THE PRESIDENTS 2005 ANNUAL REPORT ON THE TRADE AGREEMENTS PROGRAM

II. The World Trade Organization

A. Introduction[1]

Over the past year, the 149 Members of the World Trade Organization (WTO) continued to address the important business of moving forward a major round of global trade negotiations – the Doha Development Agenda (DDA), launched in Doha, Qatar two months after the events of September 11, 2001. The DDA is the ninth round of multilateral negotiations to be carried out since the end of World War II, and the first under the WTO—which itself was created as a significant result of the Uruguay Round of negotiations that were completed in December 1993. At the core of the Doha Round is the creation of new economic opportunities through new and real market openings, as well as with agricultural reform. These negotiations, along with the day-to-day implementation of the rules governing world trade, represent a dynamic approach to furthering global trade liberalization and strengthening of the trading system that is so vital to the growth of the world economy and continued peace and prosperity.

This chapter outlines the progress in the work of the WTO, and most importantly the path ahead for 2006. Following the course set by the Sixth WTO Ministerial Conference, held in Hong Kong December 13-18, 2006, will be a year of challenge, as the United States continues to press other Members to join in moving toward a conclusion of the negotiations that brings about bold and aggressive trade liberalization and agricultural reform.

Ambitious results emerging from the DDA will carry the potential for a significant contribution to global development, and the United States and other WTO Members continue to provide unprecedented contributions to strengthen technical assistance and capacity building to ensure the participation of all Members in the negotiations. This chapter will detail the progress of the DDA, and provide a review of the implementation of existing Agreements, including the critical negotiations to expand the WTO's membership to include new members seeking to reform their economies and join the rules-based system of the WTO.

B. The Doha Development Agenda under the Trade Negotiations Committee

The DDA was launched in Doha, Qatar in November 2001, at the 4th 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 Agreements. The goal of the DDA is to reduce trade barriers so as to expand global economic growth, development and opportunity. The main focus of the ongoing negotiations is in the following areas: agriculture; industrial market access; services; trade facilitation; WTO rules (i.e., trade remedies, regional agreements and fish subsidies); 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 works closely with the Chairman of the General Council, Ambassador Amina Mohamed of Kenya. The Chairman of the General Council, along with Director-General Pascal Lamy, played a central role in ensuring that the Sixth Ministerial Conference at

[1] The information in this section is provided pursuant to the reporting requirements contained in sections 122 and 124 of the Uruguay Round Agreements Act.

Hong Kong in December 2005 produced incremental progress, particularly on issues of importance to the least-developed countries. (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.)

Following on a productive year in 2004, in which the negotiations were re-energized by the frameworks agreed in the General Council decision of 1 August 2004, work on the DDA in 2005 culminated with the Ministerial Declaration of the Sixth WTO Ministerial Conference in Hong Kong in December, which is discussed in detail below. In early 2005, U.S. aims for achieving good progress in the negotiations were stymied on a number of fronts, particularly in the area of agriculture, where difficulties on the technical details of a conversion formula for non-*ad valorem* tariffs provided a preview of an unfortunate negotiating dynamic that emerged later in the year.

In a speech before the United Nations in September 2005, President Bush stated forthrightly that the United States was ready to eliminate *all* tariffs, subsidies and other barriers to free flow of goods and services as other nations do the same. Following this important speech, the United States tabled a comprehensive proposal for the agriculture negotiations on October 10th, to eliminate all tariffs and subsidies in a two-phased process.

The U.S. proposal was roundly welcomed as an important push to move the WTO agriculture negotiations forward, and presented a path for breaking what had become a logjam for the other core negotiations of industrial tariffs and services. The proposal was not a unilateral offer; it was contingent on others stepping up to the plate on these bold reforms.

In response, on October 28th, the EU tabled its own proposal, which was widely viewed as a disappointment that fundamentally fell short of the Doha mandate to provide "substantial improvements" in agricultural market access. The proposal put forth small tariff cuts, generous flexibilities for sensitive products and opportunities for safeguards which would effectively deny access to the EU market, and could not be a template for ambitious results in the key market access pillar of the agriculture negotiations. Thus, as negotiations headed toward the Hong Kong meeting, the progress necessary for achieving ambitious results in the DDA overall remained elusive, and expectations diminished as to what could be achieved at the December Ministerial. The United States and others, however, made it clear that there was no erosion of the expectation that the DDA must ultimately achieve a robust and ambitious set of market-opening results.

On December 8, WTO General Council Chairman Mohamed forwarded to WTO Members a draft ministerial text with a covering note enclosing questions for Ministers to focus on in the key areas of agriculture (including cotton), non-agricultural market access (NAMA) and development. The draft declaration covered all negotiating areas and work programs agreed at the launch of the DDA. For agriculture and NAMA, there were no forward mandates, simply a reporting of areas of possible convergence and areas for further work. With the exception of trade facilitation where a consensus-based text was achieved, the Chairs of the individual negotiating areas submitted annexes that comprised onward negotiating mandates on their own responsibility. One important decision prior to Hong Kong was the General Council agreement to the amendment on TRIPS and Health, resolving the longstanding so-called "paragraph six" issue regarding compulsory licensing. This agreement helped to sharpen the focus on agriculture and other development related issues. Discussions in Hong Kong focused on "topping up" or making incremental progress in the negotiations that would yield a way forward in the outstanding areas and the tabling of offers in the first quarter of 2006.

Modest Progress made at the Hong Kong Ministerial

The Hong Kong Ministerial Conference in December 2005 advanced the Doha negotiations and set a new deadline of April 30, 2006 for achieving agreements on the platform for final negotiations in the core areas of agriculture and non-agricultural market access. Despite intensive efforts leading up to and at the meeting, agriculture remains the main stumbling block towards progress, with the EU unable to meet the challenge of providing new and real market access in agriculture. Ministers did, however, establish 2013 as the end date for the elimination of all export subsidies. The Hong Kong Ministerial resulted in modest progress across-the-board, most particularly agreement on key aspects of a development package to assuage the concerns of developing country Members, particularly the least-developed, that their interests were taken into account in the negotiations. Least-developed country Members succeeded in further defining the commitments made when the Doha Round was launched to obtain duty-free quota free market access as part of the overall results of the Round.

Agriculture

Although there were no major breakthroughs in agriculture, negotiators did set 2013 as the date for full elimination of agricultural export subsidies and fleshed out the mandate for work on cotton as part of the larger agricultural negotiations. The declaration confirms that market access for agriculture, where substantial improvements in market access are envisioned, remains the most difficult issue to address.

On cotton, the Hong Kong Declaration lays the groundwork for near-term and future action on cotton, within the context of the overall agriculture negotiations. It addresses both the trade and development aspects of the challenges facing global trade in cotton—an issue of particular importance to a number of West and Central African countries.

Non-Agricultural Market Access (NAMA)

The NAMA text coming out of the Hong Kong Ministerial locks in the progress made since adoption of the July 2004 Framework and tops-up that progress in a few key areas. The text also reaffirms the important role of liberalizing sectoral tariffs and reducing non-tariff barriers to trade.

Services

The agreement at the Hong Kong Ministerial establishes a solid platform for future progress in the services negotiations. It includes a commitment to intensify negotiations and sets deadlines for submitting plurilateral requests, outstanding initial offers and revised offers, and finalizing negotiations. Highlights of the services text also include a commitment to intensify market access negotiations to achieve progressively higher levels of liberalization across all service sectors and modes of supply – providing a basis to press for robust results in key sectors such as financial services, telecommunications, computer and related services, express delivery, distribution, and energy services.

Trade Facilitation

Ironically, the question of whether to commence negotiations on Trade Facilitation was one of the make or break issues at the WTO Ministerial meeting in Cancun, Mexico.

On the basis of excellent work in the Geneva negotiating group since its formation in late 2004, Ministers endorsed recommendations setting the stage for intensifying the WTO negotiations on Trade Facilitation and moving toward a conclusion in 2006.

Development Package

Most notable among several results from the Hong Kong Ministerial pertaining to least-developed country Members (LDC's) wa**s** the political commitment to provide duty-free/quota-free market access to products from LDC's, with implementation to be done autonomously, through preference regimes, coincident with the implementation of the results of the DDA negotiations.

Ministers agreed to provide duty-free/quota-free market access for at least 97 percent of tariff lines, and to take steps to progressively expand beyond 97 percent– but to take into account any impact on other developing countries at similar levels of development as LDC's. (LDC's are already eligible for duty-free access to the United States on 83 percent of the tariff lines in the U.S. tariff schedule; LDC's covered by the African Growth and Opportunities Act and the Caribbean Basin Initiative are eligible for duty-free access on up to 91 percent of the tariff lines in the U.S. tariff schedule.)

At the Hong Kong Ministerial, Members agreed to allow LDCs to maintain and create measures that deviate from the TRIMS Agreement, under the conditions that the measures be duly notified and are terminated by 2020.

Access to Medicines. WTO Members formalized an agreement on the rules governing intellectual property rights that balances the needs of protecting patent rights with delivering life-saving medicines to areas hardest hit by epidemic disease. This will be of great importance to countries struggling to cope with HIV/AIDS, malaria and other health crises.

Aid for Trade. Nations reinforced their commitment to development with significant new pledges of so-called "Aid for Trade". This commitment will help create the legal, administrative and physical infrastructures needed to help developing country Members participate fully in the market openings we hope to achieve in the DDA. The United States is proud to lead the world in providing such assistance, and as part of the DDA, at Hong Kong the United States announced a doubling of our contributions over the next five years from the current level of roughly $1.3 billion a year to $2.7 billion annually.

Prospects for 2006

The United States will work with other WTO Members to pursue a successful and ambitious outcome to the negotiations before the end of 2006. This goal is consistent with the objective announced by President Bush earlier this year at the United Nations, where he laid out a bold vision for open trade to bring renewed economic growth, prosperity and hope to the developing world. Achieving new and real market openings, particularly in agriculture, is the key to achieving a final agreement. Unless the negotiations in the core areas are unblocked early in 2006, the world will risk missing a unique opportunity to enhance global economic growth and alleviate poverty.

The disappointing amount of progress made in the core areas in 2005 leaves virtually no breathing room in the negotiations if work is to be completed in 2006. Key decisions on the size and shape of cuts will need to be made early on to enable the tabling of the draft schedules by mid year and the subsequent intensive bilateral request/offer negotiations to be completed by the end of 2006. The Hong Kong Ministerial Declaration provides deadlines for the work in several negotiating groups which will guide their work and influence the overall pace and direction of the DDA in 2006:

Agriculture. Ministers agreed to establish modalities no later than 30 April 2006 and to submit comprehensive draft schedules based on these modalities no later than 31 July 2006.

NAMA. Ministers resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft schedules based on these modalities no later than 31 July 2006

Services. Ministers established to the following timeline:The submission of outstanding initial offers should be submitted as soon as possible. Groups of Members presenting plurilateral requests to other Members should submit these requests by 28 February 2006 or as soon as possible thereafter. A second round of revised offers shall be submitted by 31 July 2006. Final draft schedules of commitments shall be submitted by 31 October 2006.

Development-Related Issues

Ministers agreed to review all the outstanding Agreement-specific proposals and make recommendations to the General Council by December 2006.

Regarding the trade-related issues of small economies, Ministers set out the aim of providing responses by 31 December 2006.

On outstanding implementation issues, Ministers directed the General Council to review progress and take any appropriate action by 31 July 2006.

Ministers created a Task Force on the Integrated Framework (IF) and directed to recommend enhancements on the IF by April 2006. Enhanced operations are to be put into effect by 31 December 2006.

On Aid for Trade, Ministers asked the Director-General to create a task force that would provide recommendations on how to operationalize Aid for Trade by July 2006.

Rules – Ministers directed the Chairman of the Rules Negotiating Group to prepare consolidated texts of the AD and SCM Agreements to serve as the basis for the final stage of the negotiation early enough to assure a timely outcome within the context of the completing the DDA by the end of 2006. With respect to regional trade agreements, Ministers requested that work proceed with a view to a provisional decision on RTA transparency by 30 April 2006.

1. Committee on Agriculture, Special Session

Status

Negotiations in the Special Session of the Committee on Agriculture are conducted under the ambitious mandate agreed at the Fourth WTO Ministerial Conference in Doha, Qatar which 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 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.

The WTO provides multilateral disciplines and rules on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers, because only the WTO can impose disciplines on the entire broad range of agricultural producing and consuming Members. For example, absent a WTO Agreement on Agriculture, there would be no limits on the EU's subsidization practices or firm commitments for access to the Japanese market. Negotiations in the WTO provide the best means to expand incomes, and thereby demand for agricultural products, and to open global markets for U.S. farm products and reduce subsidized competition.

Major Issues in 2005

Following agreement in July 2004 on an agricultural framework, discussions in the WTO focused on developing specific approaches to reduce tariffs and trade-distorting domestic support and eliminate export subsidies. The United States has long advocated fundamental reform of all trade-distorting measures by all WTO Members and in 2002 made specific proposals to phase-out all tariffs, trade-distorting domestic support, and export subsidies in the Doha negotiations. While the July 2004 framework made progress by establishing a basic structure for the negotiations, the critical element of the actual formulas detailing how far and fast to cut tariffs and subsidies remained to be agreed. U.S. negotiators met bilaterally with interested Members, with small groups of like-minded Members, in informal groups of Members with varied interests in the negotiations, and in large informal and formal meetings organized by the Chairman of the WTO agriculture negotiations. Negotiations were stalled through the spring of 2005 on the technical issue of establishing *ad valorem* equivalents (AVEs) for specific tariffs. AVEs are necessary to provide a database for moving into the formula based negotiations because tariffs based on a weight of measure, such as €5 a kilogram, need to be represented as a simple percent, such as 50 percent. Due to the leadership of the United States, Members reached an agreement on an AVE methodology in May. As discussions continued into the summer some additional marginal progress was made, but the negotiations lacked the critical spark to tackle the issue of the level of ambition.

The United States took the lead in breaking the negotiating deadlock by submitting a comprehensive proposal on 10 October in all three areas of the agriculture negotiations: export subsidies, market access, and domestic support. The U.S. proposal, consistent with the 2002 U.S. proposal and the 2004 WTO framework, called for substantial reductions in tariffs and trade-distorting domestic support, with higher tariffs and countries with higher subsidy levels subject to deeper cuts. These reductions would be phased-in over a five-year period for developed countries, with developing countries taking slightly lesser cuts and given more time to implement. In the second five-year phase (immediately following the first), all tariffs and trade-distorting domestic support would be eliminated. Under the U.S. proposal, export subsidies would be eliminated within the first phase of reform, with parallel commitments undertaken on export state trading enterprises, export credits, and food aid programs.

The U.S. proposal sparked counter-proposals by other Members, including the G-20 group of developing countries and the EU. Despite the bold U.S. proposal, negotiations bogged down in the autumn over the failure of other key countries to provide proposals that delivered meaningful reforms in their own programs particularly in the area of market access. While numbers and formulas for making the cuts are now on the table, the differences between Members were too large to be resolved at the Hong Kong Ministerial Conference and substantive discussions on agriculture there focused on setting an end date for export subsidies. At the Hong Kong Ministerial, Members further narrowed some of their key differences.

Perhaps most importantly, Members agreed to an end date for export subsidies -- 2013 -- with the further commitment that the substantial part of the elimination would be completed by 2010. Members also agreed to some further refinements of the 2004 framework, including on cotton where they agreed to: eliminate export subsidies for cotton in 2006; ensure trade-distorting domestic support for cotton would be cut deeper and more quickly than for other commodities (with the actual numbers subject to negotiation); and that developed country Members would eliminate tariffs on cotton exports from the least-developed country Members.

Prospects for 2006

In 2006, negotiations will focus on reaching agreement on the basic formulas and rules for cutting tariffs and trade-distorting support by the April 30, 2006 deadline established at the Hong Kong Ministerial. These formulas will set the stage for the final bargaining through the end of the year over specific commitments, product-by-product and country-by-country. WTO Members must submit initial lists of these product commitments by the end of July, another deadline set at the Hong Kong Ministerial. In addition, bilateral discussions and sectoral negotiations for reductions beyond those called for in the basic modalities will occur when progress is achieved on the core modalities. As talks move forward, the United States will work to achieve a high level of ambition in all three pillars. U.S. objectives for agriculture reform will continue to focus on the principles of greater harmonization across countries, substantial overall reforms, and specific commitments of interest in key developed and developing country markets.

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 to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001 recognized 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. As of December 7, 2005, 69 Members had submitted initial offers.

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. 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.

Major Issues in 2005

In 2005, the United States continued to assert leadership in pressing Members to pursue a high level of engagement and ambition. Pursuant to the General Council Decision of July 2004, the United States participated actively in bilateral negotiations and provided a significantly improved revised services offer in May 2005. As of December 7, 2005, a total of 31 Members had submitted revised offers.

Recognizing the limited progress of the services negotiations, the United States along with India reached out to Members with diverse interests to form a Core Services Group to enhance communication on critical issues and help steer the negotiations.

The Core Group ultimately produced the major elements of the services work program agreed to by Ministers in Hong Kong.

The United States also worked closely with other Members to consider alternative approaches to the negotiations, including multilateral and plurilateral approaches. The constructive work of various "Friends Groups" continued as well, through which Members with similar market access priorities worked together to develop common priorities and understandings. Friends Groups of particular interest to the United States include those concerning financial services, telecommunication services, computer and related services, logistics services, express delivery services, energy services, audiovisual services, legal services, and environmental services.

Issues concerning Mode 4 (temporary entry of persons) and development continue to be a prominent fixture in discussions of the Special Session. With respect to Mode 4, the United States has emphasized that few Members have matched our level of commitments. Nevertheless, it is clear that developing country Members see new and improved Mode 4 commitments from developed country Members, including the United States, as a critical element to the successful conclusion of the services negotiations. Regarding development in general, the United States has consistently supported flexibility for the least-developed country Members while noting that trade liberalization itself is important to sustainable economic development. The United States also expanded its financial support for the International Trade Centre in Geneva Services pilot project.

Another important issue addressed during 2005 was the work program contained in the Hong Kong Ministerial Declaration. The United States was successful in pushing for a clear signal from Ministers on the importance of intensifying the services negotiations and the potential value of alternative approaches. The resulting Ministerial Declaration provides the necessary framework aimed at bringing the services negotiations to a successful conclusion.

Prospects for 2006

In addition to calling for the intensification of bilateral request-offer negotiations, the Hong Kong Ministerial Declaration breaks new ground by encouraging plurilateral negotiations. Such negotiations are expected to build upon the work of the various "Friends Groups" to identify areas of common interest and encourage the submission of "collective requests." The plurilateral process is intended to focus on specific sectors and issues, which in turn will foster more directed and productive discussions in the bilateral request-offer process. The Hong Kong Ministerial Declaration also sets 2006 deadlines of February 28 for collective requests generated from the plurilateral negotiations, July 31 for a second round of revised offers, and October 31 for submission of final draft schedules of commitments.

3. Negotiating Group on Non-Agricultural Market Access

Status

At the Hong Kong Ministerial Conference, Members agreed to lock in the progress that had been made in the Non-Agricultural Market Access (NAMA) negotiations since the July 2004 Framework Agreement. Members reaffirmed the goal of reducing or eliminating tariff peaks, high tariffs, and tariff escalation. Members also agreed that further liberalization of tariffs should be achieved through a harmonizing (Swiss) tariff cutting formula, the exact structure and details to be worked out during 2006. The United States seeks to level the playing field for U.S. businesses through the NAMA negotiations.

The Hong Kong Ministerial text also recognizes the work that has been done on moving discussions on sectoral initiatives forward and that the discussions have gained momentum over the past year. Members are pursuing sectoral discussions in a variety of global industry sectors that represent key economic building blocks. The discussions have increasingly involved a mixture of developed and developing countries from every trading region. This creates a solid platform for interested Members to negotiate the specifics in 2006.

Members also provided a boost to the important efforts to reduce or eliminate non-tariff barriers (NTBs) by recognizing the work accomplished to date and calling for introduction of detailed negotiating proposals early in 2006. This recognition sets the stage for the United States and other governments to address the variety of NTBs that impede market access for industries such as automobiles, electronics, and forest products. These barriers often are as damaging and more trade-distorting than tariff barriers. It also opens the door to push for an agreement on new horizontal rules to liberalize trade in remanufactured goods.

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 2004, U.S. exports of industrial goods rose to $710 billion – almost 11 times the level of U.S. agricultural exports. This figure is up 13 percent from 2003 and up 81 percent from 1994. The Doha Round provides an opportunity to lower tariffs in key markets like India and Egypt, which still retain ceiling rates as high as 150 percent. Likewise, gains from tariff rate reductions made as a result of the Round will accrue to developing countries, which currently pay over 70 percent of duties collected to other developing countries.

Major Issues in 2005

In 2005, Members continued to try to advance work on the substantive elements of the July 2004 Framework Agreement including (1) a non-linear formula; (2) a sectoral component; (3) work on non-tariff barriers; and (4) the flexibilities to be provided for least-developed country Members, poor and revenue-strapped Members just above the LDC level, and other developing country Members. Final consensus on these issues proved elusive throughout the year, although progress was made in narrowing differences on the key elements.

The key U.S. objective is to achieve an ambitious outcome that results in significant real market access in key markets, including both developed and developing country markets. The United States believes that a Swiss formula with dual coefficients will effectively achieve the objectives laid out in the Doha mandate to reduce or eliminate tariff peaks, high tariffs and tariff escalation, particularly on products of export interest to developing countries. The United States also believes that all the elements of the Framework must be considered in tandem. There is an inextricable link between discussions on the formula and sectors, as well as flexibilities.

Based on the July Framework, discussions on formula options intensified throughout 2005. A number of Members made specific presentations on different formula scenarios. Members also discussed technical aspects related to the formula including treatment of unbound tariffs, conversion of non *ad valorem* tariffs, and narrowing differences on product coverage. These discussions culminated with consensus at the Hong Kong Ministerial on a Swiss formula and recognition of the progress that has been made on technical aspects of the NAMA formula discussions.

Further progress was made on sectoral initiative discussions throughout 2005. In the past year, the United States continued to educate other Members on the benefits of approaching sectoral liberalization using the "critical mass" concept and to reach consensus with other countries on moving forward on specific sectoral initiatives in the DDA. Critical mass is defined as a negotiated level of participation by interested Members based on the share of world trade Members determine should be covered in order to reduce or eliminate tariffs through a sectoral agreement. Members have formally and informally proposed several sectors that might be considered for negotiation.

NAMA Chairman Johanneson's July 2005 report listed the following sectors as under discussion by WTO Members: electronics and electrical goods, bicycles and parts, chemicals, minerals and raw materials, fish, footwear, forest products, gems and jewelry, medical equipment, automobiles, pharmaceuticals, sporting goods, textiles and apparel. In addition, sub-paragraph 31(iii) of the Doha Declaration instructs WTO Members to reduce barriers to trade in environmental goods.

Flexibility for developing countries, or "less than full reciprocity," continues to be an important area of discussion, with a number of approaches under consideration. Decisions on this element will be closely linked to the outcome of negotiations on the formula and sectors. Several developing country Members continue to raise their concerns with the potential erosion of preferences or loss of government revenue due to tariff cuts.

Non-tariff barriers are an integral and equally important component of the NAMA negotiations. Following up on its indicative list of NTBs (tabled in November 2004), the United States in 2005 tabled detailed negotiating proposals to address NTBs affecting automobiles, textiles, and remanufactured products. In addition, the United States co-sponsored with New Zealand a proposal to address NTBs in the forest products sector. The Hong Kong Ministerial Declaration reiterated that Members are addressing NTBs horizontally (i.e., across all sectors), vertically (i.e., pertaining to a single sector) and through bilateral request/offer.

Prospects for 2006

In 2006, work will focus on negotiating the final details of the Swiss formula, identifying specific sectors and country participation in the sectoral component, determining the final balance of flexibilities for developing countries, and advancing negotiations on identified NTBs. At the Hong Kong Ministerial, Members agreed to establish formula modalities no later than April 30, 2006 and to submit comprehensive tariff offers based on the modalities no later than July 31, 2006. Meeting these deadlines will be crucial to ensure a successful conclusion of the NAMA negotiations.

The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country markets, while supporting elements of additional flexibility for developing countries.

4. Negotiating Group on Rules

Status

In paragraph 28 of the Doha Declaration, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and on Subsidies and Countervailing Measures (the Subsidies 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 participants.

The Doha mandate specifically calls for the development of disciplines on trade-distorting practices, which are often the underlying causes of unfair trade, and also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Doha Declaration provides for a two-phase process for the negotiations, in which participants would identify in the initial phase of negotiations the provisions in the Antidumping and Subsidies Agreements that they would seek to clarify and improve in the subsequent phase. Members have submitted over 190 formal papers to the Rules Group thus far, the majority of them identifying issues for discussion rather than making specific proposals. In order to deepen the understanding of the very technical issues raised by these papers, in 2004 the Group began a process of in-depth discussion of elaborated proposals in informal session. As of the end of 2005, Members have submitted over 90 such elaborated informal proposals to the Rules Group, with a number of these proposals containing suggestions for specific textual changes to the Agreements.

On fisheries subsidies, Ministers at the Hong Kong Ministerial 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 countries. Members will intensify their work on a text as soon as possible.

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 (including proposals already before the Group and those yet to be submitted), and to complete the process of analyzing proposals as soon as possible. Ministers also directed the Rules Chairman to prepare consolidated texts of the Antidumping and Subsidies Agreements early enough to assure a timely outcome within the context of the 2006 end date for the DDA and taking account of progress in other areas of the negotiations, stating that such texts shall be the basis for the final stage of the negotiations.

Pursuant to paragraph 29 of the Doha Declaration, the Rules Group has also been working to "clarif[y] and improv[e] disciplines and procedures" governing regional trade agreements (RTAs) under the existing WTO provisions. The Group has focused on developing procedures to increase transparency of RTAs and their operation and to establish meaningful standards to ensure that RTAs are used to liberalize trade and complement the global trading system, not simply create sector-selective preferential programs.

Major Issues in 2005

The Rules Group held seven sets of meetings in 2005 under the Chairmanship of Ambassador Guillermo Valles Galmés of Uruguay. The Group based its work primarily on the 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. In 2005, Chairman Valles began holding a serious of plurilateral consultations with smaller groups of interested Members, in order to have more intensive and focused technical discussions on elaborated proposals by Members, particularly focusing on proposals for specific textual changes to the Antidumping and Subsidies Agreements. In 2005, as part of the Rules Group's work, the Chairman also established a technical group examining in detail issues relating to antidumping questionnaires and verification outlines, with a view to seeking to reduce costs in antidumping investigations.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission the basic concepts and principles of the trade remedy rules, and identified four core principles to guide U.S. proposals for the Rules Negotiating Group. The United States' work in the Rules Group in 2005 continued to be guided by these principles: (1) negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system which enjoys the confidence of all Members; (2) trade remedy laws must operate in an open and transparent manner, and transparency and due process obligations should be further enhanced as part of these negotiations; (3) disciplines must be enhanced to address more effectively underlying trade-distorting practices; and (4) it is essential that WTO dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members obligations that are not contained in the Agreements.

Antidumping and Countervailing Duty Remedies: In accordance with the principles noted above, the United States submitted elaborated proposals to the Rules Group in 2005 on a number of antidumping (AD) and countervailing duty (CVD) issues: addressing circumvention of AD/CVD measures; preventing abuse of AD "new shipper" reviews; addressing the injury causation standard in AD/CVD investigations; ensuring disclosure by investigating authorities to the general public of non-confidential information from AD/CVD investigations; and (in a proposal co-sponsored with Brazil) ensuring that investigating authorities take appropriate steps for the identification of parties in AD/CVD investigations. The United States submitted textual proposals on four of these issues. The U.S. proposals on circumvention and injury causation were discussed in detail as part of the Chairman's plurilateral consultations. In addition to these proposals, the United States submitted a paper containing detailed comments and criticisms of proposals by other Members for a mandatory lesser duty rule in AD investigations.

A group calling itself the "Friends of Antidumping Negotiations" (FANs) has also been active in the Rules Group, generally seeking to impose limitations on the use of antidumping, and submitting elaborated proposals on a dozen issues in 2005. 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, although only one of the FANs' papers in 2005 was sponsored by all 15 "Friends." As the discussion of antidumping issues has become more technical and detailed, in 2005 many of the "Friends" submitted proposals individually without any co-sponsors: Chinese Taipei, Hong Kong China, Mexico, and Norway each submitted three elaborated AD proposals individually; Japan and Turkey two each; and Brazil and Chile one each. As noted above, Brazil also co-sponsored a proposal with the United States in November 2005 on identification of parties in AD/CVD investigations.

In addition to the proposals submitted by the United States and members of the FANs, in 2005 Canada submitted five elaborated proposals on antidumping issues; and China, Egypt, India, and South Africa each submitted one such elaborated proposal. While the EU has been a major participant in the Rules AD discussions, it has not submitted any elaborated proposals on AD issues, but did in 2005 submit an elaborated proposal addressing CVD proceedings.

The United States has been a leading contributor to the technical discussions aimed at deepening the understanding of Members of the issues raised in the Rules Group, drawing upon extensive U.S. experience and expertise as both a user of trade remedies and as a country whose exporters are often subject to other Members' use of trade remedies.
In addition to presenting its own submissions, the United States has been actively engaged in addressing the submissions from other Members, carefully scrutinizing and vigorously questioning the technical merits of the issues they have raised, as well as seeking to ensure that the Doha mandate for the Rules Group is fulfilled.

Subsidies: In 2005, the United States, Australia, Brazil, and Canada submitted elaborated proposals in the subsidies area. (As noted above, the EU also submitted a paper on CVD proceedings). The United States paper followed up on previous papers with respect to the calculation of subsidy benefits. Importantly, this issue was discussed in detail as part of the Chairman's plurilateral consultations and was generally well received. Australia submitted revised proposals to clarify the definition of a *de facto* subsidy and the "withdrawal of subsidy" remedy for prohibited subsidies.

Brazil submitted a follow-up paper on export credits, which was discussed in the Chairman's plurilateral consultations, and three other papers commenting on previously submitted subsidy papers by other Members. Most notably, among the latter three papers, Brazil supported Canada's earlier paper calling for the reinstatement of the "dark amber" category of subsidies under Article 6.1 of the Subsidies Agreement. Lastly, Canada submitted a follow-up paper on the "pass-through" of subsidy benefits that contained a modified and scaled-back version of an earlier proposal on the same topic.

In early 2006, the United States is submitting an elaborated paper regarding prohibited subsidies. Noting that serious market and trade distortions can result from types of subsidies other than those currently prohibited by the Subsidies Agreement *(i.e.,* export subsidies and import-substitution subsidies), the United States calls upon Members to consider expanding the current prohibition. Specifically, the United States suggests considering practices similar to those listed in the now-lapsed "dark amber" category of subsidies as the first candidates for inclusion in an expanded prohibited category. Other possible additional candidates could include other forms of egregious government intervention such as equity investment in, or lending to, companies with poor financial prospects unable to attract commercial financing, or other funding of companies or projects that would not otherwise receive conventional commercial financing. In addition to proposing the expansion of the prohibited category, the paper makes a significant new proposal to address the United States' increasing concerns with foreign state-owned and state-controlled enterprises. The paper proposes that there be a requirement that Members notify the WTO Subsidies Committee of any intended provision of equity capital as well as other transparency measures for all government-controlled companies, such that Members can be assured of a consistently commercial, arm's-length relationship between the government-owner and the state-owned enterprise.

Fisheries Subsidies: The United States continued to play a major leadership role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2005, working closely with a broad coalition of developed and developing country Members, including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, and Peru. The United States is seeking stronger WTO rules that will include a broad-based prohibition of the most harmful fisheries subsidies, *i.e.*, those that lead to overexploitation and depletion of fish stocks. At the Hong Kong Ministerial Conference, the United States was instrumental in securing greater focus on the issue among Members and heightened public awareness of our efforts among a variety of constituencies. The United States views these negotiations as a groundbreaking opportunity for the WTO to show that trade liberalization can benefit the environment and contribute to sustainable development as well as addressing traditional trade concerns.
The Hong Kong Ministerial Declaration acknowledges the environmental dimension of the fisheries subsidies negotiations and notes Members' broad agreement that improved disciplines should include a prohibition of certain forms of subsidies that contribute to overcapacity and overfishing.

Leading up to the Hong Kong Ministerial, Members in late 2004 and early 2005 discussed possible frameworks for improved disciplines. The United States and other proponents of stronger disciplines advocated a framework that would center on a prohibition, combined with appropriate exceptions (the "top down" approach).

In contrast, Japan and Korea, joined by Chinese Taipei, advocated a framework premised on a potentially large number of permitted subsidies and a small number of prohibited subsidies (the "bottom up" approach). Following the discussion of structure, Members then focused on providing technical information and analysis about particular categories of fisheries programs, with suggestions as to how they would be treated under new disciplines.

The United States submitted a paper on programs for decommissioning fishing vessels and withdrawing fishing licenses (generally known as buyback programs), drawing upon recent U.S. experience with such programs. Papers by other Members included discussions of management services and aquaculture. Brazil introduced a comprehensive proposal essentially premised on the top down approach, detailing, in particular, ideas for addressing developing country interests. In the final negotiating session prior to the Hong Kong Ministerial, the United States co-sponsored a paper with Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan, and Peru providing an overview of the U.S. position (including reaffirmation of support for the top down approach), as well as assessing progress to date and suggesting next steps in the negotiations.

Regional Trade Agreements: The discussions in the Rules Group on regional trade agreements (RTAs) have focused on ways in which WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved. The discussions have followed two tracks -- transparency and systemic (or substantive) issues. During 2005, significant progress was made in the area of transparency. The Group has worked from a Chair's draft proposal, setting out specific steps to improve the effectiveness of the current WTO system for reviewing and analyzing trade agreements. In addition, the Group worked with the Secretariat to develop a Factual Presentation to use as the basis for the examination of a RTA. The Group has also discussed ways to address the backlog of examinations in the Committee on Regional Trade Agreements. On systemic issues, work has centered on such issues as the GATT Article XXIV requirement that RTAs eliminate tariffs and "other restrictive regulations of commerce" on "substantially all the trade" between parties (and the analogous provisions for the GATS). Some developing country Members have proposed introducing flexibilities for RTAs involving both developed country and developing country Members.

In 2005, papers on RTA issues submitted to the Rules Group by Australia, Chile and Korea, China, Chinese Taipei, the EU, Japan, and Norway contributed to the discussions on both transparency and systemic issues. The United States has been an active participant in the RTA discussions in the Group.

Prospects for 2006

Given the Ministerial direction provided at Hong Kong, the Rules Group will intensify and accelerate its work in 2006, focusing on working to complete its analysis of the detailed textual proposals on antidumping, countervailing duty, and subsidies issues that are now before the Group, as well as of additional proposals to be submitted in 2006. In addition, pursuant to the Hong Kong Declaration, the Rules Chairman will prepare consolidated texts of the Antidumping and Subsidies Agreements to serve as the basis for the final stage of the negotiations. The United States will continue to pursue an aggressive affirmative agenda in 2006, based on the core principles summarized above, and 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; strengthening the existing subsidies rules; and strengthening WTO disciplines on harmful fisheries subsidies. The United States intends to submit additional proposals on these issues in 2006, including detailed textual proposals, while continuing its scrutiny of proposals by other Members to ensure compliance with the Doha Rules mandate. Concerning fisheries subsidies, the United States will press for an ambitious outcome, including a broad-based prohibition of the most harmful subsidies and improved transparency and accountability in the sector.

On RTAs, the Hong Kong Declaration instructed the Group to intensify negotiations "with a view to a provisional decision on RTA transparency by 30 April 2006." Consequently, discussions on transparency will intensify to meet that deadline. On systemic issues, the United States will continue to advocate 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 1 August 2004 Decision by the General Council on the Doha Work Program. Commencing negotiations on Trade Facilitation has greatly enhanced the market access aspect of the Doha negotiating agenda. Opaque border procedures and unwarranted delays faced at the borders of key export markets can add the equivalent of five to fifteen percent tariff.

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.

Since being formally established by the Trade Negotiations Committee in late 2004, the Negotiating Group on Trade Facilitation (TFNG) has met eleven times under the chairmanship of Ambassador Muhamad Noor Yacob of Malaysia. During 2005, 60 written submissions sponsored by more than 100 Members were submitted. On November 21, 2005, the TFNG achieved a consensus-based report for transmittal to the Trade Negotiations Committee, including specific recommendations on proceeding in 2006, as well as a matrix of the proposals submitted. The report was endorsed as one of the outcomes of the Hong Kong Ministerial Conference.

Major Issues in 2005

The modalities for conducting the trade facilitation negotiations, set forth as part of the 1 August 2004 General Council decision, 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 least developed country Members, and the work of other international organizations.

Hallmarks of the 2005 work on Trade Facilitation were the 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.

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.

At the same time, the negotiations are seen by most Members as potentially removing some of the non-tariff barriers most frequently cited by exporters, while bringing particular benefits to the ability of small and medium-size business to participate in the global trading system.

In 2005, understandable concerns emerged on the part of many developing country Members about the challenge of implementing the results of the negotiations, and the negotiating group has begun to take up these issues in a practical and problem-solving manner. For example, there has been a focus on ways for developing country Members to undertake assessments of their individual situations regarding capacity and progress toward implementing the proposals submitted. In conjunction with this, there has been intensified work on issues related to technical assistance, such as a potential role for a future Committee. Informally, it is already 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 having an "offensive" interest in seeking implementation by their neighbors of any future new commitments in this area. This has led to broad developed and developing country Member alliances on some of the proposals.

With this as a context, leadership in advancing Trade Facilitation in the WTO continues to be provided by the Members from varying developing levels known as the "Colorado Group": the United States, Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland. Additional leaders emerged in 2005 that contributed to a positive and constructive negotiating environment, including India, Rwanda, and the Philippines. At various times throughout 2005, the United States worked closely with each of these Members, and others, to take the work forward.

A boost to the momentum of the WTO negotiations continues to be provided by the U.S. work in its recent free trade agreements. With partners as diverse as Chile, Singapore, Australia, Morocco, and Bahrain, each FTA negotiated by the United States has included a separate, stand-alone chapter that contains significant commitments on customs administration. Each of our current and future FTA partners has become important partners and champions in Geneva toward moving the negotiations ahead and toward a rules-based approach to Trade Facilitation.

The proposals submitted to the Trade Facilitation negotiations in 2005 generally reflect measures that would capture, as WTO commitments, 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 United States' joint proposal with Uganda (calling for elimination of consularization formalities and fees), and a joint proposal with India (proposing a cooperation mechanism for customs facilitation and compliance). Overall, the United States made seven submissions outlining specific proposals:

TRADE FACILITATION PROPOSALS OF UNITED STATES

Proposed new WTO commitment	Citation	Background
- *Provide advance rulings to traders (e.g., tariff classification, customs valuation.*	TN/TF/W/12 Feb 4, 2005; GATT Article X	- Creates "up-front" certainty and diminishes expensive and often politicized disputes between customs and traders.
- *Internet publication of Laws, Regulations, and other elements that are currently required to be "published" by GATT Article X* - *Internet publication of national import procedure.s*	TN/TF/W/13 Feb 4, 2005; GATT Article X	- Ready access to information on procedures through Internet is critical for small enterprises taking initial steps toward market opportunities.
- *Expedited treatment for express shipments.*	TN/TF/W/15 Feb 4, 2005; GATT Article VIII	- Critical to manufacturers relying on speed of supplies. - Small exporters are beneficiaries; opportunity to 'leapfrog' infrastructure issues getting to market and customers.
- *Internet publication of fees;* - *Clarify parameters for WTO-consistent fees.*	TN/TF/W/14 Feb 4, 2005; GATT Article VIII and X	- Important to small enterprises, disproportionately burdened by arbitrary fees and lack of transparency.
- *Maintain system that provides, through guarantee, for release of goods before final payment of duties and resolution of other customs formalities.*	TN/TF/W/21 Mar 21, 2005; GATT Article VIII	- Linchpin to rapid release of goods and advancing use of risk management by Customs; allows inspection resource re-direction and savings.
- *Prohibition of consularization and related fees.*	TN/TF/W/22 Mar 21, 2005; GATT Article VIII (with Uganda)	- Eliminates procedure that has become outdated and has effects ranging from being an "irritant" to a significant market access barrier.
- *Multilateral mechanism for information exchange, utilizing the WCO "Data Model."*	TN/TF/W/57 July 25, 2005 (with India)	- Result would be tool for meeting both facilitation and compliance challenges; create virtual network for cooperation among border authorities of Members.

Another significant submission was made by the United States to inform the work of the Negotiating Group under the Trade Facilitation negotiating mandate on technical assistance, providing a detailed overview of U.S. activities (TN/TF/W/71; November 10, 2005). The submission noted that, between 2000 and 2005, U.S. trade-related technical assistance more than doubled, from $504 million to $1.3 billion, and that trade facilitation assistance was the fastest growing and largest share, comprising $368 million in FY 2005. Since 2000, the United States has carried out such activities in 101 countries, including work on transparency, administrative practice and organization, risk management, customs valuation, tariff classification, rules of origin, customs integrity, and automation. The 216 page U.S. submission provided a description of each individual project, noting that the assistance was conducted in a coordinated fashion through many agencies of the U.S. government.

Prospects for 2006

In accordance with the recommendations of the Negotiating Group endorsed at the Hong Kong Ministerial, the negotiations will intensify on all aspects of the mandate, including a recognized need to "move into focused drafting mode" early enough in 2006 to allow for a timely conclusion of text-based negotiations. It is possible that some further proposals may be submitted, but it is likely that much of the focus will involve the consideration of the proposals listed below and, potentially, the refinement and articulation of some into agreed text of an agreement.

There is a great potential for new and strengthened WTO commitments that could provide short-term if not immediate "on the ground" positive effects and offer a true "win-win" opportunity for all Members. One of the most frequently-cited impediments to the growth of South-South trade is the absence of a rules-based approach to goods crossing the border. While negotiations toward new and strengthened disciplines move forward, it will be important that negotiations also proceed in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations. In particular, the negotiations represent an opportunity to address longstanding issues of redundancy in assistance efforts, lack of coordination, and frequent failure to specifically target technical assistance toward concrete results. The aim of the United States in 2006 will be to ensure a continued negotiating dynamic that makes clear that every Member, as both an importer and an exporter, has a real stake in robust results and in their implementation.

MEASURES PROPOSED[2] BY WTO MEMBERS TO IMPROVE AND CLARIFY GATT ARTICLES V, VIII AND X

A. Publication and Availability of Information

- Publication of Trade Regulations
- Publication of Penalty Provisions
- Internet Publication

a) of elements set out in Article X of GATT 1994
b) of specified information setting forth procedural sequence and other requirements for importing goods
    - Notification of Trade Regulations
    - Establishment of Enquiry Points/SNFP/Information Centres
    - Other Measures to Enhance the Availability of Information

A. Time Periods between Publication and Implementation
    - Interval between Publication and Entry into Force

B. Consultation and Comments on New and Amended Rules
    - Prior Consultation and Commenting on New and Amended Rules
    - Information on Policy Objectives Sought

C. Advance Rulings
    - Provision of Advance Rulings

[2] As of November 2005, 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 Hong Kong Ministerial and included in Annex E of the Hong Kong Ministerial Declaration.

D. Appeal Procedures
- Right of Appeal
- Release of Goods in Event of Appeal

E. Other Measures to Enhance Impartiality and Non-Discrimination
- Uniform Administration of Trade Regulations
- Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials
- Establishment of a Code of Conduct
- Computerized System to Reduce/Eliminate Discretion
- System of Penalties
- Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences
- Appointment of Staff for Education and Training
- Coordination and Control Mechanisms

F. Fees and Charges Connected with Importation and Exportation
- General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
- Specific Parameters for Fees/Charges
- Publication/Notification of Fees/Charges
- Prohibition of Collection of Unpublished Fees and Charges
- Periodic Review of Fees/Charges
- Automated Payment
- Reduction/Minimization of the Number and Diversity of Fees/Charges

G. Formalities Connected with Importation and Exportation
- Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation
- Non-discrimination
- Periodic Review of Formalities and Requirements
- Reduction/Limitation of Formalities and Documentation Requirements
- Use of International Standards
- Uniform Customs Code
- Acceptance of Commercially Available Information and of Copies
- Automation
- Single Window/One-time Submission
- Elimination of Pre-Shipment Inspection
- Phasing out Mandatory Use of Customs Brokers

H. Consularization
- Prohibition of Consular Transaction Requirement

I. Border Agency Cooperation
- Coordination of Activities and Requirement of all Border Agencies

J. Release and Clearance of Goods

- Expedited/Simplified Release and Clearance of Goods
- Pre-arrival Clearance
- Expedited Procedures for Express Shipments
- Risk Management /Analysis, Authorized Traders
- Post-Clearance Audit
- Separating Release from Clearance Procedures
- Other Measures to Simplify Customs Release and Clearance
- Establishment and Publication of Average Release and Clearance Times

K. Tariff Classification

- Objective Criteria for Tariff Classification

L. Matters Related to Goods Transit

- Strengthened Non-discrimination
- Disciplines on Fees and Charges
- Publication of Fees and Charges and Prohibition of Unpublished ones
- Periodic Review of Fees and Charges
- More effective Disciplines on Charges for Transit
- Periodic Exchange Between Neighbouring Authorities
- Disciplines on Transit Formalities and Documentation Requirements
  - (a) Periodic Review
  - (b) Reduction/Simplification
  - (c) Harmonization/Standardization
  - (d) Promotion of Regional Transit Arrangements
  - (e) Simplified and Preferential Clearance for Certain Goods
  - (f) Limitation of Inspections and Controls
  - (g) Sealing
  - (h) Cooperation and Coordination on Document Requirements
  - (i) Monitoring
  - (j) Bonded Transport Regime/Guarantees
- Improved Coordination and Cooperation
  - (a) Amongst Authorities
  - (b) Between Authorities and the Private Sector

6. Committee on Trade and Environment, Special Session

Status

Following the Fourth 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 specific reference 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 2005

The CTE in Special Session (CTESS) had three formal meetings and three informal meetings in 2005 to discuss the above-mentioned negotiating mandates.

In addition to the CTESS meetings, the CTE also met in Regular Session (CTERS) three times during 2005, debating important trade liberalization issues, including market access under Doha sub-paragraph 32(i), TRIPS and environment under Doha sub-paragraph 32(ii), labeling for environmental purposes under Doha sub-paragraph 32(iii), capacity building and environmental reviews under Doha paragraph 33 and the environmental effects of negotiations under Doha paragraph 51 (See Section on Other General Council Bodies/Activities, Committee on Trade and the Environment).

Sub-Paragraph 31(i): MEA Specific Trade Obligations and WTO Rules. During 2005, discussions under this mandate were less active due to Members' intense focus on environmental goods negotiations. Members continued to provide information on their experiences with respect to negotiation and implementation of specific trade obligations set out in MEAs, noting the value of coordination between trade and environment officials at the national and international levels.
A large majority of Members, including the United States, have noted their interest in continuing experience-based discussions and have resisted any premature consideration of potential results in the negotiations. However, some Members have advocated the development of certain "principles and parameters" to help govern the WTO-MEA relationship, such as the principles of no hierarchy, mutual supportiveness and deference between the trade and environment regimes.
Sub-Paragraph 31(ii): Procedures for Information Exchange and Criteria for Observer Status. While this mandate has not been the subject of active discussions recently, Members are generally supportive of identifying additional means to enhance information exchange between MEA secretariats and WTO bodies.

In this regard, delegations have suggested a number of options, including formalizing a structure of regular information exchange sessions with MEAs; organizing parallel WTO events at meetings of the conferences of the parties of MEAs; organizing joint WTO, United Nations Environment Program and MEA technical assistance and capacity building projects; promoting regular exchange of documents between secretariats; and creating additional avenues for communication and coordination between trade and environment officials. On the issue of observer status for MEA secretariats in WTO bodies, little progress was made, although Members were able to agree on a separate decision to allow certain MEA secretariats to be invited on an ad hoc basis to attend CTESS meetings. With respect to a more permanent status, a number of delegations expressed the view that the issue of criteria for observership is dependent on an outcome in more general ongoing General Council and TNC deliberations.

Sub-Paragraph 31(iii): Environmental Goods and Services. Members intensified their discussions on environmental goods in 2005, seeking to clarify the scope of the mandate. Discussions of a technical nature were held at the formal CTESS meetings, as well as at informal information exchange sessions organized in the latter half of 2005. Nine Members have put forward lists of environmental goods, including the United States, which proposed a list of 155 products in July 2005. The products included in Members' lists (such as air pollution filters and solar panels) have been compiled in the WTO Secretariat's *Synthesis of Submissions on Environmental Goods.*[3] Also in 2005, an alternative approach to multilateral negotiations was proposed by one delegation, described as the national "Environmental Project Approach." There is, at this stage, a divergence of views as to how the work should proceed in the CTESS, and how the CTESS should interface with the Non-Agriculture Market Access Negotiating Group and the Council on Trade in Services in Special Session, where environmental goods and services market access are also under discussion.

Prospects for 2006

In 2006, the CTESS will need to move toward fulfillment of all aspects of the mandate under Paragraph 31 of the Doha Declaration. Under sub-paragraph 31(i), Members are expected to wrap-up their discussions of national experiences in negotiation and implementation of STOs set out in MEAs, including drawing any lessons that might be learned from such experiences. 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. Discussions under sub-paragraph 31(ii) are likely to become more concrete in the coming year. Several Members have 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 conflict prevention between the trade and environment regimes. Finally, the CTESS will remain the forum for 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.

7. Dispute Settlement Body, Special Session

Status

Following the Fourth Ministerial Conference at Doha Qatar in November, 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 (i) that 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) that this continued work 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; and (iii) that the first meeting of the Special Session of the DSB 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

[3] This publication is contained in document TN/TE/W/63, which is available on the WTO website, www.wto.org.

Members should continue work towards clarification and improvement of the DSU, without establishing a deadline.

Major Issues in 2005

The Special Session of the DSB met several times during 2005 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. Notwithstanding these efforts, Members were unable to conclude discussions.

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 for the first time 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, joined by 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.

Prospects for 2006

In 2006, Members will continue to work to complete the review of the DSU. Members will be meeting several times over the course of 2006 in an effort to complete their work.

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 Agreements), Ministers agreed at the Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. Further, in the August 1, 2004 decision on the Doha Work Programme, the WTO General Council reaffirmed Members' commitment to progress in this area of negotiation in line with the Doha Mandate. At the Hong Kong Ministerial Conference, Ministers agreed to intensify negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations foreseen in the Doha Ministerial Declaration. This topic is the only issue before the Special Session of the TRIPS Council.

Major Issues in 2005

During 2005, the TRIPS Council continued its negotiations under Article 23.4, which are intended to facilitate protection of certain geographic indications. Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Taiwan, and the United States continued to support the Joint Proposal under which Members would notify their geographical indications for wines and spirits for incorporation into a register on the WTO website, and several Joint Proposal co-sponsors 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 geographical indications or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations with regard to geographical indications 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 countries continued to support their alternative proposal for a binding, multilateral system for the registration and protection of geographical indications for wines and spirits.

In June 2005, the EU submitted a draft legal text that combines two of their 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 the new proposal is 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. At the international level, Members would have eighteen months in which to object to the registration of particular notified geographical indications that they believed were not entitled to protection within their own territory. If no objections were made, each notified geographical indication would be registered and all Members would be required to provide protection as required under Article 23. If an objection were made, the notifying Member and the Member objecting would negotiate a solution, but the geographical indication would have to be protected by all Members that had not objected. In addition, although certain limited objections to the registered GI would be available in domestic judicial proceedings, the notified GI would be presumed valid against a competing rightholder, including a prior rightholder. Essentially, in both cases in which an objection is made at the international or national levels, the system proposed by the EU would, as a practical matter, enable one country 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.

Hong Kong China's proposal of April 2003 remains on the table, aimed at establishing a system under which a registration should be accepted by participating Members' domestic courts, tribunals or administrative bodies as *prima facie* evidence of: (a) ownership; (b) that the indication is within the definition of geographical indications under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings before domestic courts, tribunals or administrative bodies when dealing with matters related to GIs. In effect, a rebuttable presumption is created in favor of owners of geographical indications in relation to the three relevant issues. Although this proposal was discussed in the Special Session, it has not been endorsed by either supporters of the Joint Proposal or the EU proposal.

With the intention of facilitating discussion, the WTO Secretariat presented a document (TN/IP/W/12) which contains a side-by-side presentation of the three proposals. There was no shift in currently-held positions among the Members, nor any movement towards bridging the sharp differences between the co-sponsors of the Joint Proposal and the EU.

Prospects for 2006

In his report to the Trade Negotiating Committee, the Chair of the Special Session of the TRIPS Council noted that differences remain on the two key issues of (1) the extent to which legal effects at the national level should be consequent on the registration of a geographical indication for a wine or a spirit in the system and (2) the question of participation, including whether any legal effects under the system should apply in all Members or only in those opting to participate in the system. The Chair also noted that further work is also required on a range of other points, including on questions of costs and administrative burdens for Members. In addition, Ministers agreed to intensify negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations foreseen in the Doha Ministerial Declaration.

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, 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) was established by the Trade Negotiations Committee in February 2002 to fulfill the Doha 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, the WTO provides developing country Members with technical assistance and transitional arrangements toward implementation of WTO agreements, and, ultimately, full integration into the multilateral trading system. S&D provisions also enable Members to provide better-than-MFN access to markets for developing country Members.

As part of the S&D review, the CTD in Special Session (CTD-SS) provided recommendations to the General Council on a number of proposals for consideration at the Cancun Ministerial, but no decisions were taken. Discussions on other proposals have continued in the CTD-SS and, in some cases, in negotiating groups or Committees that address the respective subject matter of the proposals. In recent months, informal discussions have focused on better ways to address the mandate, reflecting a desire to find a more productive approach than that associated with the specific proposals tabled by individual Members or groups. Developed countries have emphasized willingness to provide greater S&D treatment to the least-developed countries than to those Members that are now more advanced. However, while there is some recognition that any additional S&D provisions will likely focus on the needs of the least-developed and more vulnerable Members, developing countries want to ensure there is no diminution of their existing rights under S&D.

Major Issues in 2005

In 2005, work on the CTD Special Session's mandate focused on two areas: an effort to redirect and refocus discussion to make it more productive; and a series of proposals pertaining to the least-developed

countries (LDCs). Initially, the Chairman of the Negotiating Group put forward a different, potentially more productive approach to the work of the CTD-SS, with the objective to recognize the differences among developing country Members in their needs and capacities across areas of negotiation, and in their abilities to implement WTO rules. This approach was ultimately rejected by a number of developing country Members sensitive to differentiation among developing country Members. Other developing country Members would like to see more individualized results available under S&D provisions. Ultimately, Members agreed to focus work as a priority on five LDC proposals. These included proposals on: access to WTO waivers, coherence, duty free and quota free treatment for LDCs, Trade Related Investment Measures (TRIMS), and flexibility for LDCs that have difficulty implementing their WTO obligations. At the Hong Kong Ministerial, delegations reached agreement in these five areas.

Prospects for 2006

In 2006, it is anticipated that work will continue on the outstanding proposals of other developing country Members and on the underlying issues inherent in them. The Africa Group has indicated an interest in taking a more holistic approach to these negotiations and discussing an overall framework for S&D in the future, but the precise ideas have not been fully elaborated. Still other developing Members are concerned that this type of approach also would raise the prospect of differentiation or graduation. Much of the practical work on S&D in 2006, however, 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 Fourth Ministerial Conference at Doha in November, 2001 established the mandate for the Working Group on Trade, Debt and Finance (TDF). Ministers instructed the Working Group to examine the relationship between trade, debt and finance, and to examine 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 countries. The Group was also instructed 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 2005

The Working Group held three formal meetings in 2005. The first meeting addressed the inter-linkages between external liberalization and internal reforms. The WTO Secretariat provided a background document that was the basis for the exchange of Members' views on external liberalization and internal reforms. At the second meeting, the Working Group addressed the topics of external liberalization and internal reforms; trade liberalization as a source of growth; the importance of market access and the reduction of other trade barriers in the DDA's negotiations; and external financing, commodity markets and export diversification. The WTO Secretariat provided a background document that was used as a basis for Members to exchange views on the agenda topics. At the third meeting, the Members discussed the working group's report to the General Council.

At these meetings, the United States and other Members continued to stress the importance that the Working Group avoid venturing into discussion and work already covered by the mandates of the IMF and World Bank as well as other relevant bodies of the WTO.

Prospects for 2006

In 2006, the Working Group will continue to examine the relationship between trade, debt and finance, and of any possible recommendations on steps that might be taken within the existing 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 countries.

2. Working Group on Trade and Transfer of Technology

Status

During the Fourth Ministerial Conference in Doha, 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, asking it to report on its progress to the Fifth Session of the Ministerial Conference (Cancun). The WGTTT met three times in 2005, continuing its Doha Ministerial mandate to examine the relationship between trade and the transfer of technology. During the Sixth Ministerial Conference in Hong Kong, 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.

Major Issues in 2005

In the period since the Doha Ministerial, the WGTTT considered submissions from the Secretariat, WTO members, other WTO bodies, and other inter-governmental organizations. Members discussed two documents prepared by the Secretariat, a general background paper and "A Taxonomy of Country Experiences on International Technology Transfers." The latter paper suggested a framework for classifying the policies that governments have adopted to promote technology transfer and included a series of country case studies. The WGTTT also considered several papers circulated for discussion by Members. One submission by the EU argued for the development of a common understanding of the definition of technology transfer and identified various channels for the transfer of technology. Another EU submission highlighted the importance to technology transfer of commercial trade and investment, effective intellectual property rights protection, and the absorptive capacities of host countries. Several developing countries submitted a paper that identified provisions relating to the transfer of technology in WTO agreements.

In 2003, a group of developing countries, 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." This paper has been the focus of much of the discussion to date. The United States and several other Members objected too 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 promote the transfer of technology by private firms, rather than hindering such transfer, as the paper suggested.

During discussions on this issue and other inputs into the working group's deliberations, the United States and other countries argued that market-based trade and investment are the most efficient means of promoting technology transfer and that governments should generally not require the transfer of technology. The United States also argued that the contribution of commerce to technology transfer reinforces the case for continued trade and investment liberalization. The United States and other countries suggested that developing countries 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 countries expressed the view that many of the issues raised should be discussed in WTO bodies with expertise on the particular subject matter.

In October 2005 India, Pakistan and the Philippines submitted a new paper, also entitled "Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries." The submission focused on: expanding technical assistance under the TRIPS Agreement; encouraging multinational firms to perform science and technology development work in developing countries; discouraging use of allegedly restrictive business practices by technology owners; and enhancing mobility of scientists and technicians under the GATS Agreement. Although this paper raises some of the same concerns as previous submissions, the United States and other countries expressed appreciation for the pragmatic tone, and viewed it as a good basis for further discussions.

The Working Group on Trade and Transfer of Technology was not a major focus of the Sixth Ministerial Conference at Hong Kong, as Members had agreed by consensus ahead of time on language for the Ministerial Declaration, as follows: We take note of the report transmitted by the General Council on the work undertaken and progress made in the examination of the relationship between trade and transfer of technology and on the consideration of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. Recognizing the relevance of the relationship between trade and transfer of technology to the development dimension of the Doha Work Programme and building on the work carried out to date, we agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration. We instruct the General Council to report further to our next Session.

Prospects for 2006

As of this writing, no WGTTT meetings have been scheduled in 2006. It is expected that the group will continue its examination of issues raised in the October 2005 India/Pakistan/Philippines paper.

3. Work Programme on Electronic Commerce

Status

In the Hong Kong Ministerial Declaration adopted on December 18, 2005, WTO Members agreed to reinvigorate the Work Programme on Electronic Commerce.

In particular, Members agreed to examine development-related issues and to discuss the trade treatment, *inter alia*, of electronically delivered software through the Work Programme.

The Ministers also agreed to extend the moratorium on imposing customs duties on electronic transmission 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 issues identified by the various sub-bodies as cross-cutting, i.e., those that impacted 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. No agreement has been reached on this issue, but it will be examined more thoroughly in the coming year.

Major Issues in 2005

The Work Programme on Electronic Commerce remains an item in the Doha mandate. In November 2005, a dedicated discussion 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 permanent decisions were made on either issue, but the discussion reinvigorated and provided direction for the Work Programme for 2006, as outlined in paragraph 46 of the Hong Kong Ministerial Declaration.

Prospects for 2006

As in the past, the United States is 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. More sessions of the Work Programme are expected in 2006 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. The General Council and Ministerial Conference consist of representatives of all WTO Members.

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. All accessions to the WTO must be approved by the General Council or the Ministerial Conference. Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the General Council 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. 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 Trading Arrangements 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. 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. The mandates are part of DDA and their work is reviewed elsewhere in this chapter.

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 2005, the Chairman of the General Council 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 to making progress on the core issues in the Doha Work Program in the run-up to the Sixth WTO Ministerial Conference held December 13-18, 2005 in Hong Kong, China.

Major Issues in 2005

Ambassador Amina Mohamed of Kenya served as Chairman of the General Council in 2005. Following a months-long process early in the year, the General Council selected Pascal Lamy to be the new Director General of the WTO, replacing Dr. Supachai Panitchpakdi. The major focus of Chairman Mohamed, Director-General Lamy and the General Council over the course of the remainder of the year was the effort to produce a draft text for consideration by Ministers in Hong Kong on the core negotiating issues of the Doha Development Agenda. This draft was successfully completed in early December 2005. The Ministerial declaration agreed in Hong Kong is described at length earlier in this Chapter. In addition to work on the DDA, activities of the General Council in 2005 included:

Accessions: In 2005, the General Council approved the accessions of Saudi Arabia and Tonga. (See section on accessions.) The General Council also approved requests from Iran, Serbia, Montenegro and Sao Tome to initiate accession negotiations and directed that working parties be established with standard terms of reference to develop their protocols for accession.

Consultative Board Report: In 2003, former Director-General Supachai appointed a board of eight persons, all eminent in international trade, to study the challenges facing the WTO and to recommend ways in which the WTO could be better equipped to meet them. Released in January 2005, the report of the Consultative Board reviewed the fundamental principles of the trading system and recommended practical institutional changes. The General Council subsequently met to review the recommendations contained in the report ("The Future of the WTO: Addressing Institutional Challenges in the New Millennium") with the members of the Consultative Board and to exchange views. Members are continuing to reflect on the recommendations.

TRIPS and Public Health: On December 6th, WTO members approved an amendment to the TRIPs Agreement making permanent a decision on TRIPs and public health originally adopted in 2003. This General Council decision is the first time that an amendment to a WTO Agreement is offered for Members' acceptance.

Enlargement of the European Union: In connection with the negotiations for compensation under Article XXIV.6 of GATT 94 relating to May 2004 enlargement of the EU, the General Council twice approved an extension of the deadline for withdrawal of concessions.

Bananas: Several banana-producing Latin American countries registered complaints regarding impact of enlargement and tariffication of quotas under the EU banana regime. Under Article XXVIII, a WTO member that considers it has a "substantial interest" that is not being recognized may refer the matter to the General Council for a formal determination. The General Council considered these complaints over the course of 2005, but the issue remains unresolved.

Waivers of Obligations: The General Council approved requests from Albania, Argentina, Malaysia, Panama and Israel for waivers of WTO obligations relating to tariff concessions and schedules in 2005. The General Council also agreed to allow the Goods Council to extend consideration of the three waiver requests from the United States for its preference programs (AGOA, ATPA and CBTPA) and to report back to the General Council once it had completed this work. As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers, including those applicable to the United States for the Caribbean Basin Economic Recovery Act, and preferences for the Former Trust Territories of the Pacific Islands. Annex II contains a detailed list of Article IX waivers currently in force.

Capacity Building through Technical Cooperation: The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (*i.e.*, modernizing their government operations to facilitate effective participation in the negotiation and implementation of WTO Agreements).

China Transitional Review Mechanism: In December, the General Council concluded its fourth 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 IPR enforcement and urged China to make further progress toward the institutionalization of market mechanisms, fairness, transparency and predictability in its trade regime.

Jones Act Review: The General Council conducted its fourth review of the exception provided under Paragraph 3 of GATT 1994. This exemption applies to certain statutory provisions that the United States notified to the WTO that prohibit foreign-built or repaired ships from engaging in the coastwise trade (i.e., cabotage); however, the United States loses the exemption if the Jones Act is amended to become less WTO-consistent.

Prospects for 2006

The General Council is expected to be extremely active in 2006. In addition to its management of the WTO and its oversight of implementation of the WTO Agreements, the General Council will direct the DDA negotiations in the critical work needed to conclude the 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. The CTG was also responsible for overseeing the Textiles Monitoring Board during its 10-year life, which ended in December 2004.

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 9 waiver provisions, for example, is considered in the CTG. Trade preferences granted to African, Caribbean and Pacific (ACP) and the Caribbean Basin Initiative (CBI) countries by the European Union and the United States, respectively, required waivers given initial approval by the CTG.

Major Issues in 2005

In 2005, the CTG held four formal meetings. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention 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 taken by individual Members with respect to the operation of the WTO Agreements. Many of these complaints were resolved through consultation. In addition, five major issues were debated extensively in the CTG in 2005:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules. In addition, the CTG took up three waiver requests for which discussions are continuing:

the U.S. request concerning AGOA, CBERA and ATPA

Pakistan's request concerning its auto sector TRIMS.

the EU request for an extension of its ACP banana TRQ.

TRIMS Article 9 Review: The Council met on several occasions to consider proposals by India and Brazil that would lower the level of obligations for developing countries under the TRIMS Agreement. Developed countries opposed any changes to the TRIMS agreement. Consultations continue concerning a proposal by developing countries to have the Secretariat undertake a study of developing countries experiences with various TRIMS.

China Transitional Review: On November 25, the CTG conducted the fourth of China's Transitional Review Mechanism (TRM), as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information; answered questions posed by Members, and reviewed the TRM reports of CTG subsidiary bodies. (See Chapter IV Section F on China for more detailed discussion of its implementation of WTO commitments).

Textiles: The CTG met several times to review a proposal by small exporting Members to find ways to assist them with post-ATC adjustment problems. These countries argued that the elimination of quotas will result 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.

EU Enlargement: At its meeting on March 11, the CTG agreed to extend the deadline for compensation negotiations and referred the matter to the General Council for adoption.

Prospects for 2006

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Post-ATC adjustment, TRIMS Article 9 review and the three outstanding waiver requests will be prominent issues on the agenda.

1. Committee on Agriculture

Status

In 1995, the WTO formed the Committee on Agriculture (the Committee) to oversee the implementation of the Agreement on Agriculture (the Agreement) and to provide a forum for Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems on implementation, thus 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 and net food-importing developing countries (NFIDC).

The Agreement represents a major step forward in bringing agriculture more fully under WTO disciplines. The Agreement established disciplines in three critical areas affecting trade in agriculture. First, the Agreement places limits on the use of export subsidies. Products that had not benefited from export subsidies in the past are banned from receiving them in the future.
Where Members had provided export subsidies in the past, the future use of export subsidies was capped and reduced. Second, the Agreement set agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into simple tariffs with all agricultural tariffs "bound" and made subject to reduction commitments. Third, the Agreement calls for reduction commitments on trade-distorting domestic supports, while preserving criteria-based "green box" policies that can provide support to agriculture in a manner that minimizes distortions to trade.

Since its inception, the Committee has proven to be a vital instrument for the United States to monitor and enforce agricultural trade commitments that were undertaken by other countries 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 in the WTO.
However, there have been important exceptions where the U.S. agricultural trade interests have been adversely affected. In these situations, the Committee has frequently served as an indispensable tool for resolving conflicts before they become formal WTO disputes

Major Issues in 2005

The Committee held three formal meetings in March, June, and September 2005, to review progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of 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, 119 notifications were subject to review during 2005. The United States actively participated in the notification 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 mechanism to enhance the transparency of China's tariff-rate quota (TRQ) system and to help address low quota-fill in several global markets. As another example, the United States was successful in gaining EU agreement to double the amount authorized for import under any license issued under the EU's pork TRQ, thereby reducing red-tape and making shipment sizes more commercially viable. In addition, the United States made progress through using the consultative process in addressing problems with Turkey's import licensing regime for rice.

The United States also raised questions concerning elements of domestic support programs used by Brazil, Canada, the EU, Venezuela, and Japan; identified restrictive import licensing and TRQ quota administration practices by Romania, Tunisia, Chinese Taipei, China, and Switzerland; questioned the use of the special agricultural safeguard by Japan and the Philippines; and raised concerns with the use of export subsidies by the European Union, Tunisia, and China.

During 2005, the Committee addressed a number of other agricultural implementation-related issues: (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 Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries, and (2) the review process of Members' notifications on TRQs in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner. Due to the cancellation of the November 2005 meeting of the Committee because of the Hong Kong Ministerial, the annual monitoring exercise on the follow-up to the NFIDC Decision will be undertaken at the January 2006 meeting of the Committee, on the basis of, inter alia, donor Member notifications as well as contributions by observer organizations.

At its March 2005 meeting, the Committee accepted the application by Mongolia to be included in the WTO list of net food-importing developing countries. This list comprises the following developing country Members of the WTO: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, Egypt, Gabon, Honduras, Jamaica, Jordan, Kenya, Mauritius, Mongolia, Morocco, Namibia, Pakistan, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia, and Venezuela.

At the September meeting, the Committee held its annual Transitional Review under paragraph 18 of the Protocol of Accession of the People's Republic of China. The United States, with support from other Members, raised questions and concerns regarding China's implementation of its WTO commitments in the areas of TRQ administration, import licensing, state trading enterprises, and export subsidies.

Prospects for 2006

The United States will continue to make full use of the 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 least-developed and net food-importing developing countries in accordance with the WTO Agreement on Agriculture.

2. Committee on Market Access

Status

In January 1995, WTO Members established the Committee on Market Access, 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 Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures where not explicitly covered by another WTO body (e.g., the Textiles Monitoring Body). The Committee is also 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 2005

By 2005, WTO Members had completed implementing almost all tariff reductions agreed to in the Uruguay Round. The Committee is responsible for verifying that such implementation proceeded on schedule. The Committee held three formal meetings and three informal meetings in 2005 to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized Tariff System (HTS) tariff nomenclature; (2) the WTO Integrated Data Base; (3) finalizing consolidated schedules of WTO tariff concessions in current HTS nomenclature; (4) reviewing the status of notifications on quantitative restrictions and reverse notifications of non-tariff measures; and (5) implementation issues related to "substantial interest." The Committee also conducted its fourth annual transitional review of China's implementation of its WTO accession commitments.

Updates to the HTS nomenclature: Under this task, the Committee examines issues related to the transposition and renegotiation of the schedules of certain Members that adopted the HTS in the years following its introduction on January 1, 1988.

In 1993, the Customs Cooperation Council -- now known as the World Customs Organization (WCO) -- agreed to approximately 400 sets of amendments to the HTS, which entered into effect January 1, 1996. Further modifications entered into effect January 1, 2002. These amendments resulted in changes to the WTO schedules of tariff bindings.

Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting bound tariff 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 WTO Members have completed the process of implementing HTS 1996 changes, but Argentina, Israel, Panama, and South Africa continue to require waivers.

The Committee agreed to new procedures using the Consolidated Schedule of Tariff Concessions database and assistance from the Secretariat for the introduction into Members' schedules and verification of the 373 amendments that took effect on January 1, 2002 (HTS2002). Conversion to HTS2002 is essential to laying the technical groundwork for analyzing tariff implications of the DDA negotiations. Funding for this project has been provided from the global trust fund and work will continue in 2006. The United States submitted its proposed HTS2002 changes to the Secretariat in December 2001.

At its meeting of March 30, 2005, the Committee reviewed detailed information on the changes in the Harmonized System to be introduced on 1 January 2007 (HTS2007).

Integrated Data Base (IDB): The 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. In recent years, the United States has taken 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. As of December 2005, 111 Members and five acceding countries had provided IDB submissions. In 2005, the Committee granted requests from three new NGOs for access to the IDB and CTS databases.

Consolidated Schedule of Tariff Concessions (CTS): The 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; HTS96 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 will be linked to the IDB and will serve as the vehicle for conducting Doha negotiations in agriculture and non-agricultural market access.

China Transitional Review: In October 2005, the Committee conducted its fourth 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 trading rights, tariffs, export restrictions, tariff-rate quota administration and value-added tax administration.

Prospects for 2005

The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will likely explore technical assistance needs related to data submissions. The Committee will continue to review Members' amended schedules based on the HTS2002 revision as the Secretariat generates HTS2002 schedules for all Members. The successful completion of conversion to HTS2002 will be a tremendous step forward in technical preparation for the implementation of the DDA results.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement", or "the Agreement") establishes rules and procedures that ensure that WTO Members' SPS measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products, are not disguised restrictions on trade and are not more trade restrictive than necessary. SPS measures protect against risks associated with plant or animal borne pests and diseases; additives, contaminants, toxins and disease-causing organisms in foods, beverages and feedstuffs.

Fundamentally, the Agreement requires that such measures be based on science, developed using systematic risk assessment procedures and, in cases where no international standard exists or the proposed measure is not substantially the same as the relevant international standard and may have a significant trade impact, notified to the WTO SPS Secretariat for distribution to other Members in sufficient time for Members to comment before final decisions are made. At the same time, the Agreement recognizes each Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

The SPS Committee is a forum for consultation on Members' existing and proposed SPS measures, the implementation and administration of the SPS Agreement, technical assistance and the activities of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: for food, the Codex Alimentarius Commission; for animal health, the World Organization for Animal Health (OIE); for plant health, the International Plant Protection Convention (IPPC). The SPS Committee also discusses specific provisions of the SPS Agreement, including: transparency in Members' development and application of SPS measures (Article 7); equivalence (Article 4); regionalization (Article 6); technical assistance (Article 9); and special and differential treatment (Article 10). Based on discussions in the SPS Committee as well as bilateral discussions between Members, there is a general consensus that prevailing SPS issues and concerns stem from the failure of Members to implement fully existing obligations under the SPS Agreement, and that the current text of the SPS Agreement does not need to be changed. With this view in mind, the Committee has undertaken focused discussions on various articles of the SPS Agreement. These discussions have provided Members the opportunity to share experiences regarding implementation of SPS measures and to develop procedures to assist Members in meeting specific SPS obligations.

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

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Participation in the SPS Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. In addition, representatives from a number of international intergovernmental organizations are invited to attend Committee meetings as observers on an ad hoc basis. A partial list of such observers includes: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the Codex Alimentarius Commission; the IPPC; the OIE; the International Trade Center; and the World Bank.

Major Issues in 2005

In 2005, the SPS Committee met on three occasions. The March and June meetings were regular meetings with full agendas. The agenda for the October meeting was abbreviated and dealt with a limited set of issues; the remainder of the agenda is set to be completed at a February, 2006 meeting. WTO Members have increasingly utilized SPS Committee meetings to raise concerns regarding the new and existing SPS measures of other Members. In addition, Members treat Committee meetings as a forum for exchanging views and experiences regarding the implementation of various provisions of the SPS Agreement, such as transparency, regionalization and equivalence. Members are also providing information to the Committee on efforts to achieve freedom from specified pests and diseases. The United States views these steps as positive developments, as they demonstrate a growing familiarity with the provisions of the SPS Agreement and increasing recognition of the value of the SPS Committee as a venue to discuss SPS-related trade issues among Members.

With assistance from the United States and other donors, most of the 34 countries participating in the Free Trade Area of the Americas ("FTAA") negotiations attended each Committee meeting in 2003, 2004, and 2005. This has significantly expanded capital-based and Geneva-based participation in Committee meetings. Immediately prior to each Committee meeting, representatives from the FTAA countries have met to exchange views on issues on the agenda.

• *BSE - TSE*[4]: The SPS Committee devoted considerable time to discussing Members' measures restricting trade in beef and beef products due to BSE-related concerns. U.S. beef and other bovine-related exports were severely restricted by several WTO Members after the detection of a single imported cow in Washington state infected with the disease and another isolated case in Texas. The United States raised Japan's restrictions on U.S. beef exports due to BSE-related concerns at each of the full Committee meetings in 2005. Other Members joined the United States by noting concerns that many Members' restrictions did not appear to be based on the international standard established by the OIE and that no scientific justification was provided by Members banning imports of beef and beef products. The United States provided updated reports on its BSE status and the steps taken to control the disease, and encouraged Members to conform to the OIE standard. Several other WTO Members supported the U.S. views. The United States expects that BSE will continue to be an issue raised in the SPS Committee.

• *Avian Influenza:* During the 2005 SPS Committee meetings, several WTO Members reported on their efforts to control and eradicate avian influenza (AI) and the resulting restrictions on trade in poultry. WTO Members, including the United States, expressed concerns with the restrictions implemented by certain WTO Members on trade in poultry that either did not appear to be based on the international standards established by the OIE or did not appear to adhere to the regionalization provisions of the SPS Agreement. The United States encouraged Members to base all AI restrictions on science and relevant international standards, and, for those Members with country-wide prohibitions, to make use of the regionalization provisions of the SPS Agreement with regard to U.S. poultry exports.

[4][1] Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy.

• *Notifications:* The SPS notification process is becoming increasingly important for trade, and has also provided a means for Members to report on determinations of equivalence and special and differential treatment. In 2005, the United States and other WTO Members expressed concern about the failure of some Members to notify SPS measures which could have significant trade impacts.

• *Regionalization:* The SPS Committee held informal meetings on regionalization in advance of each formal Committee meeting in 2005. Regionalization can be an effective means to reduce restrictions on trade due to animal and/or plant health concerns. 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 IPPC and OIE have important contributions to offer to this debate, and participated in both the informal and formal Committee meetings on regionalization. Some Members expressed concerns with the time Members require to make regionalization decisions and to publish the appropriate regulations, and are seeking to establish timeframes for decision-making. Due to the unique circumstances of the pest or disease in question, environmental factors, the SPS infrastructure and other significant issues, the United States does not believe that the Committee should develop timeframes. Rather, the United States believes that the OIE and IPPC should consider the need for and utility of timelines given the unique characteristics of individual disease or pest. The SPS Committee will continue to discuss this issue.

• *Review of the Agreement:* Paragraph 3.4 of the Decision on Implementation-Related Issues and Concerns adopted at the Fourth Session of the Ministerial Conference directs the SPS Committee to review the operation and implementation of the SPS Agreement at least once every four years. The first review under this mandate was completed during 2005. In 2005, the Committee held informal meetings on the review in advance of the formal Committee meetings in March and June. The United States and several other Members submitted proposals which were discussed and resulted in a number of recommendations for in-depth discussions by the Committee. These recommendations constitute the work program that will guide the Committee's agenda for the next several years.

• *China's Transitional Review Mechanism:* The United States participated in the SPS Committee's fourth review of China's implementation of its WTO obligations as provided for in paragraph 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions regarding China's notification and transparency procedures, the scientific basis for specific SPS measures which restrict U.S. exports, risk assessment procedures, and control, inspection and approval procedures. Other Members also provided written comments and questions and offered comments during the review. China responded orally during the review and restated its commitment to implement fully the provisions of the SPS Agreement.

Prospects for 2006

The SPS Committee will hold three meetings in 2006 (in addition to the continuation of the October 2005 meeting, which will be held February 1-2, 2006). Informal sessions are anticipated in advance of each formal meeting. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The United States anticipates that the Committee will continue to monitor Members' implementation activities and that the discussion of specific trade concerns will continue to be an important part of the Committee's activities. The Committee will also continue to serve as an important venue for WTO Members to exchange information on SPS related issues, including BSE, AI, food safety measures and technical assistance.

The Committee will also begin discussions on recommendations developed during the recent review of the implementation and operation of the SPS Agreement. The United States anticipates that the Committee will continue to discuss transparency and notifications, technical assistance, special and differential treatment, and regionalization. The Committee will also monitor the use and development of international standards, guidelines and recommendations by Codex, OIE and IPPC. The Committee will also prepare for and conduct the fifth review of China's implementation of the Agreement.

4. Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (TRIMS), 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 the prohibitions on quantitative restrictions set out in Article XI:1 of GATT 1994. The TRIMS Agreement thus 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 GATT 1994.

Developments relating to the TRIMS Agreement are monitored and discussed both in the Council on Trade in Goods (CTG) and in 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. Much of the discussion has related to TRIMS in the context of the automotive sector.

Major Issues in 2005

The TRIMS Committee held three formal meetings during 2005. TRIMS issues were also discussed during several meetings of the CTG.

As part of the review of special and differential treatment provisions at an informal meeting in May 2005, the TRIMS Committee considered several TRIMS-related proposals submitted by a group of African countries.

One proposal argued that Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by African countries to safeguard their balance of payments. A second proposal argued that least-developed or other low-income WTO 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. The final African proposal would require the CTG to grant new requests from certain African countries for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS.

In response to these proposals, the United States argued that any TRIMS imposed for balance-of-payments purposes must follow existing WTO rules on balance-of-payments safeguards. The United States also argued that it would not be appropriate to adopt fixed time periods for maintaining TRIMS in response to balance-of-payments crises given the varying nature of such crises and that, given the lack of requests for TRIMS extensions from least-developed countries to date, it was not clear that a policy of

automatically granting requests for longer TRIMS transition periods was warranted. The TRIMS Committee is expected to continue to discuss these issues in 2006.

With respect to the outstanding issues related to the TRIMS Agreement, Brazil and India submitted a proposal that would allow developing country Members to use TRIMS prohibited by the TRIMS agreement if they are deemed to be useful in promoting development. The United States and developing country Members argued that renegotiation of the TRIMS agreement was not within the Doha mandate. In addition, TRIMS were an inefficient means of promoting development and could prove to be counterproductive.

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 fourth annual review in 2005 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 and to convey to China, in a multilateral setting, the concerns that it has regarding Chinese practices and/or regulatory measures that may not be in accordance with China's WTO commitments. During the October meeting of the TRIMS Committee, U.S. questions focused in particular on China's new regulations concerning foreign investment and in particular rules governing the auto and steel sectors. U.S. agencies are analyzing China's policies and its responses to U.S. questions in an effort to decide whether and how to pursue these issues during future meetings of the CTG or the TRIMS Committee.

Prospects for 2006

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[5]

Status

The Agreement on Subsidies and Countervailing Measures (the 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. The Agreement nominally divides subsidy practices into three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted non-actionable (green light) subsidies.[6] Export subsidies and import substitution subsidies are prohibited.

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[5] 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 2006.

[6] Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies. In addition, Article 6.1 of the Agreement provided that certain other subsidies (*e.g.,* subsidies to cover a firm's operating losses), referred to as dark amber subsidies, could be presumed to cause serious prejudice. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in our 1999 report, these provisions expired on January 1, 2000

All other subsidies are permitted, but are actionable (through CVD or dispute settlement action) 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 WTO Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

Major Issues in 2005

The Committee on Subsidies and Countervailing Measures (the Committee) held two meetings in 2005. In addition to its routine activities of reviewing and clarifying the consistency of WTO Members' domestic laws, regulations, and actions with the Agreement's requirements, the Committee, including the United States, continued to accord special attention to the general matter of subsidy notifications made to and considered by the Committee. During the fall meeting, the Committee undertook its fourth transitional review with respect to China's implementation of the Agreement. Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the updating of the methodology for Annex VII (b) of the Agreement and consideration of an appointment to the Permanent Group of Experts. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the Committee at both of its meetings.

In reviewing notified CVD legislation and subsidies, Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement. To date, 88 Members of the WTO (counting the 25 Members of the European Union as one) have notified that they currently have CVD legislation in place, while 35 Members have not, as yet, made a notification. Among the notifications of CVD laws and regulations reviewed in 2005 were those of: China, the European Communities, Jordan, Mexico, and South Africa.[7]

As for CVD measures, 14 WTO Members notified CVD actions taken during the latter half of 2004, and 13 Members notified actions taken in the first half of 2005. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Chinese Taipei, Costa Rica, the EU, Japan, Mexico, New Zealand, Peru, South Africa, the United States, and Venezuela. In 2005, 27 subsidy notifications covering 2004 were reviewed. The Committee also continued its examination of new and full notifications and updating notifications for earlier time periods. Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.

The lack of a subsidy notification by China has been of particular concern to the United States, as well as numerous other WTO Members (see *China Transitional Review* below).

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because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

[7] 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.

Although China became a WTO Member in 2001, it has yet to provide a subsidy notification as required under Article 25.1 of the Agreement and China's Protocol of Accession. While recognizing the problems inherent in compiling the first subsidy notification for a large country, the United States took the lead in the Committee in urging China to file its subsidy notification as soon as possible. In addition, to obtain specific information regarding known assistance programs that potentially should be notified , in October 2004, the United States exercised its rights under Article 25.8 of the Agreement and submitted detailed written questions to China requesting information on the nature and extent of the programs in question. As of the end of 2005, China had not yet provided any responses to this request, even though Article 25.9 of the Agreement directs that WTO Members shall respond to this type of request "as quickly as possible and in a comprehensive manner."

China Transitional Review. At the fall meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the fourth annual transitional review with respect to China's implementation of its WTO obligations in the areas of countervailing measures, subsidies and pricing policies. Taking a leading role, the United States, along with other Members, presented written and oral questions and concerns to China in these areas. In 2005, China continued its efforts to conform its CVD regulations and procedural rules to the provisions of the Agreement and the commitments in its WTO accession agreement. The United States and other WTO Members sought to clarify a variety of issues concerning China's legislative and regulatory framework and pressed China for greater transparency. The United States also continued to raise questions regarding potentially prohibited and actionable subsidies maintained by China, including tax incentives, preferential bank financing and regional benefits provided to producers of agricultural and industrial goods. In addition, Canada and Mexico joined the United States in seeking clarifications with respect to China=s new steel industrial policy issued in July 2005. China orally described a limited number of its subsidy programs during the meeting, as well as its pricing policies, in response to Members' inquiries.

As noted above, however, China has not submitted a subsidies notification since becoming a WTO Member, citing numerous practical difficulties in assembling and submitting the appropriate information. The United States urged China to provide a subsidy notification and a response to the United States' request under Article 25.8 of the Agreement noted above. Although China committed at the Council for Trade in Goods meeting in late 2004 to provide a subsidies notification within a year, as of the end of 2005, nothing had been submitted.

Extension of the transition period for the phase out of export subsidies: Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Committee by the end of 2001. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.[8] If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

To try and address the concerns of certain small developing countries, a special procedure within the context of Article 27.4 of the Agreement was adopted at the Fourth Ministerial Conference under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than $20 billion could be granted a limited extension for particular types of export subsidy

[8] Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures were eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.

Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, and Uruguay have made yearly requests since 2001 under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.[9] These requests were approved by the Committee in 2002, 2003 and 2004.

Extension requests were again made in 2005 by all of the countries listed above. These requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the requests under the special procedures were granted. Throughout the review and approval process, the United States took a leadership role in ensuring close adherence to all of the preconditions necessary for continuation of the extensions.

The Methodology for Annex VII (b) of the Agreement: Annex VII of the Agreement identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The countries 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).[10] A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the $1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the de facto interpretation by the Committee of the $1,000 threshold was that it reflected current (i.e., nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an alternative approach to calculate the $1,000 threshold in constant 1990 dollars. At the Fourth Ministerial Conference, decisions were made which led to the adoption of this methodology. The WTO Secretariat updated these calculations in 2005.[11]

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[9] Bolivia, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did need to make any decisions as to whether their particular programs qualify under the special procedures.

[10] 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.

[11] See G/SCM/110/Add. 2.

Permanent Group of Experts: Article 24 of the 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 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 WTO 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. As of the beginning of 2005, the members of the Permanent Group of Experts were: Professor Okan Aktan (Turkey); Dr. Marco Bronckers (Netherlands); Mr. Yuji Iwasawa (Japan); Mr. Hyung-Jin Kim (Korea); and Mr. Terence P. Stewart (United States). Mr. Hyung-Jin Kim's term expired in the spring of 2005. The Committee has been unable to reach a consensus as to his replacement.

Prospects for 2006

In 2006, the United States will continue to work with others to encourage Members to meet their subsidy notification obligations, and to provide technical assistance with their notifications when available and where appropriate. Second, the United States will particularly focus on China's Transitional Review Mechanism, continuing the effort to ensure that China meets its obligations under its Protocol of Accession and the Agreement.

Thirdly, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions or developing country issues that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

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 "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 provided through market access gains achieved through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied.

Major Issues in 2005

The Agreement is administered by the Committee on Customs Valuation, which held two formal meetings in 2005. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO).

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Committee on Customs Valuation 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.

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement on Customs Valuation, continues to diminish as more developing countries undertake full implementation of the Agreement. The United States has used the 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. 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.

Achieving universal adherence to the Agreement on Customs Valuation 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, can be the foundation to 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 countries toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

Because the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish one of the incentives for corruption by customs officials. For all of these reasons, as part of an overall strategic approach to advancing trade facilitation within the WTO, the United States has taken an aggressive role on matters related to customs valuation during the past decade.

U.S. exporters too many developing countries have had market access gains undermined the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy - one that provides no measure of administrative transparency or procedural fairness. A notable development of the past 10 years has been a broad number of developing country Members moving toward implementing rules-based trade remedy procedures as a direct result of their implementation of the Agreement and moving away from the use of minimum import prices.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2005 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Each decision has included an individualized benchmarked work program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests. No Members maintain an extension of the delay period in accordance with the provisions of paragraph 1, Annex III. One Member (Sri Lanka) maintains reservations that have been granted under paragraph 2, Annex III for minimum values, and one Member (Senegal) has requested an extension of a waiver for the application of minimum values granted under Article IX of the WTO Agreement.

An important part of the Committee's work is the examination of implementing legislation. As of October 2005, 72 Members had notified their national legislation on customs valuation. During 2005, the Committee concluded the examinations of the legislations of Burkina Faso and Peru and it agreed to revert to the examination of the customs legislations of Armenia, China, India, Mexico, and Thailand.

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 comprehensive questions as well as suggestions toward improved implementation, particularly with regard to China, India, and Mexico. These examinations will continue into 2006.

In 2005, the Committee continued to discuss China's responses to questions submitted by the United States in connection with the Fourth Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During 2005, the United States continued to seek 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. The U.S. delegation continued to urge China to work to establish uniformity in the administration of its customs valuation regime and its adherence to WTO customs valuation rules.

The Committee's work throughout 2005 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 2006

The Committee's work in 2006 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 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 is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The Agreement on Rules of Origin 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 request. In addition to setting forth disciplines related to the administration of rules of origin, the 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 set for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2005 and will continue into 2006.

The Agreement is administered by the Committee on Rules of Origin, which met formally once in 2005. 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 Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the HWP.

Major Issues in 2005

As of the end of 2005, 77 WTO Members notified the WTO concerning non-preferential rules of origin, of which 36 Members notified that they had non-preferential rules of origin and 41 Members notified that they did not have a non-preferential rule of origin regime.
Eighty-three Members notified the WTO concerning preferential rules of origin, of which 79 notified their preferential rules of origin and four notified that they did not have 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, discrimination, and a lack of predictability. Substantial attention has been given to the implementation of the Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices."

Many of the Agreement's commitments, 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.

For the past ten years, the Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the 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 Committee on Rules of Origin continued to focus on the work program on the multilateral harmonization of non-preferential rules of origin. U.S. proposals for the WTO origin HWP have been developed under the auspices of a Section 332 study being conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The proposals reflect input received from the private sector ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the WTO Committee on Rules of Origin. Representatives from several U.S. Government agencies continue to be actively involved in the WTO origin HWP, including the Bureau of Customs and Border Protection (formally the U.S. Customs Service), the U.S. Department of Commerce, and the U.S. Department of Agriculture.

In addition to the September 2005 formal meeting, the Committee conducted numerous informal consultations and working party sessions related to the HWP negotiations. The Committee's work in 2005 proceeded in accordance with an August 1, 2004 General Council extension of the deadline for completion of the 94 core policy issues by July 31, 2005. The General Council also agreed that following resolution of the core policy issues, the Committee would complete its remaining work on the HWP by December 31, 2005.

While the Committee has made significant progress towards fulfilling the mandate of the Agreement to establish harmonized non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues, including the scope of the prospective obligation to equally apply 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.

The Committee continued to make progress in reducing the number of issues that remained outstanding under the HWP, and is proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In 2005, the Committee focused on 94 unresolved issues identified as "core policy issues." Many of these issues are particularly significant due to their broad application across important product sectors, including fish, beef products, dairy products, sugar, industrial and automotive goods, semiconductors and electronics, and steel. Specific origin questions among these "core policy issues" include, for example, how to determine the origin of fish caught in an Exclusive Economic Zone, or whether refinement, fractionation, and hydrogenation substantially transform oil and fat products to a degree appropriate to confer country of origin. A cross-cutting unresolved "core policy issue" continues to arise from the absence of common understanding among Members concerning the scope of the Agreement's prospective obligation, upon completion of the harmonization and implementation of the results, for Members to "apply rules of origin equally for all purposes."

As a result, positions have sometimes been divided between a strictly neutral analysis under the criterion of 'substantial transformation' and an advocacy of restrictiveness for certain product-specific rules that would be unwarranted for application to the normal course of trade, but is perceived as necessary for the operation of certain regimes or measures covered by other Agreements, such as trade remedy measures pursued under the Agreements on Anti-Dumping, Subsidies and Countervailing Measures, and Safeguards.

Prospects for 2006

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues" and to reaching a consensus on the scope of the prospective obligation to equally apply for all purposes the harmonized non-preferential rules of origin for all purposes. In accordance with a decision taken by the General Council in July 2005, work will continue on addressing these issues. The General Council, at its meeting in July 2005, extended the deadline for completion of the 94 core policy issues to July 31, 2006. The General Council also agreed that following resolution of these core policy issues, the CRO would complete its remaining technical work by December 31, 2006.

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 TBT Agreement's aim is to prevent the use of technical requirements as unnecessary barriers to trade.

U.S. Inquiry Point

National Center for Standards and Certification Information
National Institute of Standards and Technology (NIST)
100 Bureau Drive Gaithersburg, MD 20899-2160
Telephone: (301) 975-4040
Fax: (301) 926-1559
email: ncsci@nist.gov
website: http://www.nist.gov/ncsci/

NIST offers a free web-based service, Notify U.S., that provides U.S. customers with the opportunity to review and comment on proposed foreign technical regulations that can affect them. By registering for the Notify U.S. Service, U.S. customers receive, via e-mail, notifications of drafts or changes to foreign regulations for a specific industry sector and/or country. To register on-line contact: http://www.nist.gov/ncsci.

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 TBT Committee[12] serves as a forum for consultation on issues associated with the implementation and administration of the TBT Agreement. This purpose 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 be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the TBT Agreement and relevant international developments.

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 that 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 U.S. and foreign 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 regulations 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 maintains the U.S. inquiry point pursuant to the Sanitary and Phytosanitary Agreement.

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

[12] 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 international intergovernmental 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, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

procedures which 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 country or Member).[13] 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 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). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and is available to the public on the WTO website.

With the implementation of the Marrakesh Agreement establishing the WTO, *all* Members assumed responsibility for compliance with the TBT Agreement. Although a form of the TBT Agreement had existed as a result of the Tokyo Round, the expansion of its applicability to all Members in the Uruguay Round was significant and resulted in new obligations for many Members. The TBT Agreement has secured the right for interested parties in the United States to have information on proposed standards, technical regulations and conformity assessment procedures being developed by other Members. It 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, though discussions on how to improve the operation of the provisions on transparency are 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. Committee monitoring and oversight has served an important role. The Committee has served as a constructive forum for discussing and resolving issues, and this has perhaps alleviated the need for more dispute settlement undertakings. Since its inception, an increasing number of Members have used the Committee to highlight trade problems, including a number of developing country members. To date, there has been only one WTO dispute concerning the rights and obligations under the TBT Agreement (Peru's challenge of the European Communities' trade description of sardines).

The TBT Agreement obliges the TBT Committee to review every three years the operation and implementation of the Agreement. Three such reviews have now been completed (G/TBT/5, G/TBT/9, and G/TBT/13). 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 review also identifies some practical problems associated with implementation and ways to address them. For example, in response to questions about how to define "international standard" for purposes of implementing the TBT Agreement, the Committee adopted a decision containing a set of principles it considered important for international standards development (i.e., openness, transparency, impartiality; consensus; relevance and effectiveness; and coherence and development).

Members were encouraged to promote adherence to these principles by their standardizing bodies and participants in the international bodies and thereby advance the objectives of the Agreement. (Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.8.)

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

The reviews have also stimulated the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling and good regulatory practice.

Major Issues in 2005

The TBT Committee met three times in 2005. At those meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance.
A number of Members used the Committee meetings to raise concerns about specific technical regulations that affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. U.S. interventions were primarily targeted at a variety of proposals from the EU that could seriously disrupt trade (e.g., the EU's proposed regulation on the Registration, Evaluation and Authorization of Chemicals ("REACH")). The minutes of the meetings are contained in G/TBT/M/35, 36 and 37.

The TBT Committee also carried out its Fourth Annual Transitional Review of China, which is mandated in the Protocol Accession of the People's Republic of China. The United States (G/TBT/W/257), the EU (G/TBT/W/256), and Japan (G/TBT/W/255) submitted written questions to China which provided a written response in G/TBT/W/260.

The TBT Committee also conducted its Tenth Annual Review of the TBT Agreement based on information contained in G/TBT/15, and its Tenth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on information contained in G/TBT/CS/1/Add.9 and G/TBT/CS/2/Rev.11.

Follow-up to the Third Triennial Review of the Agreement: In November 2003, the TBT Committee concluded its Third Triennial Review (G/TBT/13). In follow-up to that review, priority attention has been given to an exchange of information on good regulatory practice, conformity assessment procedures, transparency and technical assistance, and the implementation needs of developing countries. The Committee held a workshop (March 21, 2005) on implementation of supplier's declaration of conformity and discussed preparations for one on other approaches to facilitate the acceptance of conformity assessment results (planned for March 2006).

It has also explored ways to facilitate coordination, both within the WTO and with other bodies, of technical assistance in response to identified needs, and agreed upon a voluntary notification format to be applied on a trial basis for two years.[14]

Preparations for the Fourth Triennial Review of the Agreement: The following documents have been submitted in follow-up to the Third Triennial Review and to advance preparations for the Fourth, which the Committee will conclude at its third meeting in 2006:

Good Regulatory Practice: the European Communities (G/TBT/W/253) and the United States (G/TBT/W/258).

Transparency: Canada (G/TBT/W/234), China (G/TBT/W/252) and the European Communities (G/TBT/W/253).

Technical Assistance and Differential Treatment: China (G/TBT/W/252).

[14] G/TBT/16.

Other: Intellectual Property Right Issues in Standardization (China G/TBT/W/251).

Prospects for 2006

The TBT Committee will continue to monitor implementation of the TBT Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing. The Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of such concerns. In March 2006, the TBT Committee will host a workshop on conformity assessment procedures. Follow-up on issues raised in past reviews, or discussion of new issues in preparation for the Fourth Review, are driven by Member statements and submissions. The U.S. priorities are likely to continue to focus on good regulatory practice, transparency and technical assistance. At its last meeting in 2004, the Committee agreed upon a work program for the Fourth Triennial Review which it expects to conclude at its third meeting in 2006. Drafting of the text of the review, which normally includes a factual reflection of the Committee's discussion, followed by any agreed recommendations for action, is scheduled to begin at the Committee's second meeting in 2006. The initial list of topics for the Fourth Triennial Review include: good regulatory practice; conformity assessment procedures; transparency; technical assistance and special and differential treatment.

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 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: (1) pre-initiation notifications under Article 5.5 of the Antidumping Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; (3) extensions of time to supply information; (4) the timeframe to be used in calculating the volume of dumped imports for making the determination under Article 5.8 of the Antidumping Agreement as to whether the volume of such imports is negligible; and (5) guidelines for the improvement of annual reviews under Article 18.6 of the Antidumping Agreement.

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. Under this framework, the Informal Group has discussed the

topics 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 circumvention can be dealt with under existing WTO rules and what other options may be deemed necessary.

Major Issues in 2005

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 experience with respect to Members' application of antidumping remedies.

In 2005, the Antidumping Committee held two meetings; on April 7, and on October 31-November 1. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Antidumping Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 2005 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following: *Notification and Review of Antidumping Legislation:* To date, 68 Members have notified that they currently have antidumping legislation in place, while 28 Members have notified that they maintain no such legislation. In 2005, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Albania, Australia, China, Croatia, the European Union, Former Yugoslav Republic of Macedonia, Jordan, Mongolia, and Turkey. 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 2005, 24 Members notified that they had taken antidumping actions during the latter half of 2004, whereas 23 Members did so with respect to the first half of 2005. (By comparison, 36 Members notified that they had not taken any antidumping actions during the latter half of 2004, and 30 Members notified that they had taken no actions in the first half of 2005). 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.

China Transitional Review: At the October-November 2005 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its fourth annual transitional review with respect to China's implementation of the Antidumping Agreement. Several Members, including the United States, presented written and oral questions to China with respect to China's antidumping laws and practices, with a focus on injury determinations. China orally provided information in response to the U.S. statement and the other comments and questions at the meeting.

Working Group on Implementation: The Working Group held two rounds of meetings in April and October 2005. 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; the United States has submitted papers describing its practices on all four topics. In 2005, the Working Group discussed papers on these topics by the United States, Egypt, India, and Pakistan.

The Working Group continues to serve as a venue for active work regarding the practical implementation of WTO antidumping provisions. It offers Members the opportunity to examine issues and exchange views and information across a broad range of topics. It 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. Implementation concerns and questions stemming both from one's own administrative experience and from observing the practices of others are equally addressed. 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.

Informal Group on Anticircumvention: The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. In 2005, the Informal Group on Anticircumvention continued its useful discussions on 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.

Members have submitted papers and made presentations outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, that have legislation intended to address circumvention, responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. In 2005, the Informal Group met in April, but did not hold a meeting in October, and no new papers were submitted for consideration by the Informal Group. A major reason for the lessened activity in the Informal Group in 2005 is that circumvention has become a significant issue under discussion in the WTO Rules negotiations, with the United States submitting two elaborated proposals in the Rules negotiations in 2005 addressing the issue of circumvention.

Prospects for 2006

Work will proceed in 2006 on the areas that the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention 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 to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other countries 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 2006. These reports are becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II).

This 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 and more Members enact 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 rely upon 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 which Members employ to implement them. Therefore, as Members continue to submit papers on the topics being considered and participate actively in the discussions, the Group's utility should continue to grow. In 2006, the Working Group will continue its discussion of the four topics that it began discussing in the 2003 meeting: (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. However, given the mandate in the Hong Kong Ministerial Declaration to the WTO Rules Group to intensify and accelerate its work in 2006 regarding submission and analysis of detailed textual proposals on, *inter alia*, antidumping issues, it is possible that Members will have less time to devote to submission and discussion of papers on antidumping practices in the Working Group in 2006.

The work of the Informal Group on Anticircumvention will also continue in 2006 according to the framework for discussion on which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible. However, given the increased focus on anticircumvention issues in the WTO Rules negotiations, it is possible that, as in 2005, there may be less activity on these issues in the Informal Group in 2006.

10. Committee on Import Licensing

Status

The Committee on Import Licensing (the 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 Committee meets at least twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations of the Agreement. The Committee also receives questions from Members on the licensing regimes notified by other Members, and addresses 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 receive information on specific issues and to clarify problems and possibly to resolve them before they become disputes. Every other year, the Committee conducts an overall review of its activities. Since the accession of China to the WTO in December 2001, the Committee has also 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.

The Import Licensing Agreement establishes rules for all WTO Members that use import licensing systems to regulate their trade, and sets guidelines for what constitutes a fair and non-discriminatory application of such procedures. Its provisions establish disciplines to protect Members from unreasonable requirements or delays associated with a licensing regime.

These obligations are intended to ensure that the use of such procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Agreement's provisions discipline licensing *procedures,* and do not directly address the WTO consistency of the underlying measures). The notification requirements and the system of regular Committee reviews 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 Agreement.

Major Issues in 2005

At its meetings in June and September 2005, the Committee reviewed 55 submissions from 31 Members,[15] including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This count represented a slight increase in the number of notifications submitted to the Committee, but a reduction in the number of Members notifying. The Chairman reported that at the end of 2005, only 24 of 123[16] Committee Members had never submitted a notification to the Committee, bringing the percentage of Members with at least an initial notification to over three-quarters of the total. Concern remained, however, that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement. The Chairman of the Committee 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 submitted a notification of its extension and modification of the automatic import licensing program for certain steel products

The United States remained one of the most active members of the Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. We continued to press Brazil to provide information on its quotas on and non-automatic licensing system for imports of certain lithium compounds, i.e., lithium carbonate and lithium hydroxide, noting that these measures appear to be part of a system of restrictions that had not been notified to the Committee. The issue is under review by the Brazilian Government. As the EU proceeds to review its international agreements in terms of licensing restrictions on imports of natural and enriched uranium, the United States continued to use the Committee to push for further information, noting that the EU has not notified these restrictions to the Committee. The problem, notified to the Committee last year, on EU pigmeat

[15] The Members making submissions were Armenia, Bahrain, Bangladesh, Brazil, Bulgaria, Cameroon, China, Croatia, Ecuador, EU, Georgia, Hong Kong China, Iceland, India, Jamaica, Jordan, Korea, Macedonia,, Macao, Madagascar, Morocco, Mexico, Oman, Peru, Qatar, Singapore, Chinese Taipei (Taiwan), Turkey, Tunisia, United States, and Uruguay.

[16] The EU and its member states are considered a single Member for the purposes of submissions to the Committee. The Members that have never submitted a notification in this Committee are: Angola, Belize, Botswana, Central African Republic, Cambodia, Congo, Democratic Republic of the Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Israel, Kuwait, Lesotho, Mauritania, Mozambique, Myanmar, Nepal, Rwanda, St. Vincent & Grenadines, Sierra Leone, Solomon Islands, Tanzania, and Thailand.

Import TRQs was resolved in favor of U.S. exporters. Further comments were presented on Indonesia's non-automatic licensing system for selected textile products, noting that the system was clearly restrictive and appeared not to be consistent with WTO rules. The United States also submitted further written questions on the administration of Turkey's licensing system for import quotas on rice. Receiving no response, in November 2005, the United requested consultations with Turkey under WTO dispute resolution procedures concerning these issues.

Malaysia and Columbia were pressed to update their responses to the Import Licensing Procedures Questionnaire to cover products requiring import licenses but not notified, i.e., motor vehicles, construction equipment, and paper and wood products for Malaysia, and non-automatic import licensing requirements on used goods for Colombia. Neither Member has yet provided a response. Jamaica, however, responded to the U.S. question on import licensing of auto parts.

At its September meeting, the Committee conducted, pursuant to the Protocol on the Accession of the People's Republic of China, its fourth transitional review of China's implementation of its WTO accession commitments in the area of import licensing procedures. The United States and other WTO Members returned to concerns with China's implementation of its commitments expressed at the last two TRMs and previous Committee meetings, in particular the use of import licensing to administer import quotas on automobiles, the tariff-rate quota administration, and inspection-related requirements for agricultural imports. New questions were tabled on import licensing requirements for steel and iron ore. China indicated that both programs were for non-automatic licenses.

Prospects for 2006

The administration of import licensing continues to be a significant issue of discussion in the context of the DDA, as well as in the day-to-day administration of current obligations. As discussions continue to liberalize tariffs, the correct use of import licensing procedures becomes more critical, both in the administration of agricultural TRQs and in ensuring 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 and technical and sanitary requirements applied to imports as well. The Committee also 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. As demonstrated by the recent U.S. request for formal consultations with Turkey on its import licensing regime, these discussions could be the introduction to further dispute settlement cases.

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 Committee) was established to administer the WTO Agreement on Safeguards (the Agreement). The 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, thus 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 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). The Agreement requires all WTO Members to use transparent and objective procedures when taking safeguard actions to prevent or remedy serious injury to a domestic industry caused by increased imports.
Among its key provisions, the Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions than GATT Article XIX of the criteria for injury determinations; requires that safeguard measures be steadily liberalized over their duration; establishes maximum periods for safeguard actions, and 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, which had been utilized by countries to avoid GATT disciplines and which adversely affected third-country markets.

The Agreement requires Members to notify to the Committee their laws, regulations and administrative procedures relating to safeguard measures. It also requires Members to notify to the Committee various safeguards actions, such as (1) 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 2005

During its two regular meetings in April and November 2005, the Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from Albania, Barbados, Canada, China, Croatia, the European Union, the Former Yugoslav Republic of Macedonia, Jordan, Peru, South Africa, and Chinese Taipei. The 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: Canada on bicycles; Chile on wheat flour; Colombia on domestic blenders; the EU on strawberries; Indonesia on ceramic tableware and on lighters; Jordan on insecticides; Morocco on ceramic tiles; and Pakistan on footwear.

The Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Canada on bicycles; Chile on wheat flour; the EU on salmon; India on starches; Indonesia on ceramic tableware; Jordan on insecticides; Morocco on ceramic tiles; and Turkey on voltmeters and ammeters and on active earth and clays.

The Committee reviewed Article 12.1(c) notifications, regarding a decision to apply or extend a safeguard measure, from the following Members: Chile on wheat flour; the EU on salmon; Indonesia on ceramic tableware; Jordan on insecticides; Morocco on ceramic tiles; and Turkey on voltmeters and ammeters and on active earth and clays.

The Committee reviewed Article 12.4 notifications, regarding the application of a provisional safeguard measure, from the following Members: Chile on wheat flour; Moldova on cosmetics and perfumery products; and Peru on certain made-up textile articles.

The Committee received notifications from the following Members of the termination of a safeguard investigation with no safeguard measure imposed: Colombia on electric smoothing irons and on domestic blenders; Pakistan on footwear; Peru on made-up textile articles; and Turkey on unframed glass mirrors, on thermometers, and on certain glassware.

China Transitional Review: At the November 2005 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its fourth transitional review with respect to China's implementation of the 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.

Implementation: At both the April and November 2005 meetings, the Committee discussed various issues pertaining to Article 9.1 of the Agreement, concerning the exclusion of developing country Members from the application of safeguard measures when certain criteria are met.

Prospects for 2006

The Committee's work in 2006 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 laws.

12. Working Party on State Trading Enterprises

Status

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises 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 ("Article XVII Understanding") defines a state trading enterprise and instructs Members to notify the Working Party of all enterprises in their territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

A WTO Working Party on State Trading Enterprises was established in 1995 to review, *inter alia*, Member notifications of state trading enterprises and the coverage of state trading enterprises that are notified, and to develop an illustrative list of relationships between Members and their state trading enterprises and the kinds of activities engaged in by these enterprises. All Members are required under Article XVII of the GATT 1994 and paragraph 1 of the Article XVII Understanding to submit annual notifications of their state trading activities.

Major Issues in 2005

In February 2005, the United States responded to questions from Australia concerning previous STE notifications. In May 2005, Egypt responded to questions from the United States concerning the operations of the Alexandria Cotton Exporters' Association (ALCOTEXCA) and its members. Egypt explained that the right to practice or engage in the cotton trade in Egypt is not limited to members of ALCOTEXA, and that ALCOTEXA does not set the sale price and other terms and conditions for the sale of cotton exported from Egypt. In 2005, the United States made a full and new notification of its state trading enterprises (STEs), the Commodity Credit Corporation, Isotopes Production and Distribution Programme, Power Administrations, and Strategic Petroleum Reserve. The Working Party on State Trading held no formal meetings in 2005.

Prospects for 2006

The Working Party is scheduled to meet in January 2006. As part of the agricultural negotiations in the WTO, the United States proposed specific disciplines on export agricultural state trading enterprises that would increase transparency improve competition and tighten disciplines for these entities.

In 2006, the Working Party 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 state trading enterprises.

F. Council on Trade Related Aspects of Intellectual Property Rights

Status

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") is a multilateral agreement that sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights through civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members with regard to the protection and enforcement of intellectual property rights. Disputes between WTO Members regarding implementation of the TRIPS Agreement can be settled using the procedures of the WTO's Dispute Settlement Understanding.

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. Most substantive obligations are phased in based on a Member's level of development. Developed country Members were required to implement fully the obligations of the Agreement by January 1, 1996; developing country Members generally had to implement fully by January 1, 2000; and least-developed country Members as a result of the decision of the TRIPS Council of November 29, 2005, have had their deadline 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 implementation. This action is without prejudice to the existing extension, based on a proposal made by the United States at the Doha WTO Ministerial Conference, of the transition period for least-developed countries 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 least-developed country Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product patent protection for pharmaceutical inventions.

The WTO TRIPS Council monitors implementation of 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 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.

Major Issues in 2005

In 2005, the TRIPS Council held three formal meetings, including "special negotiation sessions" on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits called for in Article 23.4 of the Agreement (see separate discussion of this topic under section D, "Council for Trade-Related Intellectual Property Rights, Special Session", and below). In addition to continuing its work reviewing the implementation of the Agreement by developing countries and newly-acceding Members, the Council's work in 2005 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

● **Review of Developing Country Members' TRIPS Implementation:** As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2005 continued to devote time to reviewing the Agreement's implementation by developing country Members and newly acceding 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 geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. During the TRIPS Council meetings, 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 Members' implementation, particularly with regard to China, of its obligations.

Of particular importance has been the review mechanism for China, especially the transitional review mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China. This process has been instrumental in helping to understand the levels of protection of intellectual property rights 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 breadth of intellectual property matters and in raising concerns about protection of intellectual property in China, especially regarding enforcement of intellectual property rights.
In furtherance of that effort, the United States submitted a formal request to China in October 2005 seeking additional enforcement-related information pursuant to Article 63.3 of the TRIPS Agreement.

During 2005, the TRIPS Council undertook reviews of the implementing legislation of China (as part of China's transitional review mechanism), Armenia, Former Yugoslav Republic of Macedonia, and Zimbabwe.

● *Intellectual Property and Access to Medicines:* The August 30 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 Chairman), will apply to each Member until an amendment to the TRIPS Agreement replacing its provisions takes effect for each Member. At its meeting in June 2004, the TRIPS Council agreed to extend the original deadline for transforming the August 30 solution into an amendment until the end of March 2005. A series of discussions took place in March, June and September of 2004 evidencing differing viewpoints, on the form and content of such an amendment. The first proposal for an amendment was submitted by the African Group during the December 2004 meeting of the TRIPS Council. However, this proposal raised a number of concerns from various Members because it did not refer to the shared understandings of the Chairman's Statement and included only some elements of the General Council Decision. As a result of intense consultations held by the TRIPS Council Chairman between March 2005 and December 2005, the General Council was able to agree to submit to Members an amendment to the TRIPS Agreement that preserves all elements of the General Council Chairman's statement and the General Council Decision of the August 30, 2003

solution. In accomplishing this goal, the General Council agreed to adopt the amendment text, on December 6, 2005, in light of a statement read out by the Chairman. The amendment text and the statement by the Chair preserve all substantive aspects of the August 30, 2003 solution and do not alter the substance of the previously agreed solution. The only changes made were those technical changes necessary to change the original waiver decision to an amendment decision.

Ministers at the Hong Kong Ministerial Conference in December 2005 reaffirmed the importance of the General Council Decision of August 30, 2003 and welcomed the work in the TRIPS Council as well as the December 6, 2005 decision of the General Council on the amendment.

On December 16th, the United States submitted its acceptance of the amendment to the WTO. The amendment will enter into force, for those Members that have accepted it, upon its acceptance by two-thirds of the membership of the WTO.

● *TRIPS-related WTO Dispute Settlement Cases:* As a result of a WTO dispute launched by the United States, the WTO Dispute Settlement Body (DSB), on April 20, 2005, ruled that the EU's regulation on food-related geographical indications (GIs) is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The DSB ruled that the EU's GI regulation impermissibly discriminates against non-EU products and persons and also agreed with the United States that the regulation could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The DSB recommended that the EU amend its GI regulation to come into compliance with its WTO obligations. The EU has indicated an intent to comply, and, by agreement with the United States, has until April 3, 2006, to do so.

There are a number of other WTO Members that appear not to be in full compliance with their TRIPS obligations. The United States, for this reason, is still considering initiating dispute settlement procedures against several Members. We will continue to consult informally with these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these and other countries' enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

● *Geographical Indications:* The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of Article 23-level protection to geographical indications for products other than wines and spirits and to report to the TNC by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chair should report to the TNC on the issues related to extension of Article 23-level protection to geographical indications for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on geographical indications and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members. In a decision on August 1, 2004, to move the DDA forward, the Ministers directed the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of the protection of geographical indications. 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 in 2005.

Throughout 2005, the United States and many like-minded Members maintained the position that *demandeur*s had not established that the protection provided geographical indications 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 geographical indications, and that the benefits accruing to those few Members

that had longstanding statutory regimes for the protection of geographical indications would represent a windfall, and other Members with few or no geographical indications 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. Ministers at the Hong Kong Ministerial Conference in December 2005, reiterated their instructions to Members in August 1, 2004 for all implementation issues, including extension of the protection of geographical indications and requested the Director-General to intensify his consultative process in 2006.

The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations. The United States views such initiatives as efforts to take back the names of many famous products, such as feta and parmesan, from U.S. producers who have invested considerable time and resources to make these names famous and who are currently using such terms in a manner fully consistent with international intellectual property agreements.

No further progress has been made on the Article 24.2 review of the application by Members of TRIPS provisions on geographical indications in spite of the review continuing to be on the TRIPS Council's agenda. In 2005 TRIPS Council meetings, the United States continued to urge developing country Members that have not yet provided information on their regimes for the protection of geographical indications (most of them have not) to do so.

The United States also maintained its support for the proposal by New Zealand in 2000, and by Australia in 2001, that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members as reflected in the responses to the "checklist." No new documents were received from Members on this topic in 2005.

- *Review of Current Exceptions to Patentability for Plants and Animals:* As called for in the TRIPS Agreement, the TRIPS Council initiated a review of TRIPS Article 27.3(b) (permitting Members to except from patentability plants and animals and biological processes for the production of plants and animals) and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. Regrettably, 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. In 2004, several developing countries, led by India and Brazil, submitted a series of papers based on an unsuccessful proposal for a "checklist" approach to structuring the discussions on the relationship between TRIPS and CBD, the protection of genetic resources, and traditional knowledge. This "checklist" approach was not acceptable to the United States and certain other Members as it presupposes the position of the *demandeurs* that the patent provisions of the TRIPS Agreement should be amended 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 response to this proposal, the United States submitted a paper in November 2004 which provides counter-arguments to mandatory disclosure requirements for patent applications as well as a number of alternative proposals for better achieving certain objectives. In addition, the U.S. paper proposes a structure for future discussions that will not prejudice the position of any Members by focusing on shared objectives related to the protection of genetic resources and traditional knowledge, and sharing national experiences that may provide effective alternative models outside intellectual property right regimes to achieve the shared objectives.

In 2005, a number of documents were presented on these issues. The delegations of Brazil and India presented a point-by-point response to the U.S. paper. The United States then responded again in another paper in June 2005, to which a further response was filed from Brazil, India and a number of other Members. This debate, while unfortunately not appearing to narrow significantly differences on key issues, has clarified a number of points of divergence and convergence, and tracked more closely the debate suggested by the United States to discuss proposals based on whether or not they achieve the objectives purportedly sought, rather than presupposing any particular outcome.

The United States has suggested that any Member that has a question about whether a particular CBD implementation proposal would run afoul of TRIPS obligations raise the issue with the TRIPS Council so that it might obtain the views of other Members. In that light and, further pursuant to a suggestion by the delegation of Canada to have a more "fact-based approach" to the discussions, a number of developing countries, including India and Peru, have provided a number of patents granted in the United States, Japan and Europe, which they feel represent some type of misappropriation.

The United States has already presented its analysis of the turmeric patent, raised by India, and shown how in that case, the proposed disclosure requirements would have had no effect, but alternative solutions would have helped to remedy the problem. The United States will continue to analyze particular cases in this manner with the intent of furthering a more "fact-based" discussion on this issue. Ministers at Hong Kong, in December 2005, reiterated the instructions given to Members in August 1, 2004 for all implementation issues, including the relationship of the TRIPS Agreement and the CBD and requested the Director-General to intensify his consultative process in 2006. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

- *Non-violation:* The Doha Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, directs Members not to make use of such complaints. No consensus on a recommendation to establish scope and modalities or to extend the moratorium emerged by the time of the 5th Ministerial meeting. However, the General Council agreed, in its decision of August 1, 2004, on the Doha Work Program, to extend the moratorium until the Sixth Ministerial Conference in Hong Kong, at which point the Ministers agreed to extend the moratorium until the Seventh Ministerial Conference, which has not yet been scheduled.

The TRIPS Council took up the issue of non-violation nullification and impairment complaints in the context of the TRIPS Agreement at its formal sessions in 2005. As in past years, the United States continued to support the automatic expiration of the moratorium at the Hong Kong Ministerial Conference, arguing that TRIPS is no different than other agreements where non-violation nullification and impairment claims are permitted, and that Article 26 of the Dispute Settlement Understanding and GATT decisions on non-violation provide sufficient guidance to enable a panel or the Appellate Body to make appropriate determinations in such cases.

- *Further reviews of the TRIPS Agreement:* Article 71.1 calls for a review of the Agreement in light of experience gained in implementation, beginning in 2002. The Council continues to consider how the review should best be conducted in light of the Council's other work. The Doha Ministerial Declaration directs that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1. No further issues were raised under this Article by Members in 2005.

- *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.

- *Implementation of Article 66.2:* Article 66.2 requires developed countries 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. During 2003, the TRIPS Council adopted a Decision calling on developed countries to provide detailed reports every third year, with annual updates, on these incentives. The reports are to be reviewed in the TRIPS Council at its last meeting each year. In late 2005, the United States provided detailed reports on specific U.S. government institutions (e.g., the African Development Foundation and Agency for International Development) and incentives as required.

Prospects for 2006

In 2006, 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 geographical indications 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 2006 continue to be to:

- resolve differences through dispute settlement consultations and panels, where appropriate;
- continue its efforts to ensure full TRIPS implementation by developing country Members; 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 provided across national borders or that discriminate against locally-established services firms with foreign ownership. 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 national schedules, similar to the national schedules for tariffs.

The Council for Trade in Services in Regular Session (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; the transition review 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 Article III.3, V.5, V.7, and VII.4.

The ongoing market access negotiations take place in the CTS meeting in 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 Regulations, and the Working Party on GATS Rules. The following section discusses work in the CTS regular session.

Major Issues in 2005

In September 2005, as part of China's Transitional Review Mechanism, the CTS carried out its fourth annual review of China's implementation of its WTO services commitments. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation of certain commitments in the distribution, direct selling, franchising, express delivery, telecommunications, construction, and legal services sectors.

Members began a second review of MFN exemptions in 2004 in accordance with the decision adopted by the CTS at the conclusion of the previous review. The Council concluded its review in 2005 and decided to undertake the next review no later than June 2010.

In September 2005, the CTS formally commenced its second mandated review of the Annex on Air Transport Services. A consensus was reached among Members to task the WTO Secretariat with gathering and preparing the necessary background documentation to conduct the review. Members agreed to resume discussion in dedicated sessions in 2006.

The CTS received a number of notifications pursuant to GATS Article III.3 (transparency), GATS Article V (economic integration), and GATS Article VII.4 (recognition). Albania, Honduras, Hong Kong China and Uruguay made notifications under Article III.3. and the EU notified under Article V. The EFTA States and Chile, the United States and Australia, Thailand and Australia, Panama and El Salvador, and Japan and Mexico provided notifications under Article VII.4.

The Article V notification by the EU continues to be discussed in the CTS. In 2003, the EU belatedly notified its 1995 enlargement to include Austria, Finland and Sweden. In 2004, the EU withdrew that notification and submitted a new one to cover the 1995 enlargement as well as the ten newest Member States who joined the EU on May 1, 2004. Under Article XXI, Members who believe their access to EU services markets will be adversely affected by the changes to its schedule of commitments resulting from the enlargement process are entitled to seek compensation. Eighteen countries have filed claims of interest, including the United States. The mandated consultation period is scheduled to conclude on February 26, 2006, at which time interested parties may file a request for arbitration.

Prospects for 2006

The CTS will continue discussions pursuant to the Air Annex review 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 2005

The CTFS met three times in 2005. Brazil, Jamaica and the Philippines are the only remaining participants from 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). WTO Members have urged those three countries to accept the Fifth Protocol as quickly as possible. At the request of Members, the three countries provided some information on the status of their domestic ratification efforts.

During a June 2005 meeting, interested Members, including the United States, introduced and highlighted the major aspects of a joint communication regarding the importance of financial services liberalization for economic growth and including benchmarks for financial services market access offers.

In September 2005, as part of China's Transitional Review Mechanism, the CTFS carried out its fourth annual review of China's implementation of its WTO financial services commitments. The United States and other Members took that opportunity to raise questions and express concerns with China's implementation of certain commitments concerning insurance, banking, securities, pensions and financial information.

The CTFS also considered reports from Egypt and Chinese Taipei regarding recent developments in their financial services regimes.

Prospects for 2006

The Members of the Committee will continue to use the broad and flexible mandate of the CTFS 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, direct the Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. A 1994 Ministerial Decision assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at www.wto.org).

After the completion of the Accountancy Disciplines, in May 1999 the Council for Trade in Services (CTS) established a new Working Party on Domestic Regulation (WPDR) which also took on the work of the predecessor WPPS and its existing mandate. The WPDR is now charged with determining whether these or similar disciplines may be more generally applicable to other sectors. The Working Party shall report its recommendations to the CTS not later than the conclusion of the DDA services negotiations.

Major Issues in 2005

Throughout 2005, Members discussed a number of new and previously submitted proposals submitted by Members who believed that certain elements of regulatory disciplines related to licensing procedures and requirements, technical standards, qualification procedures and requirements, and transparency should be developed. Such disciplines would be aimed at ensuring that domestic regulations do not in themselves constitute a barrier to trade in services. At the same time Members reaffirmed the right of Members to regulate.

Members devoted considerable discussion to whether any new disciplines for domestic regulation should be adopted on a horizontal basis (applying to all sectors) or whether new disciplines should be tailored to the specific characteristics of individual sectors. Some Members advocated a single horizontal text covering licensing requirements and procedures, technical standards, qualifications requirements and procedures, and transparency. The United States took the position that horizontal or sector-specific application of any new disciplines should depend on the nature of the proposed disciplines, and that in some cases, for example in the case of licensing and qualifications, a sector-specific approach would be most feasible.

The United States' priority in 2005 continued to be horizontal disciplines for regulatory transparency. The United States considers transparency disciplines to be appropriate for horizontal implementation, because they involve universal principles that promote governmental accountability, rule of law and good governance. Greater transparency benefits not only services exporters, but also domestic producers, consumers, and the public at large. The 2004 U.S. submission on horizontal transparency disciplines was well received by the WPDR and transparency was actively debated in 2005 by both developed- and developing-country Members.

At the Hong Kong Ministerial Conference in December 2005, Ministers directed their negotiators to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current negotiations, and called upon Members to develop texts for adoption. Such texts are to be based on individual proposals, current or future, submitted by Members and/or an illustrative list of possible elements for disciplines under Article VI:4.

Prospects for 2006

The Working Party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access. In order to fulfill the directive in the December 2005 Ministerial Declaration, Members will likely continue to work intensively in both formal and informal sessions, with proponents of the various proposals moving to develop texts for adoption.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules (WPGR) continues to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, or subsidies. The WPGR held formal meetings in February, June and September of 2005.

The Doha Work Program resulting from the Hong Kong Ministerial Conference in December 2005 calls for Members to intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines.

Major Issues in 2005

Regarding emergency safeguard measures, delegations continued discussion on the basis of an informal communication from a group of ASEAN Members as well as a paper presented by UN Conference on Trade and Development. Issues touched upon in the discussion included: the purpose and effects of a safeguard mechanism in services; the definition of domestic industry; availability of appropriate statistics; link to progressive liberalization; the use of safeguard-type entries in schedules; and relevant comparisons with rules in the area of goods. Divergent views were expressed on the various aspects raised in relation to emergency safeguard measures, including desirability and feasibility. The United States continues to raise concerns with respect to feasibility, pointing out that a determination of trade-related injury would be difficult given weaknesses in services trade data; and implementing remedial measures could be problematic, particularly for services supplied through locally-established enterprises.

On government procurement, delegations continued their discussion of an earlier framework proposal by the EU as well as a new EU communication proposing an annex to the GATS on procedural rules for government procurement. Issues raised in the discussion included the application of the MFN obligation, the relationship to the Government Procurement Agreement (GPA), modal application, the possibility of distinguishing between goods and services, scheduling approaches, comparisons with approaches taken in regional trade agreements, thresholds, and elements of procedural rules. Divergent views were expressed. The United States remains willing to engage on the topic of procurement, while pointing out that the GPA already provides coverage of services.

With respect to subsidies, delegations pursued their discussion on issues relating to the information exchange, the definition of subsidy, and trade distortion. Issues raised included the scope and depth of the information exchange provided for in Article XV:1, the selection of sectors and timelines for the provision of information, the relevance of the Agreement on Subsidies and Countervailing Measures concepts for a provisional definition in services, the treatment of public services, and flexibility for developing countries. In January 2005, the United States submitted a paper titled, "Working Toward a Productive Information Exchange." The paper suggests that to facilitate an exchange of information on Members' services subsidies would be to first agree on a basic definition of a services subsidy and then narrow the scope of that exchange to a manageable level by concentrating first on certain types of subsidies (e.g., by focusing on subsidies to specific sectors). The United States continues to work constructively to foster a productive exchange of information to develop a better understanding of services subsidies and their relationship to trade.

Prospects for 2006

Pursuant to the mandate of the Hong Kong Ministerial Declaration, Members will intensify their efforts to conclude the negotiations on rule-making.

Such negotiations will involve more 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; and the fulfillment of the 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 Article XXI of the GATS. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral body, currently the case for all sectors except financial services. The CSC works to improve the classification of services, so that scheduled commitments reflect the services activities, in particular to ensure coverage of evolving services. The CSC met three times in 2005, in February, June, and September.

Major issues in 2005

The CSC addressed three items in 2005: classification issues, scheduling issues, and editorial conventions for the submission of revised offers.

Classification: The CSC continued the previous year's discussion on energy services and legal services. In June, the United States, in cooperation with Australia, Canada, Chile, the EU, Japan, Korea, New Zealand, Singapore, Switzerland, and Chinese Taipei, submitted a joint statement on how to schedule legal services. In February, the United States and the EU separately made submissions on telecommunications services, which were discussed throughout the year. In addition, issues pertaining to consulting services, postal and courier services, audiovisual services, construction and related engineering services, distribution services, education services, energy services, and environmental services were discussed in the informal mode.

Scheduling Issues: The CSC continued to address general scheduling questions raised in 2004 and to discuss technical issues related to economic needs tests. In this regard, in June, Canada submitted a communication regarding economic needs tests pertaining to the temporary movement of natural persons (mode 4).

Editorial Conventions for the Submission of Revised offers: During the February meeting, the CSC considered and adopted formatting procedures for revised offers suggested by the Chairman.

Prospects for 2006

Work will continue on technical issues and other issues that Members raise. The CSC will likely continue to examine classification issues pertaining to other service sectors.

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 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." Annex II provides more background information on the WTO dispute settlement process.

Major Issues in 2005

The DSB met 22 times in 2005 to oversee disputes and to address responsibilities such as consulting on proposed amendments to the Appellate Body working procedures 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 2005, the DSB approved by consensus a number of additional names for the roster. 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 2005.

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 to a dispute 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 Subsidies 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. The names and biographical data for the Appellate Body members during 2005 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; and Mr. Ganesan's term as Chairperson runs from December 17, 2005 to December 16, 2006.

In 2005, the Appellate Body issued nine reports, of which six involved the United States as a party and are discussed in detail below. The remaining reports concerned the challenge of Australia, Brazil and Thailand to the EU's sugar subsidies; Honduras' challenge to the Dominican Republic's measures on cigarettes; and Brazil's and Thailand's challenge to the EU's tariff classification for frozen chicken. The United States participated in these proceedings as an interested third party.

Dispute Settlement Activity in 2005: During its first eleven years in operation, WTO Members filed 335 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, and 11 in 2005). During that period, the United States filed 70 complaints against other Members' measures and received 98 complaints on U.S. measures. Several of these complaints involved the same issues (4 U.S. complaints against others and 22 complaints against the United States). A number of disputes commenced in earlier years remained active in 2005. What follows is a description of those disputes in which the United States was either a complainant, defendant, or third party during the past year.

Prospects for 2006

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 2006, we expect that the DSB will 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 2006.

a. Disputes Brought by the United States

In 2005, 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 2005 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.

Argentina–Patent and test data protection for pharmaceuticals and agricultural chemicals (DS171/196)

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").

Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that arose as a result of Argentina's failure to fully implement its remaining TRIPS obligations as required on January 1, 2000. These concerns included Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations began July 17, 2000. On May 31, 2002, the United States and Argentina notified the DSB that a partial settlement of this dispute had been reached. Of the ten claims raised by the United States, eight were settled. The United States reserved its rights with respect to two remaining issues: protection of test data against unfair commercial use and the application of enhanced TRIPS Agreement rights to patent applications pending as of the entry into force of the TRIPS Agreement for Argentina (January 1, 2000). The dispute remains in the consultation phase with respect to these issues.

Brazil–Measures on minimum import prices (DS197)

The United States requested consultations with Brazil on May 31, 2000 regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the EU regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continues to monitor the situation.

Canada–Measures relating to exports of wheat and treatment of imported grain (DS276)

On December 17, 2002, the United States requested consultations with Canada regarding trade in wheat. The United States challenged the wheat trading practices of the Canadian Wheat Board (CWB) as inconsistent with WTO disciplines governing the conduct of state-trading enterprises. The United States also challenged as unfair and burdensome Canada's requirements to treat imported grain differently than Canadian grain in the Canadian grain handling system, along with Canada's discriminatory policy that affects U.S. grain access to Canada's rail transportation system. Consultations were held January 31, 2003. The United States requested the establishment of a panel on March 6, 2003. The DSB established a panel on March 31, 2003. The Director-General composed the panel as follows: Ms. Claudia Orozco, Chair, and Mr. Alan Matthews and Mr. Hanspeter Tschaeni, Members. Following a preliminary procedural ruling, the DSB established a second panel on July 11, 2003, with the same panelists and the same schedule. In its report circulated on April 6, 2004, the panel found that Canada's grain handling system and rail transportation system discriminate against imported grain in violation of national treatment principles. However, the panel found that the United States failed to establish a claim that Canada violated WTO disciplines governing the conduct of state trading enterprises. The United States appealed the panel's findings related to state trading enterprises.
On August 30, 2004, the Appellate Body upheld the panel's findings on state trading enterprises. Canada did not appeal the panel's findings that Canada's grain handling and transportation systems discriminate against U.S. grain. The DSB adopted the panel and Appellate Body reports on September 27, 2004. Canada and the United States subsequently agreed to a reasonable period of time for implementation of the DSB's recommendations and rulings that ended on August 1, 2005.

Prior to the end of the reasonable period of time, Canada announced that it had remedied the discriminatory aspects of its grain handling and rail transportation systems.

China–Value-added tax on integrated circuits (DS309)

On March 18, 2004, the United States requested consultations with China regarding its value-added tax (VAT) on integrated circuits (ICs). While China provided for a 17 percent VAT on ICs, enterprises in China were entitled to a partial refund of the VAT on ICs that they have produced. Moreover, China allowed for a partial refund of the VAT for domestically-designed ICs that, because of technological limitations, were manufactured outside of China. As a result of the rebates, China appeared to be according less favorable treatment to imported ICs than it accorded to domestic ICs. China also appeared to be providing for less favorable treatment of imports from one WTO Member than another and discriminating against services and service suppliers of other Members. The United States considered these measures to be inconsistent with China's obligations under Articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China, and Article XVII of the General Agreement on Trade in Services (GATS). Consultations were held on April 27, 2004 in Geneva, and additional bilateral meetings were held in Washington and Beijing. On July 14, 2004, the United States and China notified the WTO of their agreement to resolve the dispute. Effective immediately, China no longer certified any new IC products or manufacturers for eligibility for VAT refunds, and China no longer offered VAT refunds that favored ICs designed in China. By April 1, 2005, China stopped providing VAT refunds on Chinese-produced ICs to current beneficiaries. Based on these developments, the United States and China notified the DSB on October 5, 2005, that they had reached a mutually satisfactory solution.

Egypt–Apparel tariffs (DS305)

On December 23, 2003, the United States requested consultations with Egypt regarding the duties that Egypt applied to certain apparel and textile imports. During the Uruguay Round, Egypt agreed to bind its duties on these imports (classified under HTS Chapters 61, 62 and 63) at rates of less than 50 percent (*ad valorem*) in 2003 and thereafter. The United States believed the duties that Egypt actually applied, on a "per article" basis, greatly exceeded Egypt's bound rates of duty. In January and September 2004, Egypt issued decrees applying *ad valorem* rates to these imports and setting the duty rates within Egypt's tariff bindings. Based on these developments and after reviewing the operation of the new decrees, Egypt and the United States agreed in May 2005 that a mutually satisfactory solution had been reached to the matter raised by the United States.

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 ("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, 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 of its plans to make permanent the ban on one hormone, oestradiol.

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 EC – Hormones dispute.

European Union–Protection of trademarks and geographical indications for agricultural products and foodstuffs (DS174)

EU Regulation 2081/92, *inter alia*, discriminates against non-EU products and nationals with respect to the registration and protection of geographical indications for agricultural products and foodstuffs; it also protects geographical indications to the detriment of TRIPS-guaranteed trademark rights. The United States therefore considered this measure inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States requested consultations regarding this matter on June 1, 1999, and, on April 4, 2003, requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. Australia also requested consultations with respect to this measure. When consultations failed to resolve the dispute, the United States requested the establishment of a panel on August 18, 2003. A panel was established on October 2, 2003, to consider the complaints of the United States and Australia. On February 23, 2004, the Director-General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair, and Mr. Seung Wha Chang and Mr. Peter Kam-fai Cheung, Members. On April 20, 2005, the DSB adopted the panel report, which found that the EU's regulation on food-related geographical indications (GIs), EC Regulation 2081/92, is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. This finding results from the long-standing U.S. complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an "EU-style" system of GI protection – and provides insufficient protections to trademark owners. The WTO panel agreed that the EU's GI regulation impermissibly discriminates against non-EU products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The panel recommended that the EU amend its GI regulation to come into compliance with its WTO obligations.

The EU, the United States, and Australia (which filed a parallel case) agreed that the EU would have until April 3, 2006, to implement the recommendations and rulings.

European Union–Provisional safeguard measure on imports of certain steel products (DS260)

On May 30, 2002, the United States requested consultations with the EU concerning the consistency of the EU's provisional safeguard measures on certain steel products with the GATT 1994 and with the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, but did not resolve the dispute. Therefore, on August 19, 2002, the United States requested that a WTO panel examine these measures. The panel was established on September 16, 2002.

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

On May 13, 2003, the United States filed a consultation request with respect to the EU's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EU. The United States asserted that the moratorium is not supported by scientific evidence, and the EU's refusal even to consider any biotech applications for final approval constitutes "undue delay." The national import bans of previously EU-approved products appear not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003.

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.

European Union–Selected customs matters (DS315)

On September 21, 2004, the United States requested consultations with the EU with respect to (1) lack of uniformity in the administration by EU member States of EU customs laws and regulations and (2) lack of an EU forum for prompt review and correction of member State customs determinations. On September 29, 2004, the EU accepted the U.S. request for consultations, and consultations were subsequently held on November 16, 2004. The panel was established on March 21, 2005. On May 27, 2005, the Director-General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair, and Mr. Mateo Diego-Fernandez and Mr. Hanspeter Tschani, Members.

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 Agreement on Subsidies and Countervailing Measures (Subsidies 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, or actionable, or both.
On February 13, 2004, the Deputy Director-General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair, and Mr. John Adank and Mr. Thinus Jacobsz, Members.

Japan–Measures Affecting the Importation of Apples (DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's measures restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, Erwinia amylovora. These restrictions included: the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those apples for other destinations. Consultations were held on April 18, 2002, and a panel was established on June 3, 2002. The Director-General selected as panelists Mr. Michael Cartland, Chair, and Ms. Kathy-Ann Brown and Mr. Christian Haeberli, Members.

In its report issued on July 15, 2003, the panel agreed with the United States that Japan's fire blight measures on U.S. apples are inconsistent with Japan's WTO obligations. In particular, the panel found that: (1) Japan's measures are maintained without sufficient scientific evidence, inconsistent with Article 2.2 of the SPS Agreement; (2) Japan's measures cannot be provisionally maintained under Article 5.7 of the SPS Agreement (an exception to the obligation under Article 2.2); and (3) Japan's measures are not based on a risk assessment and so are inconsistent with Article 5.1 of the SPS Agreement. Japan appealed the panel's report on August 28, 2003. The Appellate Body issued its report on November 26, 2003, upholding panel findings that Japan's phytosanitary measures on U.S. apples, allegedly to protect against introduction of the plant disease fire blight, are inconsistent with Japan's WTO obligations. In particular, the Appellate Body upheld the three panel findings, detailed above, that Japan had appealed. The DSB adopted the panel and Appellate Body reports on December 10, 2003. Japan notified its intention to implement the recommendations and rulings of the DSB on January 9, 2004. Japan and the United States agreed that the reasonable period of time for implementation would expire on June 30, 2004.

On expiration of the reasonable period of time, Japan proposed revised measures which made limited changes to its existing measures, and which continued to include an orchard inspection and a buffer zone. On July 19, 2004, the United States requested the establishment of a DSU Article 21.5 compliance panel to evaluate Japan's revised measures. Simultaneously, the United States requested authorization to suspend concessions or other obligations under DSU Article 22.2 in an amount equal to $143.4 million. Japan objected to this amount on July 29, 2004, referring the matter to arbitration. The parties suspended the arbitration pending completion of the compliance proceeding. The compliance panel was established on July 30, 2004. The original three panelists agreed to serve on the compliance panel. The panel issued its final report on June 23, 2005, finding Japan's revised measure in breach of Articles 2.2, 5.1 and 5.6 of the SPS Agreement. The DSB adopted the compliance panel report on July 20, 2005.

On August 25, 2005, Japan issued revised regulations eliminating its unnecessary and unjustified measures on U.S. apples, including among other things orchard inspections, buffer zones, and the surface disinfection of apple fruit. On August 30, 2005, the United States and Japan informed the DSB that they had reached a mutually agreed solution to the dispute.

Accordingly, the United States withdrew its Article 22.2 request to suspend concessions and other obligations to Japan, and Japan withdrew its Article 22.6 request for arbitration regarding the proposed level of suspension of concessions.

Mexico–Measures affecting telecommunications services (DS204)

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the GATS with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to: (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not fully addressed U.S. concerns, particularly with respect to international telecommunications services, on November 10, 2000, the United States filed a request for establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. The United States requested the establishment of a panel on March 8, 2002. The panel was established on April 17, 2002. On August 26, 2002, the Director-General appointed as Chairperson Mr. Ulrich Petersmann, and Mr. Raymond Tam and Mr. Björn Wellenius as panelists.

On April 2, 2004, the panel released its final report, siding with the United States on most of the major claims in this dispute. Specifically, the panel found that: (1) Mexico breached its commitment to ensure that U.S. carriers can connect their international calls to Mexico's major supplier, Telmex, at cost-based rates; (2) Mexico breached its obligation to maintain appropriate measures to prevent its dominant carrier from engaging in anti-competitive practices, by granting Telmex the exclusive authority to negotiate the rate that all Mexican carriers charge U.S. companies to complete calls originating in the United States; and (3) Mexico breached its obligations to ensure that U.S. carriers operating within Mexico can lease lines from Mexican carriers (and thereby provide services on a resale basis). The panel concluded, however, that Mexico may prohibit U.S. carriers from using leased lines in Mexico to complete calls originating in the United States.

Mexico did not appeal the panel report, which the DSB adopted on June 1, 2004. At that DSB meeting, Mexico and the United States informed the DSB that they had reached agreement on the steps required to implement the panel report. Mexico and the United States subsequently agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings would expire on July 1, 2005.

In August 2004, Mexico modified its international telecommunications rules to allow the competitive negotiation of international interconnection rates, and in July 2005 Mexico enacted new rules to allow the resale of international and long distance services. Based on these developments, the United States and Mexico informed the DSB on August 31, 2005, that Mexico had taken the steps required under their agreement.

Mexico–Definitive antidumping measures on beef and rice (DS295)

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns included: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available"; (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to

conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleged violations of various provisions of the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the GATT 1994. Consultations were held the summer of 2003. The United States requested the establishment of a panel on the measure on rice and the five measures of the Foreign Trade Act on September 19, 2003, and the DSB established a panel on November 7, 2003. The United States is continuing to monitor developments surrounding the beef antidumping measures.

On June 6, 2005, the panel issued its final report, siding with the United States on all of the major claims in dispute. Specifically, the panel found that Mexico improperly: (1) based its injury analysis on outdated information and failed to examine half of the injury data it collected; (2) applied its antidumping measure to two U.S. exporters that were not dumping; (3) applied an adverse "facts available" margin to a U.S. exporter that had no shipments during the period of investigation; and (4) applied "facts available" margins to U.S. exporters and producers that it did not even investigate. The panel also found that six provisions of Mexico's antidumping and countervailing duty law are inconsistent "as such" with the WTO Antidumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures.

On July 20, 2005, Mexico appealed the findings in the panel report. The Appellate Body issued its final report on November 29, 2005. The Appellate Body upheld all but one of the panel's findings relating to the antidumping measure, and it upheld all of the panel's findings relating to the provisions of Mexico's antidumping and countervailing duty laws.

The one finding that the Appellate Body reversed went to the question of whether Mexico had properly applied "facts available" margins to U.S. exporters and producers it did not investigate, and the Appellate Body found on different grounds that Mexico had not acted properly in this respect. Accordingly, the bottom line did not change. The DSB adopted the panel and Appellate Body reports on December 20, 2005.

Mexico–Tax measures on soft drinks and other beverages (DS308)

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work, *inter alia,* to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar.

The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994. Consultations were held on May 13, 2004, but they failed to resolve the dispute.

The United States requested the establishment of a panel on June 10, 2004, and the DSB established a panel on July 6, 2004. On August 18, 2004, the parties agreed to the composition of the panel as follows: Mr. Ronald Saborío Soto, Chair, and Mr. Edmond McGovern and Mr. David Walker, Members. On October 7, 2005, the panel circulated its report. The panel concluded that Mexico's beverage tax is inconsistent with Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994 and rejected Mexico's defense that the tax is justified as necessary to secure U.S. compliance with the North American

Free Trade Agreement. The panel found that the beverage tax discriminates against U.S. sweeteners, including high-fructose corn syrup, by subjecting beverages made with any sweetener other than cane sugar to a 20 percent tax whereas beverages made with cane sugar are tax-exempt. On December 6, 2005, Mexico appealed the findings in the panel report.

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 appears 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.

Venezuela–Import Licensing Measures on Certain Agricultural Products (DS275)

On November 7, 2002, the United States requested consultations with Venezuela concerning its import licensing systems and practices that restrict agricultural imports from the United States. The United States considers that Venezuela's discretionary import licensing regime appears to be inconsistent with the Agreement on Agriculture, the TRIMS Agreement, and the Import Licensing Agreement. The United States held consultations with Venezuela on November 26, 2002.

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 2005 in which the United States was a defendant.

United States–Foreign Sales Corporation ("FSC") tax provisions (DS108)

The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel.

The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed legislation that repealed and replaced the FSC provisions, but the EU claimed in further panel proceedings that the new legislation failed to bring the United States into compliance with its WTO obligations.

In anticipation of a dispute over compliance, the United States and EU reached agreement in September 2000 on the procedures to review U.S. compliance with the WTO recommendations and rulings. Pursuant to a request approved by the WTO, the deadline for U.S. compliance was changed from October 1, 2000, as recommended by the panel, to November 1, 2000. The procedural agreement also outlined certain procedural steps to be taken after passage of U.S. legislation to replace the FSC. The essential feature of the agreement provided for sequencing of WTO procedures as follows: (1) a panel would determine the WTO-consistency of FSC replacement legislation (the parties retained the right to appeal); (2) only after the appeal process was exhausted would arbitration over the appropriate level of retaliation be conducted if the replacement legislation was found WTO-inconsistent. Pursuant to the procedural agreement, on November 17, the EU requested authority to impose countermeasures and suspend concessions in the amount of $4.043 billion. On November 27, the United States objected to this amount, thereby referring the matter to arbitration, which was then, suspended pending a review of the legislation's WTO-consistency. On December 7, the EU requested establishment of a panel to review the legislation, and the panel was reestablished for this purpose on December 20, 2000. In a report circulated on August 20, 2001, the panel found that the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (ETI Act) does not bring the United States into conformity with its WTO obligations. The United States appealed the panel ruling on October 15, 2001. On January 14, 2001, the Appellate Body affirmed the findings of the panel. On January 29, 2002, the panel and Appellate Body reports were adopted, and the suspended arbitration to determine the amount of concessions was reactivated, with the original panelists serving as the arbitration panel pursuant to the procedural agreement. The arbitration panel circulated its report on August 30, 2002, and found that the EU was entitled to impose trade sanctions in the amount of $4.043 billion. On May 7, 2003, the DSB granted the EC authorization to suspend concessions consistent with the decision of the arbitrator. On December 8, 2003, the Council of the EU adopted Council Regulation (EC) No. 2193/2003, which provided for the graduated imposition of sanctions. These sanctions took effect on March 1, 2004.

On October 22, 2004, the President signed the American Jobs Creation Act of 2004 (AJCA). The AJCA repealed the FSC/ETI regime and, consistent with standard legislative practice regarding major tax legislation, contained a transition provision and a "grandfather" provision for pre-existing binding contracts. On November 5, 2004, the EU requested consultations regarding the transition and grandfather provisions. Consultations took place on January 11, 2005. On January 31, 2005, the EU published a regulation that suspended the sanctions with effect from January 1, 2005. The EU requested establishment of a panel on January 13, 2005, and the DSB established a panel on February 17. On May 2, the Director-General selected Mr. Germain Denis to replace Mr. Crawford Falconer as chairman, Mr. Falconer having earlier indicated that he was no longer able to serve on the panel. On September 30, 2005, the panel issued its report, finding that the AJCA maintains prohibited FSC and ETI subsidies through its transition and grandfathering provisions, and that the United States has therefore not fully brought its measures into conformity with its obligations under the relevant covered agreements.

The United States appealed the report on November 14, 2005.

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 is 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 United States' 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-B-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 to the WTO 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 1999, 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, the Department of 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–Countervailing duty measures concerning certain products from the European Communities (DS212)

On November 13, 2000, the EU requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the EU, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the EU in a WTO dispute concerning leaded steel products from the United Kingdom. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the EU challenged 12 separate U.S. countervailing duty proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930.

The WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

On July 31, 2002, the panel circulated its final report. In a prior dispute concerning leaded bar from the United Kingdom, the EU successfully challenged the application of an earlier version of Commerce's methodology, known as "gamma." In this dispute, the panel found that Commerce's current "same person" methodology (as well as the continued application of the "gamma" methodology in several cases) was inconsistent with the Subsidies Agreement. The panel also found that section 771(5)(F) of the Tariff Act of 1930 – the "change of ownership" provision in the U.S. statute – was WTO-inconsistent. The United States appealed, and the Appellate Body issued its report on December 9, 2002. The Appellate Body reversed the panel with respect to section 771(5)(F), finding that it did not mandate WTO-inconsistent behavior. The Appellate Body affirmed the panel's findings that the "gamma" and "same person" methodologies are inconsistent with the Subsidies Agreement, although it modified the panel's reasoning.

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations. U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the countervailing duty law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003. Second, Commerce applied its new methodology to the twelve determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129 of the URAA. As a result of this action, Commerce: (1) revoked two countervailing duty orders in whole; (2) revoked one countervailing duty order in part; and (3) in the case of five countervailing duty orders, revised the cash deposit rates for certain companies.

On November 7, 2003, the United States informed the DSB of its implementation of the DSB's recommendations and rulings.

On March 17, 2004, the EU requested consultations regarding Commerce's new change of ownership methodology. The EU contended that Commerce countervails the entire amount of unamortized subsidies even if the price paid for the acquired firm was only $1 less than the fair market value. With respect to Commerce's revised determinations, the EU complained about the three sunset reviews in which Commerce declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EU challenged the Commerce's analysis of the sale of shares to employees of the company in question. Consultations took place on May 24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

On August 17, 2005, the panel circulated its report. With respect to one determination, the panel did not find that Commerce's application of the privatization methodology was inconsistent with U.S. WTO obligations. The panel did find that Commerce should have applied the privatization methodology in two other determinations, where Commerce simply assumed the benefit of the subsidy was extinguished by the privatization; in addition, the panel found that Commerce should have taken into account new record evidence presented during the redetermination proceeding. The panel also found that the USITC was not obliged to redo its sunset determination on likelihood of injury. The DSB adopted the panel report on September 27, 2005, at which meeting the United States stated its intention to comply with the findings.

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 USC § 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. 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 Subsidies 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 Subsidies Agreements. The United States prevailed against the complainants' claims under the Antidumping and Subsidies 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 Subsidies 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 Subsidies 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 Subsidies 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, 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 has 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.

United States–Countervailing duties on certain carbon steel products from Brazil (DS218)

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel products from Brazil, alleging that Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the United Kingdom, violates the Subsidies Agreement as it was applied by the United States in this countervailing duty case. Consultations were held on January 17, 2001.

United States–Antidumping duties on seamless pipe from Italy (DS225)

On February 5, 2001, the EU requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The EU alleges that these measures violate the Antidumping Agreement. Consultations were held on March 21, 2001.

United States–Calculation of dumping margins (DS239)

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" (or, not offsetting "dumped" sales with "non-dumped" sales) in conducting investigations and reviews.

Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

United States–Final countervailing duty determination with respect to certain softwood lumber from Canada (DS257)

On May 3, 2002, Canada requested consultations with the United States regarding Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated, claimed that Commerce imposed countervailing duties against programs and policies that are not subsides and are not "specific" within the meaning of the Subsidies Agreement, and that Commerce failed to conduct its

investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada's request on October 1, 2002.

The panel was composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members. In its report, circulated on August 29, 2003, the panel found that the United States acted consistently with the Subsidies Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the Subsidies Agreement. It also found, however, that the United States had calculated the benefit incorrectly and had improperly failed to conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5.

On January 19, 2004, the Appellate Body issued a report finding in favor of the United States in all key respects. The Appellate Body reversed the panel's unfavorable finding with respect to the rejection of Canadian prices as a benchmark; upheld the panel's favorable finding that the provincial governments' provision of low-cost timber to lumber producers constituted a "financial contribution" under the Subsidies Agreement; and reversed the panel's unfavorable finding that Commerce should have conducted a "pass-through" analysis to determine whether subsidies granted to one lumber company were passed through to other lumber companies through the sale of subsidized lumber. The Appellate Body's only finding against the United States was that Commerce should have conducted such a pass-through analysis with respect to the sale of logs from harvester/sawmills to unrelated sawmills.
The DSB adopted the panel and Appellate Body reports on February 17, 2004. The United States stated its intention to implement the DSB recommendations and rulings on March 5, 2004. On December 17, 2004, the United States informed the DSB that Commerce had revised its countervailing duty order, thereby implementing the DSB's recommendations and rulings.

Following a request by Canada, on January 14, 2005, the DSB established an Article 21.5 compliance panel to review the new Commerce determination. Canada also requested authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, in the amount of C$200,000,000. The United States objected to this level, referring the matter to arbitration. The parties agreed to request that the arbitration be suspended pending completion of the compliance proceeding.

On August 1, 2005, the compliance panel issued a report finding deficiencies in Commerce's implementation with respect to both the revised determination of subsidies and the first assessment review.

On September 6, the United States appealed the panel's inclusion of the first assessment review in the compliance proceeding. On December 5, 2005, the Appellate Body upheld that aspect of the panel report. The DSB adopted the panel and Appellate Body reports on December 20, 2005.

United States–Sunset reviews of antidumping and countervailing duties on certain steel products from France and Germany (DS262)

On July 25, 2002, the EU requested consultations with the United States with respect to antidumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France and Germany, and on imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany. Consultations were held on September 12, 2002.

United States–Final dumping determination on softwood lumber from Canada (DS264)

On September 13, 2002, Canada requested WTO dispute settlement consultations concerning the amended final determination by Commerce of sales at less than fair value with respect to certain softwood lumber from Canada, along with the antidumping duty order with respect to imports of the subject products. Canada alleged that Commerce's initiation of its investigation concerning the subject products, as well as aspects of its methodology in reaching its final determination, violated the GATT 1994 and the Antidumping Agreement. Consultations were held on October 11, 2002. On December 6, 2002, Canada requested establishment of a panel, and the DSB established the panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows: Mr. Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members. In its report, the panel rejected Canada's arguments: (1) that Commerce's investigation was improperly initiated; (2) that Commerce had defined the scope of the investigation (i.e., the "product under investigation") too broadly; and (3) that Commerce improperly declined to make certain adjustment based on difference in dimension of products involved in particular transactions compared. The panel also rejected Canada's claims on company-specific calculation issues. The one claim that the panel upheld was Canada's argument that Commerce's use of "zeroing" in comparing U.S. price to normal value was inconsistent with Article 2.4.2 of the Antidumping Agreement.

On May 13, 2004, the United States filed a notice of appeal regarding the "zeroing" issue. Canada cross-appealed with respect to two company-specific issues (one regarding the allocation of costs to Abitibi, and the other regarding the valuation of an offset to cost of production for Tembec). The Appellate Body issued its report on August 11, 2004. The report upheld the panel's findings on "zeroing" and the Tembec issue. It reversed a panel finding regarding the Abitibi issue concerning interpretation of the term "consider all available evidence" in Article 2.2.1.1 of the Antidumping Agreement; however, it declined to complete the panel's legal analysis. The panel and Appellate Body reports were adopted at the August 31, 2004 DSB meeting. The United States and Canada agreed that the reasonable period of time for implementation in this dispute would expire on April 15, 2005. On February 14, 2005, by mutual agreement between the United States and Canada, the reasonable period of time was extended to May 2, 2005.

On May 2, 2005, Commerce issued a revised antidumping determination in which it established the existence of dumping using the transaction-to-transaction comparison methodology, rather than the average-to-average methodology found to be inconsistent by the panel. On May 19, 2005, Canada challenged the measure taken to comply under Article 21.5 of the DSU.

Also on that date, Canada sought recourse to Article 22.2 of the DSU. On May 31, 2005, the United States objected to the level of suspension of concessions proposed by Canada pursuant to Article 22.2 and, accordingly, the matter was referred to arbitration under Article 22.6 of the DSU. On June 10, 2005, the United States and Canada jointly asked that the Article 22.6 arbitration be suspended pending conclusion of the Article 21.5 proceeding.

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 Subsidies 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 Subsidies Agreement, the Agreement on Agriculture, and the GATT 1994. Consultations were held on December 3, 4 and 19 of 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 Dariusz Rosati of Poland, Chair, Daniel Moulis of Australia and Mario Matus of Chile, 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 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 certain administrative changes relating to its export credit guarantee programs. 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 the amount of $3 billion. 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 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in the amount of $1.04 billion per year in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, and that matter was also referred to arbitration. On November 21, 2005, the United States and Brazil agreed to suspend the arbitration.

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. 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, thus bringing the United States into compliance with the recommendations and rulings of the DSB.

United States–Investigation of the U.S. International Trade Commission in softwood lumber from Canada (DS277)

On December 20, 2002, Canada requested consultations concerning the May 16, 2002 determination of the USITC that imports of softwood lumber from Canada, which Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury.
Canada alleged that flaws in the USITC's determination caused the United States to violate various aspects of the GATT 1994, and the Antidumping and Subsidies Agreements.

Consultations were held January 22, 2003. Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director-General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members. In its report circulated on March 22, 2004, the panel agreed with Canada's principal argument was that the USITC's threat determination was not supported by a reasoned and adequate explanation, and agreed with Canada that the USITC had failed to establish that imports threaten to cause injury. However, the panel: (1) declined Canada's request to find violations of certain overarching obligations under the Antidumping and Subsidies Agreements; (2) rejected Canada's argument that a requirement that an investigating authority take "special care" is a stand-alone obligation; (3) rejected Canada's argument that the USITC was obligated to identify an abrupt change in circumstances; (4) agreed with the United States that, where the Antidumping and Subsidies Agreements required the USITC to "consider" certain factors, the USITC was not required to make explicit findings with respect to those factors; (5) and rejected Canada's argument that the United States violated certain provisions of the applicable agreements that pertain to present material injury. The DSB adopted the panel report on April 26, 2004.

At the May 19, 2004 meeting of the DSB, the United States stated its intention to implement the rulings and recommendations of the DSB. On November 24, 2004, the USITC issued a new threat determination, finding that the U.S. lumber industry was threatened with material injury by reason of dumped and subsidized lumber from Canada. On December 13, Commerce amended the antidumping and countervailing duty orders to reflect the issuance and implementation of the new USITC determination.

At the January 25, 2005 DSB meeting, the United States announced that it had come into compliance with the DSB's recommendations and rulings. Canada sought recourse to Article 21.5 of the DSU, and an Article 21.5 panel was established on February 25, 2005. The panel was composed on March 2, 2005, consisting of the same members as the original panel. Canada also sought recourse to Article 22 of the DSU. The United States objected to the level of concessions that Canada proposed to suspend, and the matter was referred to arbitration under Article 22.6. The Article 22.6 arbitration was suspended pending the outcome of the Article 21.5 proceeding.

In its report circulated on November 15, 2005, the Article 21.5 panel rejected Canada's claim that the USITC's threat determination was not supported by evidence and analysis such that an objective and unbiased investigating authority could have made that determination.

United States–Countervailing duties on steel plate from Mexico (DS280)

On January 21, 2003, Mexico requested consultations on an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico.

Mexico alleges that Commerce used a WTO-inconsistent methodology – the "change-in-ownership" methodology – to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the Subsidies Agreement. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on August 4, 2003, and the DSB established a panel on August 29, 2003.

United States–Anti-dumping measures on cement from Mexico (DS281)

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations of Commerce and the USITC, and the USITC's refusal to conduct a changed circumstances review. Mexico also referred to 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. Mexico cited a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the USITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. 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 September 3, 2004, the Director-General composed the panel as follows: Mr. Peter Palecka, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

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 challenges 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.

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.

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

On March 13, 2003, Antigua & Barbuda 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 & Barbuda from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003.

Antigua & Barbuda 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 & Barbuda, 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, and1955) 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 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 needs to clarify an issue concerning Internet gambling on horse racing.

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

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.

United States–Countervailing duty investigation on dynamic random access memory semiconductors (DRAMS) from Korea (DS296)

On June 30, 2003, Korea requested consultations regarding determinations made by Commerce and the USITC in the countervailing duty investigation on DRAMS from Korea, and related laws and regulations. Consultations were held August 20, 2003. Korea requested further consultations on August 18, 2003, which were held October 1, 2003. Korea requested the establishment of a panel on November 19, 2003. The panel request covered only the Commerce and USITC determinations made in the DRAMS investigation. The DSB established a panel on January 23, 2004.

On March 5, 2004, the Director-General composed the panel as follows: H. E. Mr. Hardeep Puri, Chair, and Mr. John Adank and Mr. Michael Mulgrew, Members. On February 21, 2005, the panel found that certain aspects of the Commerce and USITC determinations were inconsistent with provisions of the Subsidies Agreement.

On March 29, 2005, the United States appealed the portion of the panel report dealing with the Commerce determination. On June 27, the Appellate Body issued its report in which it reversed the findings of the panel. The DSB adopted the Appellate Body report and the panel report (as modified by the Appellate Body) on July 20. On August 3, the United States informed the DSB of its intent to implement the panel's adverse finding regarding the USITC determination.
The United States and Korea agreed that the reasonable period of time for implementation in this dispute will expire on March 8, 2006.

United States–Determination of the International Trade Commission in hard red spring wheat from Canada (DS310)

On April 8, 2004, Canada requested consultations regarding the USITC's determination on hard red spring wheat. In its request, Canada alleged that the United States has violated Article VI:6(a) of the GATT 1994 and various articles of the Antidumping and Subsidies Agreements. Canada alleged that these violations stemmed from certain errors in the USITC's determination. In particular, Canada claims that the USITC: (1) failed "to properly examine the effect of the dumped and subsidized imports on prices in the domestic market for like products;" (2) failed "to properly examine the impact of the dumped and subsidized imports on domestic producers of like products;" (3) failed "to properly demonstrate a causal relationship between the dumped and subsidized imports and material injury to the domestic industry;" (4) failed "to properly examine known factors other than dumping and subsidizing that were injuring the domestic industry;" and (5) attributed to the dumped and subsidized imports the injuries caused by other factors. Consultations were held on May 6, 2004. On June 11, 2004, Canada requested the establishment of a panel, the United States objected, and Canada made but withdrew a second panel request.

United States–Reviews of countervailing duty on softwood lumber from Canada (DS311)

On April 14, 2004, Canada requested consultations concerning what it termed "the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada" and "the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order." Canada alleged that the United States had acted inconsistently with several provisions of the Subsidies Agreement and with Article VI:3 of the GATT 1994. Consultations were held on June 8, 2004.

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 Subsidies 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 PeZa and Mr. David Unterhalter, Members.

United States–Section 776 of the Tariff Act of 1930 (DS319)

On November 5, 2004, the EU requested consultations with the United States with respect to the "facts available" provision of the U.S. dumping statute and the Department of Commerce's dumping order on Stainless Steel Bar from the United Kingdom.
The EU claims that both the statutory provision on adverse facts available and Commerce's determination and order are inconsistent with various provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on January 11, 2005 and May 20, 2005.

United States–Continued suspension of obligations in the EC - 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 EC – Hormones dispute. 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. 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.

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

On November 24, 2004, Japan requested consultations with respect to: (1) the Department of 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. On April 15, 2005, the Director-General composed the panel as follows: David Unterhalter, Chair, and Simon Farbenbloom and Jose Antonio Buencamino, Members.

United States–Provisional antidumping measures on shrimp from Thailand (DS324)

On December 9, 2004, Thailand requested consultations with respect to Commerce's imposition of provisional antidumping duties on certain frozen and canned warmwater shrimp from Thailand. Specifically, Thailand has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article 2.4 of the Antidumping Agreement. Thailand also has alleged that Commerce's resort to "adverse facts available" in calculating normal value for one Thai producer violates provisions of Article 6 and Annex II of the Antidumping Agreement; and that Commerce's alleged failure to make due allowances for certain factors in its calculations for the Thai exporters violates Article 2.4 of the Antidumping Agreement.

United States–Antidumping determinations regarding stainless steel from Mexico (DS325)

On January 5, 2005, 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 February 4, 2005.

United States–Antidumping measure on shrimp from Ecuador (DS335)

On November 17, 2005, Ecuador requested consultations with respect to Commerce's imposition of definitive antidumping duties on certain frozen warmwater shrimp from Ecuador. Specifically, Ecuador has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article VI of the GATT 1994 and several provisions of the Antidumping Agreement.

I. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement Establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM is a valuable resource for improving the transparency of Members' trade and investment regimes and in ensuring adherence to WTO rules. The TPRM examines national trade policies of each Member on a schedule designed to cover the full WTO Membership on a frequency determined by trade volume. The process starts with an independent report by the WTO Secretariat on the trade policies and practices of the Member under view.

This Member works closely with the Secretariat to provide relevant information for the report. The Secretariat report is accompanied by another report prepared by the government undergoing the review. Together these reports are discussed by the WTO Membership in a TPRB session. At this session, the Member under review will discuss the report and answer questions on its trade policies and practices. The express purpose of the review process is to strengthen Members observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system. A number of Members have remarked that the preparations for the review are helpful in improving their own trade policy formulation and coordination. The current process reflects improvements to streamline the TPRM and gives it broader coverage and greater flexibility. Reports cover the range of WTO agreements including goods, services, and intellectual property and are available to the public on the WTO's web site at www.wto.org. Documents are filed on the site's Document Distribution Facility under the document symbol "WT/TPR."

Major Issues in 2005

During 2005, the TPRB reviewed the trade regimes of Bolivia, Ecuador, Egypt, Guinea, Jamaica, Japan, Mongolia, Nigeria, Paraguay, The Philippines, Qatar, Romania, Sierra Leone, Trinidad and Tobago, and Tunisia. This group included two least-developed country (LDC) Members and five Members reviewed for the first time. As of the end of 2005, the TPRM had conducted 212 reviews, covering 123 out of 148 Members (counting the EU as twenty-five) and representing almost 90 percent of world trade.

Reviews emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of trade

policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives.
Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfillment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing countries of customs valuation methods, the adaptation of national legislation to WTO requirements, and technical assistance.

In the history of the TPRB, 23 of the WTO's 32 least-developed country Members have been reviewed. For least-developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have implications and uses beyond the meeting of the TPRB.
The TPRB's report to the Singapore Ministerial Conference recommended greater attention be paid to LDCs in the preparation of the TPRB timetable, and a 1999 appraisal of the operation of the TPRM also drew attention to this matter. Trade Policy Reviews of LDCs have increasingly performed a technical assistance function and have been useful in broadening the understanding of LDC's trade policy structure. These reviews tend to enhance understanding of WTO Agreements, enabling better compliance and integration in the multilateral trading system. In some cases, the TPR has facilitated better interaction between government agencies. The TPRM's comprehensive coverage of trade policies also enables Members to identify shortcomings in specific areas where further technical assistance may be required.

The review process for an LDC now includes a multi-day seminar for its officials on the WTO and, in particular, the trade policy review exercise and the role of trade in economic policy; such seminars were held in 2005 for the review process of Guinea and Sierra Leone. Similar exercises have been conducted in Belize, Benin, Burkina Faso, The Gambia, Mali, Rwanda, and Suriname. The Secretariat Report for an LDC review includes a section on technical assistance needs and priorities with a view to feeding this into the Integrated Framework process. The seminars and the technical assistance involve close cooperation between LDCs and the WTO Secretariat. This cooperation continues to respond more systematically to technical assistance needs of LDCs.

Annex III of the GATT 1994 recommends that Members review periodically the operation of the TPRM. WTO Members conducted the second such appraisal of the TPRM in 2005. With the goal of improving substantive discussion during reviews, Members agreed to advance deadlines for circulation of the Secretariat and Government Reports and submission of Member questions to the country under review by one week. To increase transparency, Members also agreed to publish the findings of the review within three months of the review date. Members decided to conduct a further appraisal of the TPRM within two years after the conclusion of the Sixth Ministerial Conference.

Prospects for 2006

The TPRM will continue to be an important tool for monitoring Members' adherence to WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. The 2006 program schedules 20 Members for review, including Angola, Argentina, Bangladesh, China, Chinese Taipei, Congo, Djibouti, Hong Kong China, Iceland, Israel, Kenya, Kyrgyz Republic, Malaysia, Nicaragua, Tanzania, Togo, Uganda, United Arab Emirates, the United States, and Uruguay. Angola, China, Chinese Taipei, Congo, Djibouti, Kyrgyz Republic, and the United Arab Emirates will undergo their first Reviews. Six Members – Angola, Bangladesh, Djibouti, Guinea, Tanzania, Togo, and Uganda – are LDCs.

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. Following the Fourth Ministerial Conference at Doha concluded in November 2001, the CTE in Regular Session continued discussion of many important issues with a focus on those identified in the Doha Declaration, including market access associated with environmental measures, TRIPS and environment, and labeling for environmental purposes under paragraph 32; capacity-building and environmental reviews under paragraph 33; and discussion of the environmental aspects of Doha negotiations under paragraph 51. These issues identified in the Doha Declaration are separate from those that are subject to specific negotiating mandates and that are being taken up by the CTE in Special Session.

Major Issues in 2005

In 2005, the CTE met in Regular Session (CTERS) three times. In general, Members have been less active in meetings of the CTERS, given the increased work load and intensified negotiating schedule of the CTE in Special Session. That said, the United States has continued its active role in CTERS 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, more specifically, in the format of national experience sharing, particularly with respect to market access issues for developing countries. Attention was also given to specific sectors, including illegal logging. The CTE heard information regarding a Sub-regional Workshop on Environmental Requirements and Market Access for Electrical and Electronic Goods held in Thailand in May 2005, as well as other work underway by UN Conference on Trade and Development.

- **TRIPS and Environment under Doha Sub-Paragraph 32(ii):** Discussions under this item continued to focus, as they had prior to the Doha Ministerial Conference, on whether there may be any inherent conflicts between the TRIPS Agreement and the Convention on Biological Diversity (CBD) with respect to genetic resources and traditional knowledge. Several suggestions for structuring of further discussions under this agenda item include studying the impacts, if any, of trade and intellectual property rights regimes on biodiversity and exploring funding for biodiversity protection and technology transfer.

- **Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii):** Discussions under this agenda item continued to demonstrate a considerably lower level of interest. Most Members continued to question the rationale for singling out environmental labeling for special consideration separate from ongoing work in the Committee on Technical Barriers to Trade on labeling more generally.

- **Capacity Building and Environmental Reviews under Doha Paragraph 33:** Many developing country Members stressed the importance of benefiting from technical assistance related to negotiations in the WTO 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 Committee of its trade and environment technical assistance activities undertaken in 2005 and planned for the year 2006.

- **Discussion of Environmental Effects of Negotiations under Doha Paragraph 51:** The highlight under this item was a WTO Symposium on Trade and Sustainable Development held in October 2005. The symposium brought together international experts on issues such as fisheries and agricultural subsidies. Representatives included the World Bank, OECD and UNEP. Discussions under this agenda item continued to focus on developments in other areas of negotiations, based on the updates from relevant WTO Divisions regarding the environment-related issues in the negotiations on Agriculture, Market Access for Non-agricultural Products, WTO Rules and on 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).

Prospects for 2006

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 the next year.

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, it 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 countries into the trading system, technical cooperation and training, commodities, market access in products of interest to developing countries, and the special concerns of the least developed countries, 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 implementation or operation of a specific agreement. Since Doha and the establishment of the Doha Development Agenda (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 countries, reliance on a narrow export base, coherence in the work of the World Bank, the IMF and the WTO, the WTO's technical assistance and capacity building activities, and sustainable development goals. Work in the Sub-Committee on LDCs and the Dedicated Session on Small Economies has identified challenges faced by LDCs in their WTO accession processes and the special characteristics of small, vulnerable economies, including island and landlocked states.

Major Issues in 2005

Following on work of the CTD in the Dedicated Session (CTD-DS) in 2004 and early 2005 to identify the unique characteristics and problems of Small Economies in the trading system, in mid-2005 the proponents of this work requested a change in focus in the work of the Dedicated Session. Specifically, the proponents requested that the CTD-DS monitor the progress of their proposals recently submitted in the negotiating and other bodies.

The work of the CTD in 2005 focused primarily on the development aspects of the ongoing negotiations under the DDA, and considered presentations on a wide range of traditional and non-traditional issues in the trade and development nexus.

These issues included commodity dependence; the role of electronic commerce and regional trade agreements in development; and the growth of developing country participation in the global economy. In the discussions on the development aspects of the DDA, notable interventions by several developing country Members emphasized that while flexibilities afforded through Special and Differential Treatment were important, developing countries needed to seek greater participation in world trade, greater market access and less trade barriers in the negotiations.

Outlook for 2006

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, particularly into developed countries' markets, is expected to continue. On commodities, in contrast to the positive experiences of those Members that have been able to successfully diversify their export bases examined by the CTD in 2005, the CTD is expected to review case studies of developing country Members that have not successfully met the challenge of export diversification.

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 balance-of-payments 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 balance of payments 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 the balance of payments.

Major Issues in 2005

During 2005, no Member imposed new balance-of-payments restrictions. The BOP Committee held two meetings during the year, in April and July. At the April meeting, the Chairman reviewed the status on the two outstanding implementation issues relating to balance of payments issues. As part of the work program agreed at Doha, BOP Committee Members continued to consider proposals by delegations and certain suggestions provided by the Chair to clarify the respective roles of the IMF and BOP Committee in balance of payment proceedings. The BOP Committee did not arrive at a consensus on implementation issues in 2005.

Prospects for 2006

Should other Members 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 approval. The Committee meets throughout the year to address the financial requirements of the organization. In 2003, the WTO moved to a biennial budget process. Under this new approach, Members agreed in December 2005 on the WTO's second biennial budget, covering 2006 and 2007. As envisaged in the decision establishing biennial budgeting, toward the end of 2006 the Secretariat may propose adjustments to the 2007 budget to take into account unforeseen and uncontrollable developments. As is the practice in the WTO, decisions on budgetary issues are taken by consensus of the Members.

The United States is an active participant in the Budget Committee. The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property, and the United States, as the Member with the largest share of such trade, also makes the largest contribution to the WTO budget. For the 2006 budget, the U.S. contribution is 15.410 percent of the total budget assessment, or Swiss Francs (CHF) 26,767,170 (about $20.5 million).
Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II. Reflecting the move to a biennial budget process, Annex II contains consolidated budget data for both 2006 and 2007.

Major Issues in 2005

• *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 began in 2005 and will continue through the 2006-2007 biennium.

• *Critical Review of the Structure of the WTO Secretariat*: The Director General has indicated that he intends to initiate a critical review of the structure of the WTO Secretariat with a view to streamlining it. Implementation of the reform plan is expected to result in future savings. However, in the short term, financial resources will be needed to bridge a liquidity gap. Therefore, in December 2005 the General Council agreed to a specific allotment of Swiss Francs 500,000 for 2005 and a further Swiss Francs 500,000 for 2006 to meet this need.

• *Policy on the Use of Temporary Assistance*: In December 2004, the Budget Committee endorsed a new policy on the use of temporary assistance. The new policy is designed to enhance the control of long term costs to the WTO by ensuring that temporary assistance is used for truly temporary needs and does not lead to uncontrolled long term obligations. In December 2005, the General Council approved decisions marking the final phase of the process of putting in place the controls to ensure that these objectives are met.

• *New WTO Annex*: In July 2005, the General Council agreed to increase the authorized funding for construction of the new WTO Annex to Swiss Francs 60 million, to be financed through a 50 year interest free loan from the Swiss authorities. The WTO Secretariat has outgrown the main WTO building and the new annex will replace temporary facilities that have been needed to house those staff and functions that do not fit in the main building. Construction is expected to begin in summer 2006.

Prospects for 2006

The Budget Committee will be regularly consulted and kept informed of all aspects concerning the formulation and implementation of the restructuring plan. The Committee will also actively follow the implementation of the Security Enhancement Program and the Director General's new human resources reform program.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (CRTA or Committee), 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 by the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives on the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV is the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim

agreements leading to an FTA or CU. 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 countries. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV; and Article 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. Second, duties and other restrictions of commerce applied to third countries upon the formation of a CU must not, on the whole, be higher or more restrictive than was the case before the agreement. For an FTA, no duties or restrictions may be higher than was the case previously. 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 the formation of a CU, the parties must notify Members to negotiate compensation to other Members for exceeding their WTO bindings with market access concessions. 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 CU or FTA may not exclude *a priori* any mode of supply from the agreement.

As with agreements on goods, any barriers or restrictions to trade in services applicable to third parties 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 2005

As of 30 September 2005, 334 RTAs have been notified to the GATT/WTO. Of the notified agreements, 183 are currently in force. Of these RTAs, 130 are GATT Article XXIV agreements; 22 are Enabling Clause agreements; and 31 are GATS Article V agreements.

During 2005, the Committee held two sessions. The Committee has currently under examination a total of 141 agreements, of which 110 are in the area of trade in goods and 31 in trade in services. Forty four RTAs are currently undergoing factual examination, while for 48 RTAs, the Committee has not yet started the factual examination. For the remaining 49 RTAs the factual examination has concluded; no progress was made, however, on the completion of the corresponding examination reports due to lack of consensus on the content of each report with respect to assessment of WTO consistency.

During its 40th Session in July 2005, in accordance with the modified Chairman's Guidelines on Procedures to Improve and Facilitate the Examination Process, the Committee for the first time made use of a factual presentation prepared by the Secretariat as the basis for the examination of an RTA. On October 4, at the invitation of the Chairman of the Negotiating Group on Rules (the WTO Body responsible for "clarifying and improving" the rules governing RTAs under the Doha Development Agenda, discussed above), the Chairman of the CRTA presented an assessment of the exercise to the Group. He indicated that the factual presentation, which had been well received by delegations, had significantly helped Members in their review exercise and had made a positive contribution to the process of transparency.

In February 2005, the CRTA reviewed the U.S.-Chile and U.S.-Singapore FTAs. Japan, Australia, the EU, Malaysia, Switzerland and Korea were among the delegations that sought additional information in the review of the U.S.-Chile FTA. Questions addressed such issues as the coverage of the FTA, TRQ fill rates, the length of the transition periods, rules of origin on goods re-entered after repair or alteration, safeguards, relationship to the WTO TRIPs Agreement, and the schedule of commitments in relation to the Parties' commitments under the GATS. In the review of the U.S.-Singapore FTA, Australia, the EU, Japan, and Switzerland raised questions addressing, *inter alia*, TRQ fill rates; asymmetrical liberalization (Singapore did not have a transition period for its tariff elimination); export restrictions on unprocessed timber; the Integrated Sourcing Initiative and goods from Indonesia; safeguards; government procurement; and the schedule of commitments in relation to the Parties' commitments under the GATS.

In September, 2005, the United States filed its Biennial Report on the Operation of the United States-Israel Free Trade Agreement.

Prospects for 2006

During 2006, the Committee will continue to review regional trade agreements notified to the WTO and referred to the Committee. The CRTA is scheduled to conduct a second round of reviews of the United States -Chile, the United States-Singapore and the United States-Jordan FTAs in January, 2006; it may also discuss the Biennial Report on the United States-Israel FTA. The United States-Australia FTA is expected to be reviewed in the CRTA's meeting in mid-2006.

6. Accessions to the World Trade Organization

Status

By the end of 2005, there remained twenty-eight accession applicants with established Working Parties; about one-third of them were least-developed countries (LDCs).[17] Saudi Arabia completed its accession and became the 149th WTO Member on December 11, in time to attend the Sixth Ministerial Conference in Hong Kong as a Member. Tonga also completed its accession process, but must ratify the accession package before officially accepting the WTO Agreement. The General Council accepted the withdrawal of the application of the state union of Serbia and Montenegro and established separate Working Parties for the Accession of the Republic of Montenegro and the Republic of Serbia as separate customs territories. In May, the General Council also approved the applications of Iran and Sao Tome and Principe to begin accession negotiations and established their Working Parties.

First sessions of Working Parties (composed of all interested WTO Members) convened for Serbia and for Montenegro, conducting the initial review of the information submitted by these applicants on their separate foreign trade regimes. The Working Parties of Algeria, Belarus, Bhutan, Tajikistan, Uzbekistan and Yemen continued to review the trade regimes of the respective applicants, and all have initiated market access negotiations. Working Party meetings for Cape Verde, Kazakhstan, Russia, Saudi Arabia, Tonga, Ukraine and Vietnam, had a different character, as these accessions were either nearing completion or approaching an advanced stage where the draft Working Party report (WPR) text, including

[17] There are ten LDCs pursuing WTO accession at this time. Negotiations are ongoing with Bhutan, Cape Verde, Laos, Samoa, Sudan, and Yemen. Afghanistan, Ethiopia and Sao Tome and Principe have not yet activated their accessions by providing descriptions of their trade regimes. Vanuatu has not finalized the package approved by its Working Party in 2001.

Protocol commitments, is under negotiation and domestic legislative implementation of WTO rules is underway.

Six of the twenty-eight applicants (primarily the most recent applicants) have not yet submitted initial descriptions of their trade regimes. They are Afghanistan, Bahamas, Ethiopia, Libya, Iran, and Sao Tome and Principe. The Working Parties of Andorra and Seychelles remained dormant. Six more, the Working Parties for Azerbaijan, Bosnia and Herzegovina, Laos, Lebanon, Samoa, and Sudan, did not meet in 2005. Iraq submitted its Memorandum on the Foreign Trade Regime, and at the very end of 2005, Samoa submitted revised market access requests to restart its accession negotiations. Working Party meetings are contemplated for most of those countries during 2006. Accession applicants are welcome in all WTO formal meetings as observers. Equatorial Guinea is a WTO observer that has not yet sought accession.[18] The chart included in Annex II reports the current status of each accession negotiation.

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. It is widely recognized that 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 expanded market access opportunities and to address outstanding trade issues in a multilateral context.

In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to conduct the negotiations. 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 make necessary legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make trade liberalizing specific commitments on market access for industrial and agricultural goods, and services. Most accession applicants take these actions prior to accession. When addressing LDC accession applications, Members are guided by the simplified and streamlined procedures developed for these countries at the end of 2002, using the accession process as a tool for economic development. The protocols of accession developed under these guidelines reflect both the goal of full implementation of WTO rules and the need to address realistically the difficulties faced by LDCs in achieving that objective.

The terms of accession developed with Working Party members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Working Party report 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 to the General Council or Ministerial Conference for approval. After General Council approval, accession applicants normally

[18] The Holy See is a permanent observer, and will not apply for accession.

submit the package to their domestic authorities for ratification. Thirty days after the applicant's instrument of ratification is received in Geneva, WTO Membership becomes effective.

The United States takes a leadership role in all aspects of the accessions, including bilateral, plurilateral, and multilateral negotiations. The objective is to ensure a high standard of implementation of WTO provisions by new Members 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 and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce.

The assistance can include short-term technical expertise focused on specific issues, e.g., Customs, IPR, or TBT, 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., Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, and Nepal. Most of these countries had U.S.-provided resident experts for some portion of the process.

Among current accession applicants, the United States provides a resident WTO expert for the accessions of Azerbaijan, Cape Verde, Ethiopia, Iraq, Montenegro, Serbia, and Ukraine; in addition a U.S.-funded WTO expert resident in the Kyrgyz Republic provides WTO accession assistance to Kazakhstan, Tajikistan, and Uzbekistan.

The United States also offers other forms of technical and expert support on WTO accession issues to Afghanistan, Algeria, Bosnia and Herzegovina, Lebanon, Russia, and Vietnam.

Major Issues in 2005

As in 2004, Members focused a great deal of attention on the accessions of countries that had credibly demonstrated through their negotiating positions and domestic efforts to implement WTO-consistent legislation that they were prepared to work towards completion of the accession process. These countries included Cape Verde, Kazakhstan, Russia, Saudi Arabia, Ukraine, Tonga, and Vietnam. Completion of Saudi Arabia and Tonga accessions required consolidation of many individual bilateral market access agreements, and careful development of their Protocol commitments and Working Party report texts. Russia, Ukraine, and Vietnam all established a fast pace of work, and declared their intent to finish work by the end of 2005. While this goal was not achieved, a great deal of progress was made, including with the United States towards bilateral market access agreements. Efforts to enact legislation to implement the WTO in domestic law in each of those three countries were accelerated, to keep pace with progress in the Working Party on development of the draft report and Protocol of Accession. Cape Verde, which has LDC status through 2007, completed its market access negotiations with most WTO Members in 2005, and its WPR and protocol are in the last stages of development.

Kazakhstan minimized the time spent in Working Party meetings in Geneva (only one formal and one informal Working Party meeting and some plurilaterals during 2005) and focused instead on legislative implementation and intensive bilateral work with interested Working Party Members on market access and protocol commitments. The results of this strategy will be circulated to WTO Members early in 2006, in the form of revised market access offers, legislative texts, and WPR text.

Members are interested in accelerating the accession process of LDCs, and in making WTO accession more accessible to them. Discussions continued in various WTO fora, including during the Hong Kong Ministerial, on how the WTO guidelines on LDC accessions, now three years old, are being implemented. Using the guidelines, WTO Members exercise restraint in seeking market access concessions, and are pledged to agree to transitional arrangements for implementation of WTO Agreements. The United States and other developed WTO Members have sought to support the transitional goals established in the accession process with technical assistance to help achieve them, using the framework of commitments established in the accession as a development tool--an opportunity to mainstream trade in the development programs of the LDC applicants, to build trade capacity, and to provide a better economic environment for investment and growth.

Prospects for 2006

It is clear that the accessions of Cape Verde, Kazakhstan, Russia, Ukraine, and Vietnam will receive priority efforts in 2006, despite the fact that the Doha Development Agenda has entered a decisive phase and will engage an increasing share of WTO Members' time and resources during the year. All applicants must maximize opportunities for progress given the competition for Members' resources and meeting times and venues at the WTO. Efforts to advance the accessions of LDCs will also continue.

K. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

The Agreement on Trade in Civil Aircraft ("Aircraft Agreement") concluded in 1979, is a plurilateral agreement. The Aircraft Agreement is part of the WTO Agreements; however, it is in force only for those WTO Members that have accepted it.

The Aircraft Agreement requires Signatories to the Aircraft Agreement ("Signatories") to eliminate tariffs on civil aircraft, their engines, subassemblies and parts, and ground flight simulators and their components, and to provide these benefits on a nondiscriminatory basis to other Members covered by the Aircraft Agreement. The Signatories have also provisionally agreed to 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.

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.

As of January 1, 2006, there were 30 Signatories to the Aircraft Agreement. Those Signatories are: Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Egypt, Estonia, the European Communities[19], Denmark, France, Georgia, Germany, Greece, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, Malta, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

Major Issues in 2005

During 2005, the Aircraft Committee met on one occasion. The Aircraft Committee continued to consider proposals to revise terminology in the Aircraft Agreement to conform with the Uruguay Round agreements; "end use" customs administration, including a proposal from Canada concerning the definition of "civil" and "military" aircraft based on initial certification; and enlargement of the European Union and Article 9 of the Agreement.

Prospects for 2006

The United States will continue to encourage observers[20] and other WTO Members to become Signatories to the Aircraft Agreement, including Oman, Albania and Croatia, which committed to become Signatories pursuant to their protocols of WTO accession.

2. Committee on Government Procurement

Status

The WTO Government Procurement Agreement (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 it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important Agreement. Thirty-eight WTO Members are covered by the Agreement: the United States; the European Union and its 25 Member States (Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom); the Netherlands with respect to Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland.

Nine WTO Members are in the process of acceding to the GPA: Albania, Bulgaria, Chinese Taipei, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, and Panama. Five additional WTO Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Armenia, China, Croatia, the Republic of Macedonia, and Mongolia.

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[19] At the June 2004 meeting of the Committee on Trade in Civil Aircraft, the representative from the European Communities announced that the ten countries that had become members of the European Union on 1 May 2004 were automatically linked by the Agreement on Trade in Civil Aircraft Agreement by means of the extension of the territory of the European Union. However, six of the ten countries (Poland, Hungary, Czech Republic, Slovenia, Cyprus, and Slovak Republic) have not deposited an instrument of accession to the Agreement.

[20] The observers include Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, Korea, Mauritius, Nigeria, Oman, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey.

Twenty WTO Members, including those in the process of acceding to the GPA, have observer status in the Committee on Government Procurement: Albania, Argentina, Armenia, Australia, Bulgaria, Cameroon, Chile, China, Chinese Taipei, Colombia, Croatia, Georgia, Jordan, the Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Sri Lanka, and Turkey.

Major Issues in 2005

Article XXIV: 7 of the GPA calls for negotiations to expand market access under the GPA, as well as to improve the Agreement. During 2005, the WTO Committee on Government Procurement (GPA Committee) held five meetings (in March, June, July, October, and December), in which it focused primarily on the revision of the GPA text. The revision of the text is aimed at streamlining and modernizing the GPA, reflecting the use of advanced technologies, and promoting increased membership in the GPA by making it more accessible to non-Parties. The United States has played a principal role in advocating significant streamlining and clarification of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. During 2005, the Committee made significant progress in its revision of the text of the Agreement.

GPA Article XXIV: 7(c) calls for the Parties to undertake negotiations with a view to achieving the greatest possible extension of its coverage among all Parties and eliminating remaining discriminatory measures and practices.

Following the exchange of requests for improvements in the coverage of the Parties, the Committee set a deadline of the Hong Kong Ministerial (December 13-18, 2005) for the exchange of offers. The United States and the European Communities tabled their initial offers in accordance with the deadline; the other GPA Parties are expected to submit their offers early in 2006.

Israel agreed to reduce the level of its offsets to 28 percent on January 1, 2006 and to offer compensatory adjustments in the form of expanded coverage of services and to reduce its threshold for construction services from 8.5 million Special Drawing Rights (SDRs) to 5 million SDRs, which is the threshold applied by all the other GPA Parties, except Japan and Korea. Israel also agreed to negotiate a schedule for the reduction of its offsets in the upcoming market access negotiations.

Prospects for 2006

In 2006, the Committee will hold five meetings with the aim of completing the revision of the text of the GPA and the market access negotiations to expand GPA coverage. It is anticipated that the completion of the GPA negotiations will coincide with the end of the Doha Round in 2006.

The Committee plans to hold informal plurilateral consultations with Jordan and Georgia as part of efforts to advance their respective accessions to the GPA. In 2006, the Committee will also continue its review of the legislation of the Netherlands with respect to Aruba.

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

Status

The Information Technology Agreement (ITA) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. The Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. Currently, the ITA has 68 participants representing more than 95 percent of world trade in information technology products.[21] The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments.

Major Issues in 2005

The WTO Committee on the Expansion of Trade in Information Technology Products held three formal meetings in 2005, during which the Committee reviewed the implementation status of the Agreement. While most participants have fully implemented tariff commitments, a few countries are still awaiting the completion of domestic procedural requirements or have not yet submitted the necessary documentation.
Work in the Committee in 2005 focused primarily on the admission of new participants as well as reconciliation of classification divergences of ITA products. The Kingdom of Saudi Arabia, Honduras, Nicaragua, and Guatemala circulated schedules of commitments and were approved for Membership by the Committee in 2005. The Committee membership also appointed a new Chairperson, Simon Chan of Hong Kong, China, in 2005.

The Committee also continued its work on the Non-Tariff Measures (NTMs) Work Programme. The Chair of the Committee reported to the Chair of the Negotiating Group on Market Access on the ITA Committee's ongoing work on NTMs. With regard to conformity assessment for ITA products, the Committee also approved Guidelines for EMC/EMI Conformity Assessment Procedures.
The Committee also continued to examine classification differences on ITA products. During 2005, ITA Participants held three discussions on 20 products for which a specific question on classification was posed to the Committee.

Prospects for 2006

Committee participants will continue to determine whether there are other non-tariff measures that should be examined and how work on non-tariff measures in the ITA context can be coordinated with the Doha negotiations. Building on the success of the October 2004 Symposium, participants will continue to discuss how to address some of the issues discussed in that forum, specifically (1) how to pursue tariff liberalization for new technologies in the context of the ITA and the Doha Development Agenda and (2) how to broaden developing country participation in the ITA. As a result, a number of ITA Participants are also active in discussions on a potential sectoral initiative for electronics and electrical products in the

[21] ITA participants are: Albania; Australia; Austria; Bahrain; Belgium; Bulgaria; Canada; China; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Egypt; El Salvador; Estonia; European Communities (on behalf of 25 Member States); Finland; France; Georgia; Germany; Greece; Guatemala, Hong Kong, China; Honduras, Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Japan; Jordan; Republic of Korea; Krygyz Republic; Latvia; Liechtenstein; Lithuania; Luxembourg; Macau, China; Malaysia; Malta; Mauritius; Moldova; Morocco; Netherlands; New Zealand; Nicaragua, Norway; Oman; Panama; Philippines; Poland; Portugal; Romania; Kingdom of Saudi Arabia; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; United Kingdom; and the United States.

Doha round. Participants will also continue to work on reconciling divergent tariff classifications for ITA products with an aim to narrow the list of products under discussion. Throughout 2006, the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation and addressing further technical classification issues.