

V. TRADE ENFORCEMENT ACTIVITIES

A. Enforcing U.S. Trade Agreements

1. Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements to which the United States is a party and pursues enforcement actions using dispute settlement procedures and applying the full range of U.S. trade laws when appropriate. Vigorous investigation efforts by USTR and relevant agencies, including the U.S. Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. The Interagency Trade Enforcement Center (ITEC), led by USTR in close collaboration with the U.S. Department of Commerce, brings together research, analytical resources, and expertise from across the Federal Government into one organization, significantly enhancing the capability of the United States to investigate foreign trade practices that are potentially unfair or adverse to U.S. commercial interests.

Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. USTR seeks to achieve this goal through a variety of means, including:

- Asserting U.S. rights through the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO bodies and committees charged with monitoring implementation and surveillance of agreements and disciplines;
- Vigorously monitoring and enforcing bilateral and plurilateral agreements;
- Invoking U.S. trade laws in conjunction with bilateral, plurilateral, and WTO mechanisms to promote compliance;
- Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements such as the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and,
- Promoting U.S. interests under free trade agreements (FTAs) through work programs, accelerated tariff reductions, and use or threat of use of dispute settlement mechanisms, including with respect to enforcement of labor laws, including ones that reflect basic widely recognized labor rights, and environmental laws.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the

United States has filed 103 complaints at the WTO, thus far successfully concluding 70 of them by settling 29 disputes favorably and prevailing in 41 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements involving rules on trade in goods, trade in services, and intellectual property protection.

Satisfactory Settlements

By filing disputes, the United States aims to secure benefits for U.S. stakeholders rather than to engage in prolonged litigation. Therefore, whenever possible, the United States has sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings.

The United States has been able to achieve this preferred result in 29 disputes concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value-added tax; China's use of prohibited subsidies for green technologies; China's treatment of foreign financial information suppliers; China's government support tied to promotion of Chinese brand names abroad; China's subsidies for so-called Famous Brands; China's support for wind power equipment; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' automotive regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

Litigation Successes

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 41 cases to date. In 2013, the United States prevailed in a dispute involving China's countervailing and antidumping duties on broiler parts from the United States. In prior years, the United States prevailed in cases involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights; China's measures related to the exportation of raw materials; China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's measures affecting electronic payment services; the EU's subsidies to Airbus for large civil aircraft; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; the EU's tariff treatment of certain information technology products; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; Mexico's

discriminatory soft drink tax; the Philippines' discriminatory taxation of imported distilled spirits; and Turkey's measures affecting the importation of rice.

USTR also works in consultation with other U.S. Government agencies to ensure the most effective use of U.S. trade laws to complement its litigation strategy and to address problems that are outside the scope of the WTO and U.S. free trade agreements. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights protection and enforcement, and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems (*the application of these trade law tools is described in greater detail in Chapter V.B.*).

ITEC

In his 2012 State of the Union Address, President Obama called for increased efforts to investigate unfair trading practices in countries around the world, including creation of a new trade enforcement unit. On February 28, 2012, the President signed Executive Order 13601, establishing the Interagency Trade Enforcement Center, or ITEC. ITEC serves as the primary forum within the Federal Government for executive departments and agencies to coordinate enforcement of international and domestic trade rules. ITEC levels the playing field for American workers and businesses by bringing a more aggressive "whole-of-government" approach to addressing unfair trade practices and foreign trade barriers, and significantly enhances the Government's capabilities to challenge such barriers and practices around the world. ITEC increases the efforts devoted to trade enforcement, as well as leverages existing resources more efficiently across the Administration. Personnel from various contributing Government agencies comprise a deep pool of analytical support for trade enforcement efforts. In a close, collaborative effort, USTR and the U.S. Department of Commerce have assembled ITEC staff from a variety of agencies including the U.S. Departments of Commerce, Agriculture, State, Treasury, and Justice, as well as the International Trade Commission and the intelligence community. The staff bring a diverse set of language skills and expertise including intellectual property rights, subsidy analysis, economics, agriculture, and animal health science.

In 2013, ITEC continued its work to fulfill the President's goals. For example, ITEC played a critical role in providing research and analysis regarding new and ongoing important matters (including China Rare Earths Export Restraints, Argentina Import Licensing, China Export Bases, and India Local Content Requirements for Solar Cells and Solar Panels) for which there were serious concerns regarding U.S. trade interests. In each instance, the United States initiated steps in the WTO to protect U.S. rights. In addition, ITEC is increasing its capabilities including the acquisition of foreign language-proficient trade experts. In coordination with other offices at USTR and other agencies, ITEC has identified priority projects for research and analysis regarding a number of countries and issues. ITEC staff has developed detailed work plans and is researching those projects intensively. These efforts are being supplemented by research activities conducted by other agencies in coordination with ITEC.

2. WTO Dispute Settlement

U.S. enforcement successes in 2013 include prevailing in a dispute in which a WTO panel found that China breached numerous WTO obligations in conducting its investigations and imposing anti-dumping duties and countervailing duties on chicken "broiler product" imports from the United States.

The United States launched three new WTO disputes in 2013, requesting WTO consultations: with Indonesia on its licensing restrictions on imports of horticultural products, animals, and animal products; with India regarding its domestic content requirements for solar cells and solar modules in Phase I of its

National Solar Mission; and with Indonesia covering new measures issued since the filing of the first dispute that continue to restrict imports of horticultural products, animals, and animal products. USTR also requested and completed an arbitration to establish the reasonable period of time for China to comply with the WTO's findings in the dispute concerning China's imposition of antidumping and countervailing duties on imports of U.S. grain-oriented flat-rolled electrical steel.

Other ongoing enforcement actions include a dispute with India regarding its import prohibitions on various U.S. poultry products purportedly to prevent the entry of avian influenza into India; a challenge to China's export restraints, including export duties and export quotas, on rare earths, tungsten, and molybdenum; a challenge to China's imposition of antidumping duties and countervailing duties on imports of certain automobiles from the United States; a dispute with Argentina on import restrictions including the broad use of non-transparent and discretionary import licensing requirements and burdensome trade balancing commitments; ongoing consultations with China regarding its automobile and auto parts "export base" program, which appears to provide extensive prohibited export subsidies; and a compliance proceeding to determine whether the EU has complied with the WTO's recommendations to withdraw subsidies provided to Airbus, a manufacturer of large civil aircraft, or to remove their adverse effects.

The cases described in Chapter II of this report further demonstrate the importance of the WTO dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website: <http://www.ustr.gov/trade-topics/enforcement/overview-dispute-settlement-matters>.

3. Other Monitoring and Enforcement Activities

Subsidies Enforcement

The WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on subsidies. Among its various disciplines, the Subsidies Agreement provides remedies for subsidies that have adverse effects not only in the importing country's market, but also in the subsidizing government's market and in third-country markets. Prior to the Subsidies Agreement coming into effect in 1995, the U.S. countervailing duty law was, in effect, the only practical mechanism for U.S. companies to address subsidized foreign competition. However, the countervailing duty law focuses exclusively on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the multilateral remedies of the Subsidies Agreement provide an alternative tool to address foreign subsidies that affect U.S. businesses in an increasingly global marketplace.

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

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

During 2013, USTR and E&C staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by E&C officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. State Department officials at posts where E&C staff are not present have also handled such inquiries.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a CVD case or a WTO subsidies complaint. The website (<http://eset.trade.gov>) includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. This database is frequently updated, making information on subsidy programs quickly available to the public.

Monitoring and Challenging Foreign Antidumping, Countervailing Duty and Safeguard Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Subsidies Agreement permit WTO Members to impose antidumping (AD) or CVDs to offset injurious dumping or subsidization of products exported from one Member to another. The United States actively monitors, evaluates, and where appropriate, participates in ongoing AD and CVD cases conducted by foreign countries in order to safeguard the interests of U.S. industry and to ensure that Members abide by their WTO obligations in conducting such proceedings.

To this end, the United States works closely with U.S. companies affected by foreign countries' AD and CVD investigations in an effort to help them better understand Members' AD and CVD systems. The United States also advocates on their behalf in connection with ongoing investigations, with the goal of obtaining fair and objective treatment that is consistent with the WTO Agreements. In addition, with regard to CVD cases, the United States provides extensive information in response to questions from foreign governments regarding the subsidy allegations at issue in a particular case.

Further, E&C tracks foreign AD and CVD actions, as well as safeguard actions involving U.S. exporters, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of such actions. Information about foreign trade remedy actions affecting U.S. exports is accessible to the public via E&C's website at <http://enforcement.trade.gov/trcs/index.html>. The stationing of E&C officers to certain overseas locations and close contacts with U.S. Government officers stationed in embassies worldwide has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports. In addition, E&C promotes fair treatment, transparency, and consistency with WTO obligations through technical exchanges and other bilateral engagements.

During the past year, over 100 trade remedy actions involving exports from the United States were closely monitored, notable examples of which include: (Antidumping) China's separate investigations of coated bleached folding board, solar-grade polysilicon, and cellulose pulp; India's investigations of solar cells; the European Union's investigation of bioethanol; Morocco's investigation of polyvinyl chloride; South Africa's expiry review of chicken products; (Countervailing Duty) the European Union's investigation of bioethanol; China's investigation of solar-grade polysilicon; Peru's investigation of cotton; (Safeguards) Chile's separate investigations of maize and frozen pork; India's investigation of seamless pipes and tubes; Russia's investigation of combine harvesters; Taiwan's investigation of high and low density polyethylene; and Ukraine's investigation of passenger cars.

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

4. Monitoring Foreign Standards-related Measures and SPS Barriers

In July 2009, Ambassador Ron Kirk announced on behalf of the Obama Administration its intention to make enforcement of trade agreements a centerpiece of U.S. trade policy. As one step in response to that commitment, the Administration has deployed resources more effectively to identify and confront unnecessary or unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as technical regulations, standards, and conformity assessment procedures (standards-related measures) that restrict U.S. exports of safe, high quality products. SPS measures, technical regulations, and standards serve a vital role in safeguarding countries and their people, including by protecting lives, health, safety, and the environment. Conformity assessment procedures are normal, legitimate day-to-day activities that contribute, *inter alia*, to increasing confidence between trading partners by ensuring that products traded internationally comply with underlying standards and technical requirements. However, it is important that SPS and standards-related measures do not act as discriminatory or otherwise unwarranted restrictions on market access for U.S. exports. For this reason, U.S. trade agreements provide that, although countries may adopt SPS and standards-related measures to meet legitimate objectives such as the protection of health and safety as well as the environment, the measures they adopt in pursuit of such objectives must not act as unnecessary obstacles to trade. Greater engagement with U.S. trading partners and increased monitoring of their practices can help ensure that U.S. trading partners are complying with their obligations. This helps facilitate trade in safe, high quality U.S. products.

As part of this intensified effort to identify and confront such barriers, in March 2010 USTR published two new reports, the Report on Technical Barriers to Trade (TBT) and the Report on Sanitary and Phytosanitary Measures. Both of these reports serve as tools to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports and thereby support efforts to gain market access for American farmers, ranchers, and businesses. USTR published the fourth TBT and SPS annual reports in April 2013. These annual reports are based on assessments from other U.S. Government agencies, including from commercial, agricultural, and foreign service officers stationed abroad, and submissions from industry and other interested stakeholders.

These reports also describe the actions that the United States has taken to address the specific trade concerns identified through these efforts, as well as ongoing processes for monitoring SPS and standards-related actions that affect trade. USTR's activities in the WTO SPS Committee and the WTO TBT

Committee are at the forefront of these efforts (*for additional information, see Chapter II.E.3 and Chapter II.E.8.*). USTR also engages on these issues through, *inter alia*, mechanisms established by free trade agreements, such as NAFTA, and through other regional and multilateral organizations, such as APEC and the OECD.

USTR will issue new, up-to-date TBT and SPS Reports in 2014 to continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during 2013, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made. These updates and the actions highlighted therein will be based in part on the input USTR receives from stakeholders. In October 2013, USTR issued a *Federal Register* Notice requesting producers, growers, industry, and other members of the public to submit views on SPS and standards-related measures that act as significant barriers to U.S. exports.

B. U.S. Trade Laws

1. Section 301

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

Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government act, policy, or practice that may be burdening or restricting U.S. commerce and take appropriate action. USTR also may self-initiate an investigation.

In each investigation, USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires USTR to use the dispute settlement procedures that are available under that agreement. Section 304 of the Trade Act requires USTR to determine whether the acts, policies, or practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, USTR must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, USTR must determine whether action is appropriate and if so, what action to take.

Actions that USTR may take under Section 301 include to: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or USTR considers

that the country fails to implement a WTO dispute panel recommendation, USTR must determine what further action to take under Section 301.

Developments during 2013

During 2013, USTR self-initiated an investigation of acts, policies, and practices of the government of Ukraine with respect to intellectual property rights. As described below, there also were developments in 2013 relating to a previously initiated Section 301 investigation.

Ukraine – Intellectual Property Rights

The May 1, 2013, Special 301 Report identified Ukraine as a priority foreign country due to Ukraine's denial of adequate and effective protection of intellectual property rights and its denial of fair and equitable market access to persons that rely on intellectual property protection (*see Chapter V.B.2 for a further discussion*). Pursuant to the Special 301 designation and to section 302(b)(2) of the Trade Act, on May 30, 2013, the Trade Representative initiated a Section 301 investigation of the acts, policies, and practices of the government of Ukraine that resulted in the identification of Ukraine as a priority foreign country. Simultaneously, USTR also proposed a determination that those acts, policies, and practices are actionable under section 301(b) of the Trade Act.

The investigation covers three categories of acts, policies, and practices with regard to intellectual property rights. The first category involves Ukraine's administration of its system of collecting societies, which are the entities responsible for collecting and distributing royalties to U.S. and other rights holders. The second category involves the use by Ukrainian government agencies of unlicensed software. The third category involves Ukraine's failure to implement an effective and systemic means to combat widespread online infringement of copyright and related rights.

In the notice of initiation, USTR invited written comments on the issues in the investigation and provided notice of a public hearing. The hearing was held on September 9, 2013.

On November 25, 2013, the Trade Representative determined pursuant to Section 304(a)(3)(B) of the Trade Act that the investigation involves complex or complicated issues that require additional time, and that the investigation would be extended by three months.

European Union – Measures Concerning Meat and Meat Products (Hormones)

A directive of the European Communities (EC or European Union (EU)) prohibits the import into the EU of animals and meat from animals to which certain hormones have been administered (the "hormone ban"). This measure has the effect of banning most imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EU's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but it failed to do so. Accordingly, in May 1999, the United States requested authorization from the Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT 1994. The EC did not contest that it had failed to comply with its WTO obligations, but it objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was \$116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the EC

and its Member States of tariff concessions and related obligations under the GATT 1994 covering trade up to \$116.8 million per year. In a notice published in the *Federal Register* in July 1999, USTR announced that the United States was exercising this authorization by using authority under Section 301 to impose 100 percent *ad valorem* duties on a list of certain products of certain EC Member States.

In February 2005, a WTO panel was established to consider the EC's claims that it had brought its hormone ban into compliance with the EC's WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. The WTO panel concluded its work in 2008, and the panel report was appealed to the WTO Appellate Body. In October 2008, the Appellate Body confirmed that the July 1999 DSB authorization to the United States to suspend the application of tariff concessions and related obligations remained in effect.

In January 2009, USTR decided to modify the action taken in July 1999 by: (1) removing some products from the list of products subject to 100 percent *ad valorem* duties since July 1999; (2) imposing 100 percent *ad valorem* duties on some new products from certain EC member States; (3) modifying the coverage with respect to particular EC member States; and (4) raising the level of duties on one of the products that was being maintained on the product list. The trade value of the products subject to the modified action continued not to exceed the \$116.8 million per year level authorized by the WTO in July 1999. The effective date of the modifications was to be March 23, 2009.

In March 2009, USTR decided to delay the effective date of the additional duties (items two through four above) imposed under the January 2009 modifications in order to allow additional time for reaching an agreement with the EC that would provide benefits to the U.S. beef industry. The effective date of the removal of duties under the January modifications remained March 23, 2009. Accordingly, subsequent to March 23, 2009, the additional duties put in place in July 1999 remained in place on a reduced list of products.

In May 2009, the United States and the EC announced the signing of a Memorandum of Understanding (MOU) in the EC-Beef Hormones dispute. Under the first phase of the MOU, which concluded in August 2012, the EC was obligated to open a new beef tariff-rate quota (TRQ) for beef not produced with certain growth-promoting hormones in the amount of 20,000 metric tons at zero rate of duty. The United States in turn was obligated not to increase additional duties above those in effect as of March 23, 2009. The MOU provides for a possible second phase in which the EU would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all additional duties imposed in connection with the Beef Hormones dispute.

On August 3, 2012, the United States and the EU, by mutual agreement, entered into the second phase of the MOU. USTR met the phase 2 obligations of the United States by terminating the remaining additional duties in May 2011, in advance of the phase 2 start date. As provided in the MOU, the EU in turn expanded the TRQ for beef produced without certain growth promoting hormones.

Under the MOU, phase 2 originally was to last for a period of one year. In August 2013, USTR announced that the United States and the EU planned to extend phase 2 for an additional two years, or until August 2015. In October 2013, the United States and the EU formally amended the MOU to reflect the extension of phase 2.

The United States continues to have an authorization from the WTO DSB to suspend concessions on EU products. USTR will continue to monitor EU implementation of the MOU and other developments affecting market access for U.S. beef products. If EU implementation and other developments do not proceed as contemplated, USTR will consider additional actions under Section 301 of the Trade Act.

2. Special 301

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994), USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as “Priority Foreign Countries,” unless those countries are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

In addition, USTR has created a Special 301 “Priority Watch List” and “Watch List.” Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List receive increased attention in bilateral discussions with the United States concerning problem areas.

Additionally, under Section 306 of the Trade Act of 1974, USTR monitors whether U.S. trading partners are in compliance with bilateral intellectual property agreements with the United States that are the basis for resolving investigations under Section 301. USTR may take action if a country fails to satisfactorily implement such an agreement.

The Special 301 list not only indicates those trading partners whose intellectual property protection and enforcement regimes most concern the United States, but also alerts firms considering trade or investment relationships with such countries that their IPR may not be adequately protected.

2013 Special 301 Review Results

On May 1, 2013, the United States Trade Representative announced the results of the 2013 Special 301 annual review. The 2013 Special 301 Report reflects the Obama Administration’s resolve to encourage and help maintain effective IPR protection and enforcement worldwide. The Report is the result of robust stakeholder input and interagency consultation. USTR requested written submissions from the public through a notice published in the *Federal Register* on December 31, 2012. The 2013 review yielded 41 comments from interested parties. The submissions received by USTR were made available to the public online at www.regulations.gov, docket number USTR-2012-0022. On February 20, 2013, USTR chaired a public hearing at which interested persons testified before the interagency Special 301 subcommittee. The hearing included testimony from 13 witnesses, including representatives from industry, non-governmental organizations, and foreign governments. A transcript of the hearing was posted at <http://www.ustr.gov>.

The 2013 Special 301 review process examined IPR protection and enforcement in 95 trading partners. Following extensive research and analysis, USTR listed 41 trading partners below as follows:

- Priority Foreign Country: Ukraine.
- Priority Watch List: Algeria, Argentina, Chile, China, India, Indonesia, Pakistan, Russia, Thailand, Venezuela.

- Watch List: Barbados, Belarus, Bolivia, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Israel, Italy, Jamaica, Kuwait, Lebanon, Mexico, Paraguay, Peru, Philippines, Romania, Tajikistan, Trinidad and Tobago, Turkey, Turkmenistan, Uzbekistan, Vietnam.

The most notable outcome of the 2013 review was the designation of Ukraine as a Priority Foreign Country (PFC). This marks the first time in eleven years – since Ukraine’s first designation as PFC - that a country has been named a PFC. The PFC designation is reserved for countries with the most egregious IPR-related acts, policies, and practices with the greatest adverse impact on relevant U.S. products, and those that are not entering into good faith negotiations or making significant progress in negotiations to provide adequate and effective IPR protection. The 2013 Special 301 review found Ukraine distinct from other trading partners both in its persistent failure to meet its commitments to improve IPR protection including commitments made in an Action Plan negotiated with the United States in 2010, and in the degree of deterioration in IPR protection, enforcement, and market access for persons relying on IPR in Ukraine. Ukraine’s actions and inactions are causing significant damage to U.S. IPR-intensive industries in Ukraine’s market and in other markets as well. On May 30, 2013, USTR initiated an investigation under Section 301 of the Trade Act of 1974 based on the grounds identified in the Special 301 Report as the basis for Ukraine’s designation as a PFC (*see Chapter V.B.1. for further information on this Section 301 investigation*).

When appropriate, USTR may conduct an Out-of-Cycle Review (OCR) to encourage progress on IPR issues of concern. OCRs provide an opportunity for heightened engagement with trading partners and others to address and remedy such issues. In the case of a country-specific OCR, successful resolution of identified IPR issues of concern can lead to a change in a trading partner’s status on the Special 301 list outside of the typical time frame for the annual Special 301 Report. In some cases, USTR calls for the OCR; in others, the trading partner governments can request an OCR based on projections for improvements in IPR protection and enforcement. Although Spain is not listed in the 2013 Special 301 Report, USTR determined that an OCR focused on whether Spain has met certain specific benchmarks related to tackling copyright piracy on the Internet would be appropriate. USTR also announced that it would conduct an OCR of El Salvador, which remained unlisted in 2013, to monitor progress on IPR protection and enforcement, in particular with respect to the implementation of new legislation on pharmaceuticals and with respect to enforcement efforts, among other concerns. Both reviews are ongoing; USTR expects to announce their results prior to the conclusion of the 2014 Special 301 review period.

USTR also conducts an OCR focused on online and physical notorious markets. Notorious Markets are physical or online marketplaces that have been the subject of enforcement action or that may merit further investigation for possible IPR infringements. USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin to publish the Notorious Markets List separately from the Special 301 Report, as an “Out-of-Cycle Review of Notorious Markets,” in order to increase public awareness and guide related enforcement efforts. The results of the 2013 Notorious Markets OCR were published in early 2014 and highlighted positive developments since the issuance of the previous Notorious Markets Review in December 2012. USTR noted that in 2013 several online markets closed or saw their business models disrupted as a result of enforcement efforts. For example, Rapidshare.com’s popularity declined significantly after a Czech Republic court found RapidShare.com liable for illegal distribution of a Czech director’s movies, a verdict that was upheld on appeal, and Canada-based IsoHunt.com, one of the largest BitTorrent indexes in the world, shut down as the result of a court case in the United States. In some instances, in an effort to legitimize their overall business, companies made the decision to close down problematic aspects of their operations, as China’s Xunlei.com did with its multi-platform site GouGou.com; others cooperated with authorities to address

unauthorized conduct on the site, as in the case of Warez-bb.org. Notwithstanding the progress made in 2013, several markets continued to operate despite legal rulings or enforcement actions against them. In Ukraine, the website Ex.ua, which offered unauthorized downloading and streaming of various content, was shut down on January 31, 2012, by criminal law enforcement authorities but was back online by February 2, 2013, and remains operational. Several additional online and physical markets based in Ukraine, India, China, and elsewhere were added to the Notorious Markets List as a result of the 2013 review.

3. Section 1377 Review of Telecommunications Agreements

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

The 2013 Section 1377 Review focused on a range of concerns, including: local content restrictions, access to networks of major suppliers of telecommunications services, increases in international call termination rates, particularly in Pakistan, and a variety of issues affecting the telecommunications equipment trade in Brazil, China, India, and Indonesia.

4. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the U.S. Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at “less than fair value”) and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, “by reason of” those imports. The antidumping law’s provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, the Trade and Competitiveness Act of 1988, and the 1994 Uruguay Round Agreements Act.

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

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a “reasonable indication” of material injury or threat of material injury to a domestic industry, or material retardation of an industry’s establishment, “by reason of” the allegedly dumped imports. If this preliminary injury determination by the USITC is negative, the investigation is terminated and no duties are imposed; if it is affirmative, Commerce will make preliminary and final determinations concerning the allegedly dumped sales into the U.S. market. If Commerce’s preliminary determination is affirmative, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries and require importers to post a bond or cash deposit equal to the estimated weighted-average dumping margin.

If Commerce’s final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC

determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the dumped imports, an antidumping order is issued and CBP collects antidumping duties on imported goods. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded or the bonds posted are released.

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

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

The United States initiated 38 antidumping investigations in 2013 and imposed 7 antidumping orders.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930, as amended by subsequent legislation including the Uruguay Round Agreements Act. As with the antidumping law, the USITC and the U.S. Department of Commerce (Commerce) jointly administer the CVD law, and U.S. Customs and Border Protection (CBP) collects and enforces CVD orders on imported goods.

The CVD law's purpose is to offset certain foreign government subsidies that benefit imports into the United States. CVD procedures under Title VII are very similar to antidumping procedures, and CVD determinations by Commerce and the USITC are subject to the same system of judicial review as antidumping determinations. Commerce normally initiates investigations based upon a petition submitted by a U.S. industry or an entity filing on its behalf. The USITC is responsible for investigating material injury issues. The USITC makes a preliminary finding as to whether there is a reasonable indication of material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise, Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination. If the USITC's final determination is affirmative, Commerce will issue a CVD order. CBP collects CVDs on imported goods.

The United States initiated 19 CVD investigations and imposed 4 new CVD orders in 2013.

6. Other Import Practices

Section 337

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

The United States International Trade Commission (USITC) conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the USITC. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. A limited exclusion order covers only certain imports from particular named sources, namely some or all of the parties who are respondents in the proceeding. A general exclusion order, on the other hand, covers certain products from all sources. Cease and desist orders are generally directed to entities maintaining inventories of infringing goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

In cases in which the USITC finds a violation of Section 337, it must decide whether certain public interest factors nevertheless preclude the issuance of a remedial order. The four public interest considerations are the order's effect on public health and welfare, on competitive conditions in the U.S. economy, on the production of similar or directly competitive U.S. products, and on U.S. consumers. If the USITC issues a remedial order, it transmits the order, determination, and supporting documentation to the President for policy review. In July 2005, President Bush assigned these policy review functions, which are set out in Section 337(j)(1)(B), Section 337(j)(2), and Section 337(j)(4) of the Tariff Act of 1930, to the USTR. The USTR conducts these reviews in consultation with other agencies. Importation of the subject goods may continue during this review process if the importer pays a bond set by the USITC. If the President (or the USTR, exercising the functions assigned by the President) does not disapprove the USITC's action within 60 days, the USITC's order becomes final. If the President or the USTR disapproves or formally approves an order before the end of the 60-day review period, the order is nullified, or becomes final, as the case may be, on the date the President or the USTR notifies the USITC. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit, with possible appeal to the U.S. Supreme Court.

The USITC is also authorized to issue temporary exclusion or cease and desist orders before it completes an investigation if it determines that there is reason to believe there has been a violation of Section 337.

During calendar year 2013, the USITC instituted 43 new Section 337 investigations and two enforcement proceedings. The USITC also issued three general exclusion orders, four limited exclusion orders, and 30 cease and desist orders covering imports, as follows: *Certain Electric Fireplaces, Components Thereof, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same*, 337-TA-791/826 (consolidated) (limited exclusion order); *Certain Electronic Digital Media Devices and Components Thereof*, 337-TA-796 (limited exclusion order and two cease and desist orders); *Certain LED Photographic Lighting Devices and Components Thereof*, 337-TA-804 (general exclusion order); *Certain Digital Photo Frames and Image Display Devices and Components Thereof*, 337-TA-807 (limited exclusion order and five cease and desist orders); *Certain Toner Cartridges and Components Thereof*, 337-TA-829 (general exclusion order and 16 cease and desist orders); *Certain Kinesiotherapy Devices and Components Thereof*, 337-TA-823 (general exclusion order and seven cease and desist orders); and *Certain Ink Application Devices and Components Thereof and Methods of Using Same*, 337-TA-832 (limited exclusion order). All but one of these orders (337-TA-794) became final after policy review.

On October 8, 2013, in allowing the Commission's determination in *Certain Electronic Digital Media Devices and Components Thereof*, Investigation Number 337-TA-796, to become final, U.S. Trade Representative Froman issued a statement regarding the clarity of the USITC's exclusion orders and the procedures followed by U.S. Customs and Border Protection in the interpretation and enforcement of

those orders. The statement noted that the Office of the Intellectual Property Enforcement Coordinator (IPEC) was conducting an interagency review aimed at strengthening the procedures and practices used during the enforcement of USITC exclusion orders, that USTR and other agencies were working with IPEC in this review, and that Ambassador Froman “look[ed] forward to receiving recommendations to address these issues on a systemic basis.”²⁸

While the USITC also issued a limited exclusion order and cease and desist order in Investigation Number 337-TA-794, *Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers*, on August 3, 2013 U.S. Trade Representative Froman took the rare action of disapproving the USITC’s determination, thus making the orders null and void. In his letter to the USITC Chairman notifying the USITC of the disapproval, U.S. Trade Representative Froman noted that the devices that were the subject of the Commission’s determination incorporated technical standards that had been developed through voluntary consensus standards set by a standards developing organization, and that a Policy Statement issued by the U.S. Department of Justice and the U.S. Patent and Trademark Office²⁹ had “express[ed] substantial concerns, which I strongly share, about the potential harms that can result from owners of standards-essential patents (SEPs) who have made a voluntary commitment to offer to license SEPs on terms that are fair, reasonable, and non-discriminatory (FRAND), gaining undue leverage and engaging in ‘patent hold-up’, *i.e.*, asserting the patent to exclude an implementer of the standard from a market to obtain a higher price for use of the patent than would have been possible before the standard was set, when alternative technologies could have been chosen.” The letter indicated that “whether public interest considerations counsel against a particular exclusion order depends on the specific circumstances at issue,” and that the disapproval in this case was based on “various policy considerations discussed [in the letter] as they relate to the effect on competitive conditions in the U.S. economy and the effect on U.S. consumers.” The letter underscored that “[l]icensing SEPs on FRAND terms is an important element of the Administration’s policy of promoting innovation and economic progress and reflects the positive linkages between patent rights and standards setting.”³⁰

Section 201

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

For an industry to obtain relief under Section 201, the USITC must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide

²⁸ The statement is available at <http://www.ustr.gov/about-us/press-office/press-releases/2013/October/Froman-decision-USITC-investigation>.

²⁹ U.S. Department of Justice and U.S. Patent and Trademark Office, Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary FRAND Commitments (2013), available at <http://www.justice.gov/atr/public/guidelines/290994.pdf>.

³⁰ The full text of the letter is available at <http://www.ustr.gov/about-us/press-office/press-releases/2013/august/froman-decision-regarding>.

relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994 – the so-called “escape clause” – and the WTO Agreement on Safeguards.

As of January 1, 2014, the United States had no measures in place under Section 201. The United States did not impose any Section 201 measures during 2013, and did not commence any safeguard investigations.

Section 421

The terms of China’s accession to the WTO included a unique China-specific safeguard mechanism that applied to all industrial and agricultural goods. The mechanism allowed a WTO Member to limit increasing imports from China that disrupt or threaten to disrupt its market if China does not agree to take action to remedy or prevent the disruption or threatened disruption.

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

On September 9, 2009, President Obama issued a determination imposing additional duties on U.S. imports of passenger vehicle and light truck tires from China. It was the first and only safeguard action taken by the United States under section 421. The safeguard action remained in place for its full three years. During that time, the United States successfully defended the action in the WTO, a decision that was affirmed by the WTO Appellate Body, the only safeguard measure so affirmed in the 19 year history of WTO dispute settlement.

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

The safeguard mechanism and the related trade diversion provision in China’s WTO accession package were available until December 11, 2013. With the lapse of that WTO provision, the China-specific safeguard mechanism under section 421 of U.S. domestic law expired as well.

7. Trade Adjustment Assistance

Overview and Assistance for Workers

The Trade Adjustment Assistance (TAA) for Workers program is authorized under Title II of the Trade Act of 1974, as amended, and provides assistance to workers who have been adversely affected by foreign trade. The TAA program offers trade-affected workers important opportunities to retrain and retool for the 21st century economy in order to obtain quality employment and a middle class standard of living.

The TAA program offers the following services to eligible workers: training; weekly income support to enable participation in training; out-of-area job search and relocation allowances; employment and case management services; and wage insurance for some older workers. In FY 2013, \$756,353,000 was available to carry out the program. For a worker to be eligible to apply for TAA, the worker must be part of a group of workers that is the subject of a petition filed with the U.S. Department of Labor (DOL). Three workers of a company, a company official, a union or other duly authorized representative, or the American Job Center operator or partner may file a petition with DOL. In response to the filing, DOL conducts an investigation to determine whether foreign trade, that is an increase in imports or shifts in production or services to foreign countries, was an important cause of the workers' job loss or threat of job loss. If DOL determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the firm to apply for TAA, DOL will issue a certification.

The TAA program is administered through agreements between DOL and states. Once covered by a certification, individual workers apply for benefits and services through the American Job Center network. American Job Centers can be located on the Internet at <http://www.servicelocator.org>, <http://www.jobcenter.usa.gov>, or by calling 1-877-US2-JOBS. Most benefits and services have separate eligibility criteria that individuals must meet in addition to group eligibility such as previous work history with the employer and exhaustion of unemployment insurance as part of the criteria for income support, and a reasonable expectation of employment following training as part of the criteria for approving a training program.

In FY 2013, DOL received 1,509 petition filings, issued 1,027 certifications of petitions, and an estimated 104,500 workers were eligible for TAA benefits; compared to 1,460 petition filings, 1,138 certifications of petitions, and an estimated 81,695 workers eligible in FY 2012.

Trade Adjustment Assistance for Farmers

Through the Trade Adjustment Assistance (TAA) for Farmers Program, the U.S. Department of Agriculture (USDA) provides training and cash benefits to eligible producers of raw agricultural commodities and fishermen whose operations have been hurt by import competition. The program provides training specifically tailored to the needs of farmers and fishermen, enabling them to compete more effectively with producers of similar imported products. The training is intended to offer domestic producers an opportunity to improve their production, consider different marketing opportunities, and evaluate alternative enterprises.

Program benefits include an orientation workshop and a minimum of 12 hours of online or in-person training on the development of business plans. Eligible producers, who complete an approved initial and long-term business plan subsequent to the training, are entitled to receive cash payments to implement the plans. All producers must complete the program within 36 months from the date their respective petition is approved.

The TAA for Farmers Program was reauthorized and modified on February 17, 2009, by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). In addition to reauthorizing the program, this legislation provided it with \$90 million per year in funding for Fiscal Years (FYs) 2009-2010, and \$22.5 million in funding for the first quarter of FY 2011. The Program officially expired on February 12, 2011. Approved FY 2009-2011 applicants were nonetheless permitted to continue receiving training and payments through September 2013.

On October 12, 2011, the U.S. Congress passed the Trade Adjustment Assistance Extension Act of 2011, which reauthorized the TAA for Farmers Program through the first quarter of FY 2014. However, the U.S. Congress has not appropriated funding for new participants for FY 2012, FY 2013, or FY 2014. As

a result, in FY 2012, FY 2013, and the first quarter of FY 2014, USDA did not accept any new petitions or applications for benefits.

Assistance for Firms and Industries

The U.S. Economic Development Administration's (EDA) Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized by chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. § 2341 et seq.) (Trade Act). Public Law 93-618, as amended, provides for trade adjustment assistance for firms and industries (19 USC §§2341-2355; 2391). Section 233 of Public Law 112-40 authorizes the TAAF Program through December 31, 2014.

The TAAF Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment to become more competitive in the global marketplace. To be certified for the program, a firm must show that an increase in imports of like or directly competitive articles contributed importantly to the decline in sales or production and to the separation or threat of separation of a significant portion of the firm's workers. The Secretary of the U.S. Commerce Department is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the U.S. Department of Commerce's Economic Development Administration (EDA). The U.S. Economic Development Administration's regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed via EDA's Internet website at http://eda.gov/pdf/EDAs_regs-13_CFR_Chapter_III.pdf

In Fiscal Year (FY) 2013, EDA awarded a total of \$15,450,000 in TAAF Program funds to its national network of 11 Trade Adjustment Assistance Centers, each of which is assigned a different geographic service area. During FY 2013, EDA certified 105 petitions for eligibility and approved 114 adjustment proposals.

Additional information on the TAAF Program (including eligibility criteria and application process) is available at <http://www.eda.gov/programs.htm>.

8. United States Preference Programs

Overview

The United States has a number of programs designed to encourage economic development in lower income countries by offering non-reciprocal reduced duty and preferential duty-free U.S. market access to imports from countries covered by these programs. Individual countries may be covered by more than one preferential market access program. In such countries, exporters may choose among programs when seeking preferential access to the U.S. market. U.S. imports benefiting from preferential access under these programs totaled an estimated \$45.7 billion during January-November 2013, down about 27 percent from the same period in 2012. This compares to an overall 0.8 percent decrease in total U.S. goods imports for consumption from the world over the same period. The decrease was largely due to a 77 percent decline in U.S. imports under the Andean Trade Preference Act (ATPA) because the ATPA expired on July 31, 2013, and as such there were no imports after that date.

As a share of total U.S. goods imports for consumption, imports under non-reciprocal preference programs decreased from 3.0 percent in the first 11 months of 2012 to 2.2 percent in the first 11 months of 2013. Again, the decrease would appear to be attributable largely to the decline in ATPA imports. Each program's respective share of total U.S. preferential imports in the first 11 months of 2013 was as follows: (AGOA, excluding GSP), 52 percent; GSP, 38 percent; Andean Trade Preference Act (ATPA), 6

percent; and Caribbean Basin Initiative (CBI) and Caribbean Basin Trade and Partnership Act (CBTPA); 2 percent. Trade under each program (AGOA, GSP, ATPA and CBI/CBTPA) decreased in 2013, attributable in part to significant declines in oil imports under AGOA and changes in the status of beneficiary countries under ATPA and CBI/CBTPA. See the sections below for more information on developments related to specific preference programs.

Generalized System of Preferences

History and Purposes

The U.S. Generalized System of Preferences (GSP) program was established under the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.). Congress has extended the program 12 times, most recently, in October 2011. Authorization for the program expired on July 31, 2013. The Obama Administration supports congressional action to extend the GSP program.

The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for a wide range of products from designated beneficiary countries and territories. Duty-free treatment under the GSP program is not available for products that the President determines to be import-sensitive or that the statute excludes from the program. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and an important means of sustaining momentum for their economic reform and liberalization. The GSP program also helps to lower the cost of imported goods for U.S. businesses and consumers.

Beneficiaries

As of January 1, 2014, there were 123 designated GSP beneficiary developing countries (BDCs) and territories, including 43 countries and territories that are “least-developed” beneficiary developing countries (LDBDCs), eligible for a broader range of duty-free benefits.

There was one change to the list of GSP beneficiaries in 2013. A Presidential Proclamation of July 2, 2013 announced the suspension of Bangladesh from GSP eligibility, effective September 3, 2013, based on that country’s failure to meet the statutory GSP eligibility requirement of taking steps to afford internationally recognized worker rights to workers in the country. In addition, on April 16, 2013, USTR initiated reviews of the Union of Burma and the Lao People’s Democratic Republic for possible designation as beneficiary developing countries. A public hearing on the eligibility of these two countries for GSP was held on June 4, 2013, and the two countries remained under review at year’s end.

Pursuant to presidential proclamations, one country – St. Kitts and Nevis – and two territories – Gibraltar and Turks and Caicos – were removed from GSP eligibility as of January 1, 2014, because their respective gross national incomes per capita exceeded statutory thresholds.

Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) take steps to afford workers internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. U.S. industry has noted that a country’s participation in the GSP program helps to promote a business and investment environment that benefits U.S. investors as well as the beneficiary countries.

Eligible Products

When the GSP program expired on July 31, 2013, approximately 5,000 products were eligible for duty-free treatment under GSP, with nearly 1,500 products reserved for LDBDCs only. The list of GSP-eligible products from all beneficiaries includes most dutiable manufactures and semi-manufactures; selected agricultural and fishery products; and many types of chemicals, minerals, and building materials that are not otherwise duty-free. The GSP statute precludes certain import-sensitive articles from receiving GSP treatment, including most non-silk textiles and apparel; watches; most footwear, handbags, and luggage; and some gloves and leather products. The products that receive preferential market access only when imported from LDBDCs include petroleum and certain chemicals, plastics, animal and plant products, prepared foods, beverages, rum, and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are among the textile products eligible for GSP treatment. Currently, the United States has agreements providing for certification and GSP eligibility of certain handmade, folkloric products with the following BDCs: Afghanistan, Botswana, Cambodia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Timor-Leste, Tunisia, Turkey, and Uruguay.

*Program Results*³¹

- **Value of Trade Entering the United States under the GSP program:** The value of U.S. imports claimed under the GSP program in the first seven months of 2013 was approximately \$11.1 billion, a 6.6 percent decrease compared to the same period in 2012. By comparison, total U.S. imports from GSP beneficiary countries decreased by 9.8 percent, by value, over the same period.³² The decrease in trade under GSP in 2013 may be attributable in part to the exclusion of certain products from countries that have met competitive need limitations as well as the suspension of benefits for Argentina in May 2012.

Top U.S. imports under the GSP program in the first seven months of 2013 (at the four-digit HTSUS level), by trade value, were motor vehicle parts, ferroalloys, new pneumatic rubber tires, crude petroleum oils and oils from bituminous minerals, jewelry of precious metal, corn maize, worked monumental or building stone and articles thereof, certain wires and cables, air conditioning machines, and electric motors and generators.

In 2013 (through July), based on trade value, the top five GSP BDC suppliers were, in order, India, Thailand, Brazil, Indonesia, and Turkey. Ten of the top 50 GSP BDCs in the first seven months of 2013 were LDBDCs. In order of GSP trade value, these were Angola, Cambodia, Bangladesh³³, Zambia, Malawi, Solomon Islands, Nepal, Ethiopia, Madagascar, and Uganda.

- **The GSP Program's Contribution to Economic Development in Developing Nations:** The GSP program helps countries diversify and expand their exports, an important development goal. The 2013 data on exports to the United States indicate that some beneficiaries have made progress in diversifying and expanding their exports to the United States under the GSP program. Among the countries with significant increases in GSP trade in 2013 were the Republic of Congo, Zambia,

³¹ Import data presented in this section are derived from the U.S. International Trade Commission's Dataweb and are based on the seven months (January-July) prior to the lapse in Congressional authorization of the GSP program effective July 31, 2013. The U.S. International Trade Commission continues to collect data on GSP import claims while the program is without authorization in the event that the program is renewed with retroactive effect.

³² Based on GSP-eligible countries as of July 1, 2013.

³³ The President suspended Bangladesh from GSP eligibility effective September 3, 2013.

Angola, Jamaica, and Pakistan. Diversification of exports under GSP also enhances the productive capacity and competitiveness of beneficiary countries with respect to their exports to markets other than the United States.

- Efforts to promote wider distribution of the use of GSP benefits among beneficiaries: As directed by the U.S. Congress, the Administration has sought to broaden the use of the GSP program's benefits among beneficiary countries. In 2013, USTR carried out GSP outreach activities for several countries, including Afghanistan, Pakistan, Kosovo, Georgia, and Turkey. For additional details and multiple-language GSP guides and country-specific analyses, go to "GSP in Use – Country Specific Information" under "Generalized System of Preferences" on the USTR website at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun>.
- Benefits to the U.S. Economy: The GSP program helps not only beneficiary developing countries but also U.S. businesses and families. The program is a significant source of imports and products for U.S. businesses, including small and medium sized companies. The GSP program also helps reduce costs for U.S. manufacturers that utilize inputs that are not produced or available domestically thereby helping to improve the competitiveness of U.S. manufacturing.

Annual Reviews

An important element of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility. Detailed information on elements of each Annual Review is available on the "Annual Reviews" pages on the USTR website at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0>.

Conclusion of the 2012 GSP Annual Review

The results of the 2012 GSP Annual Review of product petitions were announced in a Presidential Proclamation dated June 27, 2013. Among other determinations, one petition for a competitive need limitation (CNL) waiver was granted, one product was excluded for Brazil based on CNLs, and the CNL waiver for a product from Indonesia was revoked. The Proclamation and a complete list of the results are available on the "GSP: 2012 Annual Review" page on the USTR website at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/current-review>.

As part of the GSP 2012 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) also considered several petitions to withdraw or limit a country's GSP benefits for not meeting certain GSP eligibility criteria. On February 22, 2013, USTR announced that it had closed, with no change to GSP benefits, the country practice case regarding intellectual property rights (IPR) protection in Lebanon in view of the progress made by the government of Lebanon in addressing IPR issues. On July 8, 2013, USTR announced that it had accepted for formal review a country practice petition on Ecuador, submitted as part of the 2012 Annual Review, regarding the recognition and enforcement of arbitral awards. USTR deferred a decision on the acceptance of a country practice petition on Russia regarding expropriation. Other outstanding country practice petitions that remained under review at year's end include petitions on Indonesia, Russia, Ukraine, and Uzbekistan with respect to IPR protection and petitions on Fiji, Georgia, Iraq, Niger, the Philippines, and Uzbekistan with respect to worker rights or child labor concerns. For a complete list of the country practice petitions that remained under review as of December 2013, go to <http://www.ustr.gov/sites/default/files/Active%20and%20Pending%20Country%20Practices%20Reviews.pdf>.

2013 GSP Annual Review

On July 29, 2013, a notice was published in the *Federal Register* launching the 2013 GSP Annual Review. That notice is available at <http://www.regulations.gov#!documentDetail;D=USTR-2013-0024-0001>. Petitions submitted in response to that notice may be found at the same web site. As long as the GSP program remains without authorization, USTR will take no formal action with respect to the petitions submitted for the 2013 Annual Review.

The African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA), enacted in 2000, is a key element of U.S. economic policy in Africa, providing eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2014, 40 sub-Saharan African countries were eligible for AGOA benefits. For more information see <http://www.ustr.gov/about-us/press-office/press-releases/2013/December/Mali-Eligible-for-Trade-Benefits-Under-AGOA>.

AGOA requires the President to determine annually which of the sub-Saharan African countries listed in the Act are eligible to receive benefits under the Act. These decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has met the eligibility criteria, or whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, among others, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized worker rights. AGOA also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of international human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, and prospective beneficiary governments. Through the AGOA eligibility review process, the annual AGOA Forum meeting (*see below*), and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries. In December 2013, the annual AGOA country eligibility review resulted in President Obama designating 40 countries as eligible for AGOA benefits beginning January 1, 2014. The Republic of Mali, which in 2013 installed a democratically elected president following a coup that occurred in that country in 2012, was added to the list of AGOA-eligible countries.

The United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as the “AGOA Forum,” is an annual ministerial-level meeting with AGOA-eligible countries. In August 2013, the AGOA Forum was held in Addis Ababa, Ethiopia. U.S. Trade Representative Ambassador Michael Froman led the U.S. delegation which included senior officials from more than a dozen U.S. Government agencies. Ambassador Froman and other U.S. delegates met with numerous African trade ministers, leaders of African regional economic organizations, and representatives of the African and American private sectors and civil society to discuss issues and strategies for advancing trade, investment, and economic development in Africa as well as ways to increase two-way U.S.-African trade. During his remarks to Forum delegates, Ambassador Froman reaffirmed the Administration’s support for renewal of AGOA when it expires in 2015. To that end, he announced the launch of a comprehensive review of the AGOA program within the Executive Branch. Findings from this review will help develop recommendations to improve AGOA achieving its objectives and for the United States, and will inform administration discussions with the U.S. Congress regarding reauthorization of the program.

Andean Trade Preference Act

The Andean Trade Preference Act (ATPA) was enacted in 1991 to promote broad-based economic development, diversify exports, and combat drug trafficking by providing sustainable economic alternatives to drug-crop production in Bolivia, Colombia, Ecuador, and Peru. In 2002, the Andean Trade Promotion and Drug Eradication Act (ATPDEA) amended the ATPA to provide duty-free treatment for a number of products previously excluded under the original ATPA program. The most significant expansion of benefits was in the apparel sector.

On June 20, 2013, USTR issued the Seventh Report to the Congress on the Operation of the Andean Trade Preference Act as Amended. Benefits under the ATPA expired on July 31, 2013, and as such there are no current eligible beneficiary countries. Bolivia's eligibility for benefits was suspended effective December 2008. Further, in accordance with the statute, since the President did not determine that Bolivia satisfied the program's eligibility requirements in his June 30, 2009 report to the U.S. Congress, no benefits remain in effect under the program for Bolivia. In December 2010 the U.S. Congress removed Peru's beneficiary status under the ATPA effective January 1, 2011 since Peru had become a free trade agreement partner of the United States. Effective May 15, 2012, with the entry into force of the U.S.-Colombia Trade Promotion Agreement, Colombia was no longer a beneficiary country under the ATPA program. Ecuador ceased receiving benefits when the program expired on July 31, 2013.

Caribbean Basin Initiative

During 2013, the Caribbean Basin Economic Recovery Act (CBERA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA) trade programs, collectively known as the CBI, remained a vital element in the United States' economic relations with its neighbors in Central America and the Caribbean. The CBI provides beneficiary countries and territories with duty-free access to the U.S. market. Current beneficiary countries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. At the end of 2013, the President designated Curaçao, a successor political entity of the Netherlands Antilles, as an eligible beneficiary of CBERA and CBTPA.

On the date the CAFTA-DR entered into force for Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic, each country ceased to be designated as a CBERA and CBTPA beneficiary. Similarly, Panama ceased to be designated as a CBERA and CBTPA beneficiary when the United States-Panama Trade Promotion Agreement entered into force on October 31, 2012.

Since its inception, the CBI has helped beneficiaries diversify their exports. In conjunction with economic reform and trade liberalization by beneficiary countries, the trade benefits of CBI have contributed to their economic growth. In December 2013, USTR submitted its biannual report to the U.S. Congress on the operation of the CBERA. The report can be found on the USTR website, <http://www.ustr.gov>.