

# **III. BILATERAL AND REGIONAL NEGOTIATIONS AND AGREEMENTS**

## **A. Free Trade Agreements**

### **1. Australia**

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. Since then, U.S. exports of goods to Australia have increased steadily, growing 12 percent in 2006 to \$17.8 billion, 8 percent in 2007 to \$19 billion, and 20 percent in 2008 to \$23 billion. Australia is currently the 14th largest export market for U.S. goods. Two-way annual goods trade in 2008 was \$33.9 billion, up 56 percent since 2004. Two-way services trade in 2007 was \$16.3 billion, an increase of about 50 percent since 2004. U.S. services exports to Australia totaled \$10.4 billion in 2007, and U.S. services imports totaled \$5.9 billion.

U.S. exports of agricultural products to Australia totaled over \$800 million in 2007. Top U.S. agricultural exports included processed fruit and vegetables, fresh fruit, red meats, and pet food. The FTA also established a new forum for scientific cooperation between U.S. and Australian authorities, which has been meeting since 2005 to address specific bilateral animal and plant health matters based on science and with a view to facilitating trade.

The FTA also promoted investment flows in both directions. Australian foreign direct investment (FDI) in the United States totaled \$27.5 billion in 2006 (latest data available), up 15 percent from 2005. U.S. FDI in Australia in 2007 was \$79 billion, up 15 percent from 2006. U.S. FDI in Australia is concentrated largely in the non-bank holding companies, manufacturing, mining, and finance sectors.

The third annual FTA Review took place in June 2008. The two sides agreed that implementation of the agreement has remained on track. They reviewed trade in agricultural products, sanitary and phytosanitary issues, mutual recognition of professional services, and intellectual property issues.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

### **2. Morocco**

The United States and Morocco signed an FTA on June 15, 2004. The Agreement entered into force on January 1, 2006. The United States-Morocco FTA is a comprehensive agreement that is an important part of the effort to promote more open and prosperous Middle Eastern societies. The FTA supports the significant economic and political reforms that are underway in Morocco and creates improved commercial and market opportunities for U.S. exports to Morocco by reducing and eliminating trade barriers.

Since the entry into force of the FTA, the U.S. goods trade surplus with Morocco has risen to \$603 million in 2008, up from \$79 million in 2005 (the year prior to entry into force). U.S. goods exports in 2008 were \$1.5 billion, up 10 percent from the previous year. Corresponding U.S. imports from Morocco were \$871 million, up 43 percent. Morocco is now the 68th largest export market for U.S. goods.

The Joint Committee established by the FTA held its first meeting in March 2008. U.S. and Moroccan experts discussed FTA implementation issues including the implementation of tariff-rate quotas, sanitary standards for U.S. exports of beef and poultry and Moroccan exports of vegetables, the interpretation of rule of origin requirements, and discrepancies in each party's collection of trade statistics. These discussions will continue during the coming year. Morocco and the United States continued to work together to advance negotiations for an Anti-Counterfeiting Trade Agreement (ACTA) with strong enforcement characteristics.

### **3. Chile**

#### **a. Overview**

The United States-Chile Free Trade Agreement entered into force on January 1, 2004.

The United States-Chile FTA eliminates tariffs and opens markets, reduces barriers for services, provides cutting-edge protection for intellectual property, ensures regulatory transparency, guarantees non-discrimination in the trade of digital products, commits the Parties to maintain competition laws that prohibit anticompetitive business conduct, and requires effective labor and environmental enforcement. In 2008, U.S. exports to Chile increased by 45 percent to \$12.1 billion, while U.S. imports from Chile decreased by 9 percent to \$8.2 billion.

#### **b. Elements of the United States-Chile FTA**

##### **i. Operation of the Agreement**

The central oversight body for the Agreement is the United States-Chile Free Trade Commission (FTC), chaired jointly by the U.S. Trade Representative and the Chilean General Directorate for International Economic Affairs.

The fifth meeting of the FTC was held on December 12, 2008, during which the two countries evaluated progress on implementation of the Agreement during 2008. The Commission reviewed the operation of the specialized committees established under the Agreement and concluded that good progress had been made. The Working Group on Agricultural Trade, Environment Affairs Council, and Committees on Trade in Goods, Sanitary and Phytosanitary issues, Government Procurement, and Technical Barriers to Trade all convened in 2008.

Following procedures set out in the FTA, the United States and Chile agreed to accelerate the elimination of tariffs on goods covering approximately \$35 million in annual bilateral trade. The items identified for accelerated tariff elimination were selected based on requests by producers, consumers, and traders who are eager to take advantage of the benefits of free trade between the United States and Chile. Under the agreement, the United States agreed to eliminate tariffs on certain agricultural products, including spinach, sweet corn, preserved artichokes, and frozen vegetables. Chile agreed to eliminate the tariffs on a range of products, including rice, peas, safety headgear, and certain chemicals. These tariff cuts were implemented on January 1, 2009.

The Committee on Procurement also agreed on several modifications and rectifications of the Government Procurement Annex, as well as a clarification of the threshold adjustment process.

After thorough consultations under Article 3.17 of the United States-Chile FTA, the two governments also reached an agreement in November 2008 with respect to trade in table grapes.

## **ii. Labor**

The FTA establishes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Activities that have been conducted since the Agreement went into effect include the exchange of information on U.S. experience with the application of information technology to judicial proceedings, U.S. methodologies for collecting and using labor data in policy-making, and a training seminar for Chilean labor judges conducted by Department of Labor Administrative Law Judges in the context of the International Seminar on the Modernization of the Labor Justice system.

## **iii. Environment**

On April 23-24, 2008, the U.S. and Chilean governments convened the fourth meeting of the Environmental Affairs Council to discuss the FTA Environment Chapter and the work plan associated with the Environmental Cooperation Agreement. Both governments agreed to work together on the issue of public participation and transparency in trade and environmental decision-making.

In addition, the Environmental Affairs Council invited the U.S. Trade and Environmental Policy Advisory Committee (TEPAC) Members and Liaisons to participate in the meeting and to have an exchange with its advisors on trade and environment issues. This was the first such meeting between trade and environment advisory committees established pursuant to the provisions of a free trade agreement.

## **iv. Intellectual Property Rights (IPR)**

Concerns about declines in Chile's protection of intellectual property rights (IPR) were reflected in the 2008 decision to maintain Chile's position on the Special 301 Priority Watch List. There are substantive deficiencies in Chile's IPR laws and regulations as well as overall inadequate IPR enforcement. The predominant concerns involve weak protection for patent and test data which affects the pharmaceutical sector and significant copyright piracy of movies, music, and software. The United States will continue working with Chile to improve IPR protection and enforcement to ensure full implementation of the FTA. At the fifth meeting of the FTC in December 2008, both Parties agreed that in the first quarter of 2009, experts will meet to perform a technical review of the status of implementation of the FTA chapter on Intellectual Property Rights.

## **4. Singapore**

The United States-Singapore Free Trade Agreement has been in force since January 1, 2004. Since then, exports from the United States to Singapore have increased 74 percent with steady growth in medical devices, electrical and non-electrical machinery and construction equipment, and pharmaceuticals.

Singapore is the United States' 16th largest trading partner, with two-way trade in goods totaling \$44.7 billion in 2008. U.S. exports are concentrated in machinery and electrical machinery, vehicles, mineral fuel, aircraft, and optic and medical instruments. Singaporean foreign direct investment into the United States totaled more than \$10 billion in 2007, a 90 percent increase from 2006. During the same period, U.S. FDI to Singapore increased by 5.3 percent. Two-way trade in services was \$11.1 billion in 2007. In October 2008, U.S. and Singaporean government officials held the fourth annual review of the FTA, noting that implementation remained on track and welcoming the growth in bilateral trade and investment

since the FTA came into force. They also discussed implementation issues, including relating to telecommunications and other service sectors, environmental cooperation, and IPR.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

## **5. Jordan**

In 2008, the United States and Jordan continued to benefit from their extensive economic partnership, including the United States-Jordan Free Trade Agreement, which went into effect in December 2001. While the FTA is a key part of the United States-Jordan economic relationship, it is just one component of close bilateral cooperation that began in earnest with joint efforts on Jordan's accession to the World Trade Organization (WTO) in 2000. U.S. efforts to support Jordan's rapid and successful WTO accession were followed on the bilateral front by the conclusion of a Bilateral Investment Treaty.

Qualifying Industrial Zones (QIZs) are another important example of successful U.S.-Jordanian efforts to boost Jordan's economic growth and promote peace in the Middle East. Established by Congress in 1996, the QIZ initiative allows products to enter the United States duty-free if manufactured in Israel, Jordan, Egypt, or the West Bank and Gaza. The program has succeeded in stimulating significant economic activity and promoting business cooperation between Jordan and Israel. In 2002, Jordanian exports under the QIZ agreement to the United States were \$369 million; by 2006 they reached \$1 billion, and in the first 11 months of 2008, they were \$709 million.

These various measures have played a significant role in boosting overall United States-Jordanian economic ties. U.S. goods exports were \$941 million in 2008, up 10 percent from 2007. Corresponding U.S. imports from Jordan were \$1.1 billion, down 14 percent. QIZ products still account for more than half of Jordanian exports to the United States, but the QIZ share is declining relative to total products shipped under the FTA. This shift toward importing products manufactured outside of the QIZs demonstrates the important role the FTA plays in helping Jordan diversify its economy.

In October 2008, the United States and Jordan convened the latest meeting of the Joint Committee established under the FTA to manage implementation of the agreement. This meeting reviewed a range of bilateral issues, including labor, agriculture, intellectual property rights, customs, and environment, with a plan to follow-up in detail in 2009.

## **6. Israel**

The 1985 United States-Israel Free Trade Agreement, the first FTA signed by the United States, continues to serve as a foundation for expanding trade and investment between the United States and Israel.

U.S. goods exports in 2008 were \$14.8 billion, up 14 percent from the previous year. U.S. goods imports from Israel were \$22.7 billion, up 9 percent. Israel is currently the 20th largest export market for U.S. goods. U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were \$3.4 billion in 2007 (latest data available), and U.S. imports were \$3.1 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$1.1 billion in 2006 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$1.5 billion. The stock of U.S. FDI in Israel was \$10.1 billion in 2007 (latest data available), up from \$9.4 billion in 2006. U.S. FDI in Israel is concentrated largely in the manufacturing, information, professional, scientific, and technical sectors.

In 1996, the two sides, recognizing that the FTA had not served to liberalize some aspects of bilateral agriculture trade, concluded an Agreement Concerning Certain Aspects of Trade in Agricultural Products (ATAP), which provided for duty-free or other preferential treatment of certain agricultural products. The 1996 agreement was extended through 2003, and a new agreement was concluded in 2004. As the 2004 agreement was scheduled to expire at the end of 2008, the two sides agreed to extend the agreement through December 31, 2009 while a successor ATAP agreement is negotiated.

## **7. Central America and the Dominican Republic**

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. The CAFTA-DR is the first free trade agreement between the United States and a group of smaller developing economies. This agreement is creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, promoting transparency, and establishing state-of-the-art rules for 21st century commerce. It is facilitating trade and investment among the Parties and furthering regional integration.

Central America and the Dominican Republic represent the third largest U.S. export market in Latin America, behind Mexico and Brazil. U.S. exports to the CAFTA-DR countries were valued at \$26.3 billion in 2008. Combined total two-way trade in 2008 between the United States and Central America and the Dominican Republic was \$45.6 billion.

In August 2005, President Bush signed the implementing legislation for the CAFTA-DR. The agreement entered into force for the United States and El Salvador, Guatemala, Honduras, and Nicaragua during 2006 and for the Dominican Republic during 2007. Effective January 1, 2009, Costa Rica became a Party to the CAFTA-DR.

On August 15, 2008, the CAFTA-DR Parties implemented important changes to the agreement's textiles provisions, including changing the rules of origin to ensure that pocket fabric in apparel is sourced from the United States or another CAFTA-DR Party. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico will provide duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In October 2008, representatives of the CAFTA-DR Parties met for the second time to review the operation and administration of the agreement and to discuss ongoing implementation issues.

In November 2008, the CAFTA-DR Committee on Trade Capacity Building met for the third time. The Committee seeks to prioritize and coordinate trade capacity building activities undertaken by U.S. government agencies and international institutions in the CAFTA-DR countries. At the meeting, the Committee had in-depth discussions on current capacity building activities and considered potential future assistance in light of capacity building priorities that the Central American countries and the Dominican Republic had identified. See Chapter IV, Section A of this report for further discussion.

Also in November 2008, the Parties convened the first meeting of the Labor Affairs Council, the body responsible for overseeing the implementation of, and for reviewing progress under, the labor chapter of the CAFTA-DR. The Council reviewed progress on the implementation of the CAFTA-DR labor

chapter, discussed labor cooperation and capacity building efforts to date, and identified priorities for future capacity building activities. As called for by the CAFTA-DR, the Council also met in a public session to provide civil society an opportunity to discuss matters relating to the implementation of the labor chapter, including labor cooperation and capacity building. See Chapter IV, Section B of this report for further discussion.

## **8. Bahrain**

The United States-Bahrain FTA, which entered into force on January 11, 2006, generates export opportunities for the United States, creating jobs for U.S. farmers and workers. The agreement also supports Bahrain's economic and political reforms and enhances commercial relations with an economic leader in the Arabian Gulf. On the first day the agreement took effect, 100 percent of the two-way trade in industrial and consumer products began to flow without tariffs, and U.S. farmers have gained access to a new market for meats, fruits and vegetables, cereals, and dairy products. In addition, Bahrain opened its services market wider than any previous FTA partner, creating important new opportunities for U.S. financial service providers and companies that offer telecommunications, audiovisual, express delivery, distribution, healthcare, architecture, and engineering services.

The U.S.-Bahrain FTA also promotes the policy of advancing economic reforms and liberalization in the Middle East. The United States-Bahrain Bilateral Investment Treaty (BIT), which took effect in May 2001, covers investment issues between the two countries. The first meeting of the FTA Joint Committee took place in February 2008.

## **9. Panama**

The United States and Panama launched negotiations of a free trade agreement in April 2004 and concluded the negotiations in December 2006. The two governments signed the United States-Panama Trade Promotion Agreement (TPA) on June 28, 2007. Panama approved the TPA on July 11, 2007. The United States has not yet approved the agreement.

The TPA achieves the goal expressed by the U.S. Congress in the Caribbean Basin Trade Partnership Act to conclude comprehensive, mutually advantageous free trade agreements with beneficiary countries of the Caribbean Basin Initiative trade preference program.

The TPA will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Panama. Approximately 88 percent of U.S. exports of consumer and industrial goods will become duty-free immediately when the TPA enters into force. All remaining tariffs on consumer and industrial goods will be eliminated within 10 years. By value, more than 60 percent of current U.S. farm exports to Panama will become duty-free immediately when the TPA takes effect. Duties on other U.S. agricultural products will be phased out within 5 years to 12 years and on the most sensitive agricultural products within 15 years to 20 years.

Panama also implemented an expansive bilateral agreement reached with the United States on regulatory barriers to agricultural trade. Under this agreement, Panama recognized the equivalence of the U.S. meat and poultry inspection systems and of the U.S. regulatory system for processed food products, and agreed to provide access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Finally, Panama formalized its recognition of the U.S. beef grading system and cuts nomenclature, eliminated its onerous product registration procedures, and agreed to an automatic and cost-free registration process for the small group of U.S. agricultural products not exempted from this process.

The TPA will either open or lock in existing access to Panama's services market in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The TPA will also help ensure a stable legal framework for U.S. investors in Panama. Except for certain specified exceptions, the agreement will commit Panama to allow U.S. investors to establish, acquire, and operate investments in Panama on the same basis as Panama's own investors or other foreign investors.

The TPA provides that U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority, including for the \$5.25 billion Panama Canal expansion project, which began in 2007 and is expected to be completed in 2014.

The TPA includes important disciplines relating to intellectual property rights, electronic commerce, customs administration and trade facilitation, and dispute settlement.

The TPA also includes provisions concerning the protection of labor rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the TPA, each Party is required to adopt and maintain in its law, and practices thereunder, fundamental labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, and effectively to enforce those laws. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the six multilateral environmental agreements that are identified in the TPA. All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other chapters of the TPA. These commitments are supplemented by a Labor Cooperation and Capacity Building Mechanism established under the labor chapter and a separate Environmental Cooperation Agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources.

The United States had a goods trade surplus with Panama of \$4.7 billion in 2008 and is Panama's largest trading partner. Total goods trade between the United States and Panama was \$5.5 billion in 2008. Panama is a growing market for U.S. products. U.S. goods exports to Panama increased 36 percent from 2007 to 2008.

## **10. Oman**

The U.S.-Oman FTA, which entered into force on January 1, 2009, builds on existing FTAs to promote economic reforms and openness in the Middle East. Implementation of the obligations contained in the comprehensive agreement will generate export opportunities for U.S. goods and services providers, solidify Oman's trade and investment liberalization, and strengthen intellectual property rights protection and enforcement.

## **11. Thailand**

The United States suspended Free Trade Agreement negotiations with Thailand in 2006 following the dissolution of the Thai Parliament and the subsequent military-led coup. Although FTA negotiations remained suspended in 2008, U.S. and Thai officials continued to discuss bilateral issues as well as ways to advance the WTO Doha negotiations and the APEC and ASEAN agendas.

The United States and Thailand held informal consultations in March and a formal dialogue on trade and investment issues in Washington D.C. in June 2008. The United States raised concerns regarding Thai customs valuation practices, labeling requirements and other technical barriers to trade, market access for U.S. beef and live cattle, and the deterioration of intellectual property rights protection in Thailand over the past several years. The United States will continue to monitor and evaluate the political situation in Thailand and, as appropriate, will consider steps to further strengthen bilateral economic relations.

## **12. Republic of Korea**

The United States and the Republic of Korea successfully concluded the negotiation of a free trade agreement on April 1, 2007 and signed the United States-Korea Free Trade Agreement (KORUS FTA) on June 30, 2007. The KORUS FTA is the most commercially significant free trade agreement the United States has concluded in 16 years. Once approved and implemented, the KORUS FTA will provide preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to the United States' seventh largest export market, help solidify the two countries' long-standing alliance, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region.

For more details regarding the KORUS FTA, please see Chapter III, Section E.

## **13. Malaysia**

The United States and Malaysia held two rounds of negotiations of a Free Trade Agreement in 2008. Solid progress has been made in the negotiations, which were launched in March 2006, although some significant challenges remain.

Malaysia is the United States' 18th largest goods trading partner. Two-way trade in goods with Malaysia totaled \$45 billion in 2008. Exports totaled \$13.4 billion and were concentrated in the electrical and non-electrical machinery, optic and medical instruments, iron and steel products, plastic, and aircraft sectors. The United States is Malaysia's second largest export market and fourth largest source of imports. Two-way trade in services totaled \$2.9 billion in 2007, and U.S. foreign direct investment in Malaysia increased to \$15.7 billion.

## **14. Colombia**

The United States and Colombia signed the United States-Colombia Trade Promotion Agreement (CTPA) in November 2006 and a Protocol of Amendment in June 2007. The Colombian Congress approved the agreement and protocol in 2007. The United States has not yet approved the agreement

Once approved and implemented, the CTPA will provide the United States substantial commercial benefits. Colombia is a growing export market of approximately 48 million consumers for U.S. goods in Latin America. U.S. two-way trade with Colombia reached \$25 billion in 2008, making Colombia the country's fourth largest trading partner in Latin America. U.S. goods exports to Colombia totaled \$11.4 billion in 2008, an increase of 34 percent from 2007. The International Trade Commission estimates that the CTPA will increase U.S. exports to Colombia by \$1.1 billion and U.S. GDP by \$2.5 billion.

In 2008, 92 percent of U.S. imports from Colombia entered the United States duty-free under U.S. most-favored nation tariff rates and various preference programs. Colombia's trade weighted average applied tariff rate on U.S. imports was 11.1 percent, while the equivalent U.S. rate on imports from Colombia was only 0.1 percent.



Our trade agreement with Colombia will further open this dynamic and growing economy. Colombia will provide immediate duty-free access for over one-half of its imports of U.S. agricultural products and over 80 percent of U.S. industrial and consumer products, with all remaining tariffs phased out over defined periods. Colombia is already the largest market for U.S. agricultural exports in South America. U.S. farmers and ranchers will benefit particularly from the immediate elimination of duties on high quality beef, cotton, wheat, soybeans, and many fruits and vegetables including apples, pears, peaches, and cherries. While negotiating the terms of the CTPA, the United States and Colombia also reached other agreements, including reopening Colombia's market to U.S. beef and beef products for human consumption when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

In addition, the CTPA will remove barriers to U.S. services, provide a secure, predictable legal framework for investors, and strengthen protection for workers and the environment. The CTPA includes state-of-the-art provisions relating to intellectual property rights, electronic commerce, customs administration and trade facilitation, and dispute settlement.

The CTPA includes provisions concerning the protection of workers' rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the CTPA, each Party is required to adopt and maintain in its law, and practices thereunder, fundamental labor rights as stated in the 1998 International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up, and to enforce effectively those laws. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the five multilateral environmental agreements (MEAs) that are identified in the agreement. All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other FTA chapters. These commitments are supplemented by a Labor Cooperation Mechanism established under the labor chapter and the United States-Colombia Environmental Cooperation Agreement, a separate agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources.

## **15. Peru**

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. The Peruvian Congress ratified the Agreement in June 2006 and a Protocol of Amendment in June 2007. On December 14, 2007, President Bush signed into law the PTPA Implementation Act which approved the PTPA. The PTPA entered into force on February 1, 2009.

The United States has a vested interest in the security, stability, and success of the Andean region and stands to gain substantially from establishing stronger political and economic ties with Peru. The PTPA eliminates tariffs and trade barriers for U.S. manufacturers, workers, farmers, and investors, allowing U.S. products and services to compete more effectively with those of other countries in the region. Additionally, the PTPA will aid in promoting economic growth and prosperity in Peru by attracting new investment and more jobs. More importantly, the agreement will support and enhance the democratic and free market reforms that Peru has undertaken in recent years.

The United States' two-way trade with Peru doubled over the last four years to \$12.5 billion in 2008, with U.S. goods exports to Peru reaching \$6.4 billion. In 2008, 94 percent of U.S. imports from Peru entered the United States duty-free under U.S. most-favored nation tariff rates and various preference programs.

Under the terms of the PTPA, 80 percent of U.S. exports of consumer and industrial products to Peru became duty-free immediately, with remaining tariffs phased out over 10 years. More than 90 percent of current U.S. farm exports gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru has also agreed to eliminate its price band system on trade with the United States, and has addressed a number of significant sanitary and phytosanitary (SPS) and technical regulation issues that had impeded or stopped U.S. exports of beef, pork, poultry, and rice. In addition, the PTPA will remove barriers to U.S. services, provide a secure, predictable legal framework for investors, and strengthen protection for intellectual property, workers, and the environment.

The PTPA includes provisions concerning the protection of labor rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the PTPA, each Party is required to adopt and maintain in its law, and practices there under, fundamental labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, and to enforce those laws effectively. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the seven multilateral environmental agreements (MEAs) that are identified in the PTPA.

All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other FTA chapters. These commitments are supplemented by a Labor Cooperation Mechanism established under the labor chapter and the United States-Peru Environmental Cooperation Agreement, a separate agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources. The environment chapter includes a first-of-its kind Annex on Forest Sector Governance that provides for concrete steps that the Parties will take to enhance forest sector governance in Peru and promote legal trade in timber products.

The PTPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights. Such improvements include: state-of-the art protections for digital products such as software, music, and movies; stronger protection for patents, trademark and test data, including an electronic system for the registration and maintenance of trademarks; and strong enforcement provisions to combat piracy and counterfeiting.

## **16. North American Free Trade Agreement**

### **a. Overview**

On January 1, 1994, the North American Free Trade Agreement between the United States, Canada, and Mexico (NAFTA) entered into force. All remaining duties and quantitative restrictions were eliminated, as scheduled, on January 1, 2008. NAFTA created the world's largest free trade area, which now links 444 million people producing \$17 trillion worth of goods and services.

Trade between the United States and its NAFTA partners has soared since the agreement entered into force. U.S. two-way trade with Canada and Mexico exceeds U.S. trade with the European Union and Japan combined. U.S. goods exports to NAFTA partners nearly tripled between 1993 and 2008, from \$142 billion to \$418 billion.

By dismantling barriers, NAFTA has led to increased trade and investment, growth in employment, and enhanced competitiveness. From 1993 to 2007, cumulative foreign direct investment in the NAFTA countries has increased by over \$2.2 trillion. Increased investment has brought better-paying jobs, as well as lower costs and more choices for consumers and producers.

## **b. Elements of NAFTA**

### **i. Operation of the Agreement**

The NAFTA's central oversight body is the NAFTA Free Trade Commission (FTC), chaired jointly by the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Economy. The FTC is responsible for overseeing implementation and elaboration of the NAFTA and for dispute settlement.

The FTC held its most recent annual meeting in August 2007, in Vancouver, Canada. At the meeting, the FTC agreed to develop a work plan to enhance North American competitiveness. Deputy Ministers from the NAFTA countries met in Monterrey, Mexico in February 2008 to discuss progress on the trilateral work plan.

### **ii. NAFTA and Labor**

The North American Agreement on Labor Cooperation (NAALC), a supplemental agreement to the NAFTA, promotes effective enforcement of domestic labor laws and fosters transparency in their administration. The NAALC established a trinational Commission for Labor Cooperation, comprised of a Ministerial Council and an administrative Secretariat. In addition, each NAFTA Party has established a National Administrative Office (NAO) within its Labor Ministry to serve as a contact point with the other Parties and the Secretariat, to provide publicly available information to the Secretariat and the other NAOs, and to provide for the submission and review of public communications on labor law matters. The NAOs, together with the Secretariat, also carry out the Council's Cooperative Activities program.

The NAALC Labor Ministers convened the Eighth Regular Session of the Ministerial Council on April 24, 2008. They established priorities for the NAALC and for Secretariat activities, including addressing the challenges and opportunities of youth employment, improving mine safety, and protecting freedom of association. The Ministers signed a Joint Declaration to cooperate in order to resolve issues raised in a public communication concerning freedom of association, the protection of the right to organize, and the right to bargain collectively in the Mexican state of Puebla. In accordance with the Declaration, the three countries held a government-to-government exchange in Puebla, Mexico in December 2008. This event was followed by a seminar with relevant stakeholders to discuss labor law and best practices in North America related to freedom of association and collective bargaining, including federal and state procedures for processing worker complaints of illegal dismissals, procedures for the registration of unions, access to collective bargaining agreements, and labor-management cooperation mechanisms.

One new submission on labor matters was filed under the NAALC in 2008. The submission was filed with the Canadian NAO in April and alleged violations of collective bargaining and other labor rights in North Carolina. The United States addressed a related submission, filed in Mexico in 2006, by providing responses and information to the Mexican NAO on the application of federal and state labor laws in North Carolina. A copy of those responses was also sent to the Canadian NAO.

As part of its cooperative activities program, the NAALC Secretariat hosted a seminar on youth employment in Mexico City, Mexico in December 2008.

### **iii. NAFTA and the Environment**

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), seeks to ensure that trade liberalization and efforts to protect the environment are mutually supportive. The NAAEC created the Commission for Environmental Cooperation (CEC), which is composed of: (a) the Council, made up of the environment ministers or their equivalents from the United States, Canada, and Mexico; (b) the Joint Public Advisory Committee, made up of five private citizens from each of the Parties; and (c) the Secretariat, a professional staff, located in Montreal, Canada, which supports the Parties' implementation of the agreement. At the 2008 Council Session in Ottawa, Canada, the Council reviewed the work of the CEC, established the organization's goals for the coming year and, *inter alia*, reinforced the importance of both the NAFTA and NAAEC in raising environmental standards across all three countries. Specific information on the CEC's activities can be found in Chapter IV.

In November 1993, Mexico and the United States agreed on arrangements to help border communities with environmental infrastructure projects, in furtherance of the goals of the NAFTA and the NAAEC. The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB) are working with 149 communities throughout the United States-Mexico border region to address their environmental infrastructure needs. As of December 16, 2008, the NADB had contracted a total of \$968 million in loans and/or grant resources to partially finance 129 infrastructure projects certified by the BECC with an estimated cost of \$3.12 billion.

## **B. Regional Initiatives**

### **1. Free Trade Area of the Americas (FTAA)**

As agreed at the Fourth Summit of the Americas of November 2005 ("Mar del Plata Summit"), the government of Colombia undertook consultations to facilitate the exploration of the two positions put forth at the Summit. The vast majority of leaders in the hemisphere, including President Bush, called for a continuation of the FTAA negotiations and the resumption of trade meetings. Other leaders indicated that the conditions did not yet exist for the achievement of the FTAA. All 34 leaders agreed to explore these two positions in light of the outcome of the December 2005 World Trade Organization (WTO) Ministerial Meeting in Hong Kong. Colombia's consultations were aimed to facilitate a meeting of trade officials; however, there was no agreement on the timing of a meeting and the FTAA negotiations remain suspended.

### **2. U.S. - ASEAN Trade and Investment Framework Agreement (TIFA)**

The ten member ASEAN group of countries collectively ranks as the United States' fifth largest trading partner and fourth largest export market. Trade continues to grow steadily, with \$182 billion in two-way goods trade in 2008. With robust economies and a total population of about 550 million, the ASEAN market provides significant potential opportunities for U.S. companies.

In October 2002, President Bush announced the Enterprise for ASEAN Initiative (EAI), which is intended to strengthen U.S. trade and investment ties with ASEAN members both as a region and individually. Under the EAI, the United States offered the prospect of bilateral free trade agreements (FTAs) to ASEAN countries that are committed to the economic reforms and openness inherent in an FTA with the United States. The offer required a potential FTA partner to be a WTO member and have a Trade and Investment Framework Agreement (TIFA) with the United States. Since the launch of the EAI, the United States concluded an FTA with Singapore in 2003, and later began FTA negotiations with Thailand and Malaysia. The United States already had TIFAs with Indonesia and the Philippines and concluded

TIFAs with Brunei, Cambodia, and Vietnam. The United States used regular meetings under bilateral TIFAs to address bilateral trade issues, further deepen trade and investment ties, and coordinate regional and multilateral trade efforts.

In August 2006, the United States and ASEAN concluded a TIFA. This regional TIFA represents the commitment by both the United States and ASEAN countries to build upon already strong trade and investment ties to further enhance their economic relationship and promote ASEAN regional economic integration. The TIFA includes a work plan under which the two sides are working on priority projects. In May 2008, Ambassador Susan C. Schwab met with ASEAN Trade Ministers to assess the progress made on the existing TIFA work plan projects: an ASEAN Single Window for Customs Clearance; and development of an ASEAN harmonized pharmaceutical regulatory regime. The participants also discussed the development of new cooperative projects for the coming year, including a joint agreement to pursue ASEAN-wide participation in the plurilateral Multi-Chip Integrated Circuit (MCP) Agreement, and services and investment initiatives.

### **3. Middle East Free Trade Area (MEFTA)**

In May 2003, President Bush proposed the MEFTA initiative, a plan of graduated steps for Middle Eastern nations to increase trade and investment with the United States and others in the world economy, with the eventual goal of a regional free trade agreement. The first step is to work closely with peaceful nations that want to become Members of the World Trade Organization (WTO) in order to facilitate their accession. As these countries implement domestic reform agendas, institute the rule of law, protect property rights (including intellectual property), and create a foundation for openness and economic growth, the United States will pursue specific strategies to enhance trade and investment relations with them, each strategy tailored to the relevant country's level of development. In particular, the United States will expand and deepen economic ties through Trade and Investment Framework Agreements (TIFAs), Bilateral Investment Treaties (BITs), comprehensive Free Trade Agreements (FTAs), and other measures as appropriate. Bilateral FTAs with Israel, Jordan, Morocco, Bahrain, and Oman have already entered into effect (see relevant FTA sections above).

In 2008, USTR continued to work with trading partners in the region to implement the MEFTA initiative. The United States and the United Arab Emirates decided early in 2007 that the timing was not conducive to concluding bilateral FTA negotiations and have since sought to pursue trade and investment enhancement through a "TIFA-Plus" process; the first meeting of this new format was held in June 2007. The United States continues actively to support the WTO accession efforts of Lebanon, Algeria, and Yemen, and has also taken steps to reinvigorate dialogues with other key trading partners in the region, including Egypt and Saudi Arabia.

### **4. Asia-Pacific Economic Cooperation Forum**

#### **Overview**

The Asia-Pacific Economic Cooperation (APEC) forum has been instrumental in promoting regional and global trade and investment since it was founded in 1989. It has provided a forum for Leaders to meet annually since 1993, when APEC Leaders met at Blake Island in the United States. The United States will host APEC again in 2011.

The United States worked closely with Peru, the APEC Chair in 2008, and other APEC economies in pursuing an ambitious trade and investment liberalization agenda with an eye toward reducing barriers to trade and facilitating the movement of goods and services in the region.

In 2008, APEC took steps to address the current global financial turmoil, advance the World Trade Organization Doha Development Agenda (WTO/DDA) negotiations, promote regional economic integration, set high standards for FTAs, spotlight the need for work on intellectual property protection and enforcement, strengthen the safety of traded goods, expand work on the environmental goods and services sector, and facilitate trade in information and communications technologies. The United States will work with Singapore, the APEC Chair in 2009, to build on these initiatives and take further concrete steps to promote economic integration in the Asia-Pacific region.

The 21 APEC economies collectively account for 44 percent of world trade and 54 percent of global GDP. The growth in U.S. goods exports to APEC clearly demonstrates the benefits of open markets. Since 1994, U.S. exports to APEC economies increased by 137 percent. In 2008, U.S. goods trade with the APEC economies totaled \$2.1 trillion, up 7 percent from 2007. U.S. services trade with the APEC economies totaled \$287 billion in 2007.

## **2008 Activities**

### **Addressing the Financial Crisis**

APEC Leaders discussed the global financial crisis at their November 2008 summit in Lima, Peru, and issued a separate statement on the global economy, resolving to take coordinated action to restore stability to financial markets and economic growth. Specifically, they endorsed “the common principles” and “broad policy responses” of the Washington Declaration issued on November 15 at the Summit on Financial Markets and the World Economy in Washington, D.C. APEC Leaders also extended support to the WTO/DDA, and reaffirmed their commitment to “free market principles, and open trade and investment regimes” as a driver for global growth, employment and poverty reduction, and called for accelerated implementation of APEC’s regional economic integration agenda, including a possible Free Trade Area of the Asia Pacific (FTAAP).

APEC Leaders also highlighted the need to avoid “protectionist measures which would only exacerbate” the current economic downturn. In this regard, they pledged to “refrain within the next 12 months” from raising barriers to investment or to trade in goods or services, imposing export restrictions, or implementing WTO inconsistent measures in all areas, including those that stimulate exports.

### **WTO Leadership**

APEC economies continued to exercise leadership in the WTO. At the November 2008 summit, APEC Leaders issued a strong statement that called for an “ambitious and balanced conclusion” to the WTO DDA as a basis to promote economic growth and prosperity. To achieve this mandate, APEC Leaders pledged to build on the progress made to date and to work to “reach agreement on modalities” before the end of the year. They directed Ministers to take steps to advance this objective.

### **Advancing Open Trade and Investment in the APEC Region**

*Promoting Regional Economic Integration (REI)/Free Trade Area of the Asia Pacific (FTAAP):* In 2008, the United States continued work to deepen trans-Pacific economic ties through APEC. At the summit of APEC Economic Leaders in Lima, the United States promoted and Leaders endorsed a Regional Economic Integration (REI) progress report and work plan that solidifies APEC’s role as the principal vehicle to strengthen economic integration in the Asia-Pacific. These include numerous agreed actions designed to accelerate work to explore the options and prospects of a FTAAP. To embrace the challenges and opportunities involved in these developments, the United States will work closely in 2009 with other APEC economies to advance the REI mandate, including by working to achieve greater convergence in

key areas of APEC's trade and investment agenda, such as customs administration, trade facilitation, and cross-border services.

*Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs):* In 2008, APEC continued to address the growing number of FTAs and RTAs in the Asia-Pacific and the need to ensure that APEC economies' agreements are trade-promoting and reflect high standards. In this regard, APEC economies agreed on five additional model measures in 2008, including in the areas of safeguards, competition policy, and environment. These key elements for high quality FTA/RTA chapters brought the total to 15 sets of model measures agreed since commencement of this work in 2005.

*Fostering the Safety of Traded Goods:* APEC continued to address the important issue of improving food and product safety practices in the region. In 2008, APEC economies endorsed the APEC Food Safety Cooperation Forum Partnership Training Institute Network, a U.S. proposal to leverage resources and expertise from industry and academia to support the needs identified by APEC economies in building stronger food safety capacity. APEC economies also agreed to further strengthen food safety management practices in the region by supporting the use of international standards, where appropriate, and science based regulatory approaches, in addition to continuing to deepen cooperation in 2009 to ensure the safety of traded products, such as toys.

*Trade and Investment Facilitation:* In 2008, APEC took further steps to facilitate trade and investment in the region. APEC endorsed an Investment Facilitation Action Plan to improve member economies' investment regimes and enhance the flow of investment in the Asia-Pacific by 2010. The United States will work with the other APEC economies on this initiative in 2009, including by developing reporting methodologies through which progress implementing the initiative can be publicly assessed.

APEC economies also agreed on concrete ways to implement the second Trade Facilitation Action Plan to reduce trade transaction costs by five percent by 2010. This commitment builds on the success of APEC's first five-year action plan that resulted in a five percent reduction in trade transaction costs from 2001-2006. The United States will work with APEC economies to carry forward this initiative in 2009, while also continuing work on the single window initiative (launched September 2006) to further facilitate trade in the region.

*Intellectual Property Rights (IPR) Protection and Enforcement:* In 2008, the United States led efforts to ensure effective implementation of previously agreed initiatives on IPR protection and enforcement, including the APEC Anti-Counterfeiting and Piracy Initiative and APEC Cooperation Initiative on Patent Acquisition Procedures. APEC Leaders and Ministers underscored the importance of continuing and building upon this work in 2009, by addressing areas such as satellite and cable signal theft, and streamlining patent examination practices in the region. The United States will work with the other APEC economies on these efforts, and also further encourage APEC members – some of whom have major IPR enforcement challenges – to put in place legal regimes and enforcement systems to better combat counterfeiting and piracy.

*Environmental Goods and Services:* APEC economies endorsed a framework outlining areas for expanded APEC participation in the environmental goods and services sector in 2008. Enshrined in this framework is a preliminary list of projects for APEC to undertake in this new and growing sector, including a U.S.-launched initiative to build a better understanding throughout the Asia-Pacific region of cutting-edge environmental technologies. APEC Ministers underscored the importance of this work, including its potential to contribute to the DDA negotiations on environmental goods and services, and called on member economies to advance this work during 2009.

*Information and Communications Technologies:* The United States launched and secured endorsement of the APEC Digital Prosperity Checklist to promote trade in the digital economy in 2008. APEC Leaders and Ministers welcomed the checklist, which identifies policy, regulatory, trade and other tools to promote the use and development of information and communication technologies by member economies, and instructed APEC to build on this work in 2009. APEC Ministers also welcomed the expansion of the APEC Data Privacy Pathfinder and its ongoing efforts to facilitate the accountable flow of data across the region. APEC Ministers also reaffirmed the importance of the role that the WTO Information Technology Agreement (ITA) has played in promoting trade, investment, and economic growth in APEC economies, and agreed to work together to ensure that the integrity of the ITA is maintained. The United States and other APEC economies will further this work, as well as the Pathfinder on the APEC Technology Choice Principles in 2009.

### **Private Sector Involvement**

*The APEC Business Advisory Council:* The APEC Business Advisory Council was extremely active during 2008, participating in government-business dialogues and offering recommendations to advance key APEC priorities including the WTO/DDA negotiations, promoting regional economic integration, urging high-quality FTAs, trade facilitation, and IPR protection and enforcement.

*Life Sciences Innovation Forum:* In 2008, the sixth Life Sciences Innovation Forum (LSIF) undertook work to promote investment in health. In addition to sponsoring capacity building programs to combat counterfeit drugs and medical devices, promote best practices on clinical trials regulations, and facilitate greater access to innovative and life saving medical products, LSIF undertook a study examining the role of, and returns on, investment in health systems. The results of the study both demonstrated the positive returns of these investments, as well as areas where medical life science innovations could yield the greatest improvement to health outcomes and economic growth. LSIF also completed an Enablers of Investment Checklist as a voluntary guidance tool for economies to assess their investment environment for life sciences innovation.

*Automotive and Chemical Dialogues:* The Automotive and Chemical Dialogues are public-private sector dialogues in which government officials and senior industry representatives work together to map out strategies for increasing integration and liberalizing trade in the automotive and chemical sectors in the APEC region.

In 2008, the Automotive Dialogue continued work to address impediments to trade in automotive products by advancing capacity building initiatives and undertaking work in areas such as rules of origin. In addition, this dialogue worked closely with other APEC working groups both to facilitate customs procedures for low risk shippers through the use of expedited clearance, and to develop a work plan to examine issues related to biofuel resources, fuel flexible vehicles and infrastructure, and biofuel standards and trade. The Automotive Dialogue will continue these efforts in 2009, and further examine issues related to Intellectual Property Rights, motorcycle safety, small and medium-sized enterprises, and market access for aftermarket parts.

The Chemical Dialogue intensified its advocacy on the potential adverse impact of the EU REACH chemical regulations. This dialogue developed a set of Principles for Best Practice Chemicals Regulations and a report on issues associated with implementation of the UN Globally Harmonized System (GHS), both of which were endorsed by APEC Ministers and recommended for submission as APEC contributions to the Strategic Approach to International Chemical Management. In addition, the Chemical Dialogue continued work to implement GHS and develop a common approach to simplifying rules of origin in the chemicals sector as a contribution to APEC's REI agenda.



## **5. U.S. – Trans-Pacific Partnership Free Trade Agreement (FTA)**

In September 2008, the United States announced its intention to negotiate the terms of U.S. participation in the Trans-Pacific Strategic Economic Partnership (TPP) FTA. The TPP Agreement, whose original members are Singapore, Chile, New Zealand, and Brunei Darussalam, is a high standard, comprehensive regional trade agreement intended to serve as a pathway to broader Asia-Pacific trade integration. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

The U.S. decision to launch negotiations with the TPP countries followed a detailed exploratory process that began in early 2008 and included extensive consultations with the U.S. Congress and stakeholders. As the United States was conducting this process, it began in March 2008 to participate in financial services and investment negotiations with TPP countries. While the rest of the TPP Agreement entered into force in 2006, these two chapters remained to be negotiated. Three rounds of negotiations on these chapters were held in 2008, with solid progress made in both areas.

The TPP will serve to strengthen U.S. trade and investment ties to the Trans-Pacific region, which is a priority given the economic significance of the region to the United States now and in the future. In addition, U.S. participation in the TPP could position U.S. businesses better to compete in the Asia-Pacific region, which is seeing the proliferation of preferential trade agreements among U.S. competitors and the development of several competing regional economic integration initiatives that exclude the United States. The TPP also will facilitate trade in the Trans-Pacific region, rationalize existing agreements, and support the multilateral trade agenda. In addition, it could serve as a vehicle for achieving the long-term APEC objective of a Free Trade Area of the Asia-Pacific.

## **C. The Americas**

### **1. Canada**

#### **a. Softwood Lumber**

The 2006 Softwood Lumber Agreement (SLA) is a significant accomplishment in U.S.-Canada bilateral relations. Its entry into force settled massive litigation in U.S. and international venues and resulted in the revocation of antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to constrain softwood lumber exports from Canada into the United States when demand in the United States is low. In favorable market conditions, the SLA provides for unrestricted trade in softwood lumber. During 2008, the maximum export restrictions were in place and Canada's share of the U.S. market fell. The Softwood Lumber Committee, established by the SLA to monitor implementation of the agreement, met in May 2008 and December 2008 to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding several Canadian federal and provincial programs, as well as Canada's interpretation of provisions of the agreement that adjust softwood lumber export levels, including the level triggering the agreement's surge mechanism. After formal consultations failed to resolve these concerns, on August 8, 2007, the United States requested international arbitration under the terms of the agreement to compel compliance with Canada's obligations relating to export volume caps and proper application of the import surge mechanism. On March 3, 2008, the arbitral tribunal considering the matter determined that Canada violated its SLA obligations by failing to properly adjust quota levels during the first half of 2007. The tribunal is expected to issue a determination in early 2009 on the appropriate remedy for Canada's

violation. On January 18, 2008, the United States asked a second arbitration tribunal to consider its challenge of several provincial programs. These programs circumvent Canada's obligations under the SLA by reducing or offsetting the export measures imposed by the agreement. A decision is anticipated in this arbitration sometime in late 2009.

## **b. Agriculture**

Canada is the largest market for U.S. food and agricultural exports. For 2008, U.S. agricultural exports to Canada grew by 17 percent to a record-breaking annualized \$16.4 billion.

As a result of the 1998 Canada Record of Understanding on Agricultural Matters (ROU), the U.S.-Canada Consultative Committee on Agriculture (CCA) and the Province/State Advisory Group (PSAG) were formed to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. The CCA met in May 2008 and November 2008 to discuss issues concerning livestock, fruits, vegetables, seed, plant trade, and biotechnology as well as to reinforce the close working relationship between the two governments and their respective agricultural sectors.

Continued progress was made in 2008 regarding the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement will provide U.S. potato producers with predictable access to Canadian Ministerial exemptions necessary to import potatoes into Canada. The arrangement, when fully implemented in November 2009, will allow a 60-day forward contract between a U.S. grower and a Canadian processor to serve as sufficient evidence of a shortage of Canadian potatoes in order for a Ministerial exemption to be granted automatically. In addition, the United States is phasing out spot-check inspections along the northeastern Canadian border crossing and shifting to quality inspections at the point of destination for potatoes. Finally, USDA has initiated rulemaking to allow some Canadian specialty potatoes that do not currently meet U.S. quality standards for size to enter the U.S. market.

In June 2007, the government of Canada implemented import requirements for U.S. beef and beef products which allowed full market access for imports of all U.S. beef and beef products from animals of all ages, consistent with the guidelines of the World Organization for Animal Health. In 2007, U.S. exports for beef and beef products to Canada increased to 132,473 metric tons worth \$603 million dollars from 96,591 metric tons worth \$433 million in 2006. In the first 11 months of 2008 U.S. exports of beef and beef products to Canada were 143,960 metric tons worth \$669 million, a 22.7 percent increase in volume over the same period in 2007.

## **c. Intellectual Property Rights (IPR)**

Canada has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA) (see discussion in Chapter IV) and in the Security and Prosperity Partnership of North America (SPP) Intellectual Property Rights Working Group.

Canada is a member of the World Intellectual Property Organization (WIPO) and adheres to several international agreements, including the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Canada is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set standards for intellectual property protection in the digital environment. Canada has not yet ratified these two WIPO Treaties. In June 2008, Canada introduced legislation to implement the WIPO Treaties and to provide improved copyright protection. The bill, however, died on the order table when national elections were called in September 2008.

U.S. intellectual property owners remain concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment.

## **2. Mexico**

Mexico is the United States' third-largest single-country trading partner and has been among the fastest-growing major export markets for goods since 1993, with U.S. exports up 267 percent over the period. The NAFTA has fostered this relationship by virtue of the agreement's comprehensive, market-opening rules. It is also creating a more equitable set of trade rules as trade barriers in Mexico are reduced and eliminated.

### **a. Agriculture**

North American agricultural trade has grown significantly since the NAFTA was implemented. Mexico is currently the United States' second-largest agricultural export market. For 2008, U.S. agricultural exports to Mexico increased 28 percent above the 2007 level, to roughly \$16 billion.

On January 1, 2008, following the end of a 15-year transition period, the United States and Mexico removed all remaining tariffs and quotas under the NAFTA, joining North America in free trade (all tariff cuts between the United States and Canada and between Canada and Mexico had already been implemented). On January 1, 2008, Mexico eliminated all tariffs and tariff-rate quotas (TRQs) on U.S. corn, dry beans, milk powder, and sweeteners. The scheduled termination of the safeguard mechanism on chicken leg quarters at the end of 2007 also occurred. On January 1, 2008, the United States eliminated all remaining tariffs and TRQs on various horticultural products (asparagus, dried onions and garlic, cantaloupes and other melons, orange juice (fresh and frozen), as well as peanuts and products, canned tuna, sweeteners and sugar-containing products).

The United States has worked to open the Mexican market to U.S. agricultural products. The full reopening of all trading partners' markets (including Mexico) to U.S. beef and beef products from animals of all ages in a manner consistent with World Organization for Animal Health (OIE) guidelines on Bovine Spongiform Encephalopathy (BSE) is a top priority for the United States. OIE guidelines provide for conditions under which all beef and beef products from animals of all ages can be safely traded from all countries regardless of BSE status, when certain Specified Risk Materials (SRMs), defined by OIE for each classification status, are removed. In May 2007, the OIE classified the United States as a "controlled risk" country for BSE, and in May 2008, Mexico achieved the same OIE classification. Nevertheless, Mexico still continues to ban U.S. beef and beef products from animals over 30 months of age. Mexico also has unjustifiable bans on U.S. beef products such as ground beef, head and foot meat, and small intestines, which had been a major part of U.S. exports. The United States will continue to work to achieve the full reopening of Mexico's market in a manner consistent with the OIE guidelines for "controlled risk" countries. In addition, the United States is carefully monitoring Mexico's use of its antidumping trade remedy on imports from the United States, particularly on imports of Red and Golden Delicious Apples.

### **b. Intellectual Property Rights (IPR)**

Despite a fairly extensive set of IPR laws and an increase in the number of seizures and arrests during the past few years, the extent of IPR violations in Mexico remains significant. Monetary sanctions and other

penalties, when imposed, are minimal and largely targeted at bottom-tier IPR violators, such as small-scale vendors of infringing materials, who are numerous and easily replaced.

A bill proposing to give the Procuraduría General de la República (PGR) the power to prosecute intellectual property crimes *ex officio* (i.e., on its own initiative and without first receiving complaints from rights holders or their legal representatives) was approved by the Mexican Chamber of Deputies in April 2008 and is awaiting action by the Mexican Senate.

Mexico has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

### **3. Brazil and the Southern Cone**

#### **a. MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay)**

The Common Market of the South, referred to as “MERCOSUR” from its Spanish acronym, is the largest trade bloc in Latin America. MERCOSUR is currently comprised of Argentina, Brazil, Paraguay, and Uruguay, and makes up over one-half of Latin America’s gross domestic product. On December 9, 2005, Venezuela began the process of joining MERCOSUR as a full member, but the Brazilian and Paraguayan legislatures have yet to approve Venezuela’s accession. Venezuela also has yet to make certain policy changes that will grant it full voting rights. Bolivia, Peru, Colombia, Ecuador, and Chile are associate members of the bloc, and benefit from certain preferential access to MERCOSUR markets, but maintain their own external tariff policies.

As a common market, MERCOSUR applies a common external tariff (CET) to products of nonmembers with a limited number of country-specific exceptions. Full CET product coverage, originally scheduled for implementation in 2006, has been deferred until December 31, 2009. Paraguay and Uruguay may also maintain 100 country-specific exceptions until December 31, 2015.

#### **b. Argentina**

The United States exported goods valued at an estimated \$7.8 billion to Argentina in 2008, an increase of 34 percent from 2006. U.S. imports from Argentina were roughly \$6.0 billion, an increase of 34 percent from 2007.

Argentina's low level of IPR protection and enforcement remains a source of friction in the bilateral trade relationship. Argentina has been on the Special 301 Priority Watch List since 1996. Although cooperation has improved between Argentina’s enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, the United States continues to encourage stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products.

#### **c. Brazil**

The United States exported goods valued nearly \$34 billion to Brazil in 2008. Brazil’s market accounts for 24 percent of U.S. exports to Latin America and the Caribbean, excluding Mexico, and 59 percent of U.S. goods exports to MERCOSUR.

The two governments conducted a meeting of the Bilateral Consultative Mechanism in Washington, D.C. on March 10, 2008, and discussed a number of bilateral and multilateral issues of mutual interest. Both

sides agreed to create a technical working group on trade facilitation and to investigate the potential for a Bilateral Investment Treaty.

Significant issues remain that restrict U.S. agricultural and food exports. For example, due to concerns about Bovine Spongiform Encephalopathy (BSE), Brazil still bans all U.S. cattle, beef, and beef products despite World Animal Health Organization (OIE) guidelines which specify that trade in all U.S. beef and beef products, with the exception of certain specified risk materials (SRMs) is safe. While some progress has been made in the area of sanitary and phytosanitary measures, Brazil's ban on wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona continues to adversely affect U.S. wheat exports.

According to the most recent statistics made available from the WTO covering the one-year period July 2007 through June 2008, Brazil has been a significant user of trade remedies, with the initiation of 16 antidumping investigations (ranking sixth among WTO Members) and the imposition of 11 antidumping measures (ranking seventh among WTO Members). With regard to imports from the United States during the same period, Brazil initiated antidumping investigations on supercalendared paper, phenol and butyl acrylate and imposed final antidumping measures on aluminum pre-sensitized plate and polycarbonate resin. In September 2008, Brazil initiated a safeguard action on recordable compact discs and digital versatile discs (CD-Rs/DVD-Rs), which is still pending.

Brazil is a beneficiary country under the Generalized System of Preferences (GSP) program and uses the program extensively. In 2008, after extensive analysis, including comments received from the public, the Administration determined that ferroniobium from Brazil can compete effectively in the U.S. market. As a result, the Administration revoked Brazil's competitive need limitation (CNL) waivers necessary for duty-free treatment of this product under the U.S. Generalized System of Preferences. The United States also continues to have concerns regarding Brazil's burdensome and non-transparent import licensing system.

Brazil has achieved some progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audio-visual goods. In addition, in July 2008, the United States Patent and Trademark Office (USPTO) and Brazil's IP office, the National Institute for Industrial Property (INPI), signed an MOU that memorializes the close working relationship between the two offices and that will serve as a vehicle for continued technical cooperation on IPR issues, such as patent and trademark examination training and information sharing. Nonetheless, shortcomings in some areas of IPR protection and enforcement, such as the large backlogs of patent and trademark applications and the involvement of Brazil's Health Ministry (ANVISA) in the examination process of patent applications for pharmaceuticals, continue to represent issues for U.S. IP rights holders.

#### **d. Paraguay**

The United States exported goods valued at an estimated \$1.7 billion to Paraguay in 2008, an increase of 35 percent from 2006. U.S. imports from Paraguay were roughly \$77 million, an increase of 14 percent from 2007.

In November 2008, Deputy U.S. Trade Representative John K. Veroneau traveled to Paraguay and met with President Fernando Lugo to discuss the countries' common interests in pursuing policies to increase economic growth.

Paraguay is a major exporter of, and a transshipment point for, pirated and counterfeit products in the region, particularly to Brazil. In 1998, Paraguay was designated as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. The United States and Paraguay concluded a

Memorandum of Understanding (MOU) on IPR issues. This MOU has been extended and revised twice since it entered into effect. The latest revision of the MOU was signed on April 30, 2008, and is valid through the end of 2009. Implementation of the MOU is subject to ongoing monitoring under U.S. trade law. The MOU details Paraguayan commitments to implement institutional and legal reforms and to strengthen intellectual property rights enforcement and prosecution. In addition, Paraguay agreed to ensure that its government ministries use only authorized software.

#### **e. Uruguay**

Uruguay has the smallest population among MERCOSUR members (3.5 million). U.S. exports to Uruguay increased by 47 percent to \$939 million in 2008, while imports decreased by 54 percent to \$224 million.

The United States-Uruguay commercial relationship has seen significant growth in the past several years. In 2002, Uruguay and the United States created a Joint Commission on Trade and Investment (JCTI) to exchange ideas on a variety of bilateral economic topics. A Bilateral Investment Treaty entered into force in November 2006.

In January 2007, the two governments signed a Trade and Investment Framework Agreement (TIFA), and have utilized the framework to exchange ideas on a variety of economic topics, including customs issues, intellectual property protection, investment, labor, and the environment.

On October 2, 2008, the two governments signed two protocols to the TIFA covering substantive commitments in the areas of trade facilitation and public participation in trade and environment.

#### **f. Chile**

The United States-Chile Free Trade Agreement entered into force on January 1, 2004 and provides the framework for bilateral trade relations. Developments in 2008 with respect to the United States-Chile FTA are discussed in Chapter III, Section A.

### **4. The Andean Community**

The United States has concluded Trade Promotion Agreements with Peru and Colombia. See Chapter III, Section A, for a description of these agreements and their status. Additional developments with countries in the region also occurred pursuant to the Andean Trade Preference Act (See Chapter V, Section B).

## **5. Central America and the Caribbean**

### **a. Free Trade Agreement with Central America and the Dominican Republic**

See Chapter III, Section A for a discussion of this topic.

## **D. Europe and Eurasia**

### **1. European Union**

#### **Overview**

The U.S. economic relationship with Europe is the largest and most complex in the world. Transatlantic trade and investment have played a major role in promoting prosperity on both sides of the Atlantic over the past half century. Given the magnitude and the highly integrated nature of the economic relationship, however, difficult trade issues often arise. The value of trade and investment affected by these issues can sometimes be quite large. Yet even when their impact is relatively small in dollar terms, U.S.-EU trade and investment disagreements can have implications for significant matters of principle or precedent, making their resolution both important and difficult.

With the accession of Romania and Bulgaria, the EU expanded to 27 countries at the beginning of 2007, and now encompasses a market of nearly 500 million consumers with a gross domestic product of \$14 trillion. U.S. goods exports to the European Union in 2008 were \$278 billion; U.S. exports of private commercial services (*i.e.*, excluding military and government) were \$179 billion in 2007.

During 2008, USTR actively engaged with the European Commission and EU Member States on a wide range of trade and investment issues, as well as on initiatives aimed at expanding transatlantic economic cooperation.

#### **a. Enhancing Transatlantic Economic Relations**

During their April 2007 Summit, U.S. and EU leaders launched the Framework for Advancing Transatlantic Economic Integration, with the goal of fostering cooperation and reducing trade and investment barriers through a multi-year work program in such areas as regulatory cooperation, intellectual property rights (IPR), investment, secure trade, financial markets, and innovation. The new Framework also established the Transatlantic Economic Council (TEC) to oversee Framework implementation, with input from the Transatlantic Business Dialogue, the Transatlantic Consumers Dialogue, and the Transatlantic Legislators Dialogue. The initial TEC meeting occurred in November 2007.

At the conclusion of its May 2008 meeting, the TEC reported progress on several initiatives, including commitments by the European Commission to propose changes to EU regulations that would allow the importation of poultry meat processed using pathogen reduction treatments (PRTs); by the U.S. Occupational Safety and Health Administration to publish a new request for information (RFI) concerning the use of suppliers' declaration of conformity as a basis for certifying that certain electrical and electronic equipment is safe for use in U.S. workplaces; and by the European Commission to undertake the necessary steps, within its competence, to ensure transparent implementation, legal certainty and non-discriminatory trade with respect to the new EU chemical regulation, REACH (Registration, Evaluation, Authorisation and Restriction of Chemical substances) and to take concrete action to ensure that trade in cosmetics and personal care products is not disrupted by REACH implementation. The TEC also produced an Open Investment Statement affirming the commitment of the United States and the EU to promoting open investment policies at home and abroad. It also noted progress in several other areas, including mutual recognition of accounting standards, customs cooperation, validation of alternative methods of animal testing, and patent harmonization.

As described in more detail below, the United States was disappointed by the EU's inability to make satisfactory progress during 2008 on two TEC market access issues of great interest to the United States: opening the EU market to poultry treated with PRTs and resolving REACH implementation issues.

#### **b. Regulatory Cooperation**

Trade obstacles arising from divergences in U.S. and EU regulations and the lack of transparency in EU rulemaking and standardization processes are an increasingly important focus of the U.S. dialogue with the EU. Under the Roadmap for U.S.-EU Regulatory Cooperation, U.S. and European officials broadly advanced U.S.-EU regulatory cooperation in 15 different sectors in 2007, with a particular focus on pharmaceuticals, medical devices, cosmetics, automobiles, chemicals, and electrical equipment. The U.S.-EU High-Level Regulatory Cooperation Forum (HLRCF) met in November 2007 to exchange views and share experiences regarding regulatory cooperation approaches and practices of mutual interest, with product safety and integration of trade impacts into regulatory analysis being topics of particular interest.

During 2008, much of the ongoing U.S.-EU work on regulatory cooperation came under the supervision of the TEC. At the May 2008 TEC meeting, the HLRCF presented a report on strengthening cooperation on the safety of imported products, which included concrete recommendations on how to overcome current constraints on effective information sharing. The HLRCF also presented a report on the analysis of international trade and investment impacts in the U.S. and EU regulatory impact assessment guidelines. These reports confirmed a common interest in working more closely on regulatory cooperation in the future.

#### **c. Subsidies for Large Commercial Aircraft**

The United States has long expressed its concerns with European government subsidization of large civil aircraft (LCA) developed by Airbus. The issue has acquired greater urgency in recent years as Airbus sought and received substantial new subsidies (so-called "launch aid," together with grants for infrastructure, research and development, and other types of subsidies) for the Airbus A380 super jumbo aircraft and commitments from various EU Member States of further launch aid subsidies for the new Airbus A350 passenger aircraft. In 2004 and 2005, USTR attempted to work with the European Commission to establish a new agreement aimed at eliminating LCA subsidies. The Commission's reluctance to negotiate such an agreement led the United States to initiate dispute settlement at the WTO in 2005 (as the United States believes subsidies to Airbus violate EU obligations under the WTO Agreement on Subsidies and Countervailing Measures). The EU requested its own WTO dispute settlement proceeding, claiming alleged U.S. Federal and State government subsidies to Boeing. Although the United States would prefer to reach a negotiated solution, it is prepared to see its WTO case through to completion if necessary. (See the "Dispute Settlement Understanding" section in Chapter II for further information on these cases.)

#### **d. WTO Information Technology Agreement**

For several years, the United States has raised concerns in both bilateral and multilateral settings regarding the duty treatment that the EU accords to several high technology products covered by the WTO Information Technology Agreement (ITA): LCD computer monitors, set-top boxes with a communication function, and certain multifunction digital machines (*i.e.*, devices that can scan, print, copy, and/or fax). The EU agreed to provide duty-free treatment to these products when it signed the ITA. On May 28, 2008, the United States requested formal consultations with the EU under WTO dispute settlement procedures; Japan and Chinese Taipei requested consultations shortly thereafter. These consultations failed to resolve the dispute, and on August 18, 2008, the United States, Japan, and Chinese Taipei jointly requested the establishment of a dispute settlement panel to determine whether the EU is



acting consistently with its WTO obligations. On September 23, the WTO Dispute Settlement Body (DSB) agreed to establish a panel. (See the “Dispute Settlement Understanding” section in Chapter II for further information on this case.)

#### **e. Agricultural Biotechnology**

In May 2003, the United States initiated WTO dispute settlement proceedings with respect to the EU’s *de facto* moratorium on approvals of agricultural biotechnology products and the existence of individual Member State bans on agricultural biotechnology products previously approved at the EU level. In September 2006, the WTO dispute settlement panel ruled in favor of the United States, finding that both the EU’s moratorium and the Member State prohibitions were inconsistent with WTO rules. The WTO adopted the panel report on November 21, 2006. On December 19, 2006, the EU notified the WTO that it intended to comply with the WTO recommendations and rulings set out in the panel report, and that it would need a “reasonable period of time” (RPT) to do so. The United States and EU agreed that the RPT would expire on November 21, 2007, and subsequently agreed to extend the RPT to January 11, 2008. When the RPT expired on January 11, the United States took the first step toward a resumption of WTO dispute settlement procedures by submitting a request to the WTO for authority to suspend concessions. Under a January 14, 2008 agreement with the Commission, however, proceedings on the U.S. request were suspended to provide the EU an opportunity to demonstrate meaningful progress on normalizing trade in biotechnology products. (See the “Dispute Settlement Understanding” section in Chapter II for further information on the WTO dispute).

During 2008, U.S. Government and Commission officials held several rounds of discussions on normalizing trade in biotechnology products. These discussions were useful in providing a forum for the exchange of information. However, the United States continues to have serious concerns with the operation of the EU biotechnology approval system. The backlog of pending applications (about 50 at the end of 2008) is even greater than when the United States initiated the WTO proceeding in 2003. In addition, individual EU Member States continue to adopt and maintain prohibitions on EU-approved biotechnology products.

#### **f. Chemicals**

On June 1, 2007, the EU’s comprehensive new regulatory regime for all chemicals (REACH) entered into force. REACH imposes extensive additional testing and reporting requirements, to be phased in over a number of years, on producers and downstream users of chemicals. This expansive EU regulation impacts virtually all industrial sectors, including the majority of U.S. manufactured goods exported to the EU. While supportive of the EU’s objectives of protecting human health and the environment, the United States continues to stress that the EU regulation adopts a particularly complex and burdensome approach, which appears to be neither workable nor cost-effective in its implementation, and could adversely impact innovation and disrupt global trade. Many of the EU’s trading partners have expressed similar concerns.

The United States has also continued to follow the implementation of other EU chemicals-related regulations such as the Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS), which has been applied to certain chemicals as well as to other substances. With respect to RoHS, we continue to seek clarification from the European Commission on various issues involving implementation of the existing Directive and the ongoing review of the Directive, which may result in changes to the Directive. We will continue to monitor closely the ongoing implementation of these and other EU regulations in 2009, and will seek to ensure that U.S. interests are protected.

### **g. Ban on Growth Promoting Hormones in Meat Production**

The EU continues to ban the import of U.S. beef obtained from cattle treated with growth-promoting hormones. In May 1996, the United States launched a formal WTO dispute settlement proceeding, challenging the EU ban. In 1999, the WTO ruled that the EU's ban was inconsistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), because it was not based on a scientific risk assessment, and authorized the United States to impose sanctions on EU products with an annual trade value of \$116.8 million. At present, the United States continues to apply 100 percent duties on \$116.8 million of certain imports from the EU.

In September 2003, the EU announced the adoption of a directive (EC Directive 2003/74) that recodified its ban on the use of the hormone estradiol for growth-promotion purposes and established provisional bans on the five other growth-promoting hormones included in the original EU legislation. The EU argued that it was now in compliance with the earlier WTO ruling and that U.S. sanctions were no longer justified. The United States maintained that the revised EU measure could not be considered compliant with the WTO's recommendations and rulings in the earlier hormones dispute, and that U.S. sanctions remained authorized.

In November 2004, the EU requested WTO consultations with the United States on this matter. A WTO panel issued its report in March 2008, finding that the United States had committed two procedural errors by continuing its sanctions after the EU claimed compliance, but that the EU's ban remained inconsistent with the requirements of the SPS Agreement. The EU filed an appeal in May 2008, and the United States filed a cross-appeal on the panel's procedural findings. The Appellate Body issued its report on October 16, 2008, reversing the panel's procedural findings in favor of the United States and concluding that the U.S. sanctions may remain unless and until the EU demonstrates compliance. The Appellate Body also reversed certain of the panel's findings regarding the consistency of the EU's revised ban with the SPS Agreement, ultimately leaving unanswered the question of whether the revisions to the ban have brought the EU into compliance. On December 22, the EU submitted a request for formal WTO consultations with the United States on the issue of whether the recodified 2003 hormone ban brings the EU into compliance with its obligations under the SPS Agreement.

During 2008, the United States and the European Commission continued longstanding talks on a possible interim settlement of the beef hormone issue. Such a settlement would involve the lifting of trade sanctions by the United States in exchange for additional EU market access for high-quality non-hormone beef. In November, following the Commission's failure for several months to negotiate a specific amount of new market access for hormone-free beef, the United States initiated a formal review of the beef hormones import retaliation list under Section 301 of the Trade Act of 1974, collecting comments from the public on the possible revision of the retaliations list, which had not changed since 1999. On January 15, 2009, USTR issued a *Federal Register* notice announcing that additional duties would be collected on a modified list of EU imports beginning on March 23, 2009.

### **h. Poultry Meat**

U.S. poultry meat exports to the EU have been banned since April 1, 1997 because U.S. poultry producers use washes of low-concentration pathogen reduction treatments (PRTs) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime. For many years, the United States has worked with the European Commission to gain approval of four PRT compounds. In December 2005, the European Food Safety Authority formally adopted the opinion of a scientific panel that had determined these four PRTs were safe. In February 2006, the European Commission's Health and Consumer Protection Directorate General circulated the first draft of a proposal to allow PRTs to be

used on poultry meat in the EU market. The Directorates General for Environment and Agriculture and Rural Development reportedly held up the proposal for two years.

At the November 2007 meeting of the TEC, the European Commission committed to resolve this issue by the time of the 2008 U.S.-EU summit. In May 2008, the Commission issued a revised proposal to authorize the use of poultry PRTs. The proposed EU regulation included a number of conditions that would have limited the ability of most U.S. exporters to sell poultry to the EU, including prohibiting the simultaneous or consecutive use of more than one PRT and requiring poultry meat processed with a PRT to be rinsed in potable water after the application of the PRT. The proposal also provided for an unnecessarily trade-restrictive labeling requirement for poultry meat treated with PRTs. Despite the inclusion of these excessively stringent conditions, the Standing Committee on the Food Chain and Animal Health, a regulatory body that assists the Commission in the development of food safety measures, rejected the proposal on June 2, 2008. EU Agriculture Ministers also rejected the proposal in December. On January 16, 2009, the United States requested formal WTO consultations with the EU on its ban on imports of poultry treated with PRTs.

#### **i. Pork**

U.S. pork exports to the EU are restricted by high tariffs, a complex system of tariff-rate quotas (TRQs), and SPS barriers, including *trichinae* testing and a ban on the use of PRTs. In the WTO Doha negotiations, the United States has been seeking improved access to the EU market for U.S. pork through an expansion and consolidation of TRQs and a reduction in tariffs. The United States is also pressing the EU in the context of the WTO compensation negotiations related to the 2007 enlargement of the EU (see Enlargement Section below) to make improvements in TRQ administration to enable more effective utilization of the quotas by U.S. exporters. Some progress was made in 2008 through the EU's elimination of additional residue testing requirements. In the coming year, the United States will continue to seek the resolution of SPS issues restricting pork exports to the EU.

#### **j. Wine**

On March 10, 2006, the United States and the EU concluded the Agreement between the United States of America and the European Communities on Trade in Wine, an accord on wine-making practices and wine labeling intended to facilitate bilateral trade in wine, currently valued at nearly \$3.7 billion annually, of which 85 percent is of EU origin. The agreement has improved marketing certainty for U.S. and EU wine exporters.

The agreement provides for: (1) mutual recognition of existing wine-making practices; (2) a consultative process for recognition of new wine-making practices; (3) a commitment by the United States to confine, with some exceptions, the use of certain terms on wine labels in the U.S. market solely to wine originating in the EU; (4) a commitment by the EU to allow, under specified conditions, the use of certain regulated terms on U.S. wine exported to the EU; (5) recognition of certain names of origin in each market; (6) simplified import certification requirements; and (7) defined parameters for optional labeling elements for U.S. wines sold in the EU market. The agreement also provided for a second phase of negotiations to further enhance bilateral wine trade. The agreement did not address the use of "geographical indications," a category of indicators of origin that are protected under intellectual property laws or treaties. The United States and the EU continue to meet to discuss implementation of the first agreement and second-phase issues.

In September 2008, the EU notified the United States that it would not renew the derogation in the wine agreement that permits the use of certain expressions on U.S. wine sold into the EU market. The agreement permits the EU to decline to extend the derogation. It will now expire in March 2009.

### **k. EU Enlargement**

Upon their accession to the EU in January 2007, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain products imported from the United States. In December 2006, in advance of the accession, the United States and the EU entered into negotiations under WTO rules for compensation to the United States to offset the tariff changes.

Soon after the accession of Romania and Bulgaria, the United States presented a formal request for compensation under GATT 1994 Articles XXIV:6 and XXVIII. The Commission made an initial offer in June 2007 and the United States presented a formal counterproposal in October 2007. In January 2008, Commission negotiators essentially rejected the U.S. proposal and made no new offer, instead urging the United States to reconsider the offer the EU had already made. Senior U.S. and EU officials discussed the enlargement negotiations on several occasions during 2008, but made no significant progress toward a solution. The Commission has extended the formal negotiating period four times; the current negotiating period expires at the end of June 2009.

### **l. Rice**

The zero tolerance policy maintained by the EU for the presence in conventional agricultural shipments of trace amounts of unapproved biotechnology products continues to generate significant commercial risk for companies handling U.S. rice. This policy, put in place in reaction to the discovery of trace levels of unapproved biotechnology LL601 rice in the U.S. long grain rice crop in 2006, is harmful to U.S. exports because any detection of LL601 can potentially lead to detention or rejection of U.S. rice at the EU point of delivery or after distribution on the EU market. In February 2008, following a review of U.S. industry measures to ensure the exclusion of LL601 from rice shipments, the European Commission eliminated a requirement that EU Member States must test all U.S. rice shipments for genetically engineered rice upon arrival at EU ports. This change has resulted in a marginal improvement in the trading environment for U.S. rice exports to the EU during 2008. However, an EU-mandated origin-testing program for U.S. long grain rice shipments remains in place. Recognizing the extensive measures taken by the U.S. rice industry to eliminate the presence of LL601 from rice supplies, the United States seeks the elimination of this additional origin-testing requirement. Over the long run, the adoption by the EU of a reasonable low-level presence policy regarding unapproved biotechnology products will be a necessary condition for the complete recovery of U.S. rice sales to the EU market.

During 2008 the United States and the European Commission entered into discussions on the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. These discussions have focused on the annual increase in the import reference volume for the 2008/2009 marketing year as well as the longer-term operation of the tariff adjustment mechanism as set out in the agreement. For the short term, the United States is seeking a significant increase in the import reference quantity in the husked rice agreement. The longer-term U.S. objective is to obtain consistent market access for U.S. brown rice at a tariff well below the bound tariff of 65 euros per ton.

### **m. Bananas**

While the United States does not directly export bananas to the EU, the EU regime for the importation of bananas is of considerable importance to U.S. companies involved in the production, distribution, and marketing of bananas. In 1996, the United States, Ecuador, Guatemala, Honduras, and Mexico challenged before the WTO the then EU regime for importation of bananas. A WTO panel and the Appellate Body found that the EU's banana regime discriminated against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The

EU has been under an obligation to bring its bananas regime into compliance with its WTO obligations since September 1997.

On January 1, 2006, the EU implemented a new banana import regime that combined a 176 Euro/metric ton Most Favored Nation (MFN) tariff level with a zero duty tariff-rate quota in amounts up to 775,000 metric tons for bananas originating in Africa, Pacific and Caribbean (ACP) countries, with which the EU has long maintained preferential trading relationships. In February and July 2007, Ecuador and the United States, respectively, requested the establishment of compliance panels (under Article 21.5 of the WTO Dispute Settlement Understanding), challenging the consistency of this regime with the EU's WTO obligations. A panel report in the U.S. proceeding was issued in May 2008, finding that the EU's regime was in violation of GATT Articles I and XIII. A panel report in the Ecuador proceeding found similarly, and in addition found that the MFN tariff being applied by the EU was in excess of the EU's bound commitments, and therefore in violation of GATT Article II. The EU appealed both reports. The Appellate Body issued its report on November 26, 2008, upholding the findings that the EU was in violation of GATT Articles I, II, and XIII.

In July 2008, the EU, with the assistance of the WTO Director General, attempted to negotiate a comprehensive banana settlement with Latin American suppliers. Though agreement in principle seemed near, the EU suspended its efforts when WTO Members reached an impasse in talks on modalities for the WTO/DDA negotiations. The EU has said it wishes to conclude the banana negotiations within the context of a successful DDA modalities discussion.

## **2. Other European Countries**

The United States continues to broaden its economic engagement with the member countries of the European Free Trade Area (Switzerland, Norway, Iceland, and Liechtenstein). The United States and Switzerland continued discussions of bilateral trade and related issues under the U.S.-Swiss "Trade and Investment Cooperation Forum." The United States and Iceland also signed a "Trade and Investment Cooperation Forum" Agreement to expand trade relations between the two countries.

As in previous rounds of EU enlargement, USTR and other U.S. agencies have worked to help ensure that the accession of Bulgaria and Romania to the EU does not adversely affect U.S. commercial interests in the region (see EU Enlargement in the EU Section). Stabilization and Association Agreements (SAAs) with the EU, which represent a step in a candidate country's efforts to accede to the EU, have entered into force for Croatia and Macedonia, and have been signed with Albania, Bosnia and Herzegovina, Serbia, and Montenegro. These Agreements provide for the reduction to zero of virtually all tariff rates on industrial goods and preferential rates and quotas for many agricultural goods traded between the EU and these countries. Subsequent agricultural agreements (the Zero-Zero Agreements) have further reduced tariffs on the majority of agriculture goods, resulting in generally higher tariff rates (MFN tariff rates) imposed on U.S. goods in these countries than on EU goods.

Many of the countries in the Southeast Europe region are eligible for duty-free benefits under the U.S. Generalized System of Preferences (GSP) program. As provided by the GSP statute, once a country becomes an EU Member State, it may no longer be designated as a GSP beneficiary. The GSP statute also provides that a beneficiary may not receive GSP benefits if it affords preferential treatment to the products of a developed country, other than the United States, that has a significant adverse effect on U.S. commerce. As noted above, the United States has consulted with several countries concerning preferential tariffs they have granted to EU exports (as compared with U.S. exports) pursuant to their SAAs with the EU and will continue to monitor the impact of these agreements on U.S. commercial

interests. USTR is also working in the region to increase the use of GSP benefits by the eligible beneficiary countries.

### **3. Russia**

The United States has established strong bilateral trade and investment links with Russia, based on numerous bilateral trade agreements, including the 1992 bilateral trade agreement concluded in accordance with Title IV of the Trade Act of 1974. The United States also extends Generalized System of Preferences (GSP) benefits to Russia. The strong ties between the United States and Russia were strained at the end of 2008, however, as a result of Russia's military actions in Georgia. As President Bush noted in August, "Russia has sought to integrate into the diplomatic, political, economic, and security structures of the 21st Century. The United States has supported these efforts." However, by its recent actions in Georgia, he said, "Russia is putting its aspirations at risk."

#### **a. WTO Accession**

The United States has supported Russia's accession to the World Trade Organization (WTO) to encourage Russia to align its economy and legal regime with the requirements of rules-based 21<sup>st</sup> century global institutions and to support the establishment of market-based economic reforms. As with all accession negotiations, the United States and other WTO Members expect to achieve increased market access for their exports to Russia as a consequence of these negotiations and Russia's WTO accession. In 2006, the United States and Russia signed a WTO bilateral market access agreement on goods and services, and by the end of 2008, Russia had completed similar bilateral market access negotiations with most other interested WTO Members. During 2008, Russia made considerable progress in the multilateral negotiations on the terms for Russia's accession, but Russia's progress on integrating WTO provisions into domestic law and its compliance with bilateral agreements already in force was disappointing. Important issues that remain to be resolved include the operation of state-owned enterprises, protection of intellectual property, liberalization and binding of export duties, and commitments on agricultural supports.

#### **b. Jackson-Vanik Amendment**

Russia (as is the case with several of the other countries in the region – see below) receives conditional Normal Trade Relations (NTR) (formerly referred to as "most favored nation" or MFN) tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment. Under the Jackson-Vanik amendment, the President is required to deny NTR tariff treatment to an economy that was not eligible for such treatment in 1974 and that fails to meet the freedom of emigration requirements contained in the legislation. This provision is subject to waiver, if the President<sup>25</sup> determines that such a waiver will substantially promote the legislation's objectives. Alternatively, the President can determine that the country is in full compliance with the legislation's emigration requirements. The country must also have a trade agreement with the United States, including certain specified elements, in order to obtain conditional NTR status. The President has determined that Russia is in full compliance with Title IV's freedom of emigration requirements and the United States and Russia have had a qualifying trade agreement in effect since 1992.

If a country is still subject to Jackson-Vanik at the time of its accession to the WTO, the United States invokes the "non-application" provisions of the WTO. In such cases, the United States and the other

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<sup>25</sup> In 2004, the President assigned to the Secretary of State the function of determining whether a country is in compliance with Jackson-Vanik or to grant a waiver.

country in effect have no “WTO relations.” In such a situation, the United States is unable, for example, to bring a WTO dispute to address a violation of the WTO agreement, including the commitments this Member undertook as part of its WTO accession package, and U.S. exporters are not able to benefit from many of the market opening commitments that the Member undertook in connection with its accession. Congressional action is required to terminate the application of Jackson-Vanik to a country. The Administration continues to consult with the Congress and interested stakeholders regarding the status of U.S. WTO accession negotiations and the timing of termination of the application of Jackson-Vanik and the provision of Permanent Normal Trade Relations status to Russia.

### **c. Intellectual Property Rights (IPR)**

U.S. industry continues to be concerned about the IPR situation in Russia, as weak enforcement regarding piracy and counterfeiting in Russia remains a serious problem. In addition, prosecutions and adjudications of IP cases remain sporadic and do not appear to have deterred further piracy. U.S. copyright industries estimate they lost in excess of \$1.5 billion in 2007 due to copyright piracy in Russia (*e.g.*, films, videos, sound recordings, books, and computer software). In 2008, Russia’s optical disc production capacity continued to be far in excess of domestic demand, raising concerns that optical discs containing pirated material may be used for export as well as for domestic consumption. Internet piracy continued to be a serious concern, especially given increasing broadband penetration in Russia and Russia’s role in hosting websites with pirated material.

The United States is working to ensure that Russia takes appropriate actions to protect intellectual property rights. The United States continues to encourage Russia to implement its commitments pursuant to the November 2006 Bilateral IPR Agreement between the United States and Russia, and will continue to evaluate further actions that Russia needs to take to improve the protection and enforcement of intellectual property rights. This bilateral agreement sets out actions that Russia will take to improve protection and enforcement of intellectual property rights. As part of the Bilateral IPR Agreement, the Russian government has committed to fight optical disc and Internet piracy, protect pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and other international IPR norms. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this binding agreement. Bilateral consultations were held in Washington and Moscow in 2008.

In response to petitions from the U.S. copyright industries, USTR continued a review in 2008 to determine Russia’s eligibility to receive GSP benefits. Russia has also been on the Special 301 Priority Watch List since 1997.

The most significant legislative development in 2008 was the Duma’s adoption of Part IV of the Civil Code, which replaced most of Russia’s civil IPR legislation with a single code as of January 1, 2008. Part IV still contains provisions that raise concerns regarding the implementation of WTO and other international agreements. The Russian government has pledged to ensure that Part IV and other IPR measures will be fully consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The government of Russia introduced amendments to Part IV into the Duma to address U.S. concerns and the amendments passed the first of three readings. In 2008, Russia formally acceded to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty and the WIPO Copyright Treaty. These actions meet one of Russia’s commitments in the November 2006 United States-Russia bilateral IPR Agreement. The United States continues to work with the Russian government on improving the level of protection and enforcement of IP rights.

Under Article 39.3 of the TRIPS Agreement, WTO Members must protect against the disclosure and unfair commercial use of undisclosed test and other data submitted to government authorities to obtain

marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. Legislative changes to address these concerns are being considered by Russia's government.

Poor enforcement of IPR is a pervasive problem. The prosecution and adjudication of intellectual property cases remains sporadic and inadequate; there is a lack of transparency and a failure to impose deterrent penalties. In the Bilateral IPR Agreement, Russia committed to improve IPR enforcement and the United States committed to intensify training programs for customs and law enforcement officials. The U.S. Embassy in Moscow coordinated or participated in several IPR training programs in 2008. The government in 2008 put forward amendments to the Duma to provide *ex officio* authority to Customs officials, but the Duma did not take action on the proposed amendments. Russia also committed to enhancing its supervision of both licensed and unlicensed optical disc factories. While Russia's authorities took some positive steps, for example by closing some optical disc plants which had been operating on government-controlled restricted-access sites, concerns remained, including with regard to the infrequency of inspections of licensed facilities. In the November 2006 Bilateral IPR Agreement, Russia also committed to enhance its supervision of both licensed and unlicensed optical disc factories.

#### **d. Market Access for Poultry, Pork, and Beef**

The United States was actively engaged with the government of Russia throughout 2008 to ensure that U.S. producers of poultry, pork, and beef continue to have access to the Russian market and that Russia appropriately implements the U.S.-Russian Bilateral Meat Agreement on Trade in Certain Poultry, Pork, and Beef that entered into force in 2005. The Meat Agreement established tariff-rate quotas (TRQs) for poultry, pork, and beef, a 15 percent tariff for imports of U.S. high quality beef and other provisions related to importing meat and poultry into Russia. The bilateral market access agreement sets out a framework, including the timetables, tariff rates, and TRQ parameters, for WTO negotiations on how such goods will be treated post-2009. In October 2008, however, Russia proposed renegotiating the terms of access for poultry and pork. In December 2008, U.S. and Russian negotiators agreed to decrease the 2009 in-quota volume for U.S. poultry, increase the 2009 in-quota volume for pork, and increase the over-quota tariff rates for both poultry and pork. Because the 2005 Meat Agreement expires at the end of 2009, the United States expects to begin negotiations on how these meat products will be treated beginning in 2010.

#### **e. Sanitary and Phytosanitary Restrictions**

Sanitary and phytosanitary (SPS) restrictions continued to pose challenges to U.S. agricultural trade with Russia. When the United States and Russia signed the bilateral WTO market access agreement, the two governments also signed bilateral agreements to address SPS issues related to trade in frozen pork, certification of facilities to export pork, beef and poultry, trade in beef and beef by-products, and an agreement on treatment of products of modern biotechnology. Progress on some of these issues was based on Russian government resolutions issued in 2006 directing that international standards, guidelines and recommendations of the Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC) be followed. In 2008, however, the Chief of Russia's Veterinary Service signed measures that will severely restrict U.S. poultry exports to the Russian Federation. Russia has not provided any scientific justification for these measures. Following United States-Russia consultations in November and December 2008, the Russian government agreed to delay the implementation of a measure regulating use of chlorine in processing poultry until January 1, 2010. Further discussions among technical experts will take place in 2009.



## **f. Product Standards, Certification, and Licensing**

U.S. companies cite product certification requirements as an obstacle to U.S. trade and investment in Russia. In the context of Russia's WTO accession negotiations, the United States is urging Russia to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations, and conformity assessment procedures to better comply with WTO rules.

With regard to other non-tariff barriers, for alcoholic beverages, pharmaceuticals, and products with encryption capability, Russia requires an importer to obtain a non-automatic import license and an activity license to engage in production or distribution of the relevant product. In a bilateral agreement signed in November 2006, Russia agreed to establish a streamlined interim system for the import of goods containing encryption capabilities, to implement transparent, nondiscriminatory and WTO-compatible procedures for issuing permits and import licenses, and to allow importation of most commercially-traded information technology and telecommunications goods after a one-time notification, or in some cases, with no licensing or notification requirements at all. The U.S. Government will continue to work on addressing the licensing barriers to trade in products with encryption capabilities and the other products subject to non-automatic licensing requirements.

## **g. Services**

When Russia becomes a WTO Member and the United States applies the WTO Agreement to Russia, U.S. services suppliers in a wide range of sectors, including banking and securities, insurance, telecommunications, audio-visual services, distribution, express delivery, energy services, environmental services and professional services will benefit from improved access to the Russian market. For example, Russia will provide national treatment and a significant level of market access for insurance companies, including 100 percent foreign ownership of non-life insurance firms, upon accession. On banking and securities, Russia has agreed to bind most access at existing levels for most services and to offer some liberalization of treatment of foreign bank subsidiaries.

## **h. Investment**

Russia is among the top priority countries for pursuing negotiation of a bilateral investment treaty (BIT). In late 2007, the U.S. Government introduced the idea of opening BIT exploratory discussions with Russia, and Russian officials responded very positively. U.S. and Russian negotiators held a first round of such discussions in February 2008 and discussed each country's respective model investment treaty texts. The Russians took no substantive issues off the table and indicated a high degree of enthusiasm for further exploring the possibility of BIT negotiations. The United States and Russia previously had signed a BIT in 1992, but it was never ratified by the Russian Duma.

## **4. Ukraine**

In March 2008, the United States signed a Trade and Investment Cooperation Agreement (TICA) with Ukraine. The Council held its inaugural meeting in Kyiv in October 2008. The Council focused its initial work on discussing concrete steps to improve bilateral trade flows and the investment and business climate in Ukraine and to assess the status of Ukraine's compliance with its commitments in the World Trade Organization (WTO), having just become a member on May 16, 2008. The TICA is one of several bilateral trade and investment links the United States has established with Ukraine. On November 16, 1996, a bilateral investment treaty (BIT) entered into force and is operational. The BIT guarantees U.S. investors the better of national and most favored nation (MFN) treatment, the right to make financial

transfers freely and without delay, international legal standards for expropriation and compensation and access to international arbitration. Despite these links, several U.S. companies face longstanding investment disputes, which mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. At least one American investor has sought arbitration over a dispute arising in 2008. In most of these cases, there has been little progress toward resolution.

#### **a. Intellectual Property Rights**

Recent years have seen steady improvement in Ukraine's protection of intellectual property rights, in particular a significant reduction in illegal production of optical discs. After reinstatement of Ukraine's GSP benefits reflecting this progress, the U.S. Government and U.S. and Ukrainian industry participants established an IPR Enforcement Cooperation Group to monitor the progress of future enforcement efforts. The new bilateral group has conducted a series of successful dialogues, meeting roughly once every four months, and in 2007, Ukraine's Special 301 designation was lowered further to Watch List in recognition of the progress made.

Some problems remain. The retail sale of pirated goods in Ukrainian markets is still widespread, as is their transit through Ukraine. Internet piracy is a growing problem, as many Ukraine-based websites offer pirated material for download, including copyrighted music, purportedly with the full knowledge of their Internet Service Providers (ISPs). In addition, Ukraine's collective management system for royalties still functions imperfectly. Rights holders complain that some royalty collecting societies collect fees for public use of copyrighted material without authorization and do not properly return royalty payments to rights holders. Business software piracy also remains a concern in Ukraine. Of continuing concern to patent holders is the fact that the Ukrainian Ministry of Health does not routinely check the validity of patents when it grants marketing approval in Ukraine, something Ukraine's new laws, developed in the process of WTO accession, are designed to remedy. Ukraine's progress in these areas will continue to be monitored, both in the Special 301 process and in the context of the IPR Enforcement Group.

#### **b. Sanitary and Phytosanitary (SPS) Issues**

Ukraine applies a range of measures that restrict imports of a number of U.S. agricultural products, key among them, pork, beef, and poultry. Ukraine's product certification and approval process is lengthy, duplicative, and expensive. Over the past several years, Ukraine has passed amendments to several laws and regulations designed to address these issues and to bring its legislative and regulatory framework into compliance with the requirements of the WTO SPS Agreement. For example, important changes were made to the law "On Veterinary Medicine" and the law "Quality and Safety of Food Products and Food Raw Materials" in the context of Ukraine's WTO accession.

There are a few areas of significant concern remaining between the United States and Ukraine. Ukraine maintains a complex and non-transparent system for overseeing human and animal health measures involving overlapping authority by the Veterinary Service, Sanitary Service, and Derzh Spozhyv Standard. Amendments to the law on "On Standards, Technical Regulations and Conformity Assessment Procedures," passed in May 2007, made some progress towards sorting this out, but failed to solve entirely the fundamental problem of overlapping authority. Further amendments to the Law have been proposed to the Rada.

A second issue involves the specific sanitary requirements under which the United States exports beef, beef products, and pork to Ukraine. As agreed bilaterally at the same time as the WTO Bilateral Market Access Agreement with Ukraine in March 2006, Ukraine is now allowing the entry of some U.S. beef and pork that has been certified as meeting the new veterinary certificate requirements. This has reduced a major irritant in U.S.-Ukrainian bilateral trade relations. Bilateral work continues to ensure that any

measures undertaken by Ukraine on beef are consistent with World Organization for Animal Health (OIE) guidelines for Bovine Spongiform Encephalopathy (BSE). U.S. pork exports to Ukraine continued to be hampered by regulations concerning *trichinae*. The United States is working with Ukraine to harmonize Ukrainian standards for *trichinae* with international norms so that these restrictions can also be removed.

### **c. Grain Exports**

Ukraine is the sixth largest wheat exporter in the world. The United States continues to express its concern about export restrictions that Ukraine periodically imposes on food and feed grain exports. Ukraine applied restrictions on grain exports in September 2006, and then adjusted them in July 2007, imposing highly-restrictive quotas that served as a near export ban on each grain-type covered (wheat, barley, corn, and rye). Ukraine introduced somewhat more liberal quotas in early 2008, allowing more grain to be exported early in the year, and removed them altogether in May. Restrictions remain on the export of sunflower seed oil. To date, Ukraine has not adequately justified the measures taken or currently in place, *e.g.*, it has not convincingly explained how it faces a “critical shortage,” as required in order to maintain such limits under Article XI of the GATT 1994. Ukraine also has argued that export restrictions are sometimes needed to combat rising food prices, not a justification recognized by WTO. Mismanagement of export licensing procedures compounds the problem, *e.g.*, leaving a large volume of grain in storage in 2007 to spoil past the point where it could be used even for animal feedstock. The continued use of such measures, *e.g.*, on sunflower oil, and threats of measures over the last three years has tarnished Ukraine's investment climate and damaged its reputation, and will remain a matter of contention between Ukraine and its WTO partners.

## **5. Turkey**

Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. As one example, the Turkish government imposes high tariffs, as well as excise taxes and other domestic charges, on imported alcoholic beverages which significantly increase wholesale prices of these products.

Turkey also uses its import licensing regime to manage trade in a number of sectors. In the case of meat and poultry, Turkey refuses to issue any import licenses, effectively banning imports of these products. This situation appears similar in some respects to Turkey's regime for the importation of rice. In 2006, the United States brought a WTO dispute against Turkey regarding its rice import regime. In September, 2007, the WTO dispute settlement panel agreed with the United States that Turkey's failure to grant licenses to import rice and its operation of a discretionary import licensing system for rice are in breach of Turkey's market access obligations under the WTO Agreement on Agriculture. The panel also agreed with the United States that Turkey's domestic purchase requirement, under which Turkey required importers of rice to purchase large quantities of domestic rice in order to import rice at preferential tariff rates, is in breach of the national treatment provisions of the WTO (See Chapter II, Section H for additional discussion of this dispute.)

In the area of intellectual property rights, improvements in Turkish enforcement efforts in the area of copyrights led USTR to move Turkey from “Priority Watch List” to “Watch List” status during the 2008 Special 301 review. However, the United States continued in 2008 to press the Turkish government to improve enforcement against copyright piracy and trademark infringement. Turkey does not have an adequate system in place to prevent generic drugs that infringe the Turkish patents of U.S. pharmaceutical companies from receiving marketing approval in Turkey. Turkey has a Registration Regulation for protecting confidential test data which provides a six-year term of data exclusivity protection for pharmaceutical test data; however the regulation contains several provisions that remain of concern.

The United States is using annual meetings of the United States-Turkey Trade and Investment Framework Agreement (TIFA) Council as one means to address these issues. In the recent past, the TIFA Council has been effective in addressing some concerns. Following the Council's April 2007 meeting, Turkey agreed to a protocol permitting the import of live breeding cattle from the United States. In further follow up to U.S. concerns raised at the 2007 meeting, the Turkish government clarified in September 2007 that it did not intend to apply a strip stamp tax system for alcoholic beverages in a way that discriminated against U.S. imports.

## **6. The Caucasus Region**

The United States continues actively to support political and economic reforms in the countries of the Caucasus region, which includes Armenia, Azerbaijan, and Georgia.

The United States has been working – bilaterally and multilaterally – to construct strong trade and investment links with this region. Bilaterally, the United States has concluded trade agreements to extend Normal Trade Relations (NTR, formerly referred to as “most favored nation” or MFN) tariff treatment to these countries and to enhance intellectual property rights protection. The United States also has extended Generalized System of Preferences (GSP) benefits to nearly 3,400 types of products from Armenia, Azerbaijan, and Georgia and has negotiated bilateral investment treaties (BITs) to guarantee compensation for expropriation, non-discriminatory and fair and equitable treatment, transfers in convertible currency, and the use of appropriate dispute settlement procedures. The United States has some form of bilateral investment agreement with all three countries.

Multilaterally, the United States has encouraged accession to the WTO as an important means of supporting economic reform. Armenia and Georgia are WTO Members and in 2008, the United States continued bilateral and multilateral negotiations with Azerbaijan on its application to join the WTO.

In June 2007, the United States signed a TIFA with Georgia. The TIFA Council has met twice, in Washington, DC in June 2007 and in Tbilisi in October 2008. The focus of work under this TIFA is to bolster Georgia's ambitious program of economic reform and liberalization and to help Georgia attract and retain foreign investment. Following Russia's invasion of Georgia in August 2008, the United States developed a robust assistance package for Georgia, part of which is aimed at bolstering trade ties and strengthening the investment climate in Georgia.

In 2008, USTR began discussions with Armenia aimed at exploring mutual opportunities to expand bilateral trade relations.

### **a. Jackson-Vanik Amendment**

Azerbaijan receives conditional NTR tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment (see description of Jackson-Vanik above in the Russia section). The Secretary of State, pursuant to authority delegated by the President, has determined that Azerbaijan is in full compliance with Title IV's freedom of emigration requirements. Pursuant to specific legislation, the President has terminated application of Title IV to Georgia and Armenia. These countries now receive permanent normal trade relations (PNTR) treatment and the WTO Agreement applies between each country and the United States.

## **b. Intellectual Property Rights (IPR)**

Since the United States concluded bilateral agreements in the 1990's throughout the region which cover IPR protection, USTR has worked to ensure these countries' compliance with their respective IPR obligations. The United States has cooperated with, and provided technical assistance to, these countries to help improve the level of IPR protection. Copyright and trademark piracy has been a widespread and serious problem throughout the region. Customs and law enforcement authorities in the region are making slow progress in upgrading these countries' enforcement efforts, but continued close monitoring and technical assistance are still warranted. USTR uses bilateral TIFAs, WTO accession negotiations and other forums to address these issues.

## **c. Generalized System of Preferences (GSP)**

All three Caucasus countries are beneficiaries under the GSP program.

# **E. Asia**

## **1. Australia**

A discussion of United States-Australia bilateral relations during 2008 can be found in Chapter III, Section A, describing trade under the United States-Australia FTA. Australia has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

## **2. New Zealand**

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard regional FTA of which New Zealand is a founding member. A discussion of the TPP can be found in Chapter III, section B.5. In addition, the United States and New Zealand continued to consult closely on the WTO Doha Development Agenda negotiations, advancing the APEC agenda, and other regional trade policy developments.

Two-way goods trade between the United States and New Zealand totaled \$5.7 billion in 2008. U.S. goods exports totaled \$2.6 billion in 2008, down 7 percent from 2007 and are concentrated in the machinery, aircraft, electrical machinery, and vehicle sectors. Two-way trade in services totaled \$3.2 billion in 2007.

## **3. The Association of Southeast Asian Nations (ASEAN)**

### **a. Brunei Darussalam**

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard regional FTA of which Brunei Darussalam is a member. A discussion of the TPP can be found in Chapter III, section B.5. In addition, the United States met regularly with Brunei throughout the year to address a range of bilateral issues, including intellectual property rights (IPR) issues and to coordinate on the WTO Doha negotiations and APEC and ASEAN initiatives. With respect to IPR, the United States urged Brunei to intensify its enforcement and prosecution efforts. In June, the United States also sponsored a workshop to discuss best

practices in effective enforcement and to improve the dialogue between rights holders and Brunei police, customs officials, and prosecutors. The United States and Brunei agreed to continue working together on these issues.

#### **b. Cambodia**

The United States and Cambodia continued to make progress on trade- and investment- related issues in 2008 through the joint work program established under the 2006 Trade and Investment Framework Agreement (TIFA). The TIFA dialogue focused on deepening bilateral trade and investment ties, implementation of Cambodia's WTO commitments, and supporting Cambodia's domestic economic reform program. The two countries held four meetings throughout 2008 to review Cambodia's WTO implementation, to discuss specific initiatives to enhance Cambodia's business and investment climate, including through strengthening its intellectual property protection, and to coordinate on the WTO Doha negotiations and ASEAN initiatives. In addition, the United States provided technical assistance to support improvements in the transparency of Cambodia's trade policy making process as well as in strengthening intellectual property protection at the border.

#### **c. Indonesia**

The United States continued its efforts to deepen trade and investment relations with Indonesia, to resolve outstanding bilateral economic issues, and to coordinate on ways to advance the WTO Doha negotiations, APEC, and ASEAN initiatives. The United States and Indonesia met regularly throughout the year and in May held a ministerial-level Trade and Investment Framework Agreement (TIFA) meeting, at which they discussed a wide range of bilateral issues including investment, intellectual property rights (IPR), services, agriculture, sanitary and phytosanitary measures, Indonesia's restrictive import licensing system, and Generalized System of Preferences (GSP) issues. At that meeting, the United States and Indonesia also agreed to intensify engagement through more frequent meetings of the working groups established on the priority issues of investment, agricultural and industrial products, IPR, and services. These groups met in November and December 2008 to discuss ways to address specific market access concerns, including on a range of investment issues, as well as specific initiatives to further cooperate in these areas. During 2008, the United States and Indonesia conducted informal exploratory discussions on a possible Bilateral Investment Treaty, and also expanded cooperative activities against illegal logging and associated trade as part of a working group established by the 2006 bilateral Memorandum of Understanding on this issue.

#### **d. Laos**

The United States-Laos Agreement on Trade Relations (BTA) came into effect on February 4, 2005, normalizing trade relations between the two countries. Under the BTA, the United States extended Normal Trade Relations status (NTR) (formerly referred to as "most favored nation" or MFN) to products of Laos. Laos agreed to implement a variety of reforms to its trade regime, including most favored nation and national treatment for products of the United States, transparency in rule-making, establishment of a regime to protect intellectual property rights, and implementation of WTO-compliant customs regulations and procedures. The United States is working closely with Laos to implement the terms of the BTA and to support Laos' efforts to accede to the WTO. The fourth meeting of the WTO Working Party for Laos' accession took place in July 2008.

#### **e. Malaysia**

The United States launched FTA negotiations with Malaysia in 2006. A discussion of progress made in these negotiations and U.S.-Malaysia bilateral economic relations during 2008 can be found in Chapter

III, section A.13. The United States and Malaysia also coordinated on the WTO Doha negotiations and on ways to advance APEC and ASEAN initiatives.

#### **f. The Philippines**

The United States continued to work under the bilateral Trade and Investment Framework Agreement (TIFA) to address outstanding bilateral issues and consider ways to further enhance trade and economic relations with the Philippines. The United States and the Philippines also continued to consult on WTO Doha negotiations and to coordinate on regional initiatives. The two sides met regularly throughout the year, including a formal TIFA meeting in October 2008, to address issues related to intellectual property rights, a proposed new system of tariff-rate quotas for pork and poultry being advanced by the Philippines' Department of Agriculture, the Philippines' excise tax system that imposes much lower taxes on domestically produced spirits than on imports, and other issues. Follow-up discussions to resolve the pork and poultry tariff-rate quota system proposed by the Philippines were held in November. The two sides also are considering initiatives to enhance their trade relationship, including in the areas of trade facilitation and services.

#### **g. Singapore**

A discussion of United States-Singapore relations during 2008 can be found in Chapter III, Section A.4. Singapore has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA). The United States and Singapore also continued their cooperative efforts in the WTO, as well as their joint efforts to promote trade and intra-regional integration in Southeast Asia through both APEC and ASEAN.

#### **h. Thailand**

A discussion of United States-Thailand bilateral engagement on trade issues during 2008 can be found in Chapter III, section A.11. The two countries also consulted closely on the WTO Doha negotiations and on ways to advance APEC and ASEAN initiatives.

#### **i. Vietnam**

U.S. economic relations with Vietnam continued to expand significantly in 2008, building on momentum created by the 2001 United States-Vietnam Agreement on Trade Relations, or Bilateral Trade Agreement (BTA), and Vietnam's 2007 WTO accession. U.S. exports to Vietnam increased 59 percent in 2008, following an increase of 73 percent in 2007.

During 2008, the United States and Vietnam held five formal meetings under the 2007 Trade and Investment Framework Agreement (TIFA), during which they discussed issues relating to Vietnam's implementation of its WTO commitments and considered additional initiatives to further enhance trade and investment opportunities between the two countries. Among the issues discussed were trading rights, distribution services, sanitary and phytosanitary measures inhibiting exports of U.S. beef and poultry to Vietnam and the development of Vietnam's biotechnology policies. They also discussed the monitoring of national and provincial-level investment and service sector licensing regimes and intellectual property rights (IPR) enforcement. An IPR working group was established under the TIFA to expand further the already close cooperation and coordination efforts. Significant progress was made in reducing broadcast signal piracy in 2008, and the Vietnamese government took steps to address the growing problem of piracy on the Internet. The two sides also consulted closely on Vietnam's plans to reform its labor laws. In addition, the U.S. Government provided input to Vietnamese ministries and National Assembly members on important draft legislation relating to transparency, IPR, and excise taxes.

In June 2008, the United States and Vietnam launched negotiations of a Bilateral Investment Treaty (BIT) with the aim of expanding upon the existing investment provisions included in the BTA. The first round of BIT negotiations took place in December 2008 in Washington. In 2008, the United States and Vietnam also agreed to implement, with respect to each other, Phase I of the Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (APEC Telecom MRA). This agreement will lead to a reduction in the costs and time involved in exporting telecommunications and information technology equipment to Vietnam.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Vietnam, as well as Australia and Peru, also would participate in the negotiations. A discussion of the TPP can be found in Chapter III, Section B.

#### **4. Republic of Korea**

##### *FTA:*

In 2008, the U.S. Government continued to work with Congress to secure approval of the United States – Korea Free Trade Agreement (KORUS FTA), which is the United States’ most commercially significant free trade agreement in 16 years. Once approved and implemented, this agreement would provide significant economic, political, and strategic benefits for both sides. The U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add \$10 billion - \$12 billion to annual U.S. GDP and around \$10 billion to annual merchandise exports.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products will become duty-free within three years of the date the agreement enters into force, and most remaining tariffs will be eliminated within 10 years. In agriculture, the FTA will eliminate immediately or phase out tariffs and quotas on a broad range of products, with almost two-thirds of Korea’s agriculture imports from the United States becoming duty-free immediately upon entry into force. In services, the FTA provides meaningful market access commitments that extend across virtually all major service sectors, including greater and more secure access for international delivery services and the opening of the Korean market for foreign legal consulting services. The FTA makes groundbreaking achievement in the area of financial services and will increase access to the Korean market, as well as ensure greater transparency and fair treatment, for U.S. suppliers of financial services.

The FTA goes well beyond eliminating tariff barriers – it also addresses non-tariff barriers in a wide range of sectors and includes state-of-the-art protections for investors and intellectual property rights, groundbreaking competition policy provisions, strong labor and environment safeguards, and far-reaching commitments related to transparency and regulatory due process. The KORUS FTA will also provide U.S. suppliers with greater access to the Korean government procurement market.

In addition to strengthening the United States-Korea economic partnership, the KORUS FTA will help to solidify the two countries’ long-standing alliance – serving as a pillar of bilateral relations for generations to come. In addition, as the first U.S. FTA with a North Asian partner, the KORUS FTA promises to serve as a model for trade agreements for the rest of the region, and will underscore the U.S. commitment to and engagement in the Asia-Pacific region.



### *Other Developments:*

After the signing of the FTA, regular bilateral trade consultation meetings, which were suspended during the FTA negotiations, resumed in September 2007. Designed to address potential bilateral trade issues as they emerge, the bilateral trade consultation meetings, led by USTR with participation from the full range of U.S. international economic agencies, serve as the primary forum for discussing trade issues and are augmented by a broad range of senior-level policy discussions. In 2008, bilateral trade consultations were held on three occasions. The United States worked closely with Korea during these consultations to address and resolve issues related to the manufacturing, agriculture, and services sectors.

On April 18, 2008, the United States and Korea agreed to a protocol that defines conditions for the importation of U.S. beef to Korea and provides for a full reopening of the Korean beef market. The protocol is fully consistent with OIE guidelines and will permit all U.S. beef and beef products from cattle of all ages to be exported to Korea, with appropriate Specified Risk Materials (SRMs), as defined by the OIE, removed.

On June 20, 2008, Korean beef importers and U.S. exporters reached a commercial understanding – separate from the April 18 agreement – that only U.S. beef and beef products from cattle less than 30 months of age will be shipped to Korea, as a transitional measure to improve Korean consumer confidence in U.S. beef. At the request of U.S. exporters, the U.S. Department of Agriculture (USDA) set up a voluntary Quality System Assessment (QSA) Program that will verify that beef from participating plants is from cattle less than 30 months of age. As a result of the April 18 agreement and June 20 commercial understanding, U.S. exports began as of June 26, 2008, and from June to November nearly \$280 million worth of U.S. beef and beef products has been exported to Korea, with Korea now the fourth largest export market in terms of value for all of 2008 for U.S. beef and beef products, after Mexico, Canada, and Japan.

The United States also worked closely with Korea to address U.S. industry concerns that Korea's energy efficiency regulations may have resulted in under-reporting of energy consumption in Korean-manufactured refrigerators. As a result, the Korean Government adopted on April 30, 2008 the international energy test standard for refrigerators to address this problem. In addition, the Korean government has worked closely with stakeholders and the U.S. Government in implementing this standard to ensure that the new regulations do not unfairly disadvantage U.S. manufacturers. Furthermore, the United States and Korea worked cooperatively in 2008 to achieve progress in a number of areas related to technical standards, such as power cord adaptors for laptop computers and controlled access system technology for satellite and Internet protocol television, to ensure that U.S. technology providers continue to enjoy a level playing field and unfettered access to the important Korean market.

In close consultation with the U.S. Government and industry stakeholders, Korea implemented in July 2008, amendments to its system for certifying compliance with automotive emissions standards that create an improved, streamlined process for U.S. and other foreign automakers. Under the amended regulations, certifications are based on manufacturer-provided test data, eliminating the need for in-country testing or tests witnessed by Korean regulators. This change also benefits U.S. suppliers of off-road vehicles, such as lift trucks and excavators.

In an important market-opening development, the Korea Communications Commission (KCC) voted on December 10 to remove the requirement that all mobile phones sold in Korea include the Wireless Internet Protocol for Interoperability (WIPI), effective April 1, 2009. WIPI is a Korea-developed mobile platform intended to ensure cross-carrier interoperability of downloaded content. The Korean government in 2005 had mandated that WIPI be installed in all mobile phones sold in Korea. KCC's decision to remove this requirement is a significant liberalization of the Korean telecommunications

market, making it far easier for foreign handset makers to access the Korean market and providing Korean consumers with more choice. The United States had consistently urged Korea to eliminate the WIPI mandate and to more fully embrace technology neutrality in telecom regulation.

The Korean government also worked constructively with U.S. publishers of academic and scientific journals to begin to address the publishers' concerns about fraudulent practices in Korea's national procurement system, which makes purchases of the journals on behalf of national universities and research institutes. Korea's Public Procurement System agreed to implement changes to its standard terms and conditions for contracts that should help to maintain the integrity of the contract process and prevent fraud, but continued monitoring is needed to ensure adequate enforcement of the provisions occurs and a decline in fraudulent practices takes place.

The United States and Korea also worked together to address a number of issues related to Korea's customs regulations. Korea modified its individual country-of-origin labeling requirement for oranges to allow labeling on the smallest retail packaging unit, and extended this exemption to bananas and durians as well. Korea also reconsidered its initial decision to reclassify certain solar panels containing photovoltaic cells and diodes to a tariff category which incurs a duty and announced its decision to continue to classify these products in a duty-free tariff line. The United States also worked with Korea to clarify marking requirements for goods made in Puerto Rico.

Finally, the United States and Korea cooperated extensively in a wide range of multilateral fora to advance open markets. Korea was a strong partner of the United States in the WTO Non-agricultural Market Access (NAMA) negotiations, supporting the push for ambitious liberalization. Korea has been an active participant in efforts to strengthen international IPR enforcement by joining the United States and others in negotiating an Anti-Counterfeiting Trade Agreement (ACTA). In APEC, the two countries worked closely to promote high-quality FTAs in the Asia-Pacific region.

## **5. India**

### **a. General**

The United States and India completed another year of active dialogue on trade policy in 2008. The bilateral trade agenda continued to expand to support the significant opportunities for bilateral trade and investment that U.S. and Indian companies are pursuing. The Civil Nuclear Agreement signed on October 10, 2008, opens the door even wider for U.S. exports to help India meet its tremendous energy needs. That said, many challenges to trade and investment in India persist, and USTR continued to work with the Indian government to address such concerns as India's tariff and tax regime, intellectual property rights policies, investment climate and regulatory hurdles. India continues to limit market access in various sectors through non-tariff barriers such as high border taxes and tariffs, foreign direct investment caps, non-transparent procedures, and discriminatory treatment of imports. Despite these barriers, trade expanded rapidly. In 2008, bilateral goods trade totaled \$45 billion. Bilateral services trade totaled \$19 billion in 2007.

### **b. Trade Dialogue**

Ambassador Schwab and India's Minister of Commerce and Industry Kamal Nath convened the fifth ministerial-level meeting of the United States-India Trade Policy Forum (TPF) in February 2008 in Chicago, Illinois. The discussions under the TPF cover bilateral trade, investment and related issues and also address multilateral issues such as the ongoing WTO Doha Round negotiations. The TPF is part of the overall Economic Dialogue between India and the United States. Through regular dialogue under the

TPF, the United States and India seek to remove impediments to bilateral trade and investment by anticipating potential trade problems and jointly resolving concerns.

The TPF serves as the umbrella for five Focus Groups: Agriculture, Tariff and Non-Tariff Barriers, Services, Investment, and Innovation and Creativity (focusing on intellectual property rights issues). Ongoing Focus Group discussions in 2008 addressed priority issues such as foreign direct investment caps, intellectual property rights protection and enforcement, restrictive Indian telecommunications policies and market access for a wide range of manufactured and agricultural products and services. Noteworthy developments in 2008 included the agreement to launch negotiations on a bilateral investment treaty and India's withdrawal of certain import restrictions on fresh fruit.

Another development in the 2008 bilateral U.S.-India trade dialogue was the Private Sector Advisory Group's (PSAG) identification of key policy issues on which it would provide strategic recommendations and insights to the TPF. The membership of the PSAG includes trade experts and representatives of private sector organizations in the United States and India with in-depth knowledge of international economic and trade policy. The PSAG identified completion of a bilateral investment treaty as its top recommendation.

In addition to the February 2008 TPF meeting, Ambassador Schwab and Minister Nath met a number of times in the context of the Doha Round negotiations in an effort to find common ground in the pursuit of an ambitious outcome.

With regard to intellectual property rights, the United States has been working constructively with India to improve its IPR regime. The U.S. dialogue with India takes place through the TPF's Focus Group on Innovation and Creativity, the Commerce Department-led High-Technology Cooperation Group, and work by the U.S. Government's Intellectual Property attaché stationed in New Delhi and other government officials from multiple U.S. Government agencies. There has been some progress in India's protection of intellectual property rights, including through the introduction of the proposed Drugs and Cosmetics (Amendment) Bill 2008 that will increase penalties for spurious and adulterated pharmaceuticals, and create a Customs recordation system. However, India still needs to improve its copyright regime to address issues related to protection of digital works on the Internet, strengthen its patent regime, including by clarifying the scope of patentable subject matter, provide effective data protection for pharmaceutical and agricultural chemicals, and increase enforcement against piracy and counterfeiting.

## **6. Pakistan**

A top priority for the Administration was building a strategic partnership with Pakistan. Following successful elections in Pakistan and the transition to democratic governance in early 2008, the United States continued to engage Pakistan in a number of economic fora. U.S. economic support for Pakistan and a strengthened bilateral trade relationship were important contributors to Pakistan's economic growth and development since 2001. U.S.-Pakistan goods trade more than doubled during 2000 - 2008 (annualized based on January-November data) to \$5.6 billion in 2008, with U.S. exports to Pakistan growing during the period by nearly 350 percent to \$2.1 billion and imports from Pakistan growing 64 percent to \$3.6 billion.

Pakistan's economic and security situation dramatically deteriorated in 2008. Terrorists increased attacks on Pakistani security forces and government officials, and on Afghanistan and Coalition forces along the border. These attacks expanded into areas of Pakistan not previously threatened. Connections in Pakistan to terrorist attacks in Mumbai, India, last November also undercut prospects for better Indo-Pakistani

relations. Pakistan's textile industry, which constitutes about half of Pakistan's exports, was under increasing pressure from the global economic downturn, tough competition from textile giant China and other South Asian exporters, acute electricity and gas shortages, price inflation, and a collapsed stock market. In response, Pakistan's textile industry requested its government impose a moratorium on bank loan repayments and provide subsidies for energy inputs. Pakistan and the IMF agreed in late 2008 to terms of a \$7.6 billion loan, averting a collapse of Pakistan's foreign exchange reserves.

USTR was particularly focused on helping Pakistan foster an investment climate that could attract increased foreign investment, and supporting closer Pakistan-Afghanistan trade relations. Two important components of this work were the Pakistan-Afghanistan Reconstruction Opportunity Zone (ROZ) legislation introduced in Congress in 2008 and prospects for completing a United States-Pakistan Bilateral Investment Treaty (BIT). The objective of the ROZ initiative was to grant duty-free treatment upon entry into the United States to certain goods produced in designated enclaves. In Pakistan, these areas would be in regions bordering Afghanistan and in areas affected by the earthquake in 2005. The legislative goal was to boost economic development and job creation in geographic areas most critical to success in the global war on terror. Complementing these bills, USTR also pledged to support Pakistan's and Afghanistan's efforts to modernize their 1965 transit trade agreement, which would provide benefits to both countries and the South-Central Asian region.

Congress also introduced the Enhanced Partnership with Pakistan Act (informally known as the Biden-Lugar Pakistan assistance bill) in 2008. The bill proposed providing \$1.5 billion annually in Economic Support Funds for the years 2009 – 2013, with aid contingent on Pakistan demonstrating more effective actions against terrorists. Since Congress did not pass the ROZ or Pakistan Partnership bills in 2008, Congressional sponsors indicated they would re-introduce the bills in 2009.

In 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) and held TIFA Council meetings in 2005 and 2006. USTR hopes to schedule the next TIFA meeting in 2009. USTR's leadership of the TIFA talks, and in other regular, high-level bilateral dialogue meetings, reflects the importance the United States places on trade and economic relations in enabling the Pakistani people to achieve sustainable prosperity and stability. Areas addressed in these discussions included developing a way forward for the BIT negotiations begun in 2005, preparing for ROZs, coordinating assistance in Pakistan-Afghanistan border areas, improving enforcement of intellectual property rights and labor laws in Pakistan, and improving Pakistan's investment climate.

The government of Pakistan made progress in recent years to improve copyright enforcement, taking significant steps against unauthorized optical disc production and exports of pirated optical discs. Pakistan also created the Intellectual Property Rights Organization (IPRO), providing for the first time a centralized government body to oversee intellectual property rights enforcement and education. Nevertheless, there are still a number of concerns about the adequacy of Pakistan's regime for protection and enforcement of intellectual property rights. In the enforcement area, prosecutions and deterrent sentences for intellectual property infringement are lacking. Other serious barriers include continuing book piracy, weak trademark enforcement, lack of data protection for proprietary pharmaceutical and agricultural chemical test data, and problems with Pakistan's pharmaceutical patent protection. As a result, Pakistan was elevated to the Special 301 Priority Watch List in 2008.

## **7. Afghanistan**

Helping Afghanistan fight terrorism and extremism remains a top U.S. national security priority. As part of the United States' support for Afghanistan's long-term recovery process following decades of warfare, USTR has actively led on trade and investment issues in a number of high-level government-to-

government fora, including regular meetings under the United States-Afghanistan Trade and Investment Agreement (TIFA) that was signed in September 2004.

In 2008, the Administration continued to work with the U.S. Congress and private sector stakeholders on legislation to establish Reconstruction Opportunity Zones (ROZ) in Afghanistan and the border regions of Pakistan. The objective of the ROZ initiative is to boost economic development and job creation in geographic areas most critical to success in the global war on terror by granting duty-free treatment upon entry into the United States to certain goods produced in designated enclaves. A consensus of top U.S. and foreign government leaders, diplomatic, and military officials working in Afghanistan, and think tank analysts has identified providing legitimate employment opportunities to citizens in these impoverished critical areas as a top priority, and the ROZ legislation was designed to complement existing economic development and military strategies to foster this objective.

On October 5, 2008, USTR led a six-person interagency delegation for the third meeting of the United States-Afghanistan Trade and Investment Framework Agreement (TIFA) Council in Kabul. This meeting included talks on how Afghanistan could better use existing benefits under the U.S. Generalized Systems of Preferences (GSP) program, next steps on Afghanistan's accession to the World Trade Organization, progress on electricity generation, the importance of fighting corruption at all levels, and commitment to improving product quality standards. USTR officials also pledged to support Afghanistan's and Pakistan's efforts to modernize their 1965 transit trade agreement.

In April 2008, USTR joined the Department of State for its meeting with Afghan Rural Rehabilitation and Development Minister Ehsan Zia. These discussions focused on economic development issues, and U.S. Government representatives offered continued strong support to Afghanistan in its negotiations for terms of accession to the World Trade Organization.

USTR has supported efforts to assist Afghanistan's economic integration with South and Central Asia, including supporting Afghanistan's participation as an observer at the June 2008 United States-Central Asia TIFA Council meeting in Dushanbe, Tajikistan. USTR also participates in meetings of the Regional Economic Cooperation Conference, another forum designed to promote South-Central Asian regional economic integration.

On September 25, 2008, USTR participated in the United States-Afghanistan Strategic Partnership meeting in Washington. The Prosperity Working Group session included discussion of the need to: pass pro-competitive, transparent commercial and investment laws and regulations to attract investors and create new jobs; build key infrastructure, including roads, irrigation, and power plants; and expand regional trade ties, including through U.S. ROZ legislation pending in Congress.

## **8. Central Asia**

Throughout 2008, the United States continued to work – bilaterally and multilaterally – to construct strong trade and investment links with this region, which includes Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. In the 1990s, the United States concluded bilateral trade agreements to extend Normal Trade Relations (NTR, formerly referred to as “most favored nation” or MFN) to these countries and, *inter alia*, to enhance intellectual property rights protection. The United States also has extended Generalized System of Preferences (GSP) benefits to nearly 3,400 types of products from the region's eligible beneficiary developing countries (Kazakhstan, Kyrgyzstan, and Uzbekistan) and has negotiated bilateral investment treaties (BITs) to guarantee compensation for expropriation, non-discriminatory and fair and equitable treatment, transfers in convertible currency, and the use of

appropriate dispute settlement procedures. The United States currently has BITs in force with Kazakhstan and Kyrgyzstan, and has signed a BIT with Uzbekistan, which has not yet entered into force.

In 2005, the United States signed a multi-party Trade and Investment Framework Agreement (TIFA) with all five Central Asia countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). This agreement provides a regional forum for the discussion of trade and investment issues with a view to improving the investment climate in the region and liberalizing and increasing trade between the United States and the region. In 2008, the TIFA Council held its third meeting in Dushanbe, Tajikistan, with a focus on practical steps to facilitate trade among the Central Asian countries.

Multilaterally, the United States has encouraged accession to the WTO as an important method of supporting economic reform. Kyrgyzstan has been a member of the WTO since 1998. In 2008, Kazakhstan had a meeting of its Working Party on WTO accession, as well as numerous bilateral meetings and several digital video conferences with the United States, which helped move work on Kazakhstan's accession forward. Although progress in the respective negotiations on Tajikistan's and Uzbekistan's accession to the WTO has been slower than on Kazakhstan's, the United States continues to promote changes in these countries' trade and investment regimes consistent with WTO rules. Turkmenistan has not yet applied for accession to the WTO.

#### **a. Jackson-Vanik Amendment**

Several countries in Central Asia receive conditional NTR tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment (see description of Jackson-Vanik in Chapter III, Section D with respect to Russia). The Secretary of State, pursuant to authority delegated by the President, has determined that Kazakhstan, Tajikistan and Uzbekistan are in full compliance with Title IV's freedom of emigration requirements. Turkmenistan receives NTR tariff treatment subject to an annual waiver. Kyrgyzstan receives permanent normal trade relations (PNTR) treatment from the United States as a result of U.S. Congressional action when Kyrgyzstan joined the WTO.

The Administration continues to consult with Congress and interested stakeholders with a view to ending the application of the Jackson-Vanik amendment and granting these countries PNTR treatment when they become Members of the WTO.

#### **b. Intellectual Property Rights (IPR)**

Since the 1990s, when the United States concluded bilateral trade agreements covering IPR protection with countries in the region, USTR has worked to ensure these countries' compliance with their IPR obligations. The United States has cooperated with, and provided technical assistance to, Kyrgyzstan (as a WTO Member) and other countries in the region to help improve the level of IPR protection. Copyright and trademark piracy has been a widespread and serious problem throughout the region. Customs and law enforcement authorities in the region are making slow progress in upgrading these countries' enforcement efforts, but continued close monitoring and technical assistance are still warranted.

#### **c. Generalized System of Preferences (GSP)**

As noted above, Kazakhstan, Kyrgyzstan, and Uzbekistan are beneficiary countries under the GSP program. Tajikistan and Turkmenistan have not yet applied to be designated as beneficiary countries under the GSP program. USTR conducts reviews of country practices, in response to petitions received from interested parties, to determine beneficiary countries' continued eligibility to receive GSP benefits based on the statutory eligibility criteria.

Country practice petitions have been accepted regarding concerns about the IPR regime and worker rights in Uzbekistan. Review of the petition for Uzbekistan, including bilateral consultations, continues.

## **9. People's Republic of China**

### **a. 2008 Developments**

China acceded to the World Trade Organization seven years ago on December 11, 2001. The terms of its accession called for China to implement numerous specific commitments over time. All of China's key commitments should have been phased in by December 11, 2006, two years ago. Consequently, China is no longer a new WTO member, and the United States and other WTO members have been holding China fully accountable as a mature member of the international trading system, placing a strong emphasis on China's adherence to WTO rules.

On the bilateral front, the United States and China pursued a robust set of formal and informal meetings and dialogues over the last year, including numerous working groups and high-level meetings under the auspices of the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic Economic Dialogue (SED). Indeed, the United States and China held JCCT meetings in December 2007 and again in September 2008, while also holding SED meetings in December 2007, June 2008 and December 2008. As in prior years, the United States used these various avenues to seek resolutions to a number of pressing trade issues.

Bilateral engagement produced more near-term results in 2008 than in 2007, largely because China's leadership displayed an increased willingness to work constructively and cooperatively with the United States. In fact, the two sides were able to achieve incremental but important progress in numerous areas.

For example, China agreed to delay publication of final rules on information security certification that would have potentially barred several types of U.S. high technology products from China's market so that experts from both sides could discuss the best way forward. China confirmed that state-owned enterprises would base their software purchases solely on market terms without Chinese government intervention or directives favoring domestic software. China agreed to eliminate all remaining duplicative testing and inspection requirements for imported medical devices. China lifted Avian Influenza-related bans on poultry imports from several U.S. states, and China also agreed to allow several U.S. pork processing plants to resume exports to China. China committed to submit an improved offer as soon as possible in connection with its accession to the WTO's Government Procurement Agreement. China agreed to additional market access for foreign suppliers in the banking and securities sectors. China also agreed to institute notice-and-comment procedures for trade- and economic-related rules and regulations. At the same time, the United States and China agreed to begin or continue discussions in a number of other important areas, including, for example, intellectual property rights (IPR), steel trade, insurance, medical device pricing and tendering policies, sanitary and phytosanitary (SPS) measures, transportation and environmental goods and services, among other areas. The two sides also launched bilateral investment treaty negotiations.

On the enforcement side, the United States brought two new WTO cases against China in 2008. In March 2008, the United States challenged restrictions that China had placed on foreign suppliers of financial information services as well as China's failure to establish an independent regulator in this sector. The European Communities (EC) and later Canada joined in this challenge. In November 2008, following several months of constructive discussions the parties welcomed China's agreement to resolve all of their concerns through a settlement. Joined by Mexico, the United States initiated a second WTO case against

China in December 2008, challenging an industrial policy that generated a vast number of central, provincial and local government programs promoting increased worldwide recognition and sales of famous brands of Chinese merchandise through what appear to be prohibited export subsidies.

In addition, the United States continued to pursue four other WTO cases in 2008. In one of those cases, a challenge brought by the United States, the EC and Canada to China's use of prohibited local content requirements in the auto sector, a WTO panel ruled in favor of the complaining parties in March 2008, and the WTO's Appellate Body upheld that ruling on appeal in December 2008. In a WTO challenge to several prohibited tax subsidy programs, China followed through on the parties' earlier settlement by eliminating all of the subsidies at issue by January 1, 2008. In two other WTO cases, a challenge to key aspects of China's IPR enforcement regime, along with a challenge to market access restrictions affecting the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, the United States litigated its claims before WTO panels in 2008.

Looking back on 2008, the many developments in the U.S.-China trade relationship demonstrated that the Administration's policy of serious dialogue and resolute enforcement is delivering real results. The United States' intensive dialogue with China generated positive outcomes on a number of contentious issues, while U.S. use of WTO dispute settlement continued to generate favorable settlements and favorable WTO panel decisions.

However, despite the progress achieved in 2008, several specific issues continued to cause particular concern for the United States and U.S. industry, given China's WTO obligations. These outstanding issues arose in a range of areas, including principally intellectual property rights, industrial policies, trading rights and distribution services, agriculture and services, as discussed below under the heading of Priority Issues.

## **b. Trends**

China has taken many impressive steps over the last seven years to reform its economy, while making progress in implementing a set of sweeping WTO accession commitments that required it to reduce tariff rates, to eliminate non-tariff barriers, to provide national treatment and improved market access for goods and services imported from the United States and other WTO members, to protect intellectual property rights and to improve transparency. Although it does not appear to be complete in every respect, China's implementation of its WTO commitments has led to increases in U.S. exports to China, while deepening China's integration into the international trading system and facilitating and strengthening the rule of law and the economic reforms that China began thirty years ago. Since China's accession to the WTO in 2001, U.S. exports of goods to China have increased by 240 percent, rising from a 2001 total of \$19 billion to \$65 billion in 2007, while exports from January through November 2008 are 13 percent higher than 2007 exports during the same period. China is now the United States' third largest goods export market. China is also a substantial market for U.S. services, as the cross-border supply of services totaled \$14 billion in 2007, and services supplied through majority U.S.-invested companies in China totaled an additional \$10 billion in 2006, the latest date for which data is available.

Nevertheless, in some areas it appears that China has yet to fully implement important commitments, and in other areas significant questions have arisen regarding China's adherence to ongoing WTO obligations, including core WTO principles. Invariably, these problems can be traced to China's pursuit of industrial policies that rely on excessive, trade-distorting government intervention intended to promote or protect China's domestic industries. This government intervention, still evident in many areas of China's economy, is a reflection of China's historic yet unfinished transition from a centrally planned economy to a free-market economy governed by rule of law.



The United States and other WTO members had fully anticipated that tensions would arise from China's historic economic structure and the state's large role in China's economy. Consequently, they carefully negotiated conditions for China's WTO accession that would, when implemented, lead to significantly reduced levels of trade-distorting government intervention.

Through the first four years after China's accession to the WTO, China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy. However, beginning in 2006, progress toward further market liberalization began to slow. It became clear that some parts of the Chinese government did not yet fully embrace key WTO principles of market access, non-discrimination and transparency. Differences in views and approaches between China's central government and China's provincial and local governments also continued to frustrate economic reform efforts, while China's difficulties in fully implementing the rule of law exacerbated this situation.

Last year, USTR noted that one of the critical issues for the international trading system would be to ensure that China's leadership does not retreat from the substantial progress made to date. USTR explained that evidence of a possible trend toward a more restrictive trade regime appeared most visibly in diverse Chinese measures over the preceding two years signaling new restrictions on market access and foreign investment in China.

In 2008, U.S. companies have pointed to further evidence of such a trend, including the setting of unique Chinese national standards, the tremendous expansion of the test market for China's home-grown 3G telecommunications standard, China's government procurement practices, an array of policies promoting and protecting "pillar industries," the promotion of famous Chinese brands of merchandise using what appear to be prohibited forms of financial support, the continued and incrementally more restrictive use of export quotas and export duties on a large number of raw materials, new and additional restrictions on foreign investment in China, and the continuing consideration of "national economic security" when evaluating mergers and acquisitions, among other significant restrictive practices.

Despite these many remaining challenges, China's WTO membership has continued to provide substantial ongoing benefits to the United States. Each year since China joined the WTO in 2001, U.S.-China trade has expanded dramatically, providing numerous and substantial opportunities for U.S. businesses, workers, farmers and service suppliers and a wealth of affordable goods for U.S. consumers. Indeed, China was the United States' second largest goods trading partner in 2007, with two-way trade totaling \$387 billion and on track to increase by 7 percent in 2008, based on data from January through November, while two-way services trade totaled \$23 billion in 2007.

### **c. Priority Issues**

At present, several specific areas cause particular concern for the United States and U.S. industry in terms of China's adherence to the obligations of WTO membership. The key concerns in each of these areas are summarized below.

#### **i. Intellectual Property Rights**

Since its accession to the WTO, China has put in place a largely satisfactory framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). However, some critical reforms are still needed in a few areas, such as further improvement of China's measures for copyright protection on the Internet following China's notable accession to the World Intellectual Property Rights Organization (WIPO) Internet treaties, and correction of continuing deficiencies in China's criminal measures.

In addition, effective enforcement of China's IPR laws and regulations remains a significant challenge. Despite repeated anti-piracy campaigns in China and an increasing number of civil IPR cases in Chinese courts, counterfeiting and piracy remain at unacceptably high levels and continue to cause serious harm to U.S. businesses across many sectors of the economy. U.S. industry estimates that levels of piracy in China across most lines of copyright products, except business software, ranged between 90 percent and 95 percent based on data for 2007, while business software piracy rates were approximately 80 percent. These figures indicate little or no overall improvement over the previous year. USTR's annual Special 301 report, issued in April 2008, similarly confirmed a lack of progress through 2007, as USTR continued to place China on the Priority Watch List.

In 2008, the United States continued to seek ways to work with China to improve China's IPR enforcement regime. Indeed, as part of its efforts to develop innovative industries and technologies, China has an increasing stake in effective IPR enforcement. Throughout the year, a variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and conducted numerous technical assistance programs for central, provincial and local government officials on TRIPS Agreement rules, enforcement methods and rule of law issues. In addition, in September 2008, the United States was able to use the JCCT process to secure a renewed commitment from China to cooperate on a range of IPR issues, such as IPR and innovation, China's development of guidelines on IPR and standards, public-private discussions on copyright and Internet piracy challenges including infringement on user-generated content sites, and reducing the sale of pirated and counterfeit goods at wholesale and retail markets.

The United States also continued to prosecute a WTO case challenging specific deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks. Following the establishment of a WTO panel last year to hear the case, 12 WTO members joined in as third parties. Proceedings before the panel took place in April and June 2008, and the panel made its decision public in January 2009. The panel found important aspects of China's IPR regime to be inconsistent with China's obligations under the TRIPS Agreement.

The United States continues to work closely with U.S. industry and to devote considerable staff and resources, both in Washington and in Beijing, to address the many challenges in the IPR area. The United States also remains committed to working constructively with China on a bilateral basis to significantly reduce IPR infringement levels in China. At the same time, as has been demonstrated, when bilateral discussions prove unable to resolve key issues, the United States remains prepared to take further action on these issues, including WTO dispute settlement where appropriate, given the importance of China developing an effective, TRIPS Agreement-compliant system for IPR enforcement.

## **ii. Industrial Policies**

China continued to pursue industrial policies in 2008 that seek to limit market access for non-Chinese origin goods and foreign service suppliers while offering substantial government resources to support Chinese industries and increase exports. In some cases, the objective of these policies seems to be to promote the development of advanced Chinese industries that are higher up the economic value chain than China's current labor-intensive industrial base. In other cases, China appears simply to be protecting less competitive state-owned enterprises.

As the WTO's Appellate Body confirmed in a December 2008 ruling, China has been applying WTO-inconsistent taxes on imported auto parts whenever they are used in the assembly of motor vehicles that fail to meet certain local content requirements. The United States looks forward to China's prompt compliance with this ruling.

China continues to deploy export quotas, export license fees, minimum export prices, export duties and other export restrictions on a number of raw materials where it holds the advantage of being one of the world's leading producers. Through these export restrictions, it appears that China is able to provide substantial artificial advantages to a wide range of downstream producers in China, both in the China market and other markets around the world.

In 2008, it became apparent that China was seeking to expand the market share of famous Chinese brands of merchandise around the world through the use of what appear to be prohibited forms of financial support, provided by the central government as well as provincial and local governments throughout China. The U.S. response, as noted above, was the filing of a WTO case challenging the financial support that China provides through its famous brands programs.

China continues to pursue unique national standards in a number of areas of high technology where international standards already exist, such as information security standards. China also pressures foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, even after repeatedly committing to technology neutrality for 3G telecommunications standards through the JCCT process, China's regulatory authorities continued to promote the home-grown TD-SCDMA standard and, in 2008, substantially expanded its test market, without allowing any operations by telecommunications service providers seeking to employ other 3G telecommunications standards.

Meanwhile, China has sought to protect many domestic industries through an increasingly restrictive investment regime. Since 2006, China has imposed new and additional restrictions on foreign investment, particularly in "pillar industries," while also granting its regulators vaguely defined powers under the Anti-monopoly Law and the rules governing foreign mergers and acquisitions that can be used to restrict legitimate foreign investment.

In 2008, bilateral discussions yielded some progress in resolving U.S. concerns regarding these problematic industrial policy measures, some of which raise questions about China's compliance with its WTO obligations in the areas of national treatment, market access, export restrictions, technology transfer and subsidies, among others. As noted above, China agreed to delay publication of final rules on information security certification that would have potentially barred several types of U.S. high technology products from China's market, so that experts from both sides could engage in discussions and find the best way forward. In addition, as previously reported, the United States was able to leverage its use of the WTO dispute settlement mechanism to gain China's agreement in November 2007 to eliminate several prohibited tax subsidy programs by January 1, 2008. The United States has monitored China's implementation of this agreement and has confirmed that China eliminated these subsidies, as agreed.

In 2009, the United States will continue to pursue vigorous bilateral engagement to resolve the serious disagreements that remain over a number of China's industrial policy measures. If dialogue fails to address U.S. concerns, however, the United States will not hesitate to take further actions seeking elimination of these industrial policy measures, including WTO dispute settlement, where appropriate.

### **iii. Trading Rights and Distribution Services**

For many U.S. companies, China's commitments to fully liberalize trading rights (the right to import and the right to export) and distribution services (wholesale, retail, direct selling and franchising services) are critically important. While China has implemented these commitments in most sectors, enabling many U.S. companies to import and export goods directly without using middlemen and to establish their own distribution networks in China, some serious problems still appear to remain.

Despite extensive and persistent bilateral engagement by the United States, China refused to remove import and distribution restrictions on copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, in apparent contravention of China's trading rights and distribution services commitments. These restrictions reduce and delay market access for these copyrighted products, creating additional incentives for infringement in China's market. Consequently, in April 2007, the United States initiated WTO dispute settlement proceedings. Hearings before the panel took place in July and September 2008, and the panel is scheduled to make its decision public in 2009.

In 2008, China also continued to make foreign retailers that seek to open new stores satisfy burdensome requirements not applicable to domestic retailers, although U.S. bilateral engagement did lead to incremental progress. At the September 2008 JCCT meeting, China announced steps that should streamline the licensing process and facilitate approvals for new foreign retail outlets, although some concerns remain.

Finally, while China is a major market for U.S. direct sellers, China continued to subject foreign direct sellers to unwarranted restrictions on their business operations in 2008. China also appears to have stopped issuing new licenses for direct sellers. Working closely with U.S. industry, the United States sought improvements in this area in 2008 and will continue to press China in 2009 to ensure that China fully meets its WTO commitments.

#### **iv. Agriculture**

While U.S. exports of agricultural commodities to China continued to perform strongly in 2008 and largely fulfill the potential envisioned by U.S. negotiators during the years leading up to China's WTO accession, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of selective intervention in the market by China's regulatory authorities. As in past years, capricious practices by Chinese customs and quarantine agencies can delay or halt shipments of agricultural products into China, while SPS measures with questionable scientific bases and a generally opaque regulatory regime frequently bedevil traders in agricultural commodities, who require as much predictability and transparency as possible in order to preserve margins and reduce the already substantial risks involved in agricultural trade.

In 2008, the principal targets of questionable practices by China's regulatory authorities were poultry and pork, and anticipated growth in U.S. exports of these products was not realized. In addition, China continued to block the importation of U.S. beef and beef products, well over one year after these products had been declared safe to trade under international scientific guidelines.

In 2009, the United States will continue to pursue vigorous bilateral engagement with China in order to obtain progress on its outstanding concerns. The United States also will not hesitate to take other actions to resolve its concerns if dialogue fails, including WTO dispute settlement, where appropriate.

#### **v. Services**

While the United States continued to enjoy a substantial surplus in trade in services with China and the market for U.S. service providers in China remains promising, Chinese regulators continue to use an opaque regulatory process, overly burdensome licensing and operating requirements and other means to frustrate efforts of U.S. providers of banking, insurance, construction and engineering, telecommunications and legal services to achieve their full market potential in China. In the case of express delivery services, China is currently considering a draft law that would discriminatorily exclude foreign suppliers from a major segment of China's domestic express delivery market. In addition, China still does not allow foreign credit card companies and other suppliers to provide electronic payments

processing and related services for domestic currency transactions in China. USTR continues to consult closely with U.S. credit card companies on this issue.

Over the last year, U.S. engagement through the JCCT and SED processes led to China's agreement to increase market access for foreign suppliers of securities services. China also reduced capital requirements for providers of basic telecommunications services, although these capital requirements still remained excessive by international norms and will continue to discourage new providers from entering China's market.

Meanwhile, in March 2008, after dialogue failed to resolve U.S. concerns, the United States brought a WTO case challenging restrictions that China had placed on foreign suppliers of financial information services as well as China's failure to establish an independent regulator in this sector. As noted above, the EC and later Canada joined in this challenge, and following several months of constructive discussions China agreed to a settlement fully addressing all of the complaining parties' concerns. The settlement calls for China to install an independent regulator and remove the challenged restrictions through a series of steps, to be completed no later than June 1, 2009.

In 2009, the United States will continue to engage China on the many outstanding services issues and will closely monitor developments in an effort to ensure that China fully adheres to its WTO commitments. If necessary, the United States also will not hesitate to take further actions seeking to enforce China's WTO commitments, including WTO dispute settlement, where appropriate.

#### **vi. Transparency**

One of the core principles of the WTO Agreement, reinforced throughout China's WTO accession agreement, is transparency. Transparency permits markets to function effectively and reduces opportunities for officials to engage in trade distorting practices behind closed doors. While China's transparency commitments in many ways require a profound historical shift, China made important strides to improve transparency across a wide range of national and provincial authorities during the first four years of its WTO membership. However, two shortcomings stood out. As of December 11, 2005, China had still not adopted a single official journal for publishing all trade-related measures, and it had yet to regularize the use of notice-and-comment procedures for new or revised trade-related measures prior to implementation.

In 2006, after the United States elevated the issue to the JCCT level, China finally adopted a single official journal, to be administered by the Ministry of Commerce (MOFCOM). However, MOFCOM proved unable to secure full participation by all relevant government entities. In December 2007, following further U.S. engagement through the SED process, China re-committed to publishing all final trade-related measures in a single official journal.

The United States also used the SED process to urge China to adopt a mandatory notice-and-comment practice. Subsequently, in April 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws. In addition, at the June 2008 SED meeting, China similarly committed to publish all proposed trade- and economic-related regulations and departmental rules for public comment, subject to specified exceptions, in a single location.

As these steps are implemented, they should lead to improved transparency, particularly for proposed Chinese laws and regulations. China's commitments in this area also signal increasing recognition by many Chinese government officials that improved transparency and greater input from stakeholders and the public contribute to better regulatory practices and improved policy making.

#### **d. The Year Ahead**

In 2009, the United States will continue its concerted efforts to ensure that China fully implements its WTO accession commitments and fully adheres to its fundamental obligations as a WTO member, with particular emphasis on reducing Chinese government intervention in the market, removing remaining trade and investment barriers and lowering IPR infringement levels in China. As always, USTR will continue to consult closely with U.S. stakeholders to ensure that U.S. policies and actions advance their interests. Throughout this process, the United States will continue to solve problems with dialogue if possible, and legal action when appropriate, while working within the rules-based international trading system.

In particular, on the bilateral front, the United States will continue to pursue a robust set of formal and informal meetings and dialogues with China, including high-level meetings, in order to ensure that the benefits of China's WTO membership are fully realized by the United States and other WTO members and that problems in the U.S.-China trade relationship are appropriately resolved. Through these efforts, the United States will place particular emphasis on issues arising in the areas of intellectual property rights, industrial policies, agriculture and services. Based on the increased willingness that China displayed in 2008 to work cooperatively and pragmatically with the United States on contentious issues, the United States is optimistic that significant progress is obtainable in 2009.

Nevertheless, as the United States has demonstrated on several occasions, when bilateral dialogue is not successful in resolving WTO-related concerns, the United States will not hesitate to invoke the dispute settlement mechanism at the WTO. In addition, when U.S. interests are being harmed by unfairly traded imports from China, the United States will continue to vigorously enforce U.S. trade remedy laws, as envisioned by WTO rules.

### **10. Japan**

The United States continued to urge Japan during 2008 to make further progress to open its economy and re-commit more fully to economic reform. Progress was made in a number of issue areas, even as the environment in Japan for enacting further reforms became increasingly challenging compared with recent years. The United States and Japan also stepped-up work in other areas of mutual interest to address arising issues in the Asia-Pacific region and beyond.

#### **United States-Japan Economic Partnership for Growth**

Much of the engagement between the United States and Japan on bilateral, regional and global trade and economic issues continued to take place under the United States-Japan Economic Partnership for Growth (EPG). At the senior level, coordination takes place within the United States-Japan Economic Sub-Cabinet Dialogue. Other work under the EPG continued through its separate initiatives on regulatory reform (Regulatory Reform and Competition Policy Initiative, co-chaired by USTR), trade (Trade Forum, co-chaired by USTR), investment (Investment Initiative, co-chaired by the Department of State), and financial issues (Financial Dialogue, co-chaired by the Department of the Treasury).

##### **a. Regulatory Reform Initiative**

The United States and Japan completed their seventh year of work under the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) during the summer of 2008 with the Initiative's Annual Report to the Leaders. The Report outlined progress in a number of areas ranging from distribution to telecommunications to agriculture. Both Governments launched the

eighth round of the Initiative with an exchange of recommendations in October 2008. Working groups subsequently met in December, covering cross-sectoral issues as well as sector-specific groups in telecommunications, information technologies, and medical devices/pharmaceuticals.

Highlights of the work under the Initiative's seventh and eighth years are covered in the following two sections on Sectoral Regulatory Reform and Structural Regulatory Reform.

### **i. Sectoral Regulatory Reform**

*Telecommunications:* The United States continued to stress the need for reforms to help create a pro-competitive telecommunications services market in Japan based on transparent regulation. Despite ongoing difficulties addressing conduct by dominant operators in both the fixed and mobile markets, 2008 marked progress on a number of fronts. In particular, Japan took steps to ensure that NTT does not avoid network access obligations as it transitions to an Internet-protocol based "Next Generation" network; clarified that mobile operators cannot charge competitors interconnection fees that subsidize the promotion of handsets for their own subscribers; successfully arbitrated a dispute concerning a new entrant stymied in its effort to resell mobile services of Japan's dominant mobile provider; and initiated a process to permit the use of spectrum for mobile television services, an area where several Japanese operators are seeking to offer services on a technology-neutral basis (including U.S. technology).

On January 1, 2008, the United States-Japan Mutual Recognition Agreement (MRA) concerning the mutual acceptance of the results of conformity assessment procedures for telecommunications equipment entered into force. Based on this agreement, U.S. manufacturers will now have the option of selling equipment in the Japanese market that designated U.S.-based testing laboratories have certified as meeting Japan's technical requirements. This is expected to facilitate faster and more efficient trade in telecommunications equipment with Japan. Regulatory authorities of both countries are in the process of implementing this agreement and test labs in both countries are now operational for one set of requirements (electromagnetic compatibility).

*Information Technologies:* The United States continued to urge Japan to promote open information technology (IT) and electronic commerce policies, to harmonize its intellectual property rights (IPR) regime with international best practices, and to broaden cooperative work to improve IPR protection and enforcement.

Japan made improvements in several areas. Japan increased reimbursement incentives for doctors and hospitals to use innovative health IT that facilitates information sharing, such as picture archiving and communication systems. Japan announced plans to expand information available to potential vendors in Japan's central online database for government procurement of information systems, thus improving the quality of data about government procurement opportunities. Japan also undertook a public relations campaign to educate firms and consumers about its Privacy Act to prevent misinterpretations that might curtail legitimate uses of personal information due to an overabundance of caution or uncertainty.

The United States continued to emphasize the benefits of strengthening Japan's IPR enforcement system through the adoption of a system of statutory damages, copyright term extensions, and enhanced *ex officio* authority. While recognizing Japan's needs to revise its laws in response to developments in the digital economy, the United States continued to encourage not only measures to prevent online piracy and infringement but also to ensure more broadly the effective protection of IPR.

The United States and Japan cooperated in a number of fora to advance protections for IPR globally and in the Asia-Pacific region. Japan has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA). The two countries worked

closely in the Asia-Pacific Economic Cooperation (APEC) forum to put in place legal regimes and enforcement systems to better address IPR enforcement problems in the region. Third-country capacity building efforts were undertaken through trilateral work with the European Union under the U.S. Department of Commerce-Ministry of Economy, Trade and Industry (DOC-METI) Initiative.

In January 2008, the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO) fully implemented the "Patent Prosecution Highway" (PPH). The PPH facilitates the processing of patent applications by providing applicants the option to request fast track processing in one patent office if the other patent office has determined that claims in a corresponding application submitted to it are patentable. The USPTO and JPO also implemented the "New Route," a pilot framework for international cooperation on patent search and examination under the DOC-METI Initiative.

In September 2008, the USPTO, JPO, and the European Patent Office, within the context of the Trilateral Framework, began the Strategic Handling of Applications for Rapid Examination (SHARE) pilot program as a way to enhance work-sharing amongst the patent offices. Under SHARE, a patent office would give precedence to examining applications for which it was the office of first filing, and would wait to examine applications for which it is the office of second filing until search and examination results are available from another patent office.

*Medical Devices and Pharmaceuticals:* The United States urged Japan to reform its regulatory and reimbursement pricing systems to address delays in the introduction of innovative U.S. medical devices and pharmaceuticals and to create sufficient incentives for the development of advanced products. As part of its efforts to reduce the lag in the introduction of new devices and drugs, Japan's regulatory agency in 2008 continued to increase hiring of staff to review product applications and broaden the staff's expertise by hiring more physicians and experts, including with industry experience. Japan also agreed to increase by 50 percent the number of clinical trial consultations regulators hold with drug companies.

The United States encouraged Japan to ensure that reimbursement pricing policies foster the introduction of innovative devices and drugs, which can improve health outcomes and healthcare system efficiency. Japan agreed to improve the transparency of its reimbursement pricing system. The United States urged Japan to avoid taking new measures that would harm innovation, including the implementation of annual pricing and the use of Japan's market expansion rule for drugs. Japan's decisions to improve incentives for the development of advanced devices by raising related premiums and creating new functional categories for devices were positive steps. The United States also continued to raise concerns about Japan's regulation of nutritional supplements, cosmetics, and quasi-drugs.

*Financial Services:* The United States encouraged Japan to realize its aim to upgrade the global competitiveness of its financial markets, through such measures as full-file consumer credit bureaus, appropriate measures for Japan Post privatization, and through transparent, consistent, and predictable financial services regulation. In December 2007, the Financial Services Agency (FSA) published the "Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets," and submitted amendments to the Financial Instruments and Exchange Law (FIEL) in March 2008. Following passage by Japan's Diet in June 2006, the revised FIEL went into effect in December 2008. Intended to improve Japan's standing as a global financial center, FIEL includes provisions to relax firewalls that separate different classes of financial institutions, expand the array of products of exchange tradable products, create a market exclusively for professional investors, and address the transparency and predictability of the financial regulatory regime. The FSA conducted regular outreach with the financial services sector during the course of this campaign to upgrade Japan's competitive fitness in this sector.



## ii. Structural Regulatory Reform

*Competition Policy:* The United States continued to urge Japan to strengthen its competition policy and to ensure due process in the enforcement of the Antimonopoly Act (AMA). In 2008, Japan submitted legislation to the Diet to amend the AMA in several important ways, including increasing administrative fines on firms playing a leading role in hard core cartels, extending the statute of limitations for AMA violations, improving the operation of the Japan Fair Trade Commission's (JFTC's) Leniency Program (which eliminates or reduces penalties for firms that report unlawful cartel activities to the JFTC), and improving pre-merger notification procedures. The future status of this legislation remains unclear. In addition, the JFTC continued its vigorous enforcement against hard-core AMA violations, announcing that in the fiscal year ending March 2008 it took enforcement action against 14 bid-rigging conspiracies and six price cartels, and imposed surcharges totaling more than \$100 million on 162 firms. For the purpose of improving due process in its investigation and decision-making processes, the JFTC indicated that it would not disclose attorney-client communications if they include confidential information protected by existing statutes. Japan also took steps in 2008 to help stamp out bid-rigging, including enacting new legislation and implementing additional administrative measures that strengthened administrative penalties against companies found to have engaged in bid-rigging activities.

*Transparency:* The United States continued during 2008 to strongly urge Japan to take new steps to improve the transparency of its regulatory and policy making processes in number of areas where improvements are much needed, such as requiring all Japanese ministries and agencies to publish their generally applicable interpretations of regulations, strengthening further Japan's public comment procedure process, and enacting new steps to improve the transparency of Japan's government-appointed advisory and other groups.

*Other Government Practices:* In 2008, the United States urged Japan to improve a variety of government policies and practices, including those to facilitate agricultural trade and improve insurance services (for discussion of insurance-related issues, see the "*Bilateral Consultations-- Insurance*" section below).

Regarding agriculture, a priority for the United States remains Japan's enforcement program for maximum residue levels (MRLs) for pesticides affecting U.S. specialty crops. Japan's import regime can result in a 100 percent test-and-hold policy with respect to an entire exporting country if a second violation within a year involves the same pesticide and commodity. In 2008, Japan agreed to revise its enforcement program by limiting enhanced testing requirements to individual exporters found to be in violation, provided that the exporting country's MRL for a particular commodity and pesticide combination is the same or more restrictive than that of Japan. However, in cases where the exporting country's standard is less restrictive -- as is the case for a significant number of U.S. standards -- Japan continues to impose countrywide sanctions in the case of two violations from the country within a year. The United States continued to urge Japan to take measures to provide an effective and consistent MRL enforcement program that is no more trade restrictive than necessary.

The United States worked with Japan to secure Japan's approval of several food additives including *nisin* and two organic materials, *potassium bicarbonate* and *lignin sulfonate*, that would enhance market access opportunities for U.S. agricultural products. The United States also encouraged Japan to harmonize its classification of cosmopolitan pests with international standards. In May 2008, Japan notified the WTO of new regulations with respect to the potato aphid (*macrosiphum euphorbiae*) that will improve market access for U.S. exports of lettuce.

*Privatization -- Japan Post:* In 2008, Japan continued its ten-year process of privatizing Japan Post, which was initiated on October 1, 2007. The United States continued to urge Japan to ensure a level playing field between the newly privatized Japan Post entities and their private sector counterparts in the

insurance, banking, and express delivery sectors. In addition, the United States continued to emphasize the need for ensuring full transparency in the privatization process, including ensuring interested parties have meaningful opportunities to express views before final decisions are made.

The United States urged Japan to continue to take measures to ensure a level playing field between the newly privatized postal financial entities (Japan Post Insurance and Japan Post Bank) and their private sector counterparts before permitting the introduction of new lending services, new or altered insurance products underwritten by Japan Post Insurance, or the origination of non-principal-guaranteed investment products by Japan Post Bank. Japan strengthened the Financial Services Agency's (FSA) regulatory supervision of the postal financial entities by appointing an additional Director to supervise Japan Post Insurance and four staff members to supervise Japan Post Insurance and Japan Post Bank. Japan reaffirmed that the FSA has sole authority over the supervision and inspection of Japan Post Bank and Japan Post Insurance under the Banking Law and Insurance Business Law and applies the same standards to the postal financial entities as are applied to other banks and insurance companies. Japan also provided assurances that the relationship between Japan Post Network and the two postal financial entities will be conducted in a fair manner and subject to the same rules and regulations applicable to the private sector.

The United States continued to urge Japan to take steps to ensure Japan Post Service Company products and services that compete with the private sector, including its Express Mail Service (EMS), meet customs treatment requirements equivalent to those applied to private sector international express carriers. Japan is preparing to subject all international postal items valued over 200,000 yen (approximately \$2,000) to more similar customs treatment by applying the "duty declaration" system before April 2009, and the United States is urging that this program be extended to include all EMS items regardless of value. The United States also continued to urge Japan to ensure that competitive services such as EMS are not subsidized by non-competitive postal services, as well as to ensure that arm's length transactions are in fact carried out by the Japan Post Service Company in line with a mid-2008 recommendation of Japan's Postal Services Privatization Committee.

*Commercial Law:* Japan took some steps in 2008 that may facilitate foreign mergers and acquisitions (M&A) in Japan, including a decision by Japan's Cabinet to set up a fair and transparent M&A climate. In addition, the Ministry of Economy, Trade and Industry's Corporate Values Study Group determined that hostile takeovers may have positive benefits for shareholders and, therefore, that management must make responsible judgments about the attractiveness of takeover bids and target companies and should in principle not invoke anti-takeover measures.

Japan also began implementing a plan to take broad-reaching measures to strengthen corporate governance mechanisms in Japanese corporations. This plan contemplates a broad examination of the current legal system with a view to identifying necessary administrative and/or legislative improvements, and encouraging the stock exchanges to strengthen their corporate governance-related rules and codes of conduct. The Tokyo Stock Exchange also announced that it would focus its efforts in fiscal year 2008 on improving conditions for enhanced corporate governance by its listed companies, including rules that address the issuance of new shares that cause substantial dilution to existing shareholders, problems with the independence of directors and auditors, and concerns raised by the introduction of certain takeover defense measures. In addition, the Financial Services Agency announced that most managers of investment trusts have a fiduciary duty to exercise proxy voting rights solely for the interest of beneficiaries and can be held liable for damages if they breach that fiduciary duty.

*Legal Services and Legal Systems Reform:* Japan took some important steps during 2008 toward improving the environment for international legal services. The Ministry of Justice (MOJ) began a consultation process with the Japan Federation of Bar Associations to formulate recommendations on measures to allow registered foreign legal consultants in Japan to establish professional corporations and

branch offices on the same basis as Japanese lawyers, with a goal of reaching a conclusion by the end of 2008. The MOJ also committed itself to continuing to examine ways to provide greater legal certainty regarding the ability of foreign legal consultants to act as “neutrals” and to represent parties in all international alternative dispute resolution proceedings taking place in Japan.

*Distribution:* Japan made several improvements in 2008 that should help facilitate customs procedures. This included revising its Customs Law to allow inclusion of authorized customs brokers in Japan's Authorized Economic Operators (AEO) program. This action will enable declarations of cargo release and of duties and taxes to be filed separately. Japan also eliminated customs overtime service charges and the simplified application procedures for overtime services.

## **b. Bilateral Trade Consultations**

### **i. Insurance**

In December 2008, the United States and Japan held an annual insurance consultation under the 1994 and 1996 bilateral insurance agreements. The United States also pressed for improvements in the regulatory environment and increased openness for foreign suppliers in Japan's insurance sector in the U.S.-Japan Regulatory Reform Initiative and other fora.

Regarding the privatization of Japan Post and the Japanese insurance market, the United States continued to urge Japan to ensure a level playing field between Japan Post Insurance and its private sector counterparts (for a detailed review, see *Privatization -- Japan Post*).

The United States urged Japan to undertake substantive deliberations on the broad spectrum of issues related to the Life and Non-Life Policyholder Protection Corporation, and also to subject insurance cooperatives (*kyosai*) regulated by various ministries to the same laws, requirements, standards, and Financial Services Agency (FSA) oversight as the private insurance sector with which they compete. The FSA did assume regulatory supervision of certain smaller *kyosai* under the “Small Amount Short-Term Insurance Provider” system. The United States also requested revisions to information disclosure restrictions affecting the bank sales channel and adoption of measures to allow foreign incorporated insurance company branches operating in Japan to transfer more seamlessly their business to a Japan-incorporated entity.

### **ii. Government Procurement**

*Public Works (Design/Construction):* The U.S. Government held expert level consultations with Japanese officials in September 2008 to urge Japan to take new measures to further open its large (\$163 billion) public works market to U.S. companies. The United States requested, for example, that Japan take measures to address low-bidding (i.e. bidding on projects with the expectation of not making a profit while planning that losses could be made up at a later date through change orders or discretionary procurements), to increase the use of Overall Greatest Value Method procurements in which bids are evaluated on more than price, to address concerns regarding unfair treatment of joint venture members, and to take measures to ensure proper compensation for design firms. The United States is working with Japan to promote the use of “Construction Management,” an advanced project delivery and management system used to maximize project efficiency, as this would increase the market for services in which U.S. companies have considerable expertise. The United States also continued to monitor carefully Japan's procurement procedures for projects covered by bilateral and multilateral agreements as well as to promote U.S. company participation in new types of public works projects in Japan.

### **iii. Investment**

The United States continued joint work with Japan in 2008 through the U.S.-Japan Investment Initiative to encourage new measures that improve the climate for direct foreign direct investment (FDI) and merger and acquisition (M&A) activity in Japan. Then Prime Minister Fukuda formed an “Expert Committee on FDI Promotion” that issued a report in May 2008 calling for tax and regulatory changes in five areas. Several of the recommendations are very close to ideas both governments have discussed in past Investment and Regulatory Reform Initiatives, including: (1) clarification of Japan's M&A rules regarding use of corporate takeover defense measures, and increased FDI promotion efforts; (2) a survey of Japan's security-related foreign investment restrictions with the aim of providing greater transparency to investors; (3) adoption of strategies and "action programs" to increase FDI in key business sectors, most notably medical devices and pharmaceuticals; and (4) quick action to reduce business costs and increase regulatory transparency. In response to these recommendations, the government incorporated certain new measures to expand FDI in its 2008 Major Economic Policy Framework Report and has indicated it is seeking to implement these new measures.

### **c. Sectoral Issues – Agriculture**

*Beef:* The United States interacted with Japan at all levels, including the ministerial level, to urge the full reopening of Japan’s market to U.S. beef and beef products in a manner consistent with internationally accepted guidelines established by the World Organization for Animal Health (OIE). By limiting the import of U.S. beef and beef products to animals 20 months and younger, Japan continued to apply import standards not based on internationally accepted science and that are inconsistent with the OIE determination that the United States falls under “controlled risk” for Bovine Spongiform Encephalopathy (BSE).

Beef exports to Japan over the first eleven months of 2008 totaled \$359 million (approximately 69,944 metric tons), an increase of 58 percent and 61 percent respectively over the same period in 2007. This level of trade suggests that Japanese consumers now accept U.S. beef. However, the Japanese government’s restrictions limiting the supply of U.S. beef will continue to prevent U.S. beef producers from recapturing a market share that, in 2003, was valued at approximately \$1.4 billion (376,000 metric tons).

*Rice:* Under the Uruguay Round Agreement on Agriculture, Japan committed to annual minimum market access (MMA) for imported rice. In response to not importing enough rice to fill its MMA quota in Japan for Fiscal Year 2007, Japan committed to implement improvements to ensure fulfillment of its MMA rice tariff-rate quota system in the future, including earlier and more frequent tenders. Unusually high global rice prices during this period exposed several weaknesses in Japan’s administration of its import quotas for rice.

In September 2008, Japan temporarily ceased tenders for imported rice and wheat in response to the release of rice tainted with pesticides and aflatoxin into Japan’s food supply. After implementing revisions to its import tender contracts to require importers to destroy or return to the exporting country rice or wheat that exceeds maximum residue levels, wheat and rice tenders resumed in October 2008. Addressing concerns with the operation of Japan’s tariff-rate quota system, the revised tender contracts, and Japan’s fulfillment of its MMA rice import quota obligations remain priorities for the United States.

## **11. Taiwan**

During 2008, the United States and Taiwan continued to work together to enhance economic cooperation through the U.S. Bilateral Trade and Investment Framework Agreement (TIFA) process, and to address shortcomings in several areas related to Taiwan's implementation of its World Trade Organization (WTO) commitments. These WTO implementation issues included ensuring market access for rice and improving intellectual property rights protection. In addition, the United States worked with Taiwan bilaterally to ensure market access for American beef and more transparent pharmaceutical pricing and reimbursement procedures.

### **a. Beef**

Throughout 2008, the United States continued to press Taiwan to provide market access for the full range of U.S. beef and beef products in a manner consistent with World Organization for Animal Health (OIE) guidelines for Bovine Spongiform Encephalopathy (BSE) and the May 2007 OIE designation of the United States as "controlled risk" for BSE. However, as of the end of 2008, Taiwan had not yet opened its markets in a manner consistent with the May 2007 OIE determination. After partially reopening the market to U.S. deboned beef from cattle less than 30 months of age in April of 2005, Taiwan re-imposed its import suspension in June 2005, after the discovery of a second case of BSE in the United States. On January 25, 2006, Taiwan again lifted its ban on U.S. deboned beef from cattle less than 30 months of age. In addition to beef and beef products, Taiwan also maintains BSE-related import suspensions on U.S.-origin non-ruminant products such as poultry and porcine meals for the use in animal feed. Taiwan also maintains a BSE-related import suspension on U.S.-origin protein-free tallow and yellow grease (ruminant-origin products) for use in animal feed and pet food while continuing to allow importation of these products for industrial use and human consumption. Taiwan's BSE-related import restrictions on protein-free tallow and yellow grease are not consistent with OIE guidelines which specifically state that these products should be freely traded regardless of the BSE status of the exporting country. The United States has been engaging with Taiwan to fully open the market for all these products on a scientific basis.

### **b. Rice**

The United States and other suppliers continued to have public sector rice tenders fail due to Taiwan's ceiling price mechanism. Recently, Taiwan implemented new destination testing requirements for shipments of U.S. long grain rice, thereby causing additional tenders to fail. Taiwan is a leading Asian market for U.S. rice exports. Throughout 2008, the United States highlighted to Taiwan its WTO obligation to purchase rice while expressing concerns that the ceiling price mechanism was non-transparent and causing unnecessary trade disruptions. The United States will continue to work with Taiwan and other interested suppliers to the Taiwan market to achieve improvements to the rice import system.

### **c. Maximum Residue Levels (MRL)**

Since the 2007 TIFA meeting, the United States and Taiwan have engaged in numerous discussions addressing systemic issues related to Taiwan's food safety regulatory system. Taiwan currently has a backlog of approximately 1,500 pesticide applications that must undergo a technical review before permanent MRLs may be established. The backlog presents significant challenges to U.S. agricultural trade because Taiwan will reject agricultural goods containing a pesticide residue for which the Department of Health (DOH) has not established an MRL. The United States has offered several suggestions on how Taiwan could reduce its backlog. However, thus far DOH has been unwilling to defer to the CODEX or U.S. MRL on an interim basis.

#### **d. Pork**

Since 2007, Taiwan has rejected U.S. pork meat with residues of ractopamine. Ractopamine is a veterinary drug commonly used in the United States and permitted in most major pork import markets. While Taiwan notified the WTO in August of 2007 of its intent to establish an MRL for ractopamine, which would have resolved the issue, Taiwan authorities have failed to implement the draft MRL. As a result, U.S. pork exports in 2007 fell sharply and some U.S. pork market share was lost to Canada in 2008 as overall imports recovered modestly.

#### **e. Intellectual Property Rights (IPR)**

IPR protection continues to be an important issue in the U.S.-Taiwan trade relationship. In December 2004, Taiwan was moved from the Special 301 Priority Watch List to the Watch List after an out-of-cycle review (OCR) determined that Taiwan had made sufficient progress to warrant improved status. The United States recognizes Taiwan's continuing efforts to take measures to improve enforcement of IPR, and in 2008 initiated an OCR to re-evaluate Taiwan's inclusion on the Special 301 Watch List. On January 16, 2009, the Office of the U.S. Trade Representative announced that, as a result of progress on protection and enforcement of intellectual property rights, Taiwan has been removed from the Special 301 Watch List.

To deter Internet piracy, the Taiwan Intellectual Property Office (TIPO), in May 2005, initiated an "implementation plan for strengthening preventive measures against Internet infringement." In 2007, Taiwan continued to make efforts to combat Internet-related IPR violations; including strengthening cooperation with foreign enforcement agencies and passing an amendment to the Copyright Law in June 2007 that subjects illegal file-sharing to a maximum jail term of two years.

In October 2007, Taiwan's Ministry of Education (MOE) issued its Action Plan for Protecting IPR on School Campuses. The Plan addresses IP piracy on school and university campuses on Taiwan and includes measures to restrict access with some exceptions, to most peer-to-peer (P2P) services from the island's principal academic network, the Taiwan Academic Network (TANet), as well as to reduce instances of illegal text book copying by students and on-campus copy shops. Since the implementation, police have raided several copying shops near campuses engaged in illegal textbook copying, and authorities have launched public awareness campaigns to help protect intellectual property. The United States will continue to monitor the implementation of the Action Plan and other efforts to reduce infringement by the academic community, both on and off campus. In order for the Action Plan to be successful, it is important that the MOE devote adequate resources to it, especially at high levels of the Ministry, as well as engage in regular consultation with rights holders in order to improve enforcement against the unauthorized use of copyright material that occurs on and around university campuses.

The United States strongly encouraged Taiwan's passage of legislation to create a specialized court for intellectual property matters and its training of judges and prosecutors on these matters. The necessary implementing legislation and regulations were passed in 2007, and the court opened in July 2008. In addition, the Taiwan High Prosecutor's Office has set up an intellectual property office to work with the new court. The United States will continue to monitor implementation of the specialized IP court.

Internet piracy and illegal peer-to-peer downloading remain serious concerns, and the United States will continue to urge the passage and implementation of effective legislation to address liability of Internet Service Providers (ISP). In September 2008, the Ma administration forwarded to the legislature ISP-related amendments to the Copyright Act, but the amendments have not yet been passed. The United States will continue to monitor Taiwan Customs' efforts to prevent imports of counterfeit materials.

## **f. Pharmaceuticals**

Continuing concerns in the pharmaceutical sector in Taiwan include the fairness and transparency of the pharmaceutical pricing system as well as the domestic regulatory regime. Through the TIFA process, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing to address the significant gap between the higher amount that Taiwan's Bureau of National Health Insurance (BNHI) typically reimburses for a pharmaceutical product and the lower price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are compounded by another feature of the Taiwan health care system, which permits doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as a critical element in the resolution of the long-term pricing problem. The United States has encouraged Taiwan to streamline certain regulatory procedures to speed the approval of new, innovative products to the market. Production and sale of counterfeit pharmaceuticals in Taiwan also remains a concern. The United States is encouraging Taiwan's Ministry of Justice and Department of Health to work together to take action to address this issue.

## **12. Hong Kong (Special Administrative Region)**

### **a. Intellectual Property Rights (IPR)**

Hong Kong is a special administrative region of the People's Republic of China. The Hong Kong government continues to maintain a robust IPR protection regime, though end-user piracy, the rapid growth of peer-to-peer downloading from the Internet, and the importation and transit shipments of infringing products remain as significant challenges. The business and entertainment software industries estimate that Hong Kong's piracy rate was 51 percent for business software and 80 percent for entertainment software in 2007, well above the software piracy rates in other advanced economies, resulting in annual losses to business and entertainment software right holders of approximately \$212 million in 2007.

Since 2006, the Hong Kong government has taken additional steps toward addressing each of these problems. Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. An April 2008 raid by Hong Kong Customs of an underground production facility resulted in the seizure of 110 DVD writers, 27,000 optical disks, and the conviction of two defendants who each received a 24 month prison term. Hong Kong officials have also established a joint task force with copyright industry representatives to track down online pirates using peer-to-peer networks for unauthorized file sharing.

After extensive consultation, the Copyright (Amendment) Ordinance was passed in July 2007 and the government proposed several amendments to the Ordinance in April 2008 to strengthen digital IPR protection. The Ordinance provides for criminal penalties for unauthorized copying and distribution of infringing copies of printed works in the course of profit-generating activities. The Ordinance also contains provisions to hold company directors criminally liable for the use of pirated software in their businesses. Additionally, the Ordinance provides for civil liability for the act of circumventing technical protection measures (TPMs) and criminal penalties for persons convicted of dealing in circumvention devices or providing a circumvention device for commercial purposes. In the first eight months of 2008, Hong Kong Customs reported 618 convictions for Ordinance violations, and over two-thirds of those individuals received jail terms. The government is consulting with industry representatives and content user representatives on the proposed amendments and expects to introduce the proposed digital IPR protection amendments to the Legislative Council for debate in the 2009-2010 session.

## **b. Beef**

Hong Kong banned imports of U.S. beef in December 2003 following the first case of Bovine Spongiform Encephalopathy (BSE). After two years of intensive efforts on the part of the U.S. Government, the Hong Kong government announced the partial reopening of its market to deboned beef from animals less than 30 months of age, with numerous restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the two-year ban (2004-2005) cost U.S. exporters approximately \$160 million. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States in a category of “controlled risk” for BSE. The United States continues to press Hong Kong to normalize trade and implement import requirements for U.S. beef and beef products on the basis of science, the OIE guidelines, and the U.S. controlled risk classification.

## **c. Food Labeling**

The United States exported nearly \$1.4 billion of agricultural, fishery, and forestry products to Hong Kong in 2008. Although Hong Kong has a population of only seven million residents, it is the seventh largest market for exports of U.S. food and beverage products with approximately 25 percent of U.S. exports to Hong Kong transshipped to China and Southeast Asia. While the Hong Kong market has developed relying on liberal access, the Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

On July 9, 2007, an amendment to Hong Kong’s Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, and name or identification number (under the International Numbering System), on food labels. Hong Kong’s requirements vary only slightly from U.S. regulations. However, the United States is concerned that the regulations do not contribute to improved consumer awareness or information. All U.S. processed food products exported to Hong Kong already include extensive label information on ingredients, allergens, and additives. As results of these differences, U.S. food products, especially name-brand processed foods, have had difficulties complying with the labeling changes in the period allotted. The United States has expressed its objections to this regulation.

On May 28, 2008, Hong Kong’s Legislative Council passed a nutritional labeling regulation that may raise prices and restrict choice for Hong Kong consumers after it takes effect on July 1, 2010. Hong Kong’s labeling regulations do not follow the labeling practices of major suppliers, and given Hong Kong’s small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The United States has requested that the regulations allow flexibility by permitting the importation of products that comply with United States labeling laws.

## **d. Energy Efficiency Labeling and Regulations**

The Hong Kong government enacted the Energy Efficiency Labeling Ordinance in May 2008 for consumer electrical appliances. The Ordinance is intended to assist consumers in choosing energy efficient products. Under the Ordinance, the product must be registered with the Hong Kong Electro-Mechanical Services Department and carry an energy label that complies with specific technical requirements. The Hong Kong-specific labeling system could become a trade barrier to the extent the



local system differs materially from internationally agreed labels, such as the “Energy Star” label used in the United States and Japan. The United States will continue to monitor this development closely.

### **13. Sri Lanka**

In 2008, U. S. exports to Sri Lanka (annualized) were valued at \$286 million a 26 percent increase compared to 2007, and overall bilateral trade totaled \$2.2 billion. Major U.S. exports to Sri Lanka in 2008 were aircraft, wheat, industrial machinery, electrical machinery and equipment, and scientific instruments including medical equipment.

In 2002, the Administration and the Sri Lankan government entered into a TIFA. The TIFA aims to enhance the countries’ economic relationship while promoting increased trade and investment. Since 2002, United States and Sri Lankan officials have met six times to review the trade relationship and explore ways in which we can work together to facilitate expanded trade and economic cooperation.

On May 29, 2008, the sixth meeting of the U.S.-Sri Lanka TIFA Council was held in Washington, D.C. During the talks, the United States called on Sri Lanka to reduce its high tariffs and levies on agricultural products as well as foreign movies and television episodes, eliminate labeling requirements and import controls on genetically modified (GM) and non-GM agricultural products, modify seed potato import permits to allow for lot or shipment inspection for the Colorado potato beetle, and provide more certainty and transparency in Sri Lanka’s government procurement. The United States also urged Sri Lanka to lift avian influenza-related suspensions on imports of certain U.S. poultry commodities and highlighted Sri Lanka’s failure to issue two overdue letters of credit to a U.S. company doing business in Sri Lanka since 2001. In addition, the two sides discussed how Sri Lanka can make better use of the U.S. Generalized System of Preferences (GSP) program and explored ways to provide IPR enforcement training. The officials also discussed technical assistance to support Sri Lankan efforts to implement a customs recordation database and to finalize its antidumping and countervailing duty legislation.

In response to U.S. concerns, the Sri Lankan government lifted the suspension on poultry imports from several U.S. states (imports from two U.S. states are still prohibited) and also issued the overdue letters of credit to the U.S. company. In addition, in response to U.S. calls for increased IPR enforcement against software pirates, Sri Lanka conducted a raid on dealers of pirated software in May 2008. This raid was Sri Lanka's first notable enforcement action against software pirates.

Follow-up is occurring with respect to the issues discussed at the sixth round of United States-Sri Lanka TIFA Council talks, including training for Sri Lankans on GSP utilization and IPR enforcement. Meetings were held in Sri Lanka in November 2008 to discuss progress on TIFA follow-up actions and on enhancing the U.S.-Sri Lanka trade and investment relationship.

In June 2008, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed a petition requesting that Sri Lanka’s GSP benefits be withdrawn for failure to satisfy GSP eligibility criteria related to worker rights. The Administration will consider, in early 2009, whether to accept the AFL-CIO petition and other country practice petitions.

### **14. Iraq**

USTR supports the government of Iraq’s commitment to internal security and stability, job creation, and economic development. Through a number of interagency initiatives, USTR is assisting Iraq’s efforts to integrate better with the global economy, increase foreign investment, and diversify its exports. With improved security conditions and progress in other areas, USTR expects to increase bilateral cooperation

with the government of Iraq, focusing on key trade and investment issues. In late 2008, lower prices for oil, Iraq's dominant export, complicated the Government of Iraq reconstruction budget plans.

In February 2008, USTR participated in the United States-Iraq Dialogue on Economic Cooperation (DEC) meetings in Baghdad. Topics included advancing Iraq's accession to the WTO; status of passage of key commercial, investment, and labor laws; improving Iraq's investment climate and fighting corruption; expanding Iraq's use of benefits under the U.S. Generalized System of Preferences (GSP) program; and ratification of the United States-Iraq Trade and Investment Framework Agreement (TIFA).

In April 2008, USTR held the second meeting of Iraq's Working Party on WTO accession to review Iraq's trade regime. The United States is providing technical assistance to help Iraq's government with the accession process, including help with WTO training of officials, legal drafting, tariff classification, and specific guidance on implementation of WTO provisions (e.g., in the areas of investment, standards and technical regulations, intellectual property protection, customs, and services). USTR also held bilateral consultations with Iraqi officials and U.S. agencies.

In June 2008, the AFL-CIO submitted a petition seeking withdrawal of Iraq's eligibility for benefits under the U.S. Generalized System of Preferences (GSP), citing a lack of progress in approving a new law to protect internationally recognized worker rights, as well as problems with human trafficking and the abuse of foreign workers. The United States is working closely with the Government of Iraq to improve worker rights protections. The Administration will consider in early 2009 whether to accept the AFL-CIO petition and other country practice petitions.

In November 2008, USTR participated in the Iraqi-U.S. Dialogue on Business and Investment Climate in Baghdad, which highlighted the importance of foreign investment to achieve Iraq's goals of rapidly developing and diversifying its economy. Representatives from the Iraqi and international private sectors explained their experiences in the Iraqi market and in other countries and suggested steps that would make Iraq a more attractive destination for foreign investment and commercial ventures. They also agreed on Iraq's investment potential and welcomed U.S.-Iraqi cooperation to improve Iraq's commercial environment.

## **F. Africa**

### **1. COMESA**

The Common Market for Eastern and Southern Africa (COMESA) is the largest regional economic organization in Africa, with 19 member states<sup>26</sup> and a population of about 390 million. COMESA has a free trade area, with 14 member states, and is set to launch a customs union in 2009. The United States and COMESA signed a TIFA in 2001 and have held five TIFA Council meetings. The most recent meeting, in April 2008, included discussions on United States-COMESA trade, implementation of AGOA, the WTO Doha negotiations, trade capacity building activities, infrastructure issues, and investment.

U.S. trade capacity building assistance to COMESA, delivered mainly through USAID's East Africa regional mission and its East and Central Africa Global Competitiveness Hub in Kenya, has helped COMESA to advance its internal free trade area, harmonize members' policies in telecommunications,

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<sup>26</sup> COMESA members are Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

services, and investment, and increase trade linkages with the United States under AGOA. Fourteen COMESA members are AGOA-eligible, and nine qualify for textile and apparel benefits.

Total two-way trade between the United States and the 19 member countries of COMESA was valued at \$17 billion in 2008, a 17 percent increase over 2007. Egypt and Kenya were the two largest national markets for U.S. goods. The leading U.S. exports to COMESA countries were cereal grains, aircraft, and machinery, and the leading U.S. imports from COMESA countries were petroleum products, apparel, and chemicals. In the first 11 months of 2008, U.S. imports from COMESA under AGOA and GSP were valued at \$943 million, a decrease of three percent over the same period in 2007.

## **2. East African Community**

On July 16, 2008, the United States and the East African Community (EAC) signed a United States-EAC TIFA in Washington, DC. Trade ministers and other senior officials from the five EAC member states – Burundi, Kenya, Rwanda, Tanzania, and Uganda – witnessed the signing. The purpose of the TIFA is to strengthen the United States-EAC trade and investment relationship, expand and diversify bilateral trade, and improve the climate for business between U.S. and East African firms. The United States-EAC TIFA establishes regular, high-level talks on the full spectrum of United States-EAC trade and investment topics, including the African Growth and Opportunity Act (AGOA), the World Trade Organization's Doha Round, trade facilitation issues, and trade capacity building assistance. The EAC is one of the leading regional economic organizations in sub-Saharan Africa and has made great strides in recent years toward integrating the economies of its member states. It has established a free trade area and a customs union and is working toward a common market.

Total two-way trade between the East African Community and the United States was valued at \$1.2 billion in 2008. The leading U.S. exports to the EAC are aircraft, machinery, wheat, and communications equipment. U.S. imports from the EAC include apparel, coffee, and cashews. In the first 11 months of 2008, U.S. imports from EAC under AGOA, including its GSP provisions, were valued at \$234 million, 3.7 percent greater than in the corresponding period in 2007.

## **3. Ghana**

In 2008, there was growing momentum in several areas of the United States-Ghana trade relationship. The United States and Ghana initiated discussions to explore the possibility of negotiating a bilateral investment treaty. Ghana also took significant steps toward implementing reforms urged by the United States to improve enforcement against counterfeiting and to prevent illegal transshipment of non-Ghanaian goods under the African Growth and Opportunity Act (AGOA).

In January 2008, the United States and Ghana held their fifth meeting under the auspices of the 1999 United States-Ghana Trade and Investment Framework Agreement. At the meeting, officials from the United States and Ghana explored several common objectives, including cooperation in the World Trade Organization, trade expansion, AGOA implementation, intellectual property protection and enforcement, trade capacity building and technical assistance, and infrastructure issues.

Total two-way trade between Ghana and the United States was valued at \$840 million in 2008. Ghana is the fifth largest sub-Saharan African market for U.S. goods. The leading U.S. exports to Ghana were motor vehicles, machinery, and mineral fuel. U.S. imports from Ghana are primarily oil, cocoa, and timber. In the first 11 months of 2008, imports from Ghana under AGOA, including its GSP provisions, were valued at \$41.7 million, a 38 percent decrease from the corresponding period in 2007. Leading AGOA/GSP imports were petroleum products and apparel.

## **4. Mauritius**

In September 2006, the United States and Mauritius signed a TIFA aimed at strengthening and expanding trade and investment ties between the two countries. The TIFA provides a formal mechanism to address bilateral trade issues and helps enhance trade and investment relations between the United States and Mauritius. The TIFA is encouraging new trade and investment opportunities in both countries by establishing a cooperative forum for implementing specific strategies to enhance the United States-Mauritius trade and investment relationship. The second TIFA Council meeting was held on April 28, 2008, in Washington, DC. The TIFA Council reviewed an extensive work plan that the United States and Mauritius are jointly undertaking in order to implement the TIFA, including a wide-range of programs and activities to support, facilitate, and ensure progress in strengthening the U.S.-Mauritian trade and investment relationship. It charted the way forward for future work under the TIFA and explored common objectives, including cooperation in the World Trade Organization, implementation of AGOA, export diversification, trade and investment promotion, and economic development. The United States and Mauritius are also exploring the possibility of negotiating a bilateral investment treaty.

Total two-way trade between Mauritius and the United States was valued at \$233 million in 2008. The leading U.S. exports to Mauritius are wheat, diamonds, and silicon. U.S. imports from Mauritius are primarily apparel, diamonds, and fish. In the first 11 months of 2008, U.S. imports from Mauritius under AGOA, including its GSP provisions, were valued at \$94 million, a 17 percent decrease from the corresponding period in 2007.

## **5. Nigeria**

In April 2008, the United States-Nigeria TIFA working group met to advance the ongoing work program to reduce trade barriers and diversify trade. Among the topics discussed were market access, implementation of AGOA, intellectual property protection and enforcement, commercial issues, trade capacity building and technical assistance, infrastructure, and investment issues. On trade issues, Nigeria discussed efforts underway to reduce tariffs and convert existing import bans to tariff-based structures. Nigeria also described measures adopted to improve transparency and procedures for temporary import licenses for oil service equipment. In the area of intellectual property rights, the two sides agreed to develop an action plan to enhance cooperation in a number of areas, including improving enforcement against piracy and counterfeiting. In October 2008, Nigeria took significant steps towards implementing trade reforms long urged by the United States, including removal of import bans and tariff-rate reductions.

Nigeria is the United States' largest trading partner in sub-Saharan Africa, largely due to the high level of petroleum imports from Nigeria. Nigeria is currently the fifth largest provider of crude oil and petroleum to the United States. Total two-way trade was valued at \$45 billion in 2008. The leading U.S. exports to Nigeria were machinery, wheat and motor vehicles. U.S. imports from Nigeria were primarily oil, but there was notable growth in several non-oil sectors, including cocoa and rubber. Nigerian exports to the United States under AGOA, including its GSP provisions, were valued at \$33.8 billion in the first 11 months of 2008, a 25 percent increase over the corresponding period in 2007. The United States was the largest foreign investor in Nigeria in 2008.

## **6. Rwanda**

In February 2008, President Bush and Rwandan President Kagame signed the United States-Rwanda Bilateral Investment Treaty (BIT), which will enter into force following ratification by the United States Senate and approval by the Rwandan Parliament. The BIT will provide legal protections for U.S. and

Rwandan investors that underscore the two countries' shared commitment to open investment and trade policies. The negotiations toward the BIT were launched in 2007 as one outcome of the consultations under the 2006 United States-Rwanda TIFA. The most recent U.S.-Rwanda TIFA Council meeting was held in Washington, D.C. in October 2007. The next meeting is scheduled to take place in Rwanda in the first half of 2009. Among the topics to be discussed are recent trends in two-way trade, implementation of AGOA, the WTO Doha negotiations, trade capacity building activities, and infrastructure issues.

Total two-way trade between Rwanda and the United States was valued at \$34 million in 2008. The leading U.S. exports to Rwanda are vegetable fats and oils, data processing equipment, and medical equipment. U.S. imports from Rwanda include coffee, tungsten ores and concentrates, and vegetable extracts. In the first 11 months of 2008, U.S. imports from Rwanda under AGOA, including its GSP provisions, were valued at \$1.1 million, a 7.3 percent decrease from the corresponding period in 2007.

## **7. South Africa**

The United States and South Africa enjoy a broad and mutually beneficial trade and investment relationship. U.S.-South African engagement on trade and investment issues takes place both bilaterally and via U.S. discussions and negotiations with the Southern African Customs Union (SACU), of which South Africa is a member. See Chapter III, Section 8 for more information on the U.S.-SACU relationship.

Two-way U.S.-South African trade was \$16.7 billion in 2008. South Africa is the largest and most diversified supplier of non-fuel products eligible under AGOA. In 2008, U.S. imports from South Africa under AGOA and related GSP provisions were valued at \$3.5 billion, up 89 percent from the corresponding period in 2007, and included transportation equipment, minerals and metals, agricultural products, chemicals, textiles, apparel, and footwear. South Africa is currently the top single-country market in sub-Saharan Africa for U.S. exports. In 2008, U.S. exports to South Africa totaled \$6.5 billion, a 17 percent increase over 2007. Leading U.S. exports to South Africa include motor vehicles, tractors, machinery, aircraft, medical equipment, and wheat.

South Africa continues to play an important role in the WTO Doha negotiations. South Africa is a member of the Cairns Group of nations (with a strong interest in agricultural liberalization) and the G-20 coalition of advanced developing countries. It is also a member of the so-called "NAMA-11" group of countries, which has opposed negotiating proposals that call for South Africa and other large developing countries to reduce tariffs on industrial and consumer goods. South Africa and the United States continue to consult closely on issues related to the Doha negotiations despite differences on certain issues.

The United States is the second-largest source of foreign investment in South Africa. An estimated 600 U.S. companies (including subsidiaries, joint ventures, local partners, agents, franchises, and representative offices) do business in South Africa.

As of the end of 2008, South Africa maintained antidumping duties on four U.S. products: chicken meat portions, L-lysine HCL, suspension polyvinyl chloride (PVC), and acetaminophenol. U.S. exporters of chicken parts argue that the antidumping measures against their products should be discontinued, consistent with a September 2007 ruling by South Africa's Supreme Court of Appeal concerning the calculation of the deadline for initiating a sunset review of antidumping measures. South Africa has indicated that the antidumping measure on suspension PVC, which is over six years old, will be terminated.

In November 2008, the joint U.S. export sales marketing arm of U.S. soda ash producers agreed to pay a fine and withdraw, as a joint entity, from the South African market as part of a settlement with South Africa's Competition Commission of a longstanding complaint that the U.S. entity operated as a price-fixing cartel with respect to export sales to South Africa. The settlement stated that U.S. producers will be free to make export sales to South Africa on an independent basis.

U.S. companies generally support the objectives of South Africa's Black Economic Empowerment (BEE) policies, which are intended to promote the economic empowerment of the historically disadvantaged population in South Africa. However, some U.S. companies have expressed concern about the scope and implementation of BEE. For example, there are concerns about BEE policies requiring the transfer of equity to historically disadvantaged individuals. BEE Codes adopted in 2007 allow qualifying multinationals to satisfy equity requirements through other types of empowerment programs (or "equity equivalents"). The standards and procedures for approving "equity equivalents" are still under development.

## **8. Southern African Customs Union**

On July 16, 2008, the United States and the five member countries of the SACU – Botswana, Lesotho, Namibia, South Africa, and Swaziland – signed a Trade, Investment, and Development Cooperative Agreement (TIDCA). The TIDCA establishes a forum for consultative discussions, cooperative work, and possible agreements on a wide range of trade issues, with a special focus on customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and trade and investment promotion. The TIDCA is designed to build on and potentially capture some of the progress made in the FTA negotiations between the United States and SACU, which were suspended in 2006, largely due to divergent views on the scope and level of ambition for an FTA. Ideally, the TIDCA will help to put in place the "building blocks" for a future FTA, which remains a longer-term objective for both the United States and SACU.

The five SACU countries together are the United States' largest non-oil trading partner in sub-Saharan Africa, with two-way trade valued at \$18.2 billion in 2008. The SACU countries are key beneficiaries of AGOA and GSP, with U.S.-AGOA/GSP imports valued at \$4.0 billion in the first 11 months of 2008, an increase of 68 percent over the corresponding period in 2007. SACU countries also comprise the largest U.S. export market in sub-Saharan Africa, with \$6.9 billion in U.S. exports in the 2008, 19 percent more than in 2007.

## **9. West African Economic and Monetary Union (UEMOA)**

Members of the West African Economic and Monetary Union (also known by its French acronym, UEMOA) are Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo. UEMOA member countries are working toward greater regional integration with unified external tariffs. UEMOA has established a common accounting system, periodic reviews of member countries' macroeconomic policies based on convergence criteria, a regional stock exchange, and the legal and regulatory framework for a regional banking system. Seven of the eight UEMOA member countries are eligible for trade benefits under AGOA,<sup>27</sup> and five of these countries – Benin, Burkina Faso, Mali, Niger, and Senegal – are also eligible to receive AGOA's textile and apparel benefits. In November 2008, the United States and UEMOA held the third Trade and Investment Framework Agreement (TIFA) Council meeting, where parties discussed cooperation in the WTO, AGOA implementation, regional integration, commercial issues, trade capacity building, and technical assistance.

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<sup>27</sup> AGOA beneficiaries are Benin, Burkina Faso, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Total two-way trade between UEMOA and the United States was valued at \$2.7 billion in 2008. Togo and Benin formed the largest national markets in UEMOA for U.S. goods, though it seems likely that many of these U.S. exports were ultimately destined for other countries in the region, especially Nigeria. The leading U.S. exports to UEMOA in 2008 were motor vehicles, fuel oil, and electrical machinery. U.S. imports from UEMOA primarily consist of cocoa and petroleum products. In the first 11 months of 2008, U.S. imports from UEMOA under AGOA, including its GSP provisions, were valued at \$27.5 million, a 30 percent increase over the corresponding period in 2007.