addressing two key issues: (1) its failure to use existing law enforcement tools to stop optical media piracy; and (2) its failure to adopt an optical media licensing regime. On August 2, 2001, the USTR determined that the acts, policies and practices of Ukraine with respect to the protection of intellectual property rights were unreasonable and burdened or restricted U.S. commerce, and were thus actionable under Section 301(b). The USTR determined that appropriate and feasible action in response included the suspension of duty-free treatment accorded to the products of Ukraine under the GSP program, effective with respect to goods entered on or after August 24, 2001. On August 7, 2001, the USTR announced that additional action could include the imposition of prohibitive duties on certain Ukrainian products, and the Office of the USTR sought public comment on a preliminary product list.

The USTR extended the investigation for three months in order to allow sufficient time for the development of a final product list. During that time, the Government of Ukraine again failed to take steps to stop the high levels of optical media piracy. On December 11, 2001, the USTR determined that appropriate additional action included the imposition of 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately $75 million. Given that the Ukrainian parliament was scheduled to vote on an optical media licensing law on December 13, 2001, the USTR decided to delay the implementation of such action until December 20, 2001. However, Ukraine failed to adopt the optical media licensing law, and the USTR announced sanctions on December 20, 2001, with an effective date of January 23, 2002.

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

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

On March 30, 2001, the USTR requested that the International Trade Commission (ITC) conduct an investigation, pursuant to section 332 of the Tariff Act of 1930, in order to obtain information and analysis pertinent to the Section 301 investigation of the CWB. On September 24, 2001, the petitioner requested that the USTR delay a decision on the actionability of CWB practices until January 22, 2002. The USTR granted this request on October 5, 2001.

The ITC issued a confidential version of its Section 332 report on November 1, 2001, and a public version on December 21, 2001. On December 21, 2001, the Office of the USTR issued a notice in the *Federal Register* inviting public comment on the Canadian wheat marketing practices, as well as any other issues raised in the petition, the ITC report, or in other submissions to the USTR. Such comments were due by January 14, 2002. Because of the extensive comments filed, USTR extended the investigation until February 15, 2002, to ensure thorough review of all information.

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

Chapter II includes a report on WTO dispute settlement proceedings involving the EC's regime for the importation, sale, and distribution of bananas. On April 6, 1999, WTO arbitrators confirmed that the EC had failed to implement the recommendation and rulings of the WTO Dispute Settlement Body (DSB) with respect to its banana regime, and the arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime was $191.4 million per year. Pursuant to the arbitrators' determination, on April 19, 1999, the DSB authorized the United States to suspend the application to the European Communities and its Member States of tariff concessions and related obligations under the GATT covering trade up to $191.4 million per year. In a notice published in April 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States pursuant to Section 301.

On April 11, 2001, the United States and the EC announced an understanding in the dispute. The understanding provides for phased implementation steps. On July 1, 2001, the EC adopted a new system of banana licenses based on historic reference periods. On January 1, 2002, the EC shifted an additional 100,000 tons of bananas into a tariff-rate quota accessible to bananas of Latin American origin (with respect to which U.S. distributors have a substantial historic share). By January 1, 2006, the EC is to introduce a tariff-only regime for banana imports.

The EC completed the first two phases of implementation, resulting in additional access for U.S. banana distributors to the EC market. In response, the USTR removed the increased duties on EC products as of July 1, 2001. The United States is continuing to monitor the EC's implementation of the understanding.

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

Chapter II includes a report on WTO dispute settlement proceedings regarding an EC directive prohibiting import of meat from animals to which certain hormones had been administered (the "hormone ban"). This measure has the effect of banning nearly all imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EC's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but failed to do so. Accordingly, in May 1999 the United States requested authorization from the DSB to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with its WTO obligations but objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Communities and its Member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a notice published in July 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States. These increased duties remained in place throughout 2001. Talks have continued with the aim of reaching a mutually satisfactory temporary solution to the dispute, but no resolution has been reached.

Other Investigations Involving WTO Dispute Settlement

Chapter II includes information on the following Section 301 investigations that involve measures that are the subject of WTO dispute settlement proceedings filed by the United States: Japan - Market Access Barriers to Agricultural Products (301-112); and Canada - Export Subsidies and Market Access for Dairy Products (301-113)

2. Super 301

Super 301 has provided a mechanism for the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent. During calendar years 1999-2001, Super 301 was authorized by Executive Order 13116.

The 2001 Super 301 Report identified the following trade expansion priorities: (1) reestablishing a bipartisan consensus on free trade; and (2) moving on multiple fronts to expand trade. The report did not identify any "priority foreign country practices" within the meaning of the Executive Order. However, the report identified for careful monitoring a range of measures that limit U.S. exporters' ability to take advantage of enhanced market access obtained through trade agreements.

Examples of such measures include certain customs valuation practices, burdensome dealer protection laws, restrictive auto policies, onerous technical regulations, lack of

transparency in regulatory rule-making, agricultural practices, subsidization practices, telecommunications trade barriers, discriminatory trade and investment measures in the auto sector, discriminatory retail policies, discriminatory policies affecting trade in electronic commerce, non-transparent pharmaceutical pricing policies, market access barriers in the flat glass sector, and market access barriers affecting the textile sector in various trading partners.

3. Special 301

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

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

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

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

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

a. 2001 Special 301 Review Announcements

On May 1, 2001, the United States Trade Representative announced the results of the 2001 "Special 301" annual review which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 80 countries, the largest number of countries ever reviewed. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection.

Ukraine was identified as a Priority Foreign Country on March 12, 2001, and an investigation was initiated under Section 301 of the Trade Act of 1974. The United States has worked with Ukrainian officials over the past several years in an effort to reduce alarming levels of copyright piracy and to improve Ukraine's overall intellectual property regime. Copyright piracy in Ukraine is extensive and

enforcement is severely lacking, resulting in increasing unauthorized production and export of CDs and CD-ROMs. According to estimates from our copyright industry, Ukraine is the single largest source of pirate CDs in the Central and East European region. U.S. industry estimates that losses to the music industry alone are $210 million. In addition, a number of Ukraine's intellectual property laws, especially trademark, patent and copyright, fall short of compliance with the minimum standards set out in the TRIPS Agreement and the 1992 U.S.-Ukraine bilateral trade agreement. It is unclear whether Ukraine protects pre-1973 copyrighted works; it does not provide retroactive protection for sound recordings. In June, the U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy in the Ukraine was signed. Regrettably, the Ukraine has failed to live up to the terms of the Plan. *A description of the current status of that dispute is contained earlier in this chapter in the discussion of cases under Section 301.*

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

In 2001, USTR placed 16 trading partners on the "Priority Watch List": Argentina, Costa Rica, the Dominican Republic, Egypt, the European Union, Hungary, India, Indonesia, Israel, Korea, Lebanon, Malaysia, the Philippines, Russia, Taiwan and Uruguay. Thirty-two trading partners were placed on the "Watch List." Countries that were not mentioned in the report last year but are on the Watch List this year include: New Zealand, the Slovak Republic and the United Arab Emirates. The following countries were removed from all lists: Czech Republic, Denmark, Ecuador, Moldova, Oman, Qatar, Singapore, and Spain.

On October 31, 2001, the USTR announced the results of out-of-cycle reviews of Malaysia, Costa Rica and Lithuania. Malaysia was moved from the Priority Watch List to the Watch List as a result of its progress in combating optical media piracy and its commitment to sustained IPR enforcement. Costa Rica remained on the Priority Watch List, and Lithuania also remained on the Watch List.

b. Intellectual Property and Health Policy

In announcing the results of the 2001 Special 301 review, USTR reiterated that we were not considering a change in the present flexible approach to health-related intellectual property issues. Consistent with America's protection of intellectual property, we remain committed to working with countries that develop serious programs to prevent and treat HIV/AIDS.

We are informing countries that, as they take steps to address a major health crisis, like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with the provisions of the Agreement.

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

A comprehensive approach is needed to deal with any serious health emergencies, such as the AIDS crisis. In dealing with such serious threats to public health, like AIDS, countries need to stress education and prevention. The cost of drugs is but one of many important issues that must be addressed. Effective drug treatment necessitates urgent action to

strengthen health management systems – especially with regard to the means and methods of drug distribution. Other needed measures include: the development of appropriate drug selection policies and standard treatment guidelines; the training of care providers at all levels; an increase in the availability of adequate laboratory support to diagnose and monitor these complex therapies; and ensuring that the right drugs are used for the right purpose and in the right amount.

Certain countries have done an excellent job addressing the AIDS crisis, especially given their limited means. Such countries include Uganda, Senegal, and Thailand. However, some interested parties blame only the pharmaceutical companies without fully examining the many issues involved in addressing the AIDS crisis.

Certain countries try to justify the use of protectionist measures by associating these measures with the AIDS crisis when no such linkage exists. This behavior diverts countries, and other interested parties, from focusing on areas of real concern. Indeed, local production requirements can also cost the jobs of American workers.

In sum, the HIV/AIDS scourge is devastating – but there are ways to counter it. Drug therapies must be part of an integrated approach. Solutions must be found to encourage the discovery and production of other effective treatments in the future – for this disease and others.

On November 14, at the 4th World Trade Organization (WTO) Ministerial Conference, the United States joined other WTO Members in issuing a separate political Declaration that highlights provisions in the TRIPS agreement that provide Members with the flexibility to address public health emergencies, such as epidemics of HIV/AIDS, tuberculosis and malaria. Through the Declaration, Members expressed their strong support for the TRIPS agreement and the importance of intellectual property protection for the development of life-saving drugs. Ministers also agreed to a U.S. proposal to extend until January 1, 2016, the time by which least-developed WTO Members must implement TRIPS provisions on protecting patent rights for pharmaceutical products.

c. Implementation of Special 301

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

- In January 2001, Korea enacted amendments to strengthen its patent and trademark laws.
- In February 2001, Turkey enacted long-awaited amendments to its Copyright Law, with the goal of bringing Turkey into compliance with the TRIPS Agreement.
- In February 2001, President Kim of Korea issued public orders to the Ministry of Information and Communications and the Ministry of Justice designed to strengthen their copyright enforcement efforts.
- On March 20, 2001, the Danish Parliament approved legislation making civil ex parte searches available. The legislation was signed into law on March 28, 2001.
- In March 2001, the United States agreed to settle a WTO dispute it brought against Greece regarding television piracy after Greece passed new legislation providing for the immediate closure of television stations that infringe intellectual property rights, and committed to provide effective deterrence against any increase in the level of television piracy.

- Hong Kong's amendments to its Copyright Ordinance, clarifying end-user software piracy as a criminal offense, became effective on April 1, 2001.

- In response to a WTO panel decision, in which the United States prevailed, Canada amended its Patent Act to extend patent protection from 17 to 20 years to comply with its WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations. The law entered into force on July 12, 2001.

- In November 2001, Taiwan's legislature passed an optical media management law, in response to the U.S. Special 301 process. Under the law, fines were increased and the government has the authority to seize machinery and products. Due to a six- month transition period, it will be some time before the effectiveness of Taiwan's enforcement effort will be seen.

- In November 2001, Taiwan also enacted legislation extending the term of patent protection from 15 to 20 years as required by the TRIPS Agreement.

d. Ongoing Initiatives

Implementation of the TRIPS Agreement

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

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

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, a number of countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. The United States will continue to work with such countries and expects further progress in the very near future to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, or where the United States has been unable to resolve concerns through bilateral consultation, we will pursue our rights through WTO dispute settlement proceedings.

Controlling Optical Media Production and Internet Piracy

To address existing and prevent future piratical activity, over the past year several of our trading partners, including Malaysia, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. However, others that are in urgent need of such controls, including Ukraine, have made insufficient progress in this regard.

Governments such as those of Bulgaria, China,

Hong Kong and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. We continue to urge our trading partners facing the challenge of pirate optical media production within their borders, or the threat of such production developing, to adopt similar controls in the coming year. During 2001, Ambassador Zoellick took note of the positive initial steps taken by Malaysia to implement its optical media law and urged Russia, Thailand, Indonesia, the Philippines and Taiwan to follow suit.

As serious as the problem of optical media piracy is, the internet is even more problematic in that it has provided an efficient global distribution network for pirated products. Several approaches must be taken by governments to address this problem, including full implementation of the TRIPS Agreement's enforcement obligation to provide effective action and adequate deterrence against commercial piracy, whether it occurs in the on-line environment or in the physical world. In addition, governments should ratify and implement the two WIPO "internet" treaties, which clarify exclusive rights in the on-line environment and specifically prohibit the circumvention of technological protection measures for copyrighted works.

Government Use of Software

In October 1998, a new Executive Order was adopted directing U.S. Government agencies to maintain appropriate, effective procedures to ensure legitimate use of software. The President also directed USTR to undertake an initiative over the following 12 months to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding inappropriate government use of illegal software.

The United States has achieved considerable progress under this initiative since October of 1998. Countries that have issued decrees mandating the use of only authorized software by government ministries include China, Colombia, Ireland, Jordan, Paraguay, Thailand, France, the U.K., Greece, Hungary, Hong Kong, Macau, Lebanon, Taiwan and the Philippines. This past year the Governments of Israel and Spain reported that they have also issued similar decrees. Ambassador Zoellick noted his pleasure that these governments have recognized the importance of setting an example in this area. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments prior to the conclusion of the Special 301 review in April 2002.

4. Telecommunications - Section 1377 Reviews

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review, by March 31 of each year, the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the Section 1377 review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States (1) is not in compliance with the terms of the agreement or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country. An affirmative determination under Section 1377 must be treated as an affirmative determination of a violation of a trade agreement under Section 304(a)(1)(A) of the Trade Act of 1974.

Since the World Trade Organization (WTO) Basic Telecommunications Agreement came into force in February 1998, telecommunications markets overseas have

rapidly opened to competition. U.S. companies have invested billions of dollars to build global networks, partner with foreign companies, and expand their commercial presence in foreign markets.

However, there remain obstacles to the full expansion of U.S. telecommunications companies into overseas markets. Of these, the most pervasive and difficult to overcome are barriers placed on new entrants by the dominant incumbent carrier. Most major U.S. trading partners have undertaken obligations in the WTO to ensure the pro-competitive entry of new service suppliers into the market, including obligations to maintain appropriate measures to prevent anticompetitive conduct, ensure cost-oriented interconnection, and administer scarce resources in an objective and non-discriminatory manner.

The 2001 Section 1377 review focused on practices of incumbent carriers that hinder the development of competitive telecommunications markets in various countries. In addition, the 2001 review announced resolution of outstanding issues from past reviews.

Canada: USTR announced resolution of a complaint raised in the 2000 1377 review concerning the consistency of Canada's contribution collection (universal service) regime with its WTO Reference Paper obligations. The Canadian regulator (CRTC) reformed this system in November 2000. These reforms are expected to save competitive service providers millions of dollars.

Colombia: Colombia was under review for the inability of U.S. telecommunications operators to obtain licenses to offer international carrier services consistent with its WTO commitments. Carrier services involve the provision of wholesale transmission capacity – via submarine cables or otherwise – to other telecommunications operators and Internet service providers. Colombia's failure to license such services affects tens of millions of dollars of investment and deprives Colombian users of much-needed international bandwidth for Internet services and other applications. In mid-2001, Colombia's legislature enacted legislation to address this problem.

EU Member States: The 2001 review focused on alleged anticompetitive behavior by the dominant incumbent carriers in Germany, France, Italy, Spain and the United Kingdom. These problems related to local loop unbundling (i.e. competitors' ability to lease subscriber lines) and actions by the dominant incumbent carrier to slow down, degrade, and, in some cases, deny access to the local loop by a new entrant. The European Commission appears to share U.S. concern about these practices and has taken positive steps at the EU level to address them. The United States continues to work closely with the EU to monitor how EU Member States are addressing these issues.

Japan: As in past years, Japan represented an important focus of the 2001 Section 1377 review. Principal concerns raised in the review relate to: (1) the lack of effective dominant carrier regulation, including retail price regulation; (2) the lack of a fully independent regulator with effective enforcement powers; (3) burdensome licensing and filing requirements; (4) above-cost interconnection rates in both the wired and wireless markets; and (5) the lack of an effective rights-of-way regime. Japan has taken important steps to address aspects of these problems, particularly through legislation passed in mid-2001. USTR will continue to vigorously monitor implementation of this legislation and development of further competitive safeguards under the U.S.-Japan Regulatory Reform and Competition Policy Initiative.

Mexico: The United States remains concerned with trade barriers in Mexico's $12 billion telecommunications market affecting international services. Mexican measures do not permit effective competition in its international telecommunications services market. These measures deny other competitive

Mexican carriers the opportunity to provide lower-cost alternatives to U.S. companies linking with Mexico – alternatives many competitive Mexican phone companies are eager to offer. As a result, wholesale telecommunications rates for U.S.-Mexico calls are still roughly four times their cost. These inflated rates cost U.S. companies and consumers about $600 million a year.

Our concerns relate to WTO dispute settlement proceedings initiated on August 17, 2000, when the United States initiated WTO consultations with Mexico regarding a wide range of measures affecting telecommunications services. The United States and Mexico held such consultations on October 10, 2000 but did not resolve the dispute. Therefore, on November 10, 2000, the United States requested the establishment of a panel and additional consultations with the Government of Mexico. These additional consultations, held on January 16, 2001, did not resolve the dispute.

Since the initial U.S. request for consultations, Mexico has taken steps to address several barriers to telecommunications trade. However, Mexico has not yet addressed trade barriers affecting international telecommunications services.

Peru: In the 2001 review, USTR noted the reduction in interconnection rates in Peru, which had been subject to Section 1377 review since 2000. In December 2000, the Peruvian regulator (OSIPTEL) reduced all fixed-line interconnection rates to 1.68 cents per minute, down from 2.9 cents per minute. Rates are expected to continue to decline to .96 cents per minute by July 2002, which should put Peru's interconnection rates at among the lowest in Latin America. In addition, OSIPTEL is reportedly developing a methodology for analyzing the cost of terminating calls onto mobile networks.

South Africa: The 2001 review continued to note very serious concerns with alleged barriers in South Africa's market for value added network services (VANS). Specifically, Telkom, South Africa's state-owned monopoly supplier of basic telecommunications services, continues to deny certain U.S. service suppliers the network capacity they need to supply such services. At the time of the review, USTR noted progress in efforts by South Africa's telecommunications regulator to resolve these and related issues. In addition, in late March, South Africa's Minister of Communications took a major step forward, declaring that VANS should have the right to offer a broader range of data services. However, since that time the South African Parliament enacted legislation, which appears to impose new impediments on the ability of VANS to offer their services. The United States is closely monitoring developments in South Africa to ensure that the new legislation is consistent with South Africa's WTO commitments.

Taiwan: The 2001 review identified serious limitations on the competitive offering of telecommunications services and expressed concern that such limitations appeared to be inconsistent with the commitments undertaken by Taiwan as part of its bilateral WTO accession negotiations with the United States to liberalize its telecommunications market by July 1, 2001. Since that time, Taiwan has pledged to take steps to address key concerns. The U.S. Government continues to work with Taiwan to ensure that Taiwan fulfills its WTO commitments.

5. Government Procurement

Executive Order 13116 of March 31, 1999, reinstituted certain elements of Title VII of the 1988 Omnibus Trade and Competitiveness Act, as amended (expired 1996). The Executive Order required the USTR to identify countries that: (1) are not in compliance with their obligations under the WTO Government Procurement Agreement (GPA), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government

procurement to which those countries and the United States are parties; or (2) maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services, which results in identifiable harm to U.S. businesses when those countries' products or services are acquired in significant amounts by the U.S. Government.

In 2001, based on public responses to a *Federal Register* notice, consultations with the private sector, and its own information, the USTR determined that no countries met the criteria for Title VII identification. The 2001 report, however, did take note of questionable government procurement practices that the Administration is monitoring and addressing in ongoing consultations with the relevant foreign governments. The report also described U.S. efforts to eliminate discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional, and bilateral fora.

6. Antidumping Actions

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

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

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

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

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

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in

the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

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

7. Countervailing Duty Actions

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

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

The number of CVD investigations initiated in and since 1986 are: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 10 in 1999; 7 in 2000; and 18 in 2001. The number of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 6 in 1999; 6 in 2000, and 6 in 2001. In 2000, Commerce conducted sunset reviews of 54 of its outstanding countervailing measures. Also in 2000, 29 measures were revoked pursuant to these sunset procedures and 25 measures remained in force. In 2001, Commere initiated sunset reviews of 2 of its outstanding countervailing measures. No measures were revoked pursuant to these sunset procedures, while 2 measures remained in force.

8. Unfair Import Practices (Section 337)

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

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an

Initial Determination that is subject to review by the Commission. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

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

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

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

In 2001, the USITC instituted 24 new Section 337 investigations and three ancillary proceedings. During the year, the USITC issued two limited exclusion orders covering imports from foreign firms. The President permitted these exclusion orders to become final.

9. Safeguard Actions (Section 201)

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

For an industry to obtain relief under Section 201, the United States International Trade Commission (USITC) must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994 – the so-called "escape clause" – and the WTO Agreement on Safeguards.

As of January 1, 2002, the United States had safeguard measures in place on two imported products: certain steel wire rod (wire rod); and circular welded carbon quality line pipe (line pipe).

Effective March 1, 2000, the President imposed a tariff-rate quota (TRQ) on imports of wire rod from all countries except Canada and Mexico. Absent an extension, the measure will expire on

March 1, 2003. Effective November 24, 2001, the President revised the wire rod safeguard measure to allot the TRQ among four categories of supplier countries. The allotments were based on import shares for a representative historic period.

Also effective March 1, 2000, the President imposed a duty increase on imports of line pipe from all countries except Canada and Mexico. The first 9,000 short tons of line pipe imported into the United States annually from each country is exempted from this increase in duty. Absent an extension, the measure will expire on March 1, 2003.

During 2001, the WTO Appellate Body issued a report finding that the U.S. safeguard measure on lamb meat was inconsistent with the Safeguards Agreement and GATT 1994. After consultations with the U.S. industry, the United States decided to continue providing adjustment assistance to the industry through FY 2003 and to terminate the safeguard effective November 15, 2001.

On October 19, 2001, a WTO panel issued a report finding that the U.S. measure on line pipe was inconsistent with the Safeguards Agreement and GATT 1994 in that it imposed a TRQ inconsistent with Article XIII of GATT 1994, and was based on a finding of serious injury that did not comply with the Safeguards Agreement prohibition on attributing to imports injury caused by other factors. The United States has appealed aspects of this report to the Appellate Body, which should issue its report by February, 2002.

On June 1, 2001, the safeguard measure on wheat gluten expired. The U.S. Department of Agriculture subsequently instituted an adjustment assistance program to facilitate U.S. wheat gluten producers' adjustment to import competition.

On June 22, 2001, the Administration requested the USITC to commence an investigation of certain steel products. (The President excluded from his request all steel products already subject to a safeguard measure.) On October 24, 2001, the USITC announced that it had made affirmative injury determinations or was equally divided with respect to imports of 16 of the 33 product categories under consideration. On December 7, 2001, the USITC announced its recommendations as to the safeguard measure the President should impose for each of the 16 product categories for which it made an affirmative determination. On December 19, 2001, the USITC issued its report explaining its injury determinations and recommended safeguard measures. Under the statute, the President has up to 75 days from receipt of this report to announce the safeguard measures he intends to take. (*See further discussion in Chapter V under steel policy.*)

10. Trade Adjustment Assistance

a. Assistance for Workers

The Trade Adjustment Assistance (TAA) program for workers, established under Title II, chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by imports. Available assistance includes job retraining, trade readjustment allowances (TRA), job search, relocation, and other reemployment services. The program expired on September 30, 2001. However, the Administration is committed to working with Congress for the rapid renewal of TAA. Funds have been appropriated by the Congress to continue program operations despite the lapse in authorization.

The NAFTA Implementation Act established the North American Free Trade Agreement Transitional Adjustment Assistance program (NAFTA-TAA). Workers seeking NAFTA-TAA services and benefits must file a petition with the Governor's designated representative in the State where the workers' firm is located. For workers to be eligible to apply for NAFTA-TAA, the Secretary of Labor

must certify that members of the workers group have become or are threatened to become totally or partially separated from their employment; that the sales and/or production at the workers' firm have declined; and that either (1) increased imports from Canada and/or Mexico of articles like or directly competitive with those produced by the petitioning workers have contributed importantly to the actual or threatened separations and to the declines in sales and/or production at the workers' firm or (2) that there has been a shift of production from the petitioning workers' firm to Canada or Mexico. Certification under the NAFTA-TAA program does not in any way imply that the Agreement itself caused the separations.

The U.S. Department of Labor administers the TAA and NAFTA-TAA programs through the Employment and Training Administration (ETA). Workers certified as eligible to apply for adjustment assistance may apply for TAA and NAFTA-TAA benefits and services at the nearest office of the State Employment Security Agency. Under the TAA program, workers must be enrolled in approved training, or must have successfully completed approved training, in order to be eligible for TRA. A State may waive this requirement if training is not feasible or appropriate. Under the NAFTA-TAA program, in order to be eligible for TRA, workers must be enrolled in approved training within six weeks of the issuance of the DOL certification or within 16 weeks of the worker's most recent qualifying separation (whichever is later) or must have successfully completed approved training. No waivers of these requirements are permitted under NAFTA-TAA.

Fact-finding investigations were instituted for 2,269 TAA petitions in fiscal year (FY) 2001. In FY 2001, 1003 certifications were issued covering an estimated 134,695 workers, whereas 622 petitions covering an estimated 60,428 workers resulted in denials of eligibility to apply. Fact-finding investigations were instituted for 1,289 NAFTA-TAA petitions in FY 2001. In FY 2001, 556 NAFTA-TAA certifications were issued covering an estimated 78,914 workers, whereas 441 NAFTA-TAA petitions covering an estimated 46,961 workers resulted in denials of eligibility to apply.

Under the TAA program, the number of workers who entered training during FY 2001 is estimated to be 26,700; and during the same year, an estimated 31,300 began receiving Trade Readjustment Allowances (TRA). Under the NAFTA-TAA program, the number of workers who entered training during FY 2001 is estimated to be 4,700; during the same year, an estimated 2,500 began receiving TRA. Total funding for training, job search, relocation, and State administrative expenses under TAA was $94.3 million in FY 2001 and under NAFTA-TAA was $35.7 million in FY 2001. Total funding for TRA under TAA was $248 million and under NAFTA-TAA was $27 million in FY 2001.

b. Assistance for Firms and Industries

The Planning and Development Assistance Division of the Department of Commerce's Economic Development Administration (EDA) administers the TAA program for firms and industries. This program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, through September 30, 2001. Since Congress included an appropriation for the program in Commerce's FY 2002 appropriation EDA is continuing to operate the program. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers.

Under the firms and industries TAA program, EDA funds a network of 12 Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2001, EDA provided $ 10.5

million in funding to the TAACs. That amount included $ 0.183 million in defense adjustment funding, which is used to assist trade-impacted firms that also have been affected by defense downsizing or are located in areas that have been affected by defense downsizing.

TAACs assist firms in completing petitions for certification of eligibility. In FY 2001, EDA certified 179 firms under the TAA program. Once EDA has certified a firm, the TAAC assists the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 2001, the APRC approved 118 adjustment proposals from certified firms.

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

The legislation permits EDA to provide technical assistance for industry-wide projects. However, EDA has used the available funds to maintain the TAAC network.

The Emergency Steel Loan Guarantee Act of 1999 and the Emergency Oil and Gas Guaranteed Loan Program Act (also enacted in 1999) created the Emergency Steel Loan Guarantee Board and the Emergency Oil and Gas Guarantee Loan Board. The boards are authorized to provide loan guarantees to steel companies and to qualified oil and gas companies in amounts for up to 85 percent of the loan principal. The programs have been structured to fulfill the two objectives of the legislation: to assist steel and oil and gas firms injured by the import crises and to protect government funds by guaranteeing only sound loans.

In FY 2001, the Emergency Steel Loan Guarantee Board did not approve any new offers of guarantee to qualified steel companies, but did complete one previously approved loan guarantee for $110 million. Congress extended the authority of the Board to offer guarantees for another two years until December 31, 2003.

The Emergency Oil and Gas Guarantee Loan Board did not approve any new offers of guarantee during FY 2001. During FY 2001, it completed two previously approved loan guarantees totaling almost $2.9 million. After the end of FY 2001, it completed a final loan guarantee for $1.5 million that was previously approved by the Board in FY 2001. The Board's authority to extend offers of guarantee to qualified oil and gas companies ended on December 31, 2001 and was not extended by Congress.