

**TRADE ENFORCEMENT:  
Issues, Remedies, and Roles**

**Pursuant to S. Rept. 113-181**

**INTERAGENCY TRADE  
ENFORCEMENT CENTER**

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## Introduction

The Committee on Appropriations, United States Senate, 113<sup>th</sup> Congress, requested the development of a publicly available document describing types of trade violations and available remedies, and the roles different agencies play in the trade enforcement process, including the Interagency Trade Enforcement Center (“ITEC”).

This document provides an overview of the U.S. government (“USG”) agencies and offices that participate in the trade enforcement process, either directly or indirectly, and the remedies available to address potential or proven trade violations.

For purposes of this report, the term “trade violations” is defined to encompass measures generated by foreign governments as well as certain actions by private entities that impact U.S. businesses, workers, farmers or ranchers. “Trade violations” includes issues or concerns relevant to U.S. trade and investment agreements (World Trade Organization (“WTO”), free trade agreements (“FTAs”), bilateral investment treaties (“BITs”), *etc.*), alleged dumping and subsidization that injure U.S. industries, and other trade related activities that could include criminal violations (*e.g.*, customs fraud, theft of intellectual property (“IP”), and goods that do not meet U.S. sanitary and phytosanitary standards (“SPS”), or consumer safety standards).

The United States has a broad array of actions that it can take to address possible trade violations. Such actions include not only formal remedies such as imposition of antidumping duties (“AD”) and countervailing duties (“CVD”), execution of law enforcement activities, or conduct of formal dispute settlement under the WTO or FTAs, but also remedies that avoid the need to resort to formal processes. The United States engages in a variety of such activities, including negotiation, utilization of WTO and FTA Committees, bilateral dialogues and other engagement, public outreach, trade capacity building and other activities to address concerns of trade violations by its trading partners.

## AGENCIES AND TRADE ENFORCEMENT RESPONSIBILITIES

### I. Office of the U.S. Trade Representative (“USTR”)

USTR was established by Congress in 1962 as part of the Executive Office of the President (“EOP”) and “is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries.”<sup>1</sup> USTR has lead responsibility and serves as chief representative in any international trade negotiation, including on any matter under the WTO, and reports and is responsible to the President and Congress for the administration of the trade agreements program.<sup>2</sup> “USTR monitors and secures U.S. trade rights and benefits under international agreements using a variety of tools including consultations, negotiations, and litigation in formal dispute settlement proceedings.”<sup>3</sup> These international agreements include the agreements of the WTO as well as BITs, FTAs, and trade and investment framework agreements.<sup>4</sup> As explained below, the vast majority of enforcement of U.S. rights under international trade agreements is undertaken by USTR - working with agencies such as the Departments of Commerce, Labor, Agriculture, State, Justice and Treasury – through bilateral, plurilateral, and multilateral engagement, outside the context of formal dispute settlement. Once the United States seeks to resolve a matter through dispute settlement, USTR typically takes action under the dispute settlement procedures of the WTO. USTR also defends the United States when another WTO Member challenges actions by the United States that allegedly breach WTO rules.

While a specific USTR office may take the lead with regard to a particular type of engagement, all relevant USTR offices work closely together in the types of engagement discussed below, typically with support from and in coordination with other relevant agencies of the Executive Branch and in close consultation with Congress and a broad range of private sector interests. In addition, USTR is responsible for integrating the skills and expertise of other agencies of the Executive Branch into USTR’s statutory responsibility to identify and negotiate resolution of problems under international trade agreements, including invoking formal dispute resolution under U.S. trade agreements when necessary. Many of the activities carried out by the various federal agencies discussed in this report are in support of USTR’s mandate to resolve issues through bilateral or other negotiations or participation in international bodies or WTO Committees.

- Types of trade violations: Failure by trading partners to adhere to international trade agreements to which the United States is a party.
- Available remedies/actions:
  - ❖ Dispute Settlement: USTR’s Office of the General Counsel litigates disputes that the United States files with the WTO, under an FTA involving the United States or involving another international trade agreement. In doing so, the Office of the

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<sup>1</sup> <https://ustr.gov/about-us/about-ustr>; 19 U.S.C. §2171.

<sup>2</sup> 19 U.S.C. §2171(c)(1).

<sup>3</sup> <https://ustr.gov/issue-areas/enforcement>

<sup>4</sup> <https://ustr.gov/trade-agreements>

General Counsel calls upon the expertise and advice of various offices within USTR and the interagency.

- ❖ **Negotiation:** USTR offices play a lead role in engaging U.S. trading partners to negotiate solutions to trade barriers affecting U.S. companies' ability to export and to invest abroad. USTR leads or co-leads the U.S. delegations in various dialogues that seek to resolve trade violations, such as the U.S. – China Joint Commission on Commerce and Trade (“JCCT”) and the U.S. – India Trade Policy Forum.<sup>5</sup>
- ❖ **Multilateral Engagement:** Appropriate USTR offices engage with various WTO committees, such as those established for subsidies, anti-dumping and other trade remedies, import licensing procedures, standards, and technical barriers to trade (“TBTs”), and under procedures established pursuant to the FTA’s to address issues with FTA trading partners.
- **Role played in the trade enforcement process with other agencies:** See descriptions below.

## **WTO Dispute Settlement**

USTR’s Monitoring and Enforcement unit of the Office of the General Counsel works with other USTR offices, agencies in the Executive Branch, Congress, and the private sector to identify, analyze, and seek to resolve trade barriers that may be inconsistent with U.S. trade agreements or having an adverse effect on U.S. interests under those agreements. Such trade barriers include major systemic or commercial problems for the United States. A critical part of a strategy to resolve a trade barrier is to consider when and how dispute settlement proceedings may be utilized. When other forms of problem resolution, including direct negotiation, have proven inadequate, dispute resolution may offer the potential for eliminating a substantial barrier to U.S. exports or otherwise improving the ability of the United States to compete effectively in foreign markets.

Once a trade barrier or potential dispute is identified, Monitoring and Enforcement deploys the attorney resources necessary to develop the legal basis for a dispute and seeks other resources, whether from other USTR offices, other agencies, or stakeholders, to assist in gathering facts and considering policy and legal aspects of a dispute. USTR, in consultation with others, devises and deploys an appropriate strategy to seek the prompt and effective removal of the foreign trade barrier. This strategy may include bilateral or plurilateral meetings, enhanced engagement and publicity, and dispute settlement. Prior to filing the case, the United States typically seeks to resolve the matter one last time with the foreign trading partner. On a number of occasions, this strategy has proven to be successful, thus resolving a problem without having to invoke formal dispute settlement, and delivering a result more speedily for American workers and businesses.

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<sup>5</sup> For more information on the full range of USTR’s work to resolve trade violations, *see* its Annual Report at <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2015/2015-Trade-Policy-Agenda-and-2014-Annual-Report>.

When resolution is not possible through such engagement, USTR moves forward with dispute settlement under the WTO. The formal dispute settlement process of the WTO (and other trade agreements) has proven to be an effective tool in combating barriers to U.S. exports and addressing other trade agreement violations. Even after formally initiating dispute settlement procedures, the United States has on a number of occasions, including, for example, with a wind turbines dispute involving China, resolved the case through a negotiated resolution following consultations.

- To ensure the enforcement of U.S. rights under the WTO for the benefit of workers, businesses, farmers, ranchers, service providers and others, the United States has been the world's most frequent user of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 108 complaints with the WTO, thus far successfully concluding 75 of them by settling 29 disputes favorably and prevailing in 46 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.
- The United States has also been able to engage with its trading partners to conclude 29 disputes without the need for WTO panel proceedings. These settlements have improved trade conditions for a wide variety of products and industries. For example, the settlements have addressed the protection and enforcement of patents and other intellectual property, impermissible restrictions on market access, restrictive investment measures, discriminatory tax measures, prohibited export and other subsidies, and WTO-inconsistent customs and tariff regimes.

As the challenges posed by foreign government practices have increased, the difficulty and complexity of legal challenges under the WTO has increased substantially. To address these challenges successfully, USTR has deepened and expanded its investigative efforts to ensure that U.S. trade policy tools continue to deliver results commensurate with the problems faced by American workers and businesses.

- *Non-transparent forms of foreign protectionism.* Increasingly, the barriers faced by American exporters are non-transparent and potentially even undetectable to U.S. businesses. Consequently, USTR has deployed language-capable attorneys to investigate and develop legal cases. For example, the development of disputes with respect to the non-transparent trade policies of China requires a significant commitment of time and resources to conduct Chinese-language research, translate uncovered legal measures, and analyze the WTO consistency of such measures. In one such instance, USTR was able to uncover, through intensive investigation, a Chinese measure that discriminated against U.S. products that had not been notified by China to the WTO. Similarly, enhanced investigative resources have been essential in identifying and taking steps to seek elimination of Argentina's sweeping import restrictions through a non-automatic import licensing system and trade-balancing requirements. Uncovering proof of these

restrictions similarly required aggressive investigation to identify the informal, non-transparent mechanisms being used.

- *Strategic Use of Resources.* USTR utilizes and deploys its limited resources in a focused, strategic manner. One way in which USTR does this is by focusing on large, strategic markets, such as China, India and Indonesia. The rate of cases against China has substantially increased over the last seven years. Another dimension of the strategic use of resources is to target more difficult and consequential policies, such as China's use of export restraints to drive up input costs for U.S. businesses in sectors such as steel, aluminum and chemical manufacturing, as well as hybrid car batteries and energy efficient lighting.

### **Free Trade Agreement Dispute Settlement**

USTR represents the United States in all matters relating to enforcement of U.S. rights pursuant to FTAs, including dispute settlement.

As in the case of enforcement under the WTO agreements, USTR utilizes a full set of tools, from direct and informal bilateral engagement to more formal means, such as formal bilateral or plurilateral engagement or action in committees, culminating when necessary in dispute resolution to enforce U.S. bilateral and regional trade agreements. Through the dispute settlement mechanisms included in the United States' FTAs, the United States is able to press trading partners to fulfill their international trade obligations. USTR also defends the United States in those instances in which another government institutes dispute settlement proceedings challenging a U.S. measure.

- As an example of how enforcement actions work under U.S. FTAs, USTR has brought an enforcement action under the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) to ensure that Guatemala adequately enforces its labor laws. In this ongoing dispute, *CAFTA – DR: In the Matter of Guatemala – Issues Relating to the Obligations under Article 16.2.1(a) of the CAFTA-DR*, the United States has utilized formal dispute settlement under the CAFTA-DR to bring a claim that Guatemala is failing to meet its obligations under Article 16.2.1(a) with respect to the effective enforcement of Guatemalan labor laws directly related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work.

### **USTR Non-Dispute Monitoring and Enforcement**

Consistent with the President's trade policy agenda and with the primary goal of creating and sustaining well-paying American jobs, USTR closely monitors and vigorously enforces U.S. rights under trade agreements to ensure that American workers, farmers, ranchers, producers, service providers, and businesses receive the full benefit of the economic opportunities the United States has negotiated. USTR utilizes its authorities under U.S. law to monitor and enforce trade agreement obligations utilizing all of the statutory and non-statutory tools at its disposal to engage U.S. trading partners to implement trade agreement obligations. This effort is

implemented by all offices within USTR in coordination with each other, the Office of Monitoring and Enforcement, and, frequently, with support from and the engagement of other relevant agencies in the Executive Branch. Offices also engage frequently with industry and stakeholders to discuss existing and emerging trade barriers and other areas of concern of non-compliance with trade obligations.

USTR's participation in WTO committee procedures and discussions provides a key means for resolving trade issues and ensuring more transparent trade policy regimes for the benefit of American farmers, workers and businesses. USTR works in WTO committees and councils to secure U.S. trade interests and guard against efforts by other WTO Members to shift the balance of rights and obligations under WTO agreements as those agreements are applied by Members. For example, in the TBT and SPS Committees of the WTO, the United States works to resolve dozens of market access barriers affecting U.S. exporters of agricultural and industrial products each year.

USTR's efforts to fully monitor and enforce U.S. rights under FTAs and other trade agreements, which includes attending robust discussions at FTA committee meetings and other fora established under these trade agreements, also ensures that the United States does not lose export and other commercial opportunities negotiated for them in these agreements.

- Subsidies Enforcement: 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.
  - ❖ 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 in WTO dispute settlement relating to subsidies disciplines; and leads the interagency team on matters of policy.
  - ❖ Counter-notifications. A key tool available to the United States under the WTO is the ability to counter-notify another country's subsidies when that country has not lived up to its WTO obligations and has failed to notify its own subsidy programs. The purpose of this tool is to promote greater transparency in the WTO system and to discourage countries from seeking to hide subsidy programs. In the last five years, the United States has deployed this tool on several occasions. In late-2011, the United States submitted a counter-notification to the WTO Subsidies Committee of 50 measures maintained by India, along with a separate counter-notification of 200 measures in China. Subsequently, in October 2014, the United States submitted an additional counter-notification of an additional 110 Chinese measures. Most recently, in October 2015, the United States submitted a fourth counter-notification to the WTO that included an additional 64 measures maintained by China. These steps, which USTR took in collaboration with the Departments of Agriculture and Commerce have helped to expose potentially WTO-inconsistent subsidies being maintained by foreign governments.

- 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 AD duties 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.
  - ❖ Of note are three successful challenges involving China: *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*, *China – Autos AD / CVD Determinations*, and *China – Broiler Products AD / CVD Determinations*.
  
- Section 301 of the Trade Act of 1974:
  - ❖ Section 301 provides USTR with tools to address foreign unfair practices affecting U.S. exports of goods or services. Following appropriate findings (including, where applicable, findings by the WTO), USTR may take actions under Section 301 including suspending trade agreement concessions and imposing duties or other import restrictions. In recent years, USTR has used authority under Section 301 to exercise a WTO authorization to increase duties on products from the European Union (“EU”) as a result of the EU’s failure to comply with WTO rulings in the *Beef Hormones* disputes, and to impose import duties on Canadian lumber in accordance with the dispute settlement provisions of the U.S.-Canada Softwood Lumber Agreement.
  
- Inter-Agency and Public-Private Coordination in the Formulation and Implementation of U.S. Trade Enforcement:
  - ❖ Under the Trade Expansion Act of 1962, Congress established an interagency trade policy mechanism to assist with the implementation of these responsibilities. USTR chairs the interagency trade organization, through the Trade Policy Committee, the Trade Policy Review Group, and the Trade Policy Staff Committee (“TPSC”).<sup>6</sup>
  - ❖ In 1974, Congress established a formal advisory committee system, to ensure that U.S. trade policy adequately reflects U.S. public and private sector interests.
  - ❖ The advisory committee system consists of 28 advisory committees, with a total membership of approximately 700 citizen advisors, representing a broad diversity of interests.
  - ❖ USTR’s Office of Intergovernmental Affairs and Engagement “manages the advisory committee, in cooperation with other agencies, including the

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<sup>6</sup> 19 U.S.C. §§ 1872, 2171; <https://ustr.gov/about-us/interagency-role>

Departments of Agriculture, Commerce, and Labor, and the Environmental Protection Agency.”<sup>7</sup>

- Office of WTO and Multilateral Affairs:
  - ❖ The Office of WTO and Multilateral Affairs engages with trading partners to address a wide variety of issues and concerns through various WTO mechanisms including WTO Trade Policy Reviews and WTO Committees.
  
- Office of Trade Policy and Economics:
  - ❖ The Office of Trade Policy and Economics is responsible for economic analysis (including data) related to the dispute and enforcement process from the dispute initiation, through the panel, appeal, and compliance phases, and the calculation of damage in the arbitration both from violations of trade obligations by trade partners or by the United States. The Office also promotes the removal of trade barriers by managing the GSP program, and implementing programs designed to help trade partners implement their WTO, TIFA, and FTA obligations.
  
- Office of Agricultural Affairs:
  - ❖ The Office of Agricultural Affairs is responsible for all food and agricultural issues arising in negotiation and implementation of trade agreements, and with monitoring related international obligations. The Office also works to remove barriers to U.S. food and agriculture exports.
  
- Office of Environment & Natural Resources:
  - ❖ The Office of Environment and Natural Resources is responsible for developing and implementing environmental policy within the framework of trade negotiations and FTAs. The Office is responsible for monitoring compliance with environmental obligations in FTAs and other trade agreements, and coordinates with other agencies of the Executive Branch in carrying out its functions.
  
- Office of Intellectual Property & Innovation:
  - ❖ The Office of Innovation & Intellectual Property uses bilateral, plurilateral, and multilateral tools to promote the protection and enforcement of intellectual property. The Office administers the annual “Special 301” review of IP protection and enforcement in trading partners around the world, and monitors compliance with existing trade-related innovation and IP obligations.
  
- Office of Labor Affairs:
  - ❖ The Office of Labor Affairs focuses on the adoption and enforcement of internationally recognized labor rights, and monitors compliance with labor obligations in FTAs, working with other agencies of the Executive Branch. The

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<sup>7</sup> <https://ustr.gov/about-us/advisory-committees>

office also evaluates adherence to workers' rights provisions in trade preference programs, including GSP, ATPDEA, AGOA, and CBI.

- Office of Small Business, Market Access & Industrial Competitiveness:
  - ❖ The Office of Small Business, Market Access & Industrial Competitiveness negotiates, monitors and enforces bilateral, regional, plurilateral, and multilateral trade agreements to enhance the competitiveness of the U.S. manufacturing sector. The Office also engages frequently with industry on existing and emerging trade barriers to U.S. exports.
  
- Office of Services & Investment:
  - ❖ The Office of Services & Investment implements and monitors agreements with investment and service commitments to ensure that trade partners fulfill their obligations, including its annual review of compliance with telecommunications trade commitments, under Section 1377 of the 1988 Trade Act. The Office also manages USTR's participation on the Committee on Foreign Investment in the United States.
  
- Office of Textiles:
  - ❖ The Office of Textiles works to open foreign markets to U.S. producers of textile and apparel, and to address U.S. and global market competition issues as well as issues in the implementation of trade agreements such as monitoring and enforcing rules of origin.
  
- Office of African Affairs:
  - ❖ The Office of African Affairs works with our trade partners in sub-Saharan Africa to remove barriers to U.S. trade and investment, and to implement U.S. government initiatives that promote sound trade and investment policies in the region.
  
- Office of China Affairs:
  - ❖ The Office of China Affairs is responsible for engaging with China, Taiwan, Hong Kong, Macao, and Mongolia on trade restrictions and market access issues. The Office also monitors compliance with WTO and other international commitments, and also leads for USTR bilateral discussions on trade issues through the JCCT.
  
- Office of Europe & the Middle East:
  - ❖ The Office of Europe and the Middle East monitors current and emerging trade barriers and trade agreement breaches in the EU, non-EU Europe, Russia and Eurasia, Northern Africa, the Levant and the Persian Gulf, and engages with these regions to improve market access and remove trade and investment-restrictive measures.

- Office of Japan, Korea & APEC Affairs:
  - ❖ The Office of Japan, Korea and APEC Affairs negotiates, implements, and monitors trade and investment commitments related to Japan, Korea, and the Asia-Pacific Economic Cooperation Forum.
  
- Office of South & Central Asian Affairs:
  - ❖ The Office of South & Central Asian Affairs engages with our trade partners in this region to promote market access and remove trade and investment barriers. These efforts include discussing trade issues in the U.S.-India Trade Policy Forum, and negotiating or resolving issues under existing trade and investment framework agreements.
  
- Office of Southeast Asia & the Pacific:
  - ❖ The Office of Southeast Asia and the Pacific is responsible for engaging with the ten countries in ASEAN, individually, and as a group, as well as Australia, New Zealand and the Pacific Islands. It monitors and enforces their implementation of existing trade and investment commitments and negotiates new agreements to enhance U.S. market access and address trade barriers. It also is responsible for negotiation of the Trans-Pacific Partnership and will have a lead role in monitoring and enforcing that agreement.
  
- Office of the Western Hemisphere:
  - ❖ The Office of the Western Hemisphere implements and monitors compliance of trade partners with obligations under six agreements, bilateral agreements with Chile, Colombia, Panama, and Peru, as well as the NAFTA and CAFTA-DR. Canada, Chile, Mexico and Peru have also signed the Trans-Pacific Partnership (“TPP”). The Office also oversees trade preference programs, including the CBI and the Haitian Hemispheric Opportunity through Partnership Encouragement Act.

Authority for USTR’s enforcement activities includes:

- Sections 141 of the Trade Act of 1974 – establishing the duties of the U.S. Trade Representative;
- Sections 301-310 of the Trade Act of 1974 –authority to suspend trade benefits, impose duties or other import restrictions, and monitor foreign compliance;
- Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the URAA – “Special 301” Report on Intellectual Property Rights;
- Section 181 of the Trade Act of 1974, as added by section 303 of the Trade and Tariff Act of 1984, and amended by section 1304 of the Omnibus Trade and Competitiveness

Act of 1988, section 311 of the Uruguay Round Agreements Act (“URAA”), and section 1202 of the Internet Tax Freedom Act – National Trade Estimate Report (“NTE”);

- Section 201 of the Trade Act of 1974, as amended – enforcement under the Safeguards Agreement;
- Section 281 of the URAA – enforcement under the Subsidies Agreement;
- Trade Act of 2002;
- Bipartisan Congressional Trade Priorities and Accountability Act of 2015;
- Trade Facilitation and Trade Enforcement Act of 2015.

## **A. Interagency Trade Enforcement Center (“ITEC”)**

ITEC was established by Executive Order in February 2012. As the Executive Order states, “robust monitoring and enforcement of U.S. rights under international trade agreements, and enforcement of domestic trade laws, are crucial to expanding exports and ensuring U.S. workers, businesses, ranchers, and farmers are able to compete on a level playing field with foreign trade partners.” ITEC was established to “strengthen our capacity to monitor and enforce U.S. trade rights and domestic trade laws, and thereby enhance market access for U.S. exporters.”

ITEC applies a “whole-of-government” approach to monitoring and enforcing Americans’ trade rights around the world, using expertise from across the federal government to assert U.S. trade rights obtained through various international trade agreements. ITEC provides U.S. trade litigators and negotiators with more information, more analysis, and more focused support than was possible prior to its establishment. By creating a forum for executive departments and agencies to “coordinate and augment their efforts to identify and reduce or eliminate foreign trade barriers and unfair foreign trade practices,” ITEC is intended to facilitate and increase the exchange of information among and between agencies.

Located in USTR, ITEC brings together experts from across a variety of executive departments and agencies to coordinate enforcement of U.S. rights under international trade agreements. ITEC helps to ensure that America’s trading partners abide by their obligations, including by maintaining open markets on a non-discriminatory basis, and by following rules-based procedures in a transparent way. ITEC leverages and mobilizes the federal government’s resources and expertise to address unfair foreign trade practices and barriers.

ITEC is led by a Director, designated by and reporting to the U.S. Trade Representative, and a Deputy Director, designated by the Secretary of Commerce and reporting to the Director. ITEC personnel from participating agencies form an expanded team of language-proficient research analysts, subject matter experts, and economic analysts who can help to increase engagement with foreign trade partners at the WTO and in other international fora. Participating agencies have included the Departments of State, Labor, Treasury, Justice, Agriculture, Commerce, and the Office of the Director of National Intelligence, as well as the International Trade Commission and the Small Business Administration.

ITEC staff includes detailees with expertise in economics, law, and international trade. ITEC staff can perform research and analysis of materials in a variety of important languages including Mandarin, Spanish, Portuguese, Korean, Vietnamese, and Bahasa (spoken in Malaysia and Indonesia). This capability decreases reliance on outside parties to identify and research enforcement issues of importance and allows for independent and more in-depth research of issues.

By bringing various expertise under one roof, ITEC can maintain a sustained focus on monitoring and enforcement. Physical proximity of the detailees with USTR's litigators and negotiators means that ITEC can more closely tailor the information and analysis provided to USTR's needs. Proximity also facilitates timely information sharing within USTR and a real time iterative process of investigation and evaluation.

ITEC detailees leverage their efforts because they understand how to access appropriate experts and pools of information at their home agencies for monitoring and enforcement purposes. In addition, when detailees return to their home agencies, they take with them an increased awareness of the obligations of various international agreements and expand the network of government officials sensitive to the concerns of monitoring and enforcement.

- Types of trade violations: Failure by trading partners to adhere to international trade agreements to which the United States is a party.
- Available remedies/actions: ITEC monitors trade developments affecting countries' adherence to international trade obligations; funds translations of relevant foreign laws, regulations, and other measures related to priority monitoring and enforcement activities; researches and develops issues to assist the assessment of potential trade cases by USTR's Office of Monitoring and Enforcement; assists in meetings at which U.S. negotiators seek adherence to existing trade rules; provides analytical support in ongoing WTO and FTA dispute settlement litigation, offensive and defensive, through research and analysis; and researches and evaluates post-dispute compliance actions.
- Role played in the trade enforcement process with other agencies: ITEC brings together experts from various executive departments and agencies to buttress and coordinate support for enforcement of U.S. rights under international trade agreements. By leveraging information and expertise across agencies, ITEC enhances the ability of the United States to enforce the full range of U.S. trade rights. ITEC detailees can leverage their efforts because they understand how to access appropriate experts and pools of information at their home agencies for monitoring and enforcement purposes.

Authority for ITEC's enforcement activities includes:

- E.O. 13601.

## II. U.S. Department of Commerce (“DOC”)

“The mission of the Department is to create the conditions for economic growth and opportunity.”<sup>8</sup> DOC has “general operational responsibility for major nonagricultural international trade functions of the USG, including export development, commercial representation abroad, the administration of the AD/CVD laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.”<sup>9</sup>

### A. International Trade Administration (“ITA”)

ITA’s mission is to “[c]reate prosperity by strengthening the international competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements.”<sup>10</sup>

#### a. ITA/Enforcement and Compliance (“E&C”)

E&C “safeguards and enhances the competitive strength of U.S. industries against unfair trade through the enforcement of U.S. AD and CVD trade laws and ensures compliance with trade agreements negotiated on behalf of U.S. industries.”<sup>11</sup>

#### i. ITA/E&C/ AD/CVD Operations

AD/CVD Operations is responsible for enforcing U.S. AD/CVD laws. “The vast majority of the staff is comprised of international trade analysts who, on a day-to-day basis, conduct AD/CVD investigations and administrative reviews.”<sup>12</sup>

- Types of trade violations: Unfair sales of foreign merchandise in the United States at less than fair value (commonly referred to as “dumping”) by foreign producers/exporters and/or unfair subsidization by foreign governments of their producers/exporters.
- Available remedies/actions: AD/CVD Operations conducts investigations in response to petitions received from domestic producers and/or labor unions and, in affirmative determinations, calculates the amount of dumping and/or subsidization, and instructs U.S. Customs and Border Protection (“CBP”) to collect duties. It also conducts other proceedings, including administrative, new shipper, and changed circumstances reviews, and scope and anti-circumvention inquiries to ensure that the appropriate duties are collected on the dumped and subsidized imports.
- Role played in the trade enforcement process with other agencies: AD/CVD Operations coordinates with the USITC on matters related to AD/CVD investigations

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<sup>8</sup> <https://www.commerce.gov/page/about-commerce>

<sup>9</sup> 19 U.S.C. §2171 Note, Reorganization Plan No. 3.

<sup>10</sup> <http://www.trade.gov/about.asp>

<sup>11</sup> <http://trade.gov/enforcement/>

<sup>12</sup> <http://trade.gov/enforcement/operations/index.asp>

and provides background support for Department of Justice (“DOJ”) litigators in cases before the U.S. Court of International Trade (“CIT”) and the U.S. Court of Appeals for the Federal Circuit (“CAFC”) that relate to AD/CVD cases. AD/CVD Operations also provides technical advice to USTR on WTO dispute settlement litigation. In addition, the Customs Liaison Unit within AD/CVD Operations coordinates with CBP (*see* below) on matters pertaining to the collection of AD/CVD duties and issues of potential fraud and duty evasion associated with AD/CVD proceedings.

Authority for AD/CVD Operation’s enforcement activities includes:

- Title VII of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1671-1677n);
- The legislative history to amendments of the Act, including the Statement of Administrative Action to the URAA, which amended the law to conform with the WTO Antidumping and Subsidies Agreements;
- E&C’s regulations, under 19 C.F.R. §351.

## **ii. ITA/E&C/Policy and Negotiations**

The Policy and Negotiations office leads ITA’s monitoring of foreign government compliance with trade and investment agreements, actively assists U.S. industries and businesses in addressing foreign trade barriers and unfair trade matters, and oversees a variety of programs and policies regarding the enforcement and administration of the AD/CVD laws (“trade remedy laws”).<sup>13</sup>

### **1. Steel Import Monitoring and Analysis (“SIMA”)**

The SIMA system was originally created in conjunction with the 2002 U.S. section 201 steel safeguard action. After termination of the safeguard, the current SIMA system<sup>14</sup> was reconstituted and extended under Census Act authority. The SIMA system consists of an import licensing system and the Steel Import Monitor (*see* below), and is authorized through March 2017.

- Types of trade violations: Injury to the domestic industry caused by a surge in imports, which may be indicative of dumping or subsidization.
- Available remedies/actions: The SIMA system collects data from import licenses on every import of basic steel products and creates an early warning system.<sup>15</sup> SIMA aggregates the statistical information for a weekly, web-based SIMA steel import report (“Steel Import Monitor”), along with other import data, which provides early warning information about these imports six weeks earlier than publicly available trade information.<sup>16</sup> The Steel Import Monitor informs the public earlier than would

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<sup>13</sup> <http://trade.gov/enforcement/policy/index.asp>

<sup>14</sup> <http://enforcement.trade.gov/steel/license/>

<sup>15</sup> Semi-finished, flat, long or pipe and tube.

<sup>16</sup> <http://hq-web03.ita.doc.gov/License/Surge.nsf/HomePage?OpenForm>

otherwise be possible about U.S. import trends of steel products from all countries, as steel is a sector that has historically experienced large non-market driven fluctuations in import levels.

- Role played in the trade enforcement process with other agencies: The SIMA system shares aggregated data for further analysis by others.

All members of the public that import a basic steel mill product into the United States must obtain an automatic steel license from SIMA's website prior to filing import entry summary documentation with CBP.

Authority for SIMA's enforcement activities includes:

- Census Act at 13 U.S.C. §§ 301(a) and 302;
- 19 C.F.R. §360

## 2. Subsidies Enforcement Office (“SEO”)

The SEO was created to provide “an easily accessible one-stop shop that provides user-friendly information on foreign government subsidy practices.”<sup>17</sup> The SEO helps to coordinate “multilateral subsidies enforcement efforts. ... [and] provide businesses with advocacy services, information, and counseling on foreign government subsidy practices.”<sup>18</sup>

- Types of trade violations: Unfair subsidization by foreign governments of their producers/exporters.
- Available remedies/actions: SEO identifies, researches and evaluates potential foreign government subsidy practices by performing in-depth analysis of potential subsidies identified in worldwide business journals, periodicals and various online resources, including foreign government web sites, utilizing numerous legal databases, and cultivating relationships with U.S. industry contacts. Much of SEO's knowledgebase of foreign subsidies programs is collected as a part of AD/CVD Operations' CVD proceedings, details of which can be found in ACCESS, E&C's electronic filing system for AD/CVD law administration<sup>19</sup> or in SEO's online Electronic Subsidies Enforcement Library.<sup>20</sup>
- Role played in the trade enforcement process with other agencies: SEO provides technical expertise to other U.S. agencies in the negotiation of bilateral and multilateral subsidies rules. SEO works with USTR to help identify strategies and opportunities to address problematic foreign subsidies and engage foreign governments on these issues. SEO also works with USTR in responding to foreign

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<sup>17</sup> [http://esl.trade.gov/esel/groups/public/documents/web\\_resources/esel\\_home.hcsp](http://esl.trade.gov/esel/groups/public/documents/web_resources/esel_home.hcsp)

<sup>18</sup> <http://trade.gov/enforcement/policy/index.asp> For a thorough overview of SEO's and USG's subsidies enforcement activities, see *2015 Subsidies Enforcement Annual Report to Congress: Joint Report of the Office of the U.S. Trade Representative and the U.S. Department of Commerce*, available for download at <http://enforcement.trade.gov/esel/reports/seo2015/seo-annual-report-2015.pdf>.

<sup>19</sup> <http://access.trade.gov/login.aspx>

<sup>20</sup> <http://esl.trade.gov>

government requests for information, and defending the interests of U.S. exporters in foreign CVD cases. Overseas E&C officers help SEO to gather, clarify, and confirm the accuracy of information concerning foreign subsidy practices (*see also* SEO's online Electronic Subsidies Enforcement Library).

SEO (alone or as part of a USG team) regularly engages foreign governments bilaterally and multilaterally on subsidies and CVD issues through a variety of fora, including: formal CVD consultations resulting from the filing of a CVD petition under U.S. law; foreign CVD cases involving U.S. exports; multilateral or bilateral negotiations or working groups<sup>21</sup>; the WTO Subsidies Committee, and the WTO Dispute Settlement Mechanism.

SEO (alone or as part of a USG team) also regularly engages with U.S. industries confronted by unfairly subsidized foreign competitors with the goal of identifying and implementing effective and timely solutions. SEO confers with U.S. companies regarding available options, collecting information concerning potential subsidies, analyzing how U.S. commercial interests may be harmed by these measures, and determining the best way to proceed, including potentially filing a CVD petition under U.S. law.

Authority for SEO's enforcement activities includes:

- 19 U.S.C. §3571.

### **3. Office of Trade Agreements Negotiation and Compliance ("TANC")**

TANC is the DOC lead for monitoring trade and investment agreement operation. Where warranted, TANC investigates non-tariff trade barriers caused by foreign government non-compliance, and engages those governments to convince them to voluntarily honor their obligations so the United States does not have to resort to WTO dispute settlement to guarantee its trade rights.<sup>22</sup>

- Types of trade violations: Failure by trading partners to adhere to international trade and investment agreements to which the United States is a party.
- Available remedies/actions: TANC operates the ITA Trade Agreements Compliance Program,<sup>23</sup> which provides a framework for proactive monitoring of trade agreements; a process for identification, investigation, and resolution of trade barriers for companies; and the strategy for conducting outreach to inform stakeholders of efforts and services in this area. When a potential barrier caused by foreign non-compliance with trade agreement obligations is identified, TANC assembles a team of ITA specialists to investigate the problem and develop a strategy to address it. The

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<sup>21</sup> *E.g.*, the Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership ("T-TIP", negotiations ongoing), the JCCT, the WTO Doha Negotiating Agenda.

<sup>22</sup> <http://tcc.export.gov/>

<sup>23</sup> [http://tcc.export.gov/trade\\_agreements\\_compliance/index.asp](http://tcc.export.gov/trade_agreements_compliance/index.asp)

team works with affected companies or industries to establish objectives and to implement agreed upon action plans to ensure that U.S. trade agreement rights are safeguarded. The team, working with other agencies as appropriate, can escalate a trade issue, if necessary, using relevant trade agreements, multilateral/WTO fora, FTA negotiations and other commercial diplomatic means.

- Role played in the trade enforcement process with other agencies: Compliance cases may, if warranted, be referred to USTR for formal dispute settlement action consideration. In addition, TANC produces a monthly memorandum to the interagency on its trade agreements compliance activities.

TANC regularly engages in outreach to stakeholders to raise awareness of its efforts in this area and help identify trade compliance concerns.

Authority for TANC's enforcement activities includes:

- 19 U.S.C. §2171, Note, Reorganization Plan No. 3, Section 2(a)(1979).<sup>24</sup>

#### **4. Trade Remedy Compliance Staff (“TRCS”)**

TRCS uses “monitoring, outreach and advocacy to address potentially unfair application of trade remedies. ... TRCS analyzes the global use of trade remedy measures; alerts U.S. industry of pending foreign trade remedy actions; evaluates foreign countries’ trade remedy laws, policies and practices for consistency with WTO rules; and maintains an extensive network of contacts with U.S. businesses, industry associations and foreign governments.”<sup>25</sup>

- Types of trade violations: Unfair and/or WTO-inconsistent use of trade remedies against the United States and U.S. businesses.
- Available remedies/actions: TRCS provides assistance to U.S. companies facing potential obstacles in accessing export markets due to foreign trade remedy actions, through counseling and providing procedural information. TRCS also, if necessary, assists USTR in addressing such problems at the WTO, by sharing information on measures and by monitoring developments in the foreign country. TRCS routinely monitors all foreign trade remedy actions that affect U.S. exports, including AD and safeguard laws, and provides a regularly-updated listing of such actions on its webpage. *Id.*
- Role played in the trade enforcement process with other agencies: TRCS engages with foreign trade remedy administering authorities, in coordination with USTR and

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<sup>24</sup> “The Secretary of Commerce ... shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.”

<sup>25</sup> <http://enforcement.trade.gov/trcs/>

other agencies, as appropriate, to seek fair and objective treatment, consistent with WTO rules, for U.S. companies subject to trade remedy proceedings.

TRCS consults with U.S. companies subject to foreign trade remedy proceedings to identify any lack of compliance by the foreign authorities, and provides information about foreign trade remedy laws, authorities and practices that might assist in addressing potential compliance problems.

Authority for TRCS' enforcement activities includes:

- 19 U.S.C. §2171, Note, Reorganization Plan No. 3, Section 2(a)(1979).

### **b. ITA/Global Markets (“GM”)**

GM assists and advocates for U.S. businesses in international markets to foster U.S. economic prosperity. Utilizing its network of trade promotion and policy professionals located in over 70 countries and 100 U.S. locations, GM promotes U.S. exports, especially among small and medium-sized enterprises (“SMEs”), advances and protects U.S. commercial interests overseas, and attracts inward investment into the United States.<sup>26</sup> One of GM's major functions is assisting U.S. firms to enter foreign markets, including where countries have non-tariff barriers to trade.

- Types of trade violations: Discriminatory or unnecessarily burdensome or trade-restrictive non-tariff barriers to trade.
- Available remedies/actions: GM assists in identifying trade barriers as well as diplomatic engagement to address them. When a U.S. company encounters trade barriers it can alert GM and work with a cross-ITA team of specialists to formulate an action plan to address the barriers (*see also* TANC, above).
- Role played in the trade enforcement process with other agencies: As part of the ITA Trade Agreements Compliance Program (*see* TANC, above) case team, GM works with affected companies or industries to establish objectives and to implement agreed upon action plans to ensure foreign compliance with U.S. trade agreement rights. If trade issues are escalated, GM attempts to resolve the issues using direct engagement with foreign officials, or through appropriate bilateral fora.

GM interacts with foreign government officials to identify potential barriers and address foreign trade policies that are inconsistent with trade obligations, as well as promote the adoption of pro-growth trade policies in challenging markets. GM also interacts with private sector firms to help make them aware of opportunities and challenges in foreign markets.<sup>27</sup>

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<sup>26</sup> <http://www.trade.gov/markets/>

<sup>27</sup> More specific information can be found in Country Commercial Guides and in publicly available materials regarding GM's vision, mission and objectives, located at <http://www.export.gov/mrktresearch/>

Authority for GM’s enforcement activities includes:

- The Act of February 14, 1903, as amended (15 U.S.C. §1512 *et seq.*);
- Section 2(a) of Reorganization Plan No. 3 of 1979 regarding “general operational responsibilities for major non-agricultural international trade functions of the United States Government,” including “export development,” “commercial representation abroad,” “research and analysis,” and “monitoring compliance with international trade agreements to which the United States is a party”;
- The overseas trade promotion and commercial functions transferred to the Secretary from the Department of State or the Secretary of State by Section 5(b)(1) of Reorganization Plan No. 3 of 1979 and by Section 1-104 of E.O. 12188 of January 2, 1980, as amended;
- The Foreign Service Act of 1980 (22 U.S.C. §3901 *et seq.*) and such laws the exercise of which are authorized to the Secretary under Section 5(b)(2) of Reorganization Plan No. 3 of 1979 and by Section 1-104 of E.O. 12188 of January 2, 1980, as amended;
- The Omnibus Trade and Competitiveness Act of 1988, as amended, at Section 2301 (15 U.S.C. §4721) regarding the United States and Foreign Commercial Service;
- Section 1803 of the International Financial Institutions Act (22 U.S.C. §262s-2) regarding Commercial Service Officers and multilateral development bank procurement;
- E.O. 13534 of March 11, 2010, regarding implementation of the National Export Initiative;
- E.O. 13577 of June 15, 2011, regarding the establishment of the SelectUSA initiative;
- E.O. 13630 of December 6, 2012, regarding establishing an Interagency Task Force on Commercial Advocacy.

### **c. ITA/Industry and Analysis (“I&A”)**

“I&A staff of industry, trade and economic analysts devise and implement international trade, investment, and export promotion strategies that strengthen the global competitiveness of U.S. industries [...] by representing the interests of U.S. industry in trade negotiations, advocating on behalf of industry with foreign governments, publishing research on global opportunities for U.S. industry, and executing export promotion programs.”<sup>28</sup>

Authority for I&A’s enforcement activities includes:

- The Act of February 14, 1903, as amended (15 U.S.C. §1512 *et seq.*);
- Section 2(a) of Reorganization Plan No. 3 of 1979 (19 U.S.C. §2171 Note) regarding “general operational responsibilities for major non-agricultural international trade functions of the United States Government,” including “export development,” “research and analysis,” and “monitoring compliance with international trade agreements to which the United States is a party”.

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<sup>28</sup> <http://trade.gov/industry/>

## **i. I&A/Industry Trade Advisory Committees (“ITACs”)**

As part of the USTR-led trade advisory committee system, DOC and USTR co-administer sixteen ITACs, an ITAC Committee of Chairs, and more than 300-plus trade advisors, who provide detailed policy and technical advice and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers, negotiations of trade agreements, and implementation of existing trade agreements affecting industry sectors; and perform other advisory functions relevant to U.S. trade policy matters.<sup>29</sup> I&A staff serve as Designated Federal Officers for the ITACs and facilitate private sector input in the trade enforcement process.

Authority for ITACs’ enforcement activities includes:

- The Federal Advisory Committee Act, as amended (5 U.S.C. App.) and section 135 of the Trade Act of 1974, as amended (19 U.S.C. §2155).

## **ii. I&A/Textiles, Consumer Goods, and Materials**

### **1. Office of Textiles and Apparel (“OTEXA”)**

#### **a. The Committee for the Implementation of Textile Agreements (“CITA”)**

The Deputy Assistant Secretary for Textiles, Consumer Goods, and Materials is the chair for CITA, an interagency committee established to supervise the implementation of all textile trade agreements,<sup>30</sup> and comprised of representatives from USTR and the Departments of Labor, State, and Treasury.<sup>31</sup> OTEXA provides the staff support for CITA, monitors all textile agreements, and provides economic analysis and statistical data upon which CITA relies in taking action.

- Types of trade violations: Violations of certain provisions of the textile and apparel rules of origin under various FTAs and/or import surges that may trigger the textile and apparel safeguard mechanism.
- Available remedies/actions: Under U.S. FTAs, remedies include, *inter alia*, the imposition of textile safeguard measures (*i.e.* temporary reimposition of tariffs) on textiles and apparel if there is a threat of damage, or actual damage, to the domestic industry due to import surges. OTEXA publishes notices of decisions on enforcement actions by CITA, along with other actions.<sup>32</sup> OTEXA also publishes monthly on its website trade data by country and product and utilization rates of various Tariff Preference Levels under FTAs and preference programs.

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<sup>29</sup> <http://ita.doc.gov/itac/>

<sup>30</sup> *Executive Order 11651 - - Textile trade agreements*, 37 Fed. Reg. 4699 (March 3, 1972).

<sup>31</sup> <http://web.ita.doc.gov/tacgi/eamain.nsf/6e1600e39721316c852570ab0056f719/7fbca89e5cf6d814852573a000632a93?OpenDocument>

<sup>32</sup> [http://web.ita.doc.gov/tacgi/fedregister.nsf/\\$\\$searches?openform](http://web.ita.doc.gov/tacgi/fedregister.nsf/$$searches?openform)

- Role played in the trade enforcement process with other agencies: CITA works with CBP on enforcement activities, wherein, under an FTA or preference program, CBP conducts an investigation and reports to CITA, which decides on the actions to pursue in accordance with its authorities.

Authority for CITA’s enforcement activities includes:

- Presidential Proclamations 7857 (12/20/04 Australia FTA), 8039 (7/27/06, Bahrain FTA), 7987 (2/28/06, CAFTA-DR), 7746 (12/30/03, Chile FTA), 8818 (5/14/12, Colombia FTA), 8783 (3/9/12, Korea FTA), 7971 (12/22/05, Morocco FTA), 8894 (11/5/12, Panama TPA), 8341 (1/16/09, Peru TPA), 7747(12/30/03, Singapore FTA);
- The African Growth and Opportunity Act (“AGOA”) and the Caribbean Basin Trade Partnership Act, E.O.13191 (1/17/01).

### **iii. ITA/Trade Policy and Analysis**

#### **1. Office of Intellectual Property Rights (“OIPR”)**

OIPR “works with U.S. firms to help them protect their intellectual property abroad.”<sup>33</sup>

- Types of trade violations: Misappropriation of trade secrets.
- Available remedies/actions: OIPR leverages existing resources like <www.stopfakes.gov> to provide useful information for the private sector such as general information on the threat of trade secret theft, expanded country specific toolkits with information on how U.S. companies and persons can protect trade secrets in priority markets, developments in the laws and enforcement practices of significant trading partners, and webinars on trade secret theft awareness.
- Role played in the trade enforcement process with other agencies: OIPR partners with the U.S. Patent and Trademark Office and the National Intellectual Property Rights Coordination Center (*see* below) to conduct STOPfakes.gov Road Shows around the country in an effort to increase SMEs’ awareness of intellectual property rights (“IPR”) issues from both a law enforcement and trade perspective.<sup>34</sup>

Authority for OIPR’s enforcement activities includes:

- White House Administration Strategy on Mitigating the Theft of Trade Secrets (Feb. 2013).

#### **B. U.S. Patent and Trademark Office (“USPTO”)**

USPTO is responsible for granting U.S. patents and registering trademarks. USPTO advises on IP policy, protection, and enforcement, and promotes stronger and more effective IP protection

<sup>33</sup> <http://www.stopfakes.gov/us-gov-agencies/oipr>

<sup>34</sup> <http://www.stopfakes.gov/roadshows>

around the world. USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements.<sup>35</sup>

- Types of trade violations: Unfair and/or illegal use of patented IP, trademarks and copyrighted material.
- Available remedies/actions: As part of the Strategy for Targeting Organized Privacy (“STOP”) initiative, a hotline has been established that provides a one-stop shop for businesses to protect their IP at home and abroad. 1-866-999-HALT (4258) gives businesses the information they need to leverage the resources of the USG to lock down and enforce their trademarks, patents, and copyrights overseas, both in individual countries and in multiple countries through international treaties.<sup>36</sup>
- Role played in the trade enforcement process with other agencies: USPTO provides policy advice and technical expertise on IP protection and enforcement to other USG agencies<sup>37</sup> and in connection with the ongoing negotiation of multilateral agreements. USPTO advises USTR on trade policy reviews undertaken at the WTO and on the WTO accession process of several countries. USPTO also provides policy advice in connection with the Special 301 Report review of the IP systems of U.S. trading partners.<sup>38</sup> In addition, USPTO provides an IP Attaché program in cooperation with DOC/ITA/GM, State, and USTR. The attachés serve at U.S. embassies, consulates, and missions throughout the world and work to improve IP systems internationally for the benefit of U.S. stakeholders, by encouraging effective IP protection and enforcement by U.S. trading partners and by assisting U.S. businesses on IP matters including protection, enforcement, use and licensing.<sup>39</sup>

USPTO promotes robust IP regimes bilaterally, especially with the BRIC countries (Brazil, Russia, India, China). USPTO consults with foreign governments on the technical analysis of IPR enforcement laws, legal and judicial regimes, civil and criminal procedures, border measures, and related administrative regulations; and to improve the level of expertise of foreign officials responsible for IPR enforcement and the overall environment for enforcement.<sup>40</sup>

USPTO provides technical assistance to other countries on IPR enforcement. USPTO developed a series of workshops (conducted for customs, police, prosecutors, judges, and IP office officials) in coordination with trading partners to combat trademark counterfeiting and copyright piracy, and on the protection and enforcement of trade secrets. USPTO collaborated with the governments of various U.S. trading partners to provide capacity-building programs in the area of IP protection and enforcement (participants included judges, prosecutors, examiners, and border-enforcement officials, and hailed from various key regions around the globe, including

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<sup>35</sup> <http://www.uspto.gov/about-us>

<sup>36</sup> <http://www.uspto.gov/learning-and-resources/ip-policy/enforcement/strategy-targeting-organized-piracy-stop>

<sup>37</sup> DOC/ITA; USTR; State; DHS/CBP/HSI/ICE; DOJ; USITC; ITEC; U.S. Intellectual Property Enforcement Coordinator (“IPEC”).

<sup>38</sup> See, e.g., USPTO FY14 Performance and Accountability Report (“PAR”).

<sup>39</sup> <http://www.uspto.gov/learning-and-resources/ip-policy/ip-attach-program>

<sup>40</sup> <http://www.uspto.gov/about-us/organizational-offices/office-policy-and-international-affairs>

the Middle East and North Africa, South Asia, Southeast Asia, the Western Hemisphere, Central Asia, and the Transcaucasian region).<sup>41</sup>

USPTO also provides IP educational programs for U.S. and foreign government officials, domestic SMEs, universities, and the public, through the Global Intellectual Property Academy, which also offers webcasts and e-learning capability on all areas of IP protection and enforcement.<sup>42</sup>

Authority for USPTO's enforcement activities includes:

- 35 U.S.C. §§ 2(b)(8) – 2(b)(13).<sup>43</sup>

#### **a. USPTO/Office of Policy and International Affairs (“OPIA”)**

The OPIA “[a]ssists the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in advising the President, through the Secretary of Commerce, and Federal agencies, on domestic and international IP issues as well as on United States treaty obligations.”<sup>44</sup>

- Types of trade violations: Failure to provide adequate or effective IPR protection and enforcement domestically and abroad.
- Available remedies/actions: OPIA formulates domestic and international policy regarding protection and enforcement of IPR; promotes the development of IP systems, nationally and internationally, and advocates improvements in and more effective means of protecting and enforcing IPR of United States nationals in the U.S. and throughout the world; formulates legislative and policy proposals regarding IP, and prepares supporting documentation to carry out the IP legislative and policy proposals; and advises the Under Secretary on the economic implications of policies and programs affecting the United States IP system. *Id.*
- Role played in the trade enforcement process with other agencies: Consults with other agencies on the technical analysis of IPR enforcement laws, legal and judicial regimes, civil and criminal procedures, border measures, and administrative regulations relating to the enforcement of IP laws; supports USTR,<sup>45</sup> the Department of State, and other agencies in international negotiations and consultations, and assists with the drafting, reviewing, and implementation of IP obligations in bilateral and multilateral treaties and trade agreements. *Id.*

Authority for OPIA's enforcement activities includes:

- Trade Act of 1974, Special 301 (19 U.S.C. §2411).

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<sup>41</sup> See PAR.

<sup>42</sup> <http://www.uspto.gov/learning-and-resources/global-intellectual-property-academy>

<sup>43</sup> <https://www.law.cornell.edu/uscode/text/35/2>

<sup>44</sup> <http://www.uspto.gov/about-us/organizational-offices/office-policy-and-international-affairs>

<sup>45</sup> Such as the TRIPS Council, WTO accessions, WTO trade policy reviews, FTAs (*e.g.*, the T-TIP), and the Special 301 report.

### III. U.S. Department of Agriculture (“USDA”)

USDA maintains an active monitoring program and works closely with USTR and a wide range of other trade and regulatory agencies to enforce existing trade agreements. USDA’s overseas offices and Washington-based experts consult frequently with agricultural industry associations to identify threats and opportunities and help establish priorities. USDA uses a toolbox approach to help solve problems and maintain or expand markets. Among its most formidable tools are the disciplines of the WTO and our other trade agreements, but it also uses international standards, and technical exchange and capacity building tools to complement traditional enforcement mechanisms. USDA overseas officers understand the complexity of agricultural trade and are particularly well placed to advocate on behalf of U.S. agriculture, to advise the Ambassador on issues impacting agricultural trade, and to build relationships with foreign agricultural, trade and food safety counterparts.

#### A. USDA/Foreign Agricultural Service (“FAS”)

FAS is USDA’s lead agency in coordinating all agricultural matters with foreign countries.<sup>46</sup> It has expertise in agricultural commodity markets, foreign country practices and policies, and works with agencies across USDA to address technical issues and identify interests of U.S. agriculture. As a Foreign Service Agency, FAS has an extensive network of overseas officers in key agricultural markets and competitor countries that enables it to respond quickly to emerging issues. Its career agricultural officers are supported by local employees with an extensive knowledge of the markets where they serve and they work in partnership with Washington-based experts who are skilled in developing constructive coalitions among stakeholders and U.S. government officials to find creative solutions or even to prevent problems before they have a real trade impact. The Office of Agreements and Scientific Affairs (“OASA”) is the principle office responsible for monitoring and enforcing trade agreements, but works daily to bring the full scope of agency resources to bear on trade issues.

- Types of trade violations: 1) Violations of trade agreements that have an impact on U.S. agricultural exports, and 2) potential violations, differences of interpretation, or development of referenced international standards that are likely to impact U.S. agricultural exports.
- Available remedies/actions: FAS takes an issue-based approach that typically escalates from intelligence gathering to technical consultations to formal bilateral engagement with trading partners under the terms of a trade agreement. This can eventually lead through a full interagency process to formal dispute settlement under the terms of the agreement in question. As a rule, the FAS aims to calibrate its approach as necessary to (re)open the market in an expeditious manner. Tools utilized for the process include but are not limited to:
  - ❖ *Issue identification and intelligence gathering*: Overseas offices and Washington staff maintain close relations with U.S. stakeholders to identify potential problems and understand the underlying policies. These contacts may include overseas

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<sup>46</sup> <http://www.fas.usda.gov/>

importers who have a vested interest in open trade and U.S. exporters who identify market barriers.

- ❖ *Early advocacy:* FAS overseas officers can frequently intervene early at the working level to bring concerns to the attention of foreign officials. This can create opportunities for technical consultation and resolution to avert significant trade disruptions.
- ❖ *WTO Notifications:* FAS actively monitors foreign government notifications to the WTO Committee on Agriculture (“COA”), the WTO Committee on SPS Measures (“SPS Committee”) and the WTO Committee on TBTs (“TBT Committee”). FAS circulates the SPS and agriculture-related TBT notifications electronically to stakeholders and coordinates the USG formal response process. FAS often identifies foreign measures that have not been notified and calls on foreign governments to provide proper notification and opportunity for comment. FAS funds translations of relevant foreign laws, regulations, and other measures related to priority monitoring and enforcement activities. FAS identifies specific trade concerns related to food and agriculture for WTO Committee action, prepares briefing papers on the concerns, and participates in or leads bilateral discussions on the margins of the WTO Committees.
- ❖ *Analysis:* FAS analysis supports priority setting and specific trade remedies. As an example of the latter, analysts evaluate foreign subsidy practices to determine whether there is reason to believe they are impeding U.S. exports to foreign markets or are inconsistent with the foreign country’s WTO commitments, including those negotiated under the WTO Agreement on Agriculture or the WTO Agreement on Subsidies and Countervailing Measures.
- ❖ *Grant Programs:* FAS manages several grant programs that can be and are used to address trade barriers. Examples include the funding of an industry initiative on Geographical Indications, research on the use of value added taxes, an industry initiative to identify foreign country grain subsidies, an industry initiative to expand organic equivalency arrangements, capacity building work to enable countries to understand and implement their SPS obligations, and field survey and scientific research in the United States to develop data needed to eliminate foreign SPS barriers affecting specialty crops.
- ❖ *Outreach and Education:* FAS provides U.S. industry stakeholders with information on foreign government trade obligations and on foreign regulations and policies such as technical standards, import requirements or AD/CVD procedures.
- ❖ *Global Collaboration:* FAS collaborates with other like-minded countries to help shape their enforcement priorities, for example by coordinating positions in advance of international meetings like the WTO SPS Committee. The FAS Attachés overseas will often collaborate with attachés in other foreign embassies to address common concerns in the host country.
- ❖ *Representation:* FAS represents U.S. agriculture in formal and semi-formal consultations with trading partners, generally in close coordination with USTR.

FAS advises the Secretary of Agriculture and senior USDA staff on trade matters and prepares high level correspondence and briefing material for engagement at the highest levels of the USDA.

- Role played in the trade enforcement process with other agencies: FAS works with offices throughout USTR on a daily basis to provide analysis, establish joint priorities, and discuss strategy. Its closest relationship is with the Office of Agricultural Affairs, but it works closely with many others.
  - ❖ FAS represents USDA in the TPSC process, identifying interests of U.S. agriculture and recognizing the legislated mandates of the other USDA agencies whose work may be impacted by TPSC decisions.
  - ❖ FAS, along with USTR, manages the trade advisory committee process for agriculture, through which the Secretary of Agriculture and the U.S. Trade Representative obtain formal industry input on trade priorities and policies.
  - ❖ FAS operates the U.S. National Notification Authority and U.S. Enquiry Point, as mandated under the WTO SPS Agreement. In conjunction with that effort, FAS coordinates interagency USG comments on foreign SPS measures. It plays a similar role for notified foreign TBT measures aimed at agricultural products.
  - ❖ FAS coordinates questions and comments on foreign notifications of agricultural policies under the WTO COA.
  - ❖ FAS regularly helps establish agricultural priorities, performs analysis, advises on policy positions, and represents USDA at the WTO COA, WTO SPS Committee, TBT Committee, WTO Accession consultations, dispute settlement proceedings, FTA committees, and meetings under Trade and Investment Frameworks or similar trade fora.
  - ❖ FAS works with USTR on trade policy development to engage with stakeholders and Congress, identify U.S. priorities, develop approaches to advance U.S. agricultural interests, participate in negotiations, and implement the results.
  - ❖ FAS participates in AD/CVD agriculture investigations. FAS provides recommendations on market impact, industry reaction, and government action for on-going AD/CVD investigations. FAS overseas offices often deliver comments, attend hearings, and raise concerns with government officials in country as needed. With regard to foreign countries' CVD cases, FAS, in conjunction with USDA's Office of the Chief Economist ("OCE"), provides extensive information in response to questions from foreign governments regarding the subsidy allegations.
  - ❖ Dispute Settlement: In support of USTR efforts, FAS makes recommendations on, researches and develops potential agriculture trade cases. FAS and OCE provide analytical support and injury determination in ongoing WTO and FTA dispute settlement litigation, offensive and defensive. FAS also evaluates and makes recommendations on post-dispute compliance actions.
  - ❖ FAS Attachés work within the interagency economic team at U.S. missions and embassies abroad. The FAS Attaché is the representative of the Secretary of

Agriculture and generally the principle advisor to the Ambassador on agricultural trade issues.

- ❖ FAS collaborates with various degrees of formality with other USG agencies, private sector partners, land grant institutions and international organizations on outreach and capacity building efforts to try and resolve or avoid trade irritants before entering into enforcement mode.
- ❖ FAS maintains two staff detailed to USTR and ITEC.

Authority for FAS' enforcement activities includes:

- Establishment on March 10, 1953, by Secretary's Memorandum No. 1320, Supplement 1. Public Law 83-690, approved August 28, 1954, transferred the agricultural attachés from State to FAS. These memoranda were consolidated in Title 5 of the Agricultural Trade Act of 1978, as amended. Secretary's Memorandum No. 1020-39 dated September 30, 1993, transferred the functions of the former Office of International Cooperation and Development to FAS;
- 7 U.S.C. §5693: "The Service shall assist the Secretary in carrying out the agricultural trade policy and international cooperation policy of the United States...";
- USDA Regulation 1051-001 (June 2005) defines the role of the FAS as USDA's lead agency in coordinating all agricultural matters with foreign countries;
- USDA Regulation 1051-002 (December 2004) delineates FAS' responsibilities;
- The Administrator of FAS has been delegated authority related to FAS programs by the Under Secretary for Natural Resources and Environment, set forth in Title 7, Subtitle A, Code of Federal Regulations Part 2, Subpart F, section 2.43 (7 C.F.R. §2.43) and 7 C.F.R. §2.7;
- In accordance with Title IV of Pub. L. No. 95-501 (7 U.S.C. §1765 a-g) FAS staff operates in 94 overseas offices covering 196 foreign countries;
- The Technical Assistance for Specialty Crops program is authorized by Section 3205 of the Farm Security and Rural Investment Act of 2002, which was reauthorized by the Food, Conservation, and Energy Act of 2008. The regulations are laid out in 7 C.F.R. Part 1487;
- 7 C.F.R. Part 46 – the Dairy Import Licensing Program;
- 15 C.F.R. Part 11 – Sugar Import Program.

## IV. U.S. Department of Homeland Security (“DHS”)

The five core missions of DHS are to: 1) prevent terrorism and enhance security; 2) secure and manage our borders; 3) enforce and administer our immigration laws; 4) safeguard and secure cyberspace; and, 5) ensure resilience to disasters.<sup>47</sup>

### A. DHS/U.S. Customs and Border Protection (“CBP”)

CBP’s mission is “[t]o safeguard America’s borders thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel.”<sup>48</sup>

- Types of trade violations: Breaches of domestic law related to duty evasion and violation of IPR. Failure by trading partners to adhere to Customs-related provisions in trade agreements and special trade programs.
- Available remedies/actions: Dependent on the trade violation, CBP takes on differing remedies/actions in response:
  - ❖ AD and CVD: CBP carries out DOC’s AD/CVD instructions and ensures collection on duties owed. CBP monitors imports for patterns that may identify AD/CVD evasion. CBP analyzes allegations received from partner agencies and through CBP’s e-Allegations website.<sup>49</sup> Enforcement actions include issuance of monetary penalties, seizure of merchandise, national targeting, port special operations to identify evasion, and audits of high-risk companies.
  - ❖ IPR: The vast majority of CBP’s IPR enforcement efforts involve *in rem* actions against the merchandise with no attendant criminal investigation. CBP has broad legal authority to administer and enforce IPR laws and regulations through detention, seizure, and forfeiture of IPR-violating goods. Specifically, CBP enforces IPR at the border by seizing imported merchandise bearing counterfeit or confusingly similar versions of trademarks or that constitute piratical copies of recorded works. CBP also administers and enforces exclusion orders issued by the USITC (*see* below). CBP releases an annual publication to the public which provides statistics on IPR seizures, including aggregate data on the source countries of seized shipments, the estimated manufacturer suggested retail price of the seized goods by country, and breakdowns by product category.<sup>50</sup> CBP uses risk management tools and technology to authenticate and release compliant shipments and to target and interdict suspect and high risk shipments. In addition, CBP conducts post-import audits of violating companies, collaborates with our trading partners through information sharing, capacity building and training, and

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<sup>47</sup> <http://www.dhs.gov/our-mission>

<sup>48</sup> <http://www.cbp.gov/about>

<sup>49</sup> CBP developed the online trade violation reporting system, available at <https://eallegations.cbp.gov/Home/Index2>, to provide an easier mechanism for anonymous reporting of potential AD/CVD evasion, possible IPR violations, and other trade violations. CBP examines the allegation and takes appropriate action, which at times may involve a referral to ICE/HSI (*see* below) for investigation.

<sup>50</sup> *See* IPR Annual Seizure Statistics, available at <https://www.cbp.gov/trade/priority-issues/ipr/statistics>

participating in bilateral and multilateral IPR enforcement operations. CBP also issues civil fines and, where appropriate, refers cases to other law enforcement agencies for criminal investigation. In addition, as part of the 2013 Joint Strategic Plan on Intellectual Property Enforcement (*see* Office of Management and Budget, below), CBP is to develop a three-year plan which focuses on working with express carriers on counterfeit shipments. As part of this plan, CBP has established a new administrative process allowing for the voluntary abandonment of counterfeit goods, in partnership with the Express Association of America and its members.

- ❖ Import Safety: Operates the Commercial Targeting Analysis Center (“CTAC”), which is designed to streamline and enhance federal efforts to address import safety issues. CTAC functions to enhance information sharing, increase automation, and expand interagency partnerships.<sup>51</sup>
- ❖ Quotas: CBP’s Trade Policy and Programs, Quota Branch, administers and enforces TRQs on certain imported goods imported into the United States.<sup>52</sup> Tariff preference levels are a type of TRQ, which pertain to textiles covered by preferential duty programs such as FTAs. CBP monitors the quotas, closes the quotas when filled (and/or prorates the quotas when they overfill or fill).
- ❖ Trade Agreements: CBP reviews compliance activities (such as for fraudulent practices, transshipments, false importers claims, improper description of merchandise, undervaluation, and undercounting of goods), and assesses areas of potential non-compliance and high risk industries.
- ❖ Textiles: CBP identifies textile trade fraud using high-risk indicators and following an enforcement strategy to address the risk posed by illegal transshipment. This includes conducting Textile Production Verification Team (“TPVT”) visits, capacity building, trade intelligence, and enforcement operations. The TPVTs conduct on-site factory visits in eight to ten countries per year, based on risk assessment and under the terms of the various trade preference programs, to verify the origin of imported textile and apparel goods and compliance with trade preference programs. In addition, the Apparel, Footwear and Textile Center of Excellence and Expertise (“AFT Center”), which debuted December 2015, is CBP’s hub for trade actions involving clothing, shoes and raw materials.<sup>53</sup>

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<sup>51</sup> CTAC partner agencies include, among others:

- Animal Plant Health Inspection Service (APHIS)
- Customs and Border Protection (CBP)
- Environmental Protection Agency (EPA)
- Food and Drug Administration (FDA)
- Immigration and Customs Enforcement (ICE)

<sup>52</sup> <http://www.cbp.gov/trade/quota/guide-import-goods/administration>

<sup>53</sup> <http://www.cbp.gov/newsroom/national-media-release/2015-12-16-000000/us-customs-and-border-protection-announces> CBP’s Centers Directory available at <http://www.cbp.gov/sites/default/files/documents/Center%20Directory%20Tables%2011172015.pdf>

- Role played in the trade enforcement process with other agencies:
  - ❖ AD and CVD: CBP works with DOC, ICE, Homeland Security Investigations (“HSI”), Treasury, and USTR to provide comprehensive enforcement of AD/CVD laws.
  - ❖ IPR: CBP’s Office of International Trade (“OIT”) IPR Division (including the IPR National Targeting and Analysis Group) works closely with other CBP and DHS offices on IPR border enforcement issues. CBP is also a partner agency at the National Intellectual Property Rights Coordination Center (“IPR Center”) (*see below*), which is led by the Director and Deputy Directors from HSI and CBP.
  - ❖ Import Safety: CBP assists some 47 USG agencies in exercising their domestic import safety mission at the border. CBP seizes hazardous imported products at ports of entry on behalf of these agencies with jurisdiction over the product safety. CTAC joins together CBP and U.S. import safety regulating agencies to enhance the management of importing safe products into the U.S.
  - ❖ Quotas: Certain quotas are monitored and reported on a weekly basis to USDA.
  - ❖ Trade Agreements: CBP’s OIT’s Trade Agreements Branch (“TAB”) works in cooperation with CPB’s Office of Field Operations (“OFO”) to ensure compliance with trade agreements and special trade programs. TAB sets the policy, provides training, and offers general support for enforcement, while the OFO performs or assists with the carrying out of such enforcement (*e.g.*, conducting import verifications, using import specialists, entry specialists).CBP’s enforcement strategy also prioritizes collaborative work with ICE.

*CBP’s work with foreign governments:*

- ❖ AD and CVD: CBP works with foreign governments to share trade intelligence that allows for identification of schemes to evade payment of AD/CVD.
- ❖ IPR: CBP collaborates with foreign governments to enhance IPR border enforcement through information sharing, capacity building and training, and participating in bilateral and multilateral IPR enforcement operations, including IPR working groups established in international fora such as the World Customs Organization (“WCO”) and the JCCT. CBP also works with foreign law enforcement agencies as one of the 23 partner agencies of the IPR Center (*see below*).
- ❖ Import Safety: CBP has formed several strategic international partnerships with foreign customs and regulatory authorities to establish a CTAC-like facility to detect and prevent the importation of hazardous products from being imported to, or transiting through, their respective countries. In August 2014, CBP and its ten partner government agencies that comprise the CTAC gathered in Washington, D.C. for Ops Expo.<sup>54</sup> Ops Expo is where CTAC Partner Government Agencies share their anticipated import plans, based on risk, and the strategy to confront those risks through trade-targeting operations. Ops Expo has helped to reduce inspectional activities, increase transparency and accountability at the

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<sup>54</sup> <http://www.cbp.gov/newsroom/spotlights/2014-08-28-000000/opsexpo-underscores-one-us-government-border>

ports of entry, and has drastically improved the overall targeting effectiveness and the ability to stop potentially harmful and fraudulent imports.

- ❖ Quotas: CBP works with embassies and foreign governments to provide training and assist with quota enforcement.
- ❖ Trade Agreements: CBP meets with representatives from foreign governments regarding trade agreement matters including general concerns as well as proposed and active enforcement steps. CBP also confers with foreign Customs authorities, congruent with trade agreement and regulatory requirements.
- ❖ Textiles: CBP may work closely with foreign governments to provide guidance on trade preference programs, offer support for verifications, and resolve issues related to the enforcement of trade agreement requirements.

*CBP's work with the private sector:*

- ❖ AD/CVD: CBP leverages trade partnerships to gain industry knowledge and to identify issues of mutual interest to provide CBP with targeting, enforcement and/or trade intelligence.
- ❖ IPR: Through its OIT, IPR Division, CBP works closely with private industry to identify and understand important issues facing holders of IPR. CBP is advised by the Customs Operations Advisory Committee (“COAC”)<sup>55</sup> and, with regard to IPR issues, COAC’s Subcommittee on Trade Enforcement and Revenue Collection. In addition, CBP industry experts work directly with their industry stakeholders through CBP’s Integrated Trade Targeting Network’s Centers of Excellence and Expertise, each of which is focused on specific product categories. The CBP IPR Help Desk provides the public with information on IPR border enforcement procedures.<sup>56</sup>
- ❖ Import Safety: Federal authorities coordinate to address import safety risk through enhanced targeting efforts at the CTAC.
- ❖ Quotas: CBP works with several trade associations and the National Customs Brokers and Forwarders Association of America to help with enforcement and informing the trade of significant changes.
- ❖ Trade Agreements: CBP works closely with private industry to identify and understand important issues facing the private sector as they attempt to avail themselves of trade preferences. CBP interacts with industry when enforcing preference program rules. This interaction may be with foreign companies (such as FTA verification visits), or with domestic companies (such as requests to substantiate a preference claim). The e-Allegations process (*see* above) allows CBP to collect, from various sources, information on potential violators. Through these efforts, CBP is able to identify violations, conduct capacity building operations to deter evasion, direct international outreach and educational efforts, and deploy enforcement strategies to recover lost revenue owed the USG.
- ❖ Textiles: CBP regularly interacts and communicates with both trade and domestic industry. With regard to domestic industry, CBP participates in panel discussions on CBP

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<sup>55</sup> <http://www.cbp.gov/trade/stakeholder-engagement/coac>

<sup>56</sup> <http://www.cbp.gov/trade/priority-issues/ipr/ipr-assistance>

enforcement, meets with key representatives and attends various textile association and organization meetings, and visits their domestic manufacturing plants. These forums, with both the trade and the domestic industry, encourage information sharing related to possible violations and suspected non-compliance within the textile sector. CBP also participates in broader-level discussions, such as to review the textile verification process, including advance notification to factories, reporting mechanisms, and potential follow-up actions taken by CBP against foreign manufacturers. CBP may provide documentation on TPVT procedures, an explanation of the TPVT reporting process, and clarification on the responsibility of the importer of record to make an accurate preference claim.

Authority for CBP's enforcement activities includes:

- CBP's Regulations and Rulings, IPR Branch interacts with importers and others in the trade community through the rulings process (19 C.F.R. Part 177), the protest process (19 U.S.C. §1514; 19 C.F.R. Part 174) and the administrative petition process (19 U.S.C. §1618; 19 C.F.R. Part 171);
- AD/CVD: CBP's statutory authority to issue monetary penalties can be found in 19 U.S.C. §1592; seizure authority can be found in 19 U.S.C. §1595;
- IPR:
  - Statutory Authorities relevant to IPR border enforcement:*
  - Tariff Act of 1930;
  - Lanham (Trademark) Act of 1946;
  - Copyright Act of 1976;
  - Digital Millennium Copyright Act of 1998;
  - 19 U.S.C. §1526 – Merchandise bearing American trademark
  - 19 U.S.C. §1595a(c) – Forfeitures and other penalties
  - 19 U.S.C. §1337 – Unfair trade practices in import trade
  - 15 U.S.C. §1124 – Importation of goods bearing infringing marks or names forbidden
  - 17 U.S.C. §501 – Infringement of copyright
  - 17 U.S.C. §602 - Infringing importation or exportation of copies or phonorecords
  - 17 U.S.C. §1201 – Circumvention of copyright protections systems
  - Recordation with CBP and Implementation of Statutory Authorities:*
  - 19 C.F.R. Part 133 (trademark and copyright)
  - 19 C.F.R. §12.39 (exclusion orders)
- Import Safety: Done under CBP and CTAC member agency authorities;
- Quotas: 19 U.S.C. §3601, 19 C.F.R. §132, 19 C.F.R. §142, numerous Presidential Proclamations, the Harmonized Tariff Schedule, and acts of Congress;
- Trade Agreements: Authority is created by the particular trade agreement and implementing statute and conferred through the applicable trade agreement regulation. The regulations pertaining to trade agreements can be found in 19 C.F.R. Part 10.

## B. DHS/U.S. Immigration and Customs Enforcement (“ICE”)

In 2002, the Homeland Security Act reorganized the United States Customs Service and the Immigration and Naturalization Service, fusing the investigative components of these agencies to create ICE. ICE’s primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.

### a. ICE/Homeland Security Investigations (“HSI”)

HSI is the primary DHS component responsible for the criminal investigation and enforcement of trade-related violations of U.S. laws and regulations.

- Types of trade violations: Unfair and/or predatory trade practices that threaten the U.S. economy and national security, restrict the competitiveness of U.S. industry in world markets, and place the health and safety of the U.S. public at risk.
- Available remedies/actions: HSI investigates and refers willfully noncompliant importers, exporters, customs brokers, and other entities involved in international commerce for prosecution and civil penalty, in order to provide a highly visible deterrent factor and to disrupt and dismantle transnational criminal organizations. Illicit trade fraud investigations focus on commercial importations and exportations involving false statements and deceptive business practices, and frequently result in significant seizures, civil penalties, and criminal prosecutions. HSI is the lead agency and sole enforcer of many federal statutes, and HSI special agents possess “border exception” authority to conduct searches without warrant or probable cause at a border. HSI uses its authority to investigate financial crimes and smuggling (which are beyond the scope of this report), and customs violations (*see* below). Another HSI priority is preventing, detecting and investigating IP theft under federal criminal laws. In addition, HSI has established a hotline, wherein “[i]ndividuals across the world can report suspicious criminal activity ... 24 hours a day, seven days a week. Highly trained specialists take reports from both the public and law enforcement agencies on more than 400 laws enforced by HSI.”<sup>57</sup> Among the listed crimes that should be reported to the tip line are Import/Export violations and IPR violations. *Id.*
- Role played in the trade enforcement process with other agencies: HSI and CBP are the principal federal law enforcement agencies responsible for enforcing U.S. international trade laws and regulations. A common mission of HSI and CBP is to ensure all imports are in compliance with these laws and regulations, and they work together to successfully conduct an illegal trade fraud investigation.

HSI and CBP establish Customs Mutual Assistance Agreements (“CMAAs”) that are binding government-to-government agreements through which the exchange of customs information is facilitated.<sup>58</sup> This mechanism allows HSI and CBP to work closely with foreign customs

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<sup>57</sup> <http://www.ice.gov/tipline>

<sup>58</sup> <https://www.cbp.gov/border-security/international-initiatives/international-agreements/cmaa>

agencies to prevent, detect, and investigate customs violations. At present, the United States has 76 signed CMAAs with foreign governments' customs administration agencies.

### **i. HSI/ National Intellectual Property Rights Coordination Center (“IPR Center”)**

“The U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) led National Intellectual Property Rights Coordination Center (IPR Center) stands at the forefront of the United States Government’s response to global IP theft and enforcement of its international trade laws. The IPR Center brings together 23 partner agencies, consisting of 19 key federal agencies, Interpol, Europol and the governments of Canada and Mexico in a task-force setting. The task force structure enables the IPR Center to effectively leverage the resources, skills, and authorities of each partner and provide a comprehensive response to IP theft. The IPR Center is led by an ICE-HSI Director with Deputy Directors from HSI and CBP.”<sup>59</sup>

- Types of trade violations: Theft of IP; illegal importation and distribution of counterfeit, substandard, and tainted goods.
- Available remedies/actions: The IPR Center is an interagency initiative that uses a three-pronged approach to combat IP crimes: interdiction, investigation, and outreach and training. In conjunction with the IPR Center, HSI leverages its worldwide presence to build and maintain partnerships with foreign law enforcement agencies via a network of HSI attaché offices in 46 foreign countries, providing international capacity building and training programs, and conducting international investigations.
- Role played in the trade enforcement process with other agencies: HSI field offices work closely with DOJ’s U.S. attorneys and DOJ’s Computer Crime and Intellectual Property Section, as well as with state and local prosecutors to combat IP crimes. IPR Center personnel participate in capacity building programs sponsored by USPTO, DOJ, INTERPOL, Europol, the WCO, and DOC/Office of General Counsel’s Commercial Law Development Program as IP enforcement subject matter experts.<sup>60</sup> In addition, the IPR Center routinely organizes trade enforcement training programs for foreign law enforcement with funding provided by State’s Bureau of International Narcotics and Law Enforcement.

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<sup>59</sup> <https://www.iprcenter.gov/about-us> The following U.S. agencies are among the 23 partner agencies listed therein that engage in trade issues, enforcing trade agreement obligations, and IPR protection.

- DHS’ CBP;
- DOC’s OIPR;
- FDA;
- FBI;
- DHS/ICE/HSI;
- USPTO;
- State/Office of International IP Enforcement.

<sup>60</sup> <http://cldp.doc.gov/about-cldp>

The IPR Center partners with public and private sector organizations to combat IP theft and trade fraud. These partnerships increase information sharing and awareness, which in turn assists the IPR Center in combatting the illegal importation and distribution of counterfeit, substandard, and tainted goods. Much of the private sector outreach performed by the IPR Center targets rights holders, manufacturers, importers, customs brokers, freight forwarders, bonded facilities, carriers and others to discuss the trade enforcement mission of HSI and the IPR Center, raising the awareness of the dangers of trade based violations, such as IP theft and trade fraud, while serving as a public point of contact for investigative leads and referrals.

Additionally, the IPR Center has partnered with private industry through the assignment of agents to the National Cyber-Forensics and Training Alliance (“NCFTA”), a non-profit organization which brings together experienced investigators, analysts, and leaders in the business world to form an integral alliance between academia, law enforcement and industry. By merging a wide range of cyber expertise in one location, the NCFTA serves as a conduit for information sharing between private industry and law enforcement.

## **ii. HSI/Trade Enforcement Unit (“TEU”)**

The TEU, co-located with the IPR Center (*see* above), manages several programs which cover the broad scope of illicit trade fraud enforcement, including, *inter alia*: AD/CVD evasion; false duty drawback refund claims to CBP; substandard, misbranded, and/or misclassified imports to evade duties or regulatory requirements; coordination of HSI’s participation in the interagency TPVT (*see* above); trafficking of counterfeit, genuine, and stolen cigarettes; and investigations into false FTA and legislative preference claims.

Authority for ICE’s enforcement activities includes:

- 19 U.S.C. §1401(i) defines customs officer;
- 15 U.S.C. §1124 – Importation of Goods Bearing Infringing Marks or Names Forbidden;
- 15 U.S.C. §1125 – False Designations of Origin, False Descriptions, and Dilution Forbidden (the Lanham Act);
- 17 U.S.C. §1201(a)(1) – Circumvention of Technological Measures;
- 17 U.S.C. §1201(a)(2) – Manufacture, Import, or Traffic in Circumvention Technology;
- 13 U.S.C. §305 – Penalties for Unlawful Export Information;
- 18 U.S.C. §541 – Entry of Goods Falsely Classified;
- 18 U.S.C. §542 – Entry of Goods by Means of False Statements;
- 18 U.S.C. §545 – Smuggling of Goods in the United States;
- 18 U.S.C. §546 – Smuggling Goods into Foreign Countries;
- 18 U.S.C. §554 – Smuggling Goods from the United States;
- 18 U.S.C. §1001 – False Statements;
- 19 U.S.C. §1508 – Keep import/export records for 5 years (Civil);
- 18 U.S.C. §2318 – Trafficking in Counterfeit Labels, Illicit Labels, or Counterfeit Documentation or Packaging Accompanying a Work;
- 8 U.S.C. §2320 – Trafficking in Counterfeit Merchandise.

## V. U.S. Department of Justice (“DOJ”)

The mission of DOJ is “[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”<sup>61</sup>

### A. Civil Division/Commercial Litigation Branch

The Commercial Litigation Branch (including the National Courts Section, its International Trade Field Office in New York City, and the Office of Foreign Litigation) is primarily responsible for the enforcement of the trade and customs laws within DOJ. The Offices of the U.S. Attorneys in 93 judicial districts are responsible for defending CBP in the seizure of improper imports and enforcing the trade laws insofar as they may result in criminal sanctions.

- Types of trade violations: All trade enforcement matters before the federal district court, the U.S. Court of International Trade (“CIT”), and the U.S. Court of Appeals for the Federal Circuit (“CAFC”).
- Available remedies/actions: DOJ achieves its enforcement obligations through affirmative civil and criminal actions, and defensive matters involving DOC, CBP, and other federal agencies responsible for the administration and enforcement of the international trade and customs laws. Affirmative actions include civil penalty actions against any person who commits fraud, gross negligence, or negligence while entering merchandise into the United States; civil actions to recover unpaid duties owed on imported goods; civil actions under the False Claims act against any person who, among other things, knowingly makes a false statement material to an obligation to pay or transmit money or property to the Government; and prosecutions of those violating the trade and customs laws carrying criminal penalties. DOJ defends DOC in its administration and enforcement of the AD/CVD statutes and CBP in its assessment of duties, seizure of improper imports, and classification and valuation of imported goods. DOJ also defends trade policies, trade agreements, and Executive Branch decisions concerning other trade statutes, including sections 201, 301, and the Generalized System of Preferences (“GSP”). The Office of Foreign Litigation represents the United States and its agencies when U.S. decisions or policies are challenged in foreign courts. With respect to trade, these matters may include foreign CVD determinations involving the United States and NAFTA disputes.
- Role played in the trade enforcement process with other agencies: Upon request, DOJ represents USTR before international arbitral bodies and provides litigation risk assessments and advice for trade agencies. When a foreign government is involved in litigation, we seek the relevant United States agencies’ views regarding any matter so that we may litigate with due consideration of the United States’ foreign affairs function. We assist CBP and DOC with their various reporting requirements.

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<sup>61</sup> <http://www.justice.gov/about>

DOJ has developed procedures for evaluating referrals to commence affirmative actions for the enforcement of the trade and customs laws in the federal courts. DOJ has also developed procedures for responding to civil actions against DOC, CBP, and other federal agencies responsible for the administration and enforcement of the trade and customs laws.

Authority for DOJ's enforcement activities includes:

- 28 U.S.C. §516 (the conduct of litigation in which the United States is a party, “is reserved to officers of the Department of Justice, under the direction of the Attorney General.”);
- 28 U.S.C. §519 (“the attorney general shall supervise all litigation in which the United States . . . is a party”);
- 19 U.S.C. §517 (“[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”);
- 19 U.S.C. §1592 (civil penalty actions against any person who commits fraud, gross negligence, or negligence while entering merchandise into the United States);
- 28 U.S.C. §1582(2) and (3) (civil actions to recover unpaid duties owed on imported goods);
- 31 U.S.C. §§ 3729-33 (civil actions under the False Claims act, against any person who, among other things, knowingly makes a false statement material to an obligation to pay or transmit money or property to the Government).

## VI. U.S. Department of Labor (“DOL”)

DOL’s mission is to “To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”<sup>62</sup>

### A. DOL/Bureau of International Labor Affairs (“ILAB”)

#### a. ILAB/Office of Trade and Labor Affairs (“OTLA”)

ILAB/OTLA coordinates with USTR, State and other interagency partners to: (1) research and develop international labor policy; (2) investigate complaints of alleged violations of labor rights commitments in FTAs and preference programs; and, (3) engage stakeholders on inconsistencies with those commitments.

- Types of trade violations: Failure by trading partners to adhere to commitments regarding labor laws and practices that arise under FTAs to which the United States is a party.
- Available remedies/actions: Within OTLA, the Trade Policy and Negotiation (“TPN”) division is responsible for the labor components of U.S. trade preference programs and working with USTR in negotiations of the labor provisions of FTAs, while the Monitoring and Enforcement of Trade Agreements (“META”) division is responsible for the monitoring, enforcement and engagement conducted under labor chapters of FTAs once they enter into force.<sup>63</sup>
  - ❖ META carries out its responsibility of the administration of FTAs through:
    - Submissions – Members of the public may submit a complaint (“submission”) alleging that a trading partner has violated the FTA labor provisions. If OTLA determines that a submission meets established criteria, it accepts the submission and conducts a factual review of documents and interviews with affected parties, and issues a public report with findings and recommendations to the Secretary of Labor on resolving issues identified in the review, which may include a recommendation for the USG to request cooperative labor consultations (*see below*).
    - Cooperative Labor Consultations and Dispute Settlement – Working closely with USTR and the Department of State, OTLA may formally engage with partner governments to discuss and attempt to redress inconsistencies with labor commitments of FTAs through cooperative labor consultations. Additionally, informal consultations have resulted from OTLA submission reports of review, where the USG did not choose to elevate to formal consultations. In both forms of consultations, OTLA, USTR, and State work to develop actions the partner government can take to address inconsistencies with FTA labor provisions. For most FTAs, only a failure to effectively

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<sup>62</sup> <http://www.dol.gov/opa/aboutdol/mission.htm>

<sup>63</sup> In the case of NAFTA, labor provisions are not a component of the FTA but rather a labor side agreement called the North American Agreement on Labor Cooperation (“NAALC”).

enforce labor laws in a sustained and recurring manner affecting trade or investment can result in recourse to the FTA's dispute settlement chapter if consultations fail to resolve the apparent labor violation.

- Staff-Level Monitoring and Engagement – To proactively engage with trading partners and prevent potential inconsistencies with FTA labor provisions from escalating into trade violations, OTLA, as the designated FTA and NAALC point of contact, conducts desk reviews and stakeholder outreach to produce internal monitoring documents, occasionally supplemented by overseas monitoring trips to engage with our trading partners and stakeholders. These are used by OTLA to identify key labor issues, possible violations, opportunities to better meet internationally-recognized labor standards, and potential for technical assistance in coordination with USTR and State. OTLA uses the monitoring tools to engage at an informal, technical level with partner ministries of labor to advance the objectives of the FTA labor provisions in a cooperative and ongoing manner. OTLA monitoring can also produce cases or documents that inform submission reviews, help assess progress made on consultation issues, and support dispute settlement arbitration.
- Labor Affairs Council Meetings and Labor Subcommittee Meetings (*see also* below) – Though different FTAs use different terms, both are a labor-focused subset of the Joint Committee (comprising of government officials from parties to the FTA) that meets periodically to discuss mutual areas of interest and concern on labor matters under the FTA. These meetings are a proactive measure to ensure the proper functioning of FTA labor provisions and reaffirm labor commitments in a cooperative spirit. To date, OTLA has participated in or hosted, along with USTR and State, these formal FTA meetings with 17 of the 19 countries bound by FTA labor provisions.
- National Advisory Committee on the Labor Provisions of FTAs (“National Advisory Committee”) – As provided for in FTA labor provisions, OTLA has established a balanced representative committee of experts to provide advice and publish reports on the implementation of our FTA labor provisions. The committee comprises twelve experts: four from the business community, four representing nongovernmental organizations and four representing worker groups. OTLA works with the committee to develop agendas and to receive advice and reports, and uses this advice to guide DOL's trade-related labor policy and engagement.
- ❖ TPN carries out the following activities in relation to the enforcement of three trade preference programs:
  - AGOA – OTLA provides expertise to the interagency through monitoring and analysis of AGOA eligible countries' compliance on the labor rights eligibility criteria to “establish or make continual progress towards the protection of internationally recognized worker rights.” In particular, ILAB participates in the annual AGOA interagency review on whether to continue, limit, or withdrawal a country's eligibility based on its compliance with the worker

rights eligibility criteria. ILAB contributes to the letters and demarches notifying governments of compliance concerns, and assists in the development of steps the government must take to retain or regain country benefits. During the annual AGOA forum, ILAB engages with country governments to stress the importance of AGOA worker rights eligibility criteria for inclusive economic growth.

- GSP – ILAB regularly monitors labor practices in GSP beneficiary countries. The monitoring and reporting on these countries informs ILAB’s contribution to the respective interagency reviews on compliance with the worker rights eligibility criteria. OTLA participates in the enforcement of GSP eligibility criterion requiring beneficiary countries to take “steps to afford internationally recognized worker rights to workers in the country,” through its participation in the TPSC.<sup>64</sup> OTLA provides advice and technical expertise in the area of worker rights to the GSP Subcommittee. In particular, OTLA votes in the TPSC decision to accept or reject GSP country practice petitions on a beneficiary country’s compliance with the worker rights criterion, informs the TPSC on the review of government efforts to meet the worker rights criteria, and votes in the TPSC decision to remove GSP benefits from a country based on its failure to comply with the worker rights criterion.
- HOPE II – Under the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (“HOPE II”), which provides preferential trade benefits for certain apparel products exported to the United States, DOL enforces the labor conditions required for continued producer-level eligibility in Haiti. Specific actions include routine monitoring of all exporting factories’ compliance with core labor standards, technical assistance for non-compliant factories, and public reporting. Under HOPE II, the Secretary of Labor is required to identify non-compliant producers in Haiti on a biennial basis. These identifications are the result of continuous monitoring efforts on the part of DOL staff that travel regularly to Haiti to conduct investigations. Non-compliance identifications are made public in USTR’s annual report on the implementation of HOPE II. In carrying out its mandate, DOL engages with Haiti’s Ministry of Labor and Social Affairs (French acronym, “MAST”) as well as the Office of the Ombudsperson, an institution established by the Government of Haiti as a condition of certifying Haiti’s eligibility for HOPE II benefits. Interactions with MAST and the Office of the Ombudsperson focus on working collaboratively with these institutions to investigate and remediate cases of non-compliance with core labor standards and ensuring that apparel producers in Haiti and their U.S. buying partners remain eligible for HOPE II benefits.
- Role played in the trade enforcement process with other agencies: DOL is one of the agencies on the TPSC and TPRG and, as such, weighs in on administration of the preference programs, offering in particular expertise on labor eligibility compliance for the GSP and AGOA. OTLA works in consultation with USTR (predominately the Labor Office and Office of General Counsel, but occasionally with the region-specific

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<sup>64</sup> See Trade Law of 1974; 19 CFR 2462.

offices) and State (through the Bureau of Democracy, Human Rights and Labor, and the Economic Bureau (*see* below)). On occasion, and most often through the TPSC, OTLA works with the other trade-related agencies, particularly the International Trade Center of DOC, and USDA/FAS. Should consultations fail to resolve any issues that are subject to dispute settlement, OTLA supports USTR efforts to convene the Free Trade Commission under the FTA, by preparing a brief outlining the apparent failures of the partner to meet its obligations under the enforceable provisions of the FTA, developing a labor roster of experts from which arbiters may be selected to decide whether the partner's actions constitute a violation of the FTA, and working with the partner government in the event that a violation is found by the arbitration panel.

OTLA notifies foreign governments upon receipt of a complaint submission and, if accepted for review, OTLA engages with the government in the preparation of its public report. In consultations, OTLA (often accompanied by a representative of DOL's Deputy Undersecretary for International Affairs), USTR and State meet with foreign government representatives to resolve the issues, often by working to jointly develop an action plan with concrete, time-bound and actionable steps that the partner government may take to remedy the identified issues. OTLA (often accompanied by a representative of DOL's Deputy Undersecretary for International Labor Affairs or the Secretary of Labor), USTR, and State, and representatives of the partner government's labor, trade and foreign affairs ministries, serve as members of the Labor Affairs Council Meetings and Labor Subcommittee Meetings, including by ensuring that all the mechanisms of the FTA are in place, discussing labor issues of interest, exploring opportunities for technical assistance or cooperation and hearing the views of the public. In addition, as part of OTLA's role as the contact point for the labor provisions of all FTAs, OTLA engages with partner governments (predominantly ministries of labor and/or social affairs) to identify and discuss potential concerns about labor law and enforcement before they evolve into a trade dispute and to identify opportunities for potential technical cooperation or exchanges.

As the contact point for the labor provisions of all FTAs, OTLA engages with employer associations and companies to identify and discuss potential concerns about labor law and enforcement before they evolve into a trade dispute and to identify opportunities for potential technical cooperation. In the event of a complaint submission, OTLA engages with the private sector to encourage companies to remedy any potential and apparent deficiencies. All Labor Affairs Council or Labor Subcommittee meetings involve a public session for members of the public to present their views of and questions about the functioning of FTA labor provisions to the partner governments. The USG often meets with the private sector (along with worker organizations and other civil society stakeholders) beforehand to ensure the public is aware of the meeting and to reflect any recent concerns and considerations from the public in its discussions with partner governments. The National Advisory Committee has four designated seats for representatives of the private sector. During these meetings, OTLA will receive the advice and views of the private sector (balanced by representatives of workers and of civil society) about how it carries out its functions as the contact point for FTA labor provisions.

Finally, under AGOA, ILAB holds quarterly stakeholder meetings for labor unions and other civil society organizations to gather information and views relating to progress governments

have made in the protection of worker rights in Sub-Saharan Africa. Under GSP, ILAB interacts with stakeholder groups, including labor unions and other civil society organizations, to gather information and views relating to progress governments have made in the protection of worker rights. Information provided by stakeholders assists in informing ILAB positions and points for engagement in the annual interagency AGOA review and on the review of GSP worker rights country practice reviews. Under HOPE II, DOL routinely interacts with private sector actors in Haiti, particularly factory management and ownership, through the monitoring and assistance process. These interactions allow apparel producers in Haiti to provide relevant information for the investigation process and, where warranted, these interactions also include assistance to the producers in an effort to bring their operations into compliance.

Authority for DOL's enforcement activities includes:

- The Trade Expansion Act of 1962; the Trade Act of 1974, the Trade Agreements Act of 1979, the Omnibus Trade and Competitiveness Act of 1988, the Trade Act of 2000, and the Trade Act of 2002;
- E.O. 11846, 40 FR 14291 (1975), as amended, reprinted in 19 U.S.C. 2111 note, 12188, 45 FR 989 (1980), as amended, reprinted in 19 U.S.C. 2171 note, and 13277, 67 FR 70305 (2002), as amended, reprinted in 19 U.S.C. 3801;
- Reorganization Plan No. 3 of 1979, 44 FR 69273 (1979), as amended, reprinted in 19 U.S.C. 2171;
- Secretary's Order 18-2006, 71 Fed. Reg. 77560 (December 26, 2006);
- Delegation of authority to OTLA, and OTLA its functions and procedural guidelines, in 71 Fed. Reg. 76691 (Dec. 21, 2006);
- OTLA/META's activities involving FTAs that have entered into force derive from the Implementation Acts: *See* Public Law 108-77, 117 Stat. 909 (Sept. 3, 2003), "the U.S.-Chile Free Trade Agreement Implementation Act"; Public Law 108-78, 117 Stat. 948 (Sept. 3, 2003), "the U.S.-Singapore Free Trade Agreement Implementation Act"; Public Law 108-286, 118 Stat. 919 (August 3, 2004), "the U.S.-Australia Free Trade Agreement Implementation Act"; Public Law 108-30, 118 Stat. 1103 (August 17, 2004), "the U.S.-Morocco Free Trade Agreement Implementation Act"; Public Law 109-53, 119 Stat. 462 (August 2, 2005), "the Dominican Republic-U.S.-Central America Free Trade Agreement Implementation Act"; Public Law 103-182, 107 Stat. 2057 (Dec. 8, 1993), the North American Free Trade Agreement Implementation Act; Public Law 112-43, 125 Stat. 497 (October 21, 2011), "the U.S.-Panama Trade Promotion Agreement (TPA) Implementation Act"; Public Law 110-138, 121 Stat. 1455 (December 14, 2007), "the U.S.-Peru Trade Promotion Agreement Implementation Act"; Public Law 112-42, 125 Stat. 462 (October 21, 2011), "the U.S.-Colombia Trade Promotion Agreement Implementation Act"; Public Law 112-41, 125 Stat. 428 (October 21, 2011), "the U.S.-Korea Free Trade Agreement Implementation Act"; Public Law 107-43, 115 Stat. 243 (September 28, 2001), "the U.S.-Jordan Free Trade Area Implementation Act"; Public Law 109-283, 120 Stat. 1191 (September 26, 2006), "the U.S.-Oman Free Trade Agreement Implementation Act"; Public Law 109-169, 119 Stat. 3581 (January 11, 2006), "the U.S.-Bahrain Free Trade Agreement Act";
- NAALC;
- In 2008, then-President George W. Bush delegated the responsibility to identify and assist non-compliant producers under HOPE II to the Secretary of Labor, in consultation

with the U.S. Trade Representative. *Presidential Proclamation 8296*, September 30, 2008.

## VII. U.S. Department of State (“State”)

“The Department’s mission is to shape and sustain a peaceful, prosperous, just, and democratic world and foster conditions for stability and progress for the benefit of the American people and people everywhere. This mission is shared with the U.S. Agency for International Development, ensuring we have a common path forward in partnership as we invest in the shared security and prosperity that will ultimately better prepare us for the challenges of tomorrow.”<sup>65</sup> Enforcement of international trade and investment obligations is essential to U.S. economic growth and security, and as a result, State plays an important role in upholding and protecting U.S. trade and investment rights overseas, working closely with USTR and other executive agencies.

- Types of trade violations: Failure by trading partners to comply with international trade agreements to which the United States is a party.
- Available remedies/actions: State officers overseas monitor compliance with international agreements and work closely with officers in Washington, D.C. to identify foreign trade barriers that may violate international trade agreements. State officers overseas are directly responsible for monitoring and enforcement work on commercial issues such as trade and investment. Responsibility for trade enforcement activities at home include:
  - ❖ The Under Secretary for Economic Growth, Energy and Environment leads State’s efforts to develop and implement international policies related to economic growth.
  - ❖ The Bureau of Economic and Business Affairs (“EB”)/Trade Policy and Programs works closely with other USG agencies, overseas posts, and the U.S. private sector to address and resolve trade disputes, and eliminate trade barriers, specifically coordinating with State officers overseas to report any trade barriers or potential violations of trade agreements.
  - ❖ In addition, EB’s Special Representative for Commercial and Business Affairs (“CBA”) plays an important role in trade enforcement. CBA coordinates State advocacy on behalf of U.S. businesses and provides assistance in opening markets, leveling the playing field, and protecting IP. Reporting to CBA, the Office of International Intellectual Property Enforcement works closely with other USG agencies, overseas posts, and the U.S. private sector, supported by the Trade Directorate, to address and resolve trade disputes relating to IP protection and enforcement, including classification of countries under Special 301. It develops, executes, and supports broad initiatives designed to strengthen IPR.
  - ❖ EB’s Office of Investment Affairs advances global, regional, and bilateral investment policy and negotiations. This includes working to ensure adherence by foreign countries to existing investment arrangements, the accession of new countries to such agreements, and the development and promotion of relevant bilateral and multilateral arrangements and guidelines. This office prepares

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<sup>65</sup> <http://www.state.gov/s/d/rm/index.htm#mission>

annual Investment Climate Statements that help U.S. firms identify barriers and market distortions which deter U.S. investment.

- ❖ The Office of Environmental Quality and Transboundary Issues, within the Bureau of Oceans and International Environmental and Scientific Affairs, manages issues related to the nexus of trade and the environment, including negotiating and implementing environmental cooperation agreements related to U.S. FTAs.
- ❖ The Office of the Legal Adviser provides the USG with legal advice and representation with respect to all aspects of international claims and investment disputes. *See also* below.
- ❖ Reporting to the Under Secretary for Civilian Security, Democracy and Human Rights, the Bureau of Democracy, Human Rights, and Labor, Office of International Labor Affairs addresses appropriate application of U.S. laws, regulations, and policy on international labor standards in bilateral relations and in relations between the USG and international organizations
- Role played in the trade enforcement process with other agencies: State works closely with the interagency to coordinate the enforcement of U.S. trade rights on the ground in countries all over the world. State also utilizes its embassies to confront foreign trade barriers and also works closely with other federal agencies that maintain a presence at embassies overseas, including with DOC's Foreign Commercial Service offices, USDA's Foreign Agricultural Service offices, USPTO's Intellectual Property Attachés, and with USTR in Brussels and Beijing. State's Office of the Legal Adviser provides the USG with legal advice and representation with respect to all aspects of international claims and investment disputes and also works closely with DOJ and other Executive Branch agencies in formulating USG positions in a variety of international and domestic litigation proceedings.

State routinely interacts at all levels with foreign government officials and counterparts. State officers work closely with our embassies and the interagency to identify high-priority foreign trade measures so that, during these interactions, State officials can raise trade concerns and emphasize to foreign governments the importance of adhering to international agreements.

State also meets regularly with private sector and other stakeholder representatives regarding trade issues, both in Washington, D.C. and overseas. Abroad, State officers are often the first point of contact for any U.S. business encountering a foreign trade barrier, as well as businesses, worker organizations, or other civil society partners regarding facing possible violations of a U.S. trade agreement. State officials also work to support U.S. businesses and workers, including through facilitating their contact with relevant host government officials, encouraging the host government to negotiate a settlement of the dispute, and obtaining additional information about foreign trade measures of concern.

Embassy officers and local staff are also well placed to investigate suspected trade barriers, given their knowledge of local systems and their foreign language skills.

Authority for State's enforcement activities includes:

- 22 U.S.C. 2656 (Management of foreign affairs);
- Other provisions under Title 22 of the U.S.C. pertaining to the organization and functions of State and missions abroad;
- 1 U.S.C. 112a, b (International agreements);
- Responsibilities pursuant to an array of Executive Orders and Delegations of Authority relevant to trade and foreign affairs matters.

These and other authorities and functions are detailed in sections of State's Foreign Affairs Manual ("FAM") that pertain to the offices described in this section and to other units of State, including but not limited to 1 FAM 420 (Bureau of Economic and Business Affairs); 1 FAM 240 (Office of the Legal Adviser); 1 FAM 510 (Bureau of Democracy, Human Rights and Labor) and 1 FAM 540 (Bureau of Oceans and International Environmental and Scientific Affairs).

## VIII. U.S. Department of the Treasury (“Treasury”)

Treasury’s mission is to “[m]aintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combating threats and protecting the integrity of the financial system, and manage the U.S. Government’s finances and resources effectively.”<sup>66</sup>

Treasury participates fully and actively in U.S. trade policy and trade enforcement, both separately and through the inter-agency process. Treasury is particularly engaged in the implementation of trading rules as they affect financial services.

- Types of trade violations: Failure by trading partners to abide by financial service provisions and commitments in international trade agreements to which the United States is a party.
- Available remedies/actions: Treasury ensures that other governments comply with trading rules where Treasury equities are involved.
- Role played in the trade enforcement process with other agencies: As the co-lead with USTR on financial services in U.S. trade agreements, Treasury has a substantial role regarding the negotiation, implementation, and enforcement of the financial services provisions of U.S. trade agreements. Treasury also has a statutory role regarding oversight of customs revenue functions – which encompasses trade issues as well as CBP regulations affecting revenue, trade, and trade enforcement. Treasury works with other agencies to implement U.S. trade laws and policy, as well as enforce rules and agreements to reduce and eliminate foreign trade barriers and to protect U.S. companies and workers. Treasury is a member of the TPSC (*see above*), and part of CITA (*see above*). As such, Treasury is actively engaged in interagency deliberations and decisions on specific trade actions (*e.g.*, initiation of trade disputes, IP enforcement, review of specific country petitions under preference programs, Section 303, Section 337, *etc.*).

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<sup>66</sup> <http://www.treasury.gov/about/role-of-treasury/Pages/default.aspx>

## IX. U.S. Environmental Protection Agency (“EPA”)

EPA’s mission is “to protect human health and the environment.”<sup>67</sup>

- Types of trade violations: Failure by trading partners to interpret international agreements to which the United States is a party consistent with U.S. environmental laws and policies.
- Available remedies/actions: EPA is not responsible for enforcement of international trade law obligations. It works to ensure that international trade law obligations are not interpreted in such a manner as to conflict with, or unduly limit, discretion under U.S. environmental laws and policies implemented by EPA
- Role played in the trade enforcement process with other agencies: EPA works with USTR and other agencies through inter-agency processes led by USTR to address possible violations of international trade law obligations. EPA’s primary focus in this context is to ensure that trade policy and environmental policy are mutually supportive.

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<sup>67</sup> <http://www2.epa.gov/aboutepa/our-mission-and-what-we-do>

## X. The Federal Communications Commission (“FCC”)

The FCC “regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the commission is the United States’ primary authority for communications law, regulation and technological innovation.”<sup>68</sup>

- Types of trade violations: Anticompetitive conduct in setting international phone rates.
- Available remedies/actions: The FCC’s International Bureau (“IB”) has primary responsibility within the FCC for providing U.S. trade officials advice and technical assistance in negotiation and implementation of telecommunications trade agreements. To bring allegations of anticompetitive conduct on international phone rates before the FCC, parties must file a petition with IB regarding the alleged conduct harming U.S. consumers. Upon a finding of anticompetitive behavior, the FCC can impose a variety of potential remedies, including prohibiting payment of increased settlement rates, revoking or limiting section 214 authorizations (necessary to provide U.S.-international common carrier service), prohibiting termination of traffic, and issuing full stop payment orders.
- Role played in the trade enforcement process with other agencies: On international phone rates, the FCC coordinates with the relevant Executive Branch agencies regarding particular instances of anticompetitive behavior on U.S.-international routes. *See also* “Satellite and foreign licensing issues”, below.

The FCC also participates in discussions of telecommunications policy issues, including regulatory reform, with foreign regulators and telecommunications ministries. The FCC promotes pro-competitive regulatory policies globally and interacts with foreign governments.

Regarding international phone rates, the FCC has, in the past, written letters to its foreign regulatory counterparts regarding specific complaints of anticompetitive behavior that harms U.S. consumers.

Satellite and foreign licensing issues: From time to time, U.S. companies will approach the FCC about difficulties entering or providing communications service in a foreign market. When warranted, the FCC (along with other USG agencies such as DOC, State, and USTR) may engage its foreign regulatory counterpart in informal discussions to seek to resolve the matter. The FCC also administers an international agreement for reciprocal recognition of commercial satellite operations between Argentina and the United States.

The FCC’s Office of Engineering and Technology (“OET”), together with IB, coordinates Mutual Recognition Agreements (“MRA”) with other countries for equipment certification activities and support the USTR, DOC, National Institute of Standards and Technology, and State in MRA negotiation and implementation.

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<sup>68</sup> <https://www.fcc.gov/what-we-do>

Authority for the FCC's enforcement activities includes:

- International Phone Rates;
  - 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 208, 211, 214, 303(r), 309, and 403;
  - *Benchmarks Order* and *Benchmarks Reconsideration Order*;
  - *International Settlements Policy Reform*, IB Docket Nos. 11-80, 05-254, 09-10, RM-11322, Report and Order, FCC 12-145, 27 FCC Rcd 15521 (2012).
- Mutual Recognition Agreements: On December 17, 1998, the FCC adopted rules for the establishment of Telecommunication Certification Bodies (“TCB”).<sup>69</sup> A TCB is a private third-party organization, which is authorized to issue grants, within its scope of designation, for equipment subject to the FCC's certification procedures. The FCC also established procedures for foreign TCBs under the terms of a government-to-government Mutual Recognition Agreement. Foreign TCBs certify equipment to the FCC requirements using test procedures and technical requirements as specified by the FCC;
- Under 47 C.F.R. §0.51(j), the IB has the responsibility to “collect and disseminate within the FCC information and data on international telecommunications policies, regulatory and market developments in other countries, and international organizations”;
- 47 C.F.R. §43.62 sets forth reporting requirements that helps the FCC monitor termination rates, and are reported in the FCC's annual International Traffic and Revenue Report.<sup>70</sup>;
- Section 4 of the Communications Satellite Act of 1962 (47 U.S.C. §701 *et seq.*), as amended by Communications Satellite Act—Amendment (Pub. L. No. 109-34, 119 Stat. 377): The FCC is required to submit an annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services.<sup>71</sup>
- IB's Telecommunications and Analysis Division and IB's Global Strategy and Negotiations Division (“GSN”) provide input to USTR when it prepares its annual Section 1377 report. USTR also consults with these divisions from time to time for subject matter or regional expertise on an as-needed basis. (47 C.F.R. §0.61(h); sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c)(1))
- Section 1377 Report and General Support: GSN provides input to USTR when it prepares its annual Section 1377 report. USTR also consults from time to time for subject matter or regional expertise on an as-needed basis. (Authority: 47 C.F.R. § 0.51(h); sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 155(c)(1));

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<sup>69</sup> 1998 Biennial Regulatory Review -- Amendment of Parts 2, 25 and 68 of the Commission's Rules to further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, GEN Docket No. 98-68, Report and Order, 13 FCC Rcd 24687 (1998).

<sup>70</sup> <https://www.fcc.gov/encyclopedia/international-traffic-and-revenue-report>

<sup>71</sup> <https://transition.fcc.gov/ib/obc/scr/scr.html>

- Expert advisory agency on communications trade negotiations: As the expert agency on communications regulation, the FCC provides advice and counsel to U.S. trade officials in the negotiation and implementation of trade agreements. Specifically, IB at the FCC “provide(s) advice and technical assistance to U.S. trade officials in the negotiation and implementation of telecommunications trade agreements, and consult(s) with other bureaus and offices as appropriate.” 47 C.F.R. § 0.51(h). Recent agreements in which the FCC has served (or currently serves) in this role include the WTO General Agreement on Trade and Services (“GATS”) agreement, numerous bilateral FTAs, the T-TIP, Trade in Services Agreement, and the TPP;
- Responsibility for implementing trade agreements and enforcing violations of rules regarding market entry: The FCC has responsibility for implementing U.S. telecommunications commitments in international trade agreements. *See* 47 C.F.R. § 0.51(n). For example, as a result of the WTO GATS market access provisions, the FCC developed rules to permit non-U.S. companies to have access to the U.S. satellite market for certain types of satellite services. The FCC also has the authority to enforce compliance with these rules. *See* 47 C.F.R. § 0.51(q).

## XI. U.S. International Trade Commission (“USITC”)

“The United States International Trade Commission is an independent, quasijudicial Federal agency with broad investigative responsibilities on matters of trade. [...] The mission of the Commission is to (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, USTR, and Congress with independent analysis, information, and support on matters of tariffs, international trade, and U.S. competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States (HTS).”<sup>72</sup>

- Types of trade violations: Imports found by DOC to be dumped or subsidized that materially injure, threaten to materially injure, or materially retard the establishment of, U.S. industries. Increased imports that seriously injure or threaten to seriously injure U.S. industries. Importation of goods that infringe U.S. IPR, and other unfair methods of competition and unfair acts in connection with imported goods.
- Available remedies/actions: The USITC conducts import injury investigations and IP-based import investigations. *Id.*
  - ❖ **AD/CVD Investigations**: As explained in the DOC section, above, DOC determines whether dumping or subsidization exists and, if so, the margin of dumping or amount of the subsidy. The USITC determines whether the subject imports materially injure or threaten to materially injure a U.S. industry, or materially retard the establishment of such industry. Thereafter, the USITC (and DOC) conduct five-year (sunset) reviews of existing AD/CVD orders and suspension agreements to determine whether revocation of the order or termination of the suspension agreement would be likely to lead to continuation or recurrence of dumping or subsidization (DOC) and of material injury (USITC) within a reasonably foreseeable time.
  - ❖ **Safeguard Investigations**: The USITC determines whether an article is being imported into the United States in such increased quantities to be a substantial cause of serious injury or threat of serious injury to a domestic industry. If the USITC makes an affirmative injury determination, the USITC recommends to the President relief that would prevent or remedy the injury and facilitate industry adjustment to import competition. Such relief may be in the form of a tariff increase, a tariff-rate quota, quantitative restrictions, or one or more appropriate adjustment measures, including trade adjustment assistance. The President makes the final decision on whether to provide relief and the type, amount, and duration of relief.<sup>73</sup>

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<sup>72</sup> [http://www.usitc.gov/press\\_room/about\\_usitc.htm](http://www.usitc.gov/press_room/about_usitc.htm)

<sup>73</sup> The USITC is also authorized to conduct country or region-specific safeguard investigations under U.S. FTA implementation legislation and to make injury determinations and remedy recommendations to the President; no remedy actions are currently in effect under those provisions. The USITC is also authorized to conduct investigations under section 406 of the Trade Act of 1974 (19 U.S.C. §2436, market disruption from Communist countries) and section 22 of the Agricultural Adjustment Act (7 U.S.C. §624, interference with USDA domestic support programs). The USITC has not conducted any investigations under sections 406 or 22 since the 1990s, and these statutes may be applied only in very limited circumstances.

- ❖ **Investigations of Unfair Practice in Import Trade, Including Infringement of IPR Import Investigations (a.k.a. Section 337 Investigations):** Under section 337 of the Tariff Act of 1930, the infringement of a U.S. patent, copyright, registered trademark, or mask work is an unlawful practice in import trade (most complaints filed under this provision involve patent or trademark infringement allegations). Other unfair methods of competition and unfair acts in the importation of articles also may be found unlawful under section 337. Upon request, the USITC conducts enforcement, modification, and advisory opinion proceedings after orders have been issued.
- Role played in the trade enforcement process with other agencies: Upon request, the USITC provides technical support to USTR in WTO dispute settlement matters. In section 337 cases, the USITC may issue exclusion orders that are enforced by CBP.

Authority for the USITC's enforcement activities includes:

- USITC rules of practice and procedure relating investigations and meetings: 19 C.F.R. Part 210, Subparts A, B, and E, generally;
  - AD/CVD Investigations: 19 U.S.C. §§ 1673, 1673b, 1673c, 1673d, 1673h (AD investigations); 19 U.S.C. §§ 1671, 1671b, 1671c, 1671(d) (CVD investigations); 19 U.S.C. §§ 1675, 1675a, 1675b (reviews); 19 U.S.C. § 1677, 1677c, 1677e, 1677f (definitions, special rules, and general provisions); USITC rules of practice and procedure relating to the conduct of its AD/CVD investigations can be found at 19 C.F.R. Part 207;
  - Safeguard Investigations: 19 U.S.C. §§ 2251-2254. U.S. legislation implementing the safeguard provisions in various FTAs is generally found at 19 U.S.C. §§ 3352, 4061, 2112 note, and 3805 note. Sections 201-204 of the Trade Act of 1974 implement certain authority to apply safeguard measures in Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; USITC rules of practice and procedure relating to the conduct of global and bilateral safeguard investigations, and review of safeguard measures can be found at 19 C.F.R. Part 206;
  - Section 337 Investigations: 19 U.S.C. § 1337; Section 337 of the Tariff Act of 1930; USITC rules of practice and procedure relating to the conduct of Section 337 Investigations can be found at 19 C.F.R. Part 210.

## **XII. Executive Office of the President, Office of Management and Budget**

### **A. Office of the U.S. Intellectual Property Enforcement Coordinator (“IPEC”)**

IPEC was created by the Prioritizing Resources and Organization for Intellectual Property Act of 2008.<sup>74</sup> As its website explains, IPEC “is dedicated to the protection of the American intellectual property that powers our economy. American entrepreneurs, business owners, and the general public are best served by an economy that fosters and protects our global competitive advantage, which must discourage IP theft while protecting the constitutional rights of our citizens. Our office strives to make sure that the Federal government takes the most appropriate action to realize those goals.”<sup>75</sup>

- Types of trade violations: IP infringement.
- Available remedies/actions: In June 2013, IPEC released the 2013 Joint Strategic Plan on Intellectual Property Enforcement, which, pursuant to the PRO-IP Act, sets forth the USG’s strategy for IP enforcement for three years.<sup>76</sup> In addition, since 2010, the Joint Strategic Plan has required the Special 301 Out-of-Cycle Review of Notorious Markets to address online and physical piracy and counterfeiting being carried out in foreign countries.
- Role played in the trade enforcement process with other agencies: Under Title III of the PRO-IP Act and Executive Order 13565, IPEC chairs two interagency committees that are charged with developing and implementing three-year strategic plans on IP enforcement. As the IPEC website explains: “The job of the IPEC office is to coordinate the work of the Federal government in order to stop illegal and damaging IP theft. We work with relevant Federal agencies, law enforcement organizations, foreign governments, private companies, public interest groups, and others to develop and implement the best strategies to conduct this fight. We aim to foster and protect invention and creativity by reducing infringement at home and abroad.”<sup>77</sup> The IPEC Office also participates in the annual Special 301 Review and Out-of-Cycle Review on Notorious Markets.

Authority for IPEC’s enforcement activities includes:

- Title III of the PRO-IP Act (15 U.S.C. §8111-8116);
- Executive Order 13565 of February 8, 2011 (“Establishment of the Intellectual Property Enforcement Advisory Committees”).

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<sup>74</sup> Pub. L. No. 110-403, Title III, §§ 301-306 (Oct. 13, 2008). <http://www.gpo.gov/fdsys/pkg/PLAW-110publ403/pdf/PLAW-110publ403.pdf> (“PRO-IP Act”).

<sup>75</sup> <https://www.whitehouse.gov/omb/intellectualproperty/ipec>

<sup>76</sup> <https://www.whitehouse.gov/sites/default/files/omb/IPEC/2013-us-ipec-joint-strategic-plan.pdf>

<sup>77</sup> <https://www.whitehouse.gov/omb/intellectualproperty/ipec>

## ANNEX I: KEY TRADE ENFORCEMENT REPORTS

**China WTO Compliance Report:** An annual report that examines WTO commitments undertaken by China and identifies areas where progress has been made and underscores areas of concern, especially those raised by U.S. stakeholders.

<https://ustr.gov/sites/default/files/2014-Report-to-Congress-Final.pdf>

(USTR, with input from USDA, DOC, including USPTO, State, and Treasury)

**The National Trade Estimate Report on Foreign Trade Barriers (“NTE”):** An annual survey of significant foreign barriers to U.S. exports. The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports.

<https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf>

(USTR, with input from USDA, DOC, and State)

**Notorious Markets Report:** The Special 301 Out-of-Cycle Review of Notorious Markets conducted under the IPEC’s Joint Strategic Plan since 2010, highlights specific physical and online markets around the world that are reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting.

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/december/2015-notorious-markets-list>

(USTR, with input from all agencies on the Special 301 Committee)

**Section 1377 Review of Telecommunications Trade Agreements:** An annual review of the operation and effectiveness of U.S. telecommunications trade agreements and the presence or absence of other mutually advantageous market opportunities.

[https://ustr.gov/sites/default/files/2015-Section-1377-Report\\_FINAL.pdf](https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf)

(USTR, with input from DOC and the FCC)

**Softwood Lumber Report:** Reviews subsidies, including stumpage subsidies, provided by countries exporting softwood lumber and lumber products to the United States.

<http://enforcement.trade.gov/sla2008/reports/Softwood-Lumber-Subsidies-Report-2015-06-16.pdf>

(DOC/ITA, with input from DOJ)

**The Special 301 Report:** An annual review of the global state of IPR protection and enforcement. This Report reflects the Administrations’ resolve to encourage and maintain effective IPR protection and enforcement worldwide.

<https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>

(USTR, with input from all agencies on the Special 301 Committee)

**Steel Import Monitoring Report:** Collects data from import licenses for a weekly, web-based report, which provides early warning information on steel imports.

<http://enforcement.trade.gov/steel/license/>

(DOC/ITA)

**Subsidies Enforcement Report:** An annual report that details efforts by USTR and DOC to strengthen international trade rules against prohibited subsidies and to enforce compliance against the unfair use of foreign government subsidies across a broad range of industries, including aerospace, steel, paper, semiconductors and fertilizer.

<http://enforcement.trade.gov/esel/reports/seo2015/seo-annual-report-2015.pdf>

(USTR and DOC)

**The Trade Policy Agenda and Annual Report:** A review of the President's Trade Policy Agenda and an Annual Report of the Office of the U.S. Trade Representative.

<https://ustr.gov/sites/default/files/President%27s%20Trade%20Agenda%20for%20Print%20FINAL.pdf>

(USTR, with input from USDA, DOC and State)