V. Trade Enforcement Activities

A. Enforcing U.S. Trade Agreements

1. Overview

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

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

- Vigorously monitoring and enforcing bilateral agreements;

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

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

- Promoting U.S. interests under FTAs, through FTA work programs, tariff acceleration, and use, or threat of use, of FTA dispute settlement mechanisms, including using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO, the United States has filed 69 complaints at the WTO, thus far successfully concluding 40 of them by settling 22 cases favorably and prevailing on 18 others through litigation in WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and

intellectual property protection – and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements. Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible the United States has sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings. The United States has been able to achieve this preferred result in 22 of the 44 cases concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; China's value-added tax on integrated circuits; Denmark's civil procedures for intellectual property enforcement; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When the United States trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 18 cases so far, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; the EU's import barriers on bananas; the EU's ban on imports of beef; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's measures that discriminated against imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's beef imports; Mexico's antidumping duties on high-fructose corn syrup; and Mexico's telecommunications barriers.

USTR also works to ensure the most effective use of U.S. trade laws to complement its litigation strategy and to address problems that are outside the scope of the WTO and U.S. free trade agreements. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights enforcement, and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems. The application of these trade law tools is described further below.

2. WTO Dispute Settlement

2004 Activities

In 2004, the United States filed four new complaints under WTO dispute settlement procedures involving China's value-added tax on integrated circuits, the European Union's administration of its customs laws, the European Union's aircraft subsidies, and Mexico's tax measures on soft drinks and other beverages. The United States also initiated compliance panel proceedings on a case involving Japan's restrictions on apple imports relating to fire blight.

The cases described in Chapter II further demonstrate the importance of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a

party is available on the USTR website (http://www.ustr.gov).

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

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

During this past year, USTR and IA staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by IA officers stationed overseas (in China and Korea), who help gather, clarify and check the accuracy of information concerning foreign subsidy practices.

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

monthly, making information on subsidy programs investigated or reviewed quickly available to the public.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

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

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

Based in part on this monitoring activity, the United States has filed a WTO dispute settlement case against Mexico's antidumping measure on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among other antidumping investigations of U.S. goods that were closely monitored in the past year are Canada's continued measures on potatoes, Mexico's antidumping investigations of pork products (rescinded in May 2004 due to a lack of evidence of injury) and its *ex officio* investigation of pork legs and shoulders/hams (initiated in May 2004) and China's investigations of optical fiber, kraft linerboard and several chemical products. Import Administration personnel have also participated in technical exchanges with the administering authorities of Canada, Egypt, and India to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

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

B. U.S. Trade Laws

1. Section 301

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

a. Operation of the Statute

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

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

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

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

During 2004, there were ongoing actions in the following Section 301 investigations, and USTR received three petitions seeking the initiation of new investigations:

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

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

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

Consultations with Ukraine have continued, but Ukraine failed to take all of the steps needed to stop high levels of optical media piracy. Accordingly, the suspension of GSP benefits and increased duties on certain Ukrainian products remained in effect throughout 2004.

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

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

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Community's and its Member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a notice published in July 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States. The increased duties remained in place throughout 2004.

Talks were held during 2004 with the aim of reaching a mutually satisfactory solution to the dispute, but no resolution was reached. In November 2004, the EC sought consultations under the WTO DSU claiming that the EC had brought its hormone ban into compliance with the EC's WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. (The section of this report addressed to WTO dispute settlement contains further information on this matter).

b. Petitions filed in 2004

During 2004, USTR received three petitions seeking the initiation of new investigations.

One petition alleged that certain labor policies and practices of the Government of China with respect to Chinese manufacturing workers are unreasonable, as defined in section 301(d) of the Trade Act, and burden or restrict U.S. commerce. The USTR determined not to initiate an investigation under section 302 of the Trade Act with respect to the petition because the Government of the United States is involved in ongoing efforts to address with China many of the labor issues raised in the petition, and because initiation of an investigation would not be effective in addressing the policies and practices covered in the petition.

Two substantially similar petitions alleged that the policies and practices of the Government of China with respect to the valuation of Chinese currency deny and violate international legal rights of the United States, are unjustifiable, and burden or restrict U.S. commerce. The USTR determined not to initiate investigations with respect to the petitions because the United States is involved in ongoing efforts to address with China the currency valuation issues raised in the petitions, and because initiation of investigations would not be effective in addressing the policies and practices covered in the petitions.

2. Special 301

During the past year, the United States continued to implement vigorously the Special 301 program, resulting in continued improvement in the global intellectual property environment. Publication of the Special 301 lists indicates those trading partners whose intellectual property protection regimes most concern the United States, and alerts those considering trade or investment relationships with such countries that their intellectual property rights (IPR) may not be adequately protected. Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) , under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as "Priority Foreign Countries."

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

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

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

Additionally, under Section 306, USTR monitors a country's compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a

country fails to satisfactorily implement an agreement.

a. 2004 Special 301 Review Announcements

On May 3, 2004, U.S. Trade Representative Robert B. Zoellick announced the results of the 2004 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 85 countries. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 52 trading partners that deny adequate and effective protection of intellectual property and/or equitable market access to U.S. artists and industries that rely upon intellectual property protection.

In the report, USTR noted the continued designation of Ukraine as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, the $75 million in sanctions imposed on Ukrainian products on January 23, 2002, remain in place. This continued failure to adequately protect intellectual property rights could seriously undermine its efforts to attract trade and investment. The U.S. Government remains actively engaged with Ukraine in encouraging the nation to combat piracy and enact the necessary intellectual property rights legislation and regulations.

China and Paraguay continued to be designated for Section 306 monitoring to ensure both countries comply with their commitments to the United States under bilateral intellectual property agreements.

Addressing weak IPR protection and enforcement in China is one of the Administration's top priorities. At the April 2004 meeting of the Joint Commission on Commerce and Trade (JCCT), the United States secured a commitment from China's Vice Premier Wu Yi that China will undertake a series of actions to significantly reduce IPR infringements throughout the country. These actions, outlined in the China section of this report, are critical in light of the rampant counterfeiting and piracy problems that plague China's domestic market and the fact that China has become a leading exporter of counterfeit and pirated goods to the world. The United States will be monitoring implementation of these commitments closely through a Joint IPR Working Group formed through the JCCT, and USTR will assess China's progress on their commitments through an out-of-cycle review in early 2005. With regard to Paraguay, 2004 was the first year that a new agreement, which was renegotiated in late 2003, was under Section 306 monitoring.

Fifteen trading partners were placed on the "Priority Watch List": Argentina, Bahamas, Brazil, Egypt, the EU, India, Indonesia, Korea, Kuwait, Lebanon, Pakistan, the Philippines, Russia, Taiwan and Turkey. An additional 34 trading partners were placed on the "Watch List." USTR also announced "out-of-cycle" (OCR) reviews for China, Israel, Malaysia, Poland and Taiwan.

In addition to the primary focus on intellectual property protection, the 2004 Special 301 Report also noted the importance of understanding how certain types of regulatory barriers -- such as non-transparent and cumbersome administrative regimes and decision-making that lacks scientific basis -- impede R&D funding and innovation in IP-based industries such as the pharmaceutical industry.

b. New Initiatives

Recognizing the growing problem of trade in pirated and counterfeit goods in the global economy, USTR began working with agencies across the federal government and trading partners around the world to develop a new approach and solutions to this serious problem.

In October 2004, USTR together with the Departments of Commerce, Justice, and Homeland Security launched a major new government-wide initiative in partnership with U.S. companies and IPR owners, the Strategy Targeting Organized Piracy (STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. The STOP! Initiative is designed to help businesses enforce their rights, stop fakes at borders, dismantle criminal enterprises, build an international coalition against piracy and counterfeiting. The STOP! Initiative incorporates and builds on the Special 301 Review process to help achieve these objectives.

c. Ongoing Initiatives

i. Global Scourge of Counterfeiting and Piracy

Counterfeiting and digital piracy have increased dramatically in recent years and were areas of particular concern in the 2004 Special 301 Report. Unfortunately, in the area of counterfeiting what was once a localized industry concentrated on the copying of high-end designer goods has now become a massive, sophisticated global business involving the manufacturing and sale of counterfeit versions of everything from soaps, shampoos, razors and batteries to cigarettes, alcoholic beverages and automobile parts, as well as medicines and health care products.

Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods. It also hurts the countries concerned by decreasing tax revenues and deterring investments. In addition, counterfeiters pay no taxes or duties and do not comply with basic manufacturing standards for the health and safety of workers or product quality and performance.

Piracy of products in digital, print (e.g., books, journals and other printed materials) and other analog formats, as well as counterfeiting of all types of trademarked products, have grown to such a scale because these illegal activities offer enormous profits and little risk for the criminal element of society. Criminals can get into the counterfeiting business with little capital investment, and even if caught and charged with a crime, the penalties actually imposed in many countries are so low that they offer no deterrent. The most significant piracy and counterfeiting problems require measures that may go beyond the minimum standards of TRIPS to ensure effective enforcement at the national and local levels, including free trade zones in countries such as Belize, Panama and the United Arab Emirates. The global scourge of piracy and counterfeiting requires stronger and more effective border enforcement to stop the import, export, and transit of pirated and counterfeit goods.

This is why USTR continues to seek through our FTAs and our bilateral consultations to ensure that criminal penalties are high enough to have a deterrent effect, both in the law and as imposed by the courts and administrative bodies, as well as to ensure that pirated and counterfeit products, and the equipment used to make them, are seized and destroyed. These products can be produced and sold at prices much lower than legitimate products, but still deliver attractive profit margins for the infringer because the counterfeit and pirated products maybe made with substandard materials, and undergo little or no quality control or even basic health and safety testing. The economic damage caused by counterfeiting to the legitimate companies whose products are counterfeited is enormous.

ii. Controlling Optical Media Production

Over the past year some of our trading partners, such as the Philippines and Poland, have taken important steps toward implementing, or have committed to adopt, much-needed controls on optical media production. We await news of aggressive enforcement of these laws. However, others that are in urgent need of such controls, including India, Indonesia, Lithuania, Pakistan, Russia, Thailand and Ukraine, have not made sufficient progress in this regard.

Governments that implemented optical media controls in previous years, such as those of Hong Kong and Macau, have clearly demonstrated their commitment to continue to enforce these measures. Taiwan and Malaysia are steadily improving their enforcement as well. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. We continue to urge our trading partners facing the threat of pirate optical media production within their borders to adopt similar controls or aggressively enforce existing regulations in the coming year.

iii. Implementation of the WTO TRIPS Agreement

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

Developed countries were required to implement fully TRIPS as of January 1, 1996, while developing countries were given a transition period – until January 1, 2000. Ensuring that developing countries are in full compliance with the Agreement now that this transition period has come to an end is one of this Administration's highest IPR priorities. With respect to least developed countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.
Developing countries continue to make progress toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the United States provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the State Department, the U.S. Agency for International Development, U.S. Customs and Border Protection, the Justice Department, and the Commerce Department's Commercial Law Development Program on a country-by-country basis, as well as in group seminars, including those co-sponsored with the World Intellectual Property Organization (WIPO) and the WTO. Technical assistance involves review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with WTO Members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, the United States will pursue our rights through WTO dispute settlement proceedings.

One of the key implementation priorities that we have focused on in this year's review is the

implementation of Article 39.3 of the TRIPS Agreement, which requires WTO Members to protect test data submitted by drug companies to health authorities[55] against disclosure of that data and against "unfair commercial use" of that data.

Most countries, including the United States, impose stringent regulatory testing requirements on companies seeking to market a new drug or agricultural chemical product. Many countries have recognized, however, the value of allowing abbreviated approval procedures for second-comers seeking to market an identical product to one that has already been approved. Generally, these second applicants may be required to demonstrate only the bioequivalence of their products with the product of the first company, and will not be required to repeat all of the expensive and laborious clinical tests conducted by the first company to prove the safety of the product.

However, because of the expense involved in producing the safety and efficacy data needed to obtain marketing approval, the TRIPS Agreement recognizes that the original applicant should be entitled to a period of exclusivity during which second-comers may not rely on the data that the innovative company has created to obtain approval for their copies of the product. During this period of exclusive use, the data cannot be relied upon by regulatory officials to approve similar products. This period of exclusivity is generally five years in the United States and six to ten years in the EC Member States. Other countries that provide a period of exclusivity against reliance on data include Australia, China, Colombia, the Czech Republic, Estonia, Japan, Jordan, Korea, Mexico, New Zealand, Slovenia, and Switzerland. We urge all WTO members to swiftly complete their implementation of Article 39.3, including Israel and Turkey.

[55] Such data is typically required by authorities in order to establish the safety and efficacy of a drug, and obtain government approval to market the drug.

As more countries fulfill their implementation obligations, we will adjust our focus to determine whether our trading partners are providing adequate and effective enforcement as required by the TRIPS enforcement provisions.

iv. Internet Piracy and the WIPO Copyright Treaties

The Internet has undergone explosive growth and, coupled with increased availability of broadband connections, serves as an extremely efficient global distribution network for pirate products. The explosive growth of copyright piracy on the Internet is a serious problem. We are continuing to work with other governments, and consult with U.S. industry, to develop the best strategy to address Internet piracy.

An important first step in the fight against Internet piracy was achieved at WIPO when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, referred to as the WIPO Internet Treaties. These treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works. They clarify exclusive rights in the on-line environment and specifically prohibit the devices and services intended to circumvent technological protection measures for copyrighted works. Both treaties entered into force in 2002.

These treaties represent the consensus view of the world community that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce.

In order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related

businesses and technologies. In the competition for foreign direct investment, these countries now hold a decided advantage. The Administration urges other governments to ratify and implement the two WIPO Internet Treaties.

v. Other Initiatives Regarding Internet Piracy

The United States is seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. The United States has been successful in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in all our FTAs to date, and continues to pursue this goal in other FTAs. Moreover, U.S. proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges we face today as well as those that may exist at the time negotiations are concluded.

vi. Government Use of Software

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

The United States has achieved considerable progress under this initiative. Countries and territories that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, Chile, China, Colombia, Costa Rica, the Czech Republic, France, Greece, Hong Kong, Hungary, Ireland, Israel, Jordan, Korea, Lebanon, Macau, Paraguay, Peru, the Philippines, Spain, Taiwan, Thailand, Turkey, and the United Kingdom. U.S. Trade Representative Robert B. Zoellick was pleased that these governments have recognized the importance of setting an example in this area and expects that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

3. Section 1377 Review of Telecommunications Agreements

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

The 2004 Section 1377 Review focused on the following issues: (1) the introduction of mandatory, discriminatory standards in relation to telecommunications services and equipment, notably in China, Korea, and Japan; (2) unreasonably high fixed-to-mobile termination rates, a factor identified as negatively impacting U.S. companies in a large number of markets, including Australia, Germany, Japan, New Zealand, and Switzerland; (3) a lack of reasonable access to leased lines and submarine cable capacity in Germany, India, Switzerland, and Singapore, where the absence of clear rules supported by the adequate enforcement powers of a regulator has allowed incumbent operators to succeed in blocking long-term access solutions; (4) efforts to undermine the effectiveness of independent regulators through political interference or legislative proposals in China, Japan, France, Mexico, and South Africa; and (5) slow implementation by South Africa

and Mexico of their WTO commitments to permit resale of basic telecommunications services.

USTR has urged national regulators to fulfill their responsibility to address such problems, and initial signs are promising: On the issue of mandatory, discriminatory standards, significant progress was made in China with the successful resolution of the Wireless LAN Authentication and Privacy Infrastructure (WAPI) issue, and in Korea with a reduction in restrictions on mobile wireless software standards (WIPI) and mobile wireless broadband transmission standards (WIBRO). In addition, Singapore's regulator introduced a transitional regime to ensure competitively-priced wholesale leased lines, which should greatly improve competitive access, if fully implemented. Both the French and Japanese regulators made improvements in their regulatory functions, by taking steps to liberalizing markets and addressing anti-competitive behavior. South Africa has announced its intention to open its telecommunications sector to competition by February 1, 2005. While this is a welcome plan, we remain concerned that there may be additional delays in the liberalization of that market. USTR also remains concerned with the lack of clear regulatory independence in many countries, and will continue to monitor developments in this area in the future. Finally, while efforts to address mobile termination rates were undertaken in some markets during 2004 (e.g., by the governments of Australia, New Zealand, and Israel), additional effort may be necessary in 2005 to address the concerns of certain U.S. companies.

Mexico

As a result of a dispute settlement proceeding brought by the United States in 2002, Mexico instituted much-needed reform to its international rules. Pursuant to an agreement reached with the United States regarding implementation of the recommendations included in the WTO panel report adopted on June 1, 2004, Mexico removed in June 2004 the provisions of Mexican Law that created the uniform tariff and proportional return systems, and the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiate the settlement rate on behalf of all Mexican carriers. Mexico also committed to allowing the introduction of resale-based international telecommunications services in Mexico by July 2005. Mexico, however, continues to prevent foreign carriers from using leased lines to bring calls directly into the domestic network.

4. Antidumping Actions

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

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

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a "reasonable indication" of material injury or threat of material injury to a domestic industry, or material retardation of an industry's establishment, "by reason of" the LTFV imports. If this preliminary determination by the USITC is negative, the investigation is

terminated; if it is affirmative, Commerce will make preliminary and final determinations concerning the alleged LTFV sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs to suspend liquidation of entries and require importers to post a bond or cash deposit equal to the estimated weighted average dumping margin.

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

Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO antidumping agreement.
Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 77 in 2001; 35 in 2002; 37 in 2003; and 26 in 2004. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 23 in 1995; 9 in 1996; 11 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 31 in 2001; 27 in 2002; 16 in 2003; and 14 in 2004. Under its sunset review procedures, Commerce revoked 57 antidumping duty orders and continued 72 orders in 2000; revoked 7 antidumping duty orders and continued 19 orders in 2001; revoked 9 antidumping duty orders and continued 2 orders in 2002; revoked 2 antidumping duty orders and continued 5 orders in 2003; and revoked 12 antidumping duty orders and continued 17 orders in 2004.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930, as amended effective January 1, 1995 by the Uruguay Round Agreements Act. As with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

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

issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination.

The numbers of CVD investigations initiated in and since 1986 are as follows: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 10 in 1999; 7 in 2000; 18 in 2001; 3 in 2002; 5 in 2003; and 3 in 2004. The numbers of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 6 in 1999; 6 in 2000; 6 in 2001; none in 2002; 2 in 2003; and 3 in 2004. Under its sunset review procedures, Commerce revoked 8 countervailing duty orders and continued 22 orders in 2000; revoked 1 countervailing duty order and continued 5 orders in 2001; revoked no countervailing duty orders and continued no orders in 2002; revoked no countervailing duty orders and continued no orders in 2003; and revoked 1 countervailing duty order and continued none in 2004.

6. Other Import Practices

a. Section 337

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

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the Commission. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

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

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

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

In 2004, the USITC instituted 25 new Section 337 investigations and one enforcement proceeding relating to a previously issued USITC remedial order. During the year, the USITC issued four general exclusion orders, four limited exclusion orders and 12 cease and desist orders covering imports from foreign firms, as follows: Inv. No. 337-TA-489, Certain Sildenafil or Any Pharmaceutically Acceptable

Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same (general exclusion order); Inv. No. 337-TA-487, Certain Agricultural Vehicles and Components Thereof (general exclusion order, two limited exclusion orders, and 11 cease and desist orders); Inv. No. 337-TA-492, Certain Plastic Grocery and Retail Bags (general exclusion order); Consolidated Inv. Nos. 337-TA-481 and 337-TA-491, Certain Display Controllers with Upscaling Functionality and Products Containing Same and Certain Display Controllers and Products Containing Same (limited exclusion order); Inv. No. 337-TA-498, Certain Insect Traps (limited exclusion order and cease and desist order); and Inv. No. 337-TA-500, Certain Purple Protective Gloves (general exclusion order). A limited exclusion order covers only certain imports from particular named sources, while a general exclusion order covers certain products from all sources. The President permitted all the exclusion orders and cease and desist orders that reached him during 2004 to become final with the exception of the last two above-listed orders (Certain Insect Traps and Certain Purple Protective Gloves), both of which reached the President late in the year and remained under review at the time of preparation of this report.

b. Section 201

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

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

As of January 1, 2004, the United States had no safeguard measures in place. The United States did not impose any safeguard measures during 2004, and did not commence any safeguard investigations. On September 19, 2003, the USITC issued its midterm report on the steel safeguard measures. In view of the information provided in the USITC's report, and after seeking advice from the Secretary of Commerce and the Secretary of Labor, the President, taking into account that the measure had achieved their purpose, determined that the effectiveness of the steel safeguard measures had been impaired by changed economic circumstances, and that termination of the measures was warranted. Accordingly, the steel safeguard measures terminated on December 5, 2003

c. Section 421

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

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

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into its market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

Through the end of 2004, five petitions have been filed under Section 421. During 2004, there was activity on two Section 421 petitions. On March 3, 2004, the President issued his determination with respect to a petition filed in September 2003 concerning certain ductile iron waterworks fittings from China. The President determined that providing import relief was not in the national economic interest of the United States. On January 6, 2004, the American Innerspring Manufacturers filed a petition regarding uncovered innerspring units from China. On March 8, 2004, the USITC issued a negative market disruption determination regarding those products and the investigation was terminated.

On June 3, 2004, the U.S. Court of International Trade rejected a challenge to the President's determination, in January 2003, to deny relief to the U.S. pedestal actuators industry based on a national economic interest determination. The suit had been brought by Motion Systems Corporation, the petitioner in the first Section 421 investigation. Motion Systems Corporation appealed the ruling. The case is pending before the U.S. Federal Court of Appeals for the Federal Circuit.

China Textile Safeguard

The terms for China's accession to the WTO ("Accession Agreement") also include a special textiles safeguard, which is available for WTO members until December 31, 2008. This safeguard covers all products subject to the WTO Agreement on Textiles and Clothing as of January 1, 1995.

Paragraph 242 of the Accession Agreement ("Paragraph 242") allows WTO members that believe imports of Chinese-origin textile or apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding such market disruption. Under Paragraph 242, the importing country must supply data which in its view shows the "existence or threat" of market disruption and the role of Chinese-origin products in that disruption. Upon receipt of a request for consultations, China must impose specified limits on its exports of such products to the member country. If the consultations fail to yield a solution to the threat or existence of market disruption, the WTO member may continue such limits on imports of Chinese-origin textile or apparel products.

In late 2003, after the consideration of requests made by representatives of the U.S. textile and apparel industry, the interagency Committee for the Implementation of Textile Agreements ("CITA") determined that imports of Chinese-origin knit fabric (Category 222), cotton and man-made fiber brassieres and other body supporting garments (Category 349/649), and

cotton and man-made fiber dressing gowns and robes (Category 350/650) were, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in these products, and that imports of these products from China played a significant role in the existence and threat of such market disruption. The United States requested consultations with China pursuant to Paragraph 242 on December 24, 2003.

The United States held consultations with China on two occasions, but no mutually satisfactory solution was reached. Limits on imports of these products went into effect on December 24, 2003 and remained in effect through December 23, 2004.

In November and December 2004, U.S. textile and apparel industry representatives applied to CITA for further application of Paragraph 242 safeguards on these three products. The requests were premised on the argument that an anticipated increase in imports of these products after the expiration of the one-year period of import restrictions threatened to disrupt the U.S. market for such products. CITA accepted the requests for consideration and commenced the periods of public comment and internal review, pursuant to its published procedures.

In addition, from October to December 2004, U.S. industry representatives submitted nine requests for the imposition of Paragraph 242 safeguards on the basis of a threat of market disruption from Chinese-origin textile or apparel imports. In particular, these requests concerned: (1) cotton trousers (Category 347/348); (2) man-made fiber trousers (Category 647/648); (3) man-made fiber knit shirts and blouses (Category 638/639); (4) men's and boys' cotton and man-made fiber shirts, not knit (category 340/640); (5) cotton knit shirts and blouses (Category 338/339); (6) cotton and man-made fiber underwear (Category 352/652); (7) combed cotton yarn (Category 301); (8) other synthetic filament fabric (Category 620); and (9) wool trousers (Category 447). Again pursuant to its published procedures calling for public comment followed by internal review, CITA decided to consider each of those requests.

On December 1, 2004, the U.S. Association of Importers of Textiles and Apparel ("USA-ITA") filed a motion for preliminary injunction in the Court of International Trade ("CIT"), seeking to bar CITA from further accepting, considering, or otherwise proceeding to review requests based solely on a threat of market disruption. USA-ITA argued that CITA had acted outside of its legal authority by accepting and considering requests based on a threat of market disruption for products still under WTO-authorized quotas, and that its members would suffer irreparable harm if CITA were able to continue accepting and considering such requests. Among other things, the Administration responded that Paragraph 242 allows for safeguards based on a threat of market disruption, that CITA followed its valid published procedures in applying Paragraph 242, and in any event that USA-ITA's members could not have suffered irreparable harm as the result of CITA's actions. Furthermore, the Administration asserted, the Court's consideration of the substantive basis for CITA's actions would be an impermissible incursion into the President's exclusive authority to conduct foreign relations.

On December 30, 2004, the Court issued an order granting the motion for a preliminary injunction and enjoining CITA from further accepting, considering, or otherwise proceeding to review safeguard requests based on a threat of market disruption, or from self-initiating consideration of whether to impose safeguards under CITA procedures based on a threat of market disruption. The Administration has announced that it will appeal this ruling to the U.S. Court of Appeals for the Federal Circuit.

On June 28, 2004, U.S. textile and apparel industry representatives requested Paragraph 242 safeguard action on imports of Chinese-origin socks (Category 332/432/632 part), alleging that such imports were, due to market

disruption, threatening to impede the orderly development of trade in this product. CITA determined that the request provided the information necessary to be considered and solicited public comments on the request. Following the close of the public comment period, CITA determined that Chinese sock imports were, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in socks, and that imports of socks from China play a significant role in the existence of and threat of such disruption. The United States requested consultations with China pursuant to Paragraph 242 on October 29, 2004.

The United States held consultations with China on November 23, 2004, but no mutually satisfactory solution was reached. Limits on imports of these products went into effect on October 29, 2004.

7. Trade Adjustment Assistance

a. Assistance for Workers

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

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

The TAA Reform Act expanded eligibility for the TAA program. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that a significant number or proportion of the workers in a firm (or appropriate subdivision of the firm) have become totally or partially separated or threatened with such separation and: (1) increased imports contributed importantly to a decline in sales or production and to the separation or threatened separation of workers; or (2) there has been a shift in production to a country that has a free trade agreement with the United States or is a beneficiary country under a U.S. trade preference program; or (3) there has been a shift in production to another country, and there has been or is likely to be an increase in imports of like or directly competitive articles; or (4) loss of business as a supplier or downstream producer for a TAA certified firm contributed importantly to worker layoffs. The fourth basis for certification is designed to cover certain secondarily-affected workers.

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

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

In addition, the TAA Reform Act of 2002 created an Alternative Trade Adjustment Assistance (ATAA) program for older workers who are not likely to find suitable reemployment in their local labor market. This program was implemented on August 6, 2003 and provides qualified trade-impacted workers who are over 50 years of age and find other work within 26 weeks of separation with a wage supplement of up to half the difference between their old and new salaries, in lieu of retraining. The maximum amount payable is $10,000 over a two year period, and workers must earn less than $50,000 per year in the new employment to qualify for the program.

The Government Accountability Office (GAO) recently issued two reports on TAA: a report of September 22, 2004, on progress since the TAA Reform Act of 2002, and a report of September 30, 2004 on the Health Care Tax Credit provision of TAA. The reports found that workers are interested in the new wage insurance provision created by ATAA and are enrolling in services more rapidly due to a new 40-day time limit the Department of Labor must meet when processing a request for TAA coverage and a new deadline requiring workers to be enrolled in training 8 weeks after TAA certification or 16 weeks after a worker's layoff. Of the 2,918 petitions for TAA eligibility received in FY2004, 1,734 certifications were issued, covering an estimated 147, 956 workers.

The Labor Department recently began a new 5-year study of the implementation and effectiveness of the TAA program, which it expects will provide more useful findings. The Labor Department expects the first of several interim reports will be issued by mid- 2005 and expects to issue the final report in 2009.

The Trade Act of 2002 also contains a provision for Trade Adjustment Assistance for Farmers, with an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to be administered by the U.S. Department of Agriculture. The Secretary of Agriculture delegated authority for this program to the Administrator of the Foreign Agricultural Service.

The regulation to implement Trade Adjustment Assistance for Farmers was published in the Federal Register on August 20, 2003 (and is now codified at 7 C.F.R. § 1580). Primary requirements for a farmer to be eligible are that the price of the basic agricultural commodity produced by the farmer in the most recent year is less than 80 percent of the average price over the previous five years, and that imports contributed importantly to the price decline.

If a group of farmers is certified as eligible for benefits, individual producers can then apply to the Farm Service Agency for technical assistance and/or cash benefits. A producer must receive technical assistance to become eligible for cash benefits. Cash benefits are subject to certain personal and farm income limits, and cannot exceed $10,000 per year to an individual producer. The cash benefit per unit is one-half of the gap between the most recent year's price and the previous five-year average price. If the funding authorized by Congress is insufficient to pay 100 percent of all claims during the fiscal year, payments will be prorated.

b. Assistance for Firms and Industries

The Office of Strategic Initiatives of the Department of Commerce's Economic Development Administration (EDA) managed the TAA program for firms and industries during

FY 2004. (In FY 2005, EDA will transfer administration of this program to its six regional offices.) The program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, and was extended by the Trade Act of 2002 through September 30, 2007. Under the firms and industries TAA program, EDA funds a network of eleven Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2004, EDA awarded $11.874 million in funding to the TAACs. TAACs assist firms in completing petitions for certification of eligibility. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers. In FY 2004, EDA certified 162 firms under the TAA program. Once EDA has certified a firm, the TAAC assists the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 2004, the APRC approved 165 adjustment proposals from certified firms. (Some of these adjustment proposals were received in FY 2003, but were not approved until FY 2004.)

After the ARC approves an adjustment proposal, the firm may request technical assistance from the TAAC to implement its strategy. Using funds provided by the TAA program, the TAAC contracts with consultants to provide the technical assistance identified in the firm's proposal. The firm must typically pay 50 percent of the cost of each consultant contract, and the maximum amount of technical assistance available to a firm under the TAA program is $75,000. Common types of technical assistance that firms request include the development of marketing materials, the identification of new products for the firm to produce, the completion of a quality assurance program such as ISO 9000/2000, and the identification of appropriate management information systems.

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

8. Generalized System of Preferences

The Generalized System of Preferences (GSP) is a program that grants duty-free treatment to specified products that are imported from more than 140 designated developing countries and territories. The program began in 1976, when the United States joined 19 other industrialized in granting tariff preferences to promote the economic growth of developing countries through trade expansion. Currently, more than 4,000 products or product categories (defined at the eight-digit level in the Harmonized Tariff Schedule of the United States) are eligible for duty-free entry from countries designated as beneficiaries under GSP. In 1997, an additional 1,783 products were made duty-free under GSP for countries designated as least developed beneficiary developing countries (LDBDCs).

The premise of GSP is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and liberalization. In its current form, GSP is designed to integrate developing countries into the international trading system in a manner commensurate with

their development. The program achieves these ends by making it easier for exporters from developing economies to compete in the U.S. market with exporters from industrialized nations while at the same time excluding from duty-free treatment under GSP those products determined by the President to be "import-sensitive." The value of duty-free imports in 2001 was approximately $15.7 billion.

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

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

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

On February 24, 2004, a notice was published in the Federal Register announcing the decision of the Trade Policy Staff Committee (TPSC) to initiate a full review of selected submitted product petitions but not to initiate a full review of submitted country practices.

On March 1, 2004, the president issued a proclamation making Algeria a GSP beneficiary country, effective 15 days after the date of the proclamation. The proclamation also terminated the designation of GSP beneficiary developing country for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia; termination to be effective on or after the day on which a country becomes a European Union member state. Finally, the proclamation graduated from GSP eligibility Antigua, Barbuda, Bahrain, and Barbados, effective January 1, 2006. On May 18, 2004, a notice was published in the Federal Register, announcing the termination of GSP eligibility, for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia, as a result of their accessions to the European Union on May, 1, 2004.

On June 30, 2004, the president issued a proclamation modifying the duty-free treatment of certain GSP-eligible products and certain beneficiary developing countries under the Generalized System of Preferences. On July 6, 2004, a Federal Register notice announced the disposition of product petitions accepted for review in the 2003 GSP Annual Product Review, the 2002 GSP Country Practices Review, the 2003 De Minimis Waiver and Redesignation Reviews, the 2003 Competitive Need Limitation removals, and certain previously-deferred product and country practice decisions.

On September 7, 2004, the president issued a proclamation designating (among other matters) Iraq a beneficiary developing country, effective September 15, 2004, and removed imported Russian titanium from receiving GSP-eligibility, effective 60 days after the date of the proclamation.

On September 10, 2004, a notice in the Federal Register announced the initiation of a review to consider the designation of Serbia and Montenegro as a beneficiary developing country under the GSP; while on November 5, 2004, a Federal Register notice announced initiation of a review to consider Azerbaijan as a beneficiary developing country under the GSP.

On November 15, 2004, a notice in the Federal Register announced the extension of the deadline for submitting petitions for the 2004 annual product and country practices review to December 13, 2004.