III. TRADE ENFORCEMENT ACTIVITIES

A. Overview

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

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

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

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

Favorable Resolutions or Settlements

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

The United States has been able to achieve this preferred result in 34 disputes concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value-added tax exemptions for certain domestically produced aircraft; China's Demonstration Base / Common Service Platform export subsidy program; China's Automobile and Automobile Parts Export Bases prohibited subsidy program; China's value-added tax on integrated circuits; China's use of prohibited subsidies for green technologies; China's treatment of foreign financial information suppliers; China's subsidies for so called Famous Brands; China's support for wind power equipment; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; India's compliance regarding its patent protection; Indonesia's barriers to the importation of horticultural products (two disputes); Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' automotive regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

Litigation Successes

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 48 cases to date. In 2017, the United States prevailed in a dispute challenging Indonesia's barriers on the importation of horticultural products, beef, poultry, and animals. The United States also prevailed in three proceedings in WTO disputes brought against U.S. measures: a compliance challenge by the European Union on alleged U.S. subsidies for large civil aircraft (on appeal by the European Union); a dispute by the European Union challenging alleged Washington State export subsidies; and a dispute brought by Indonesia challenging U.S. countervailing duties on coated paper.

In prior years, the United States prevailed in complaints involving: Argentina's import licensing restrictions and other trade-related requirements; Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights; China's measures related to the exportation of raw materials; China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's claim of compliance in the dispute involving China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's measures affecting electronic payment services; China's countervailing and antidumping duties on broiler parts from the United States; China's countervailing and antidumping duties on automobiles from the United States; China's export restrictions on rare earths and other materials; the EU's subsidies to Airbus for large civil aircraft; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; the EU's tariff treatment of certain information technology products; India's ban on poultry meat and various other U.S. agricultural products allegedly to protect against avian influenza; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's discriminatory local content requirements for solar cells and modules under its National Solar Mission (two merged complaints); India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers;

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

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

ICTIME

On February 28, 2012, Executive Order 13601 established the Interagency Trade Enforcement Center, or ITEC, to bring additional approaches to addressing unfair trade practices and foreign trade barriers, and to significantly enhance the U.S. Government's capabilities to challenge such barriers and practices around the world. ITEC increased the efforts devoted to trade enforcement, as well as leveraged existing analytical resources more efficiently across the U.S. Government in support of trade enforcement efforts.

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law. Section 604 of the law established ICTIME in USTR to support the activities of USTR in investigating potential disputes under the WTO and bilateral and regional trade agreements; monitoring and enforcing trade agreements to which the United States is a party; and monitoring implementation by foreign parties to trade agreements. The statute expressly provides that federal agencies may detail employees to ICTIME to support its functions. To transition ICTIME from a primarily detailee-supported entity to one staffed significantly by USTR employees, ICTIME undertook extensive efforts to develop a hiring plan, specify needed skills, announce new positions, review and interview candidates, and train new hires to support its expanded mission within the new management structure.

In 2017, ICTIME continued its work. ICTIME has played a role in providing research and analysis in support of multiple USTR enforcement actions on WTO matters, including Argentina's compliance with WTO findings on its import licensing restrictions and other trade-related requirements; China's subsidies to its aluminum industry; Indonesia's restrictive import licensing; India's local content restrictions on certain solar energy products; China's domestic support for corn, wheat, and rice production; and China's administration of tariff rate quotas for corn, wheat, and rice. In addition, ICTIME has provided research and analysis to assist in defending disputes brought against the United States at the WTO and acquired translations of hundreds of foreign laws, regulations, and other measures related to trading partners' adherence to international trade obligations.

ICTIME has provided an important monitoring and analysis function to support USTR's evaluation of various countries' compliance with WTO findings in disputes brought by the United States. ICTIME analysts provided extensive research and analysis to document China's policies and actions regarding intellectual property and technology transfer as part of a wide-ranging Section 301 investigation. ICTIME also provided significant research to support USTR's filing of a WTO counter-notification regarding various Chinese export subsidies and another regarding Vietnamese state trading enterprises that both countries should have notified.

In coordination with other offices at USTR and other agencies, ICTIME has identified priority projects for research and analysis regarding a number of countries and issues. ICTIME staff are researching those projects intensively and these efforts are being supplemented by research conducted by other agencies in coordination with ICTIME.

1. WTO Dispute Settlement

In November 2017, the United States prevailed in a challenge (also resolving two previous complaints) to Indonesia's import barriers against U.S. agricultural products from beef to fruits and vegetables to poultry. The Appellate Body agreed Indonesia's import restrictions and prohibitions breach WTO rules. Those import barriers cost U.S. farmers and ranchers millions of dollars per year in lost export opportunities in Indonesia.

The United States launched three WTO disputes and pursued actions in three other proceedings in 2017. USTR requested WTO consultations with Canada on British Columbia's regulations regarding the sale of wine in grocery stores. Canada's regulations discriminate against the sale of U.S. wine. USTR also requested WTO consultations with Canada regarding British Columbia's additional and revised measures regarding the sale of wine in grocery stores. These measures discriminate against U.S. wine by allowing only British Columbia wine to be sold on regular grocery store shelves while imported wine may be sold in grocery stores only through a so-called "store within a store." In January 2017, the United States requested WTO consultations with China on certain subsidies to specific producers of primary aluminum. The United States had WTO panels established to examine a U.S. complaint that China is exceeding its agricultural domestic support commitments and a U.S. complaint that China is administering its tariff-rate quotas for wheat, rice, and corn in a non-transparent, unpredictable, and unreasonable manner. The United States also proceeded with an arbitration to determine the level of countermeasures against India in relation to its restrictions on imported U.S. poultry and other products allegedly due to avian influenza.

The cases described in Chapter V.H of this report provide further detail about U.S. involvement in the WTO dispute settlement process. Further information on WTO disputes to which the United States is a party is available on the USTR website: https://ustr.gov/issue-areas/enforcement/overview-dispute-settlement-matters.

2. Section 301

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

Operation of the Statute

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

In each investigation, USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, USTR must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, USTR must determine whether action is appropriate and if so, what action to take.

Actions that USTR may take under Section 301 include to: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations. After a Section 301 investigation is concluded, USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or USTR considers that the country fails to implement a WTO dispute panel recommendation, USTR must determine what further action to take under Section 301.

Developments during 2017

China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

On August 14, 2017, the President issued a Memorandum (82 FR 39007) to the U.S. Trade Representative instructing USTR to determine, consistent with section 302(b) of the Trade Act of 1974 (19 U.S.C. 2412(b)), whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development.

Pursuant to the President's Memorandum, on August 18, 2017, USTR initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) to determine whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce.

The acts, policies, and practices of the government of China directed at the transfer of U.S. and other foreign technologies and intellectual property are an important element of China's strategy to become a leader in a number of industries, including advanced technology industries, as reflected in numerous industrial policy initiatives, including, China's "Made in China 2025" industrial plan. The Chinese government's acts, policies, and practices take many forms. The investigation initially will consider the following specific types of conduct:

First, the Chinese government reportedly uses a variety of tools, including opaque and discretionary administrative approval processes, joint venture requirements, foreign equity limitations, procurements, and other mechanisms to regulate or intervene in U.S. companies' operations in China, in order to require or pressure the transfer of technologies and intellectual property to Chinese companies. Moreover, many U.S. companies report facing vague and unwritten rules, as well as local rules that diverge from national ones, which are applied in a selective and nontransparent manner by Chinese government officials to pressure technology transfer.

Second, the Chinese government's acts, policies, and practices reportedly deprive U.S. companies of the ability to set market based terms in licensing and other technology-related negotiations with Chinese companies and undermine U.S. companies' control over their technology in China. For example, the Regulations on Technology Import and Export Administration mandate particular terms for indemnities and ownership of technology improvements for imported technology, and other measures also impose non-market terms in licensing and technology contracts.

Third, the Chinese government reportedly directs or unfairly facilitates the systematic investment in, or acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.

Fourth, the investigation will consider whether the Chinese government is conducting or supporting unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of intellectual property, trade secrets, or confidential business information, and whether this conduct harms U.S. companies or provides competitive advantages to Chinese companies or commercial sectors.

In addition to these four types of conduct, USTR also will consider information on other acts, policies, and practices of China relating to technology transfer, intellectual property, and innovation described in the President's Memorandum that might be included in the investigation or might be addressed through other applicable mechanisms.

Pursuant to section 302(b)(1)(B) of the Trade Act (19 U.S.C. 2412(b)(1)(B)), USTR consulted with appropriate advisory committees. USTR also consulted with members of the interagency Section 301 Committee. On the date of initiation, USTR requested consultations with the government of China concerning the issues under investigation, pursuant to section 303(a)(1) of the Trade Act (19 U.S.C. 2413(a)(1)).

USTR held a public hearing on October 10, 2017, and two rounds of public written comment periods. USTR received approximately 70 written submissions from academics, think tanks, law firms, trade associations, and companies.

Under section 304(a)(2)(B) of the Trade Act (19 U.S.C. 2414(a)(2)(B)), the U.S. Trade Representative must make a determination within 12 months from the date of the initiation whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, what action, if any, to take.

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

The European Union (EU) prohibits imports into the EU of animals and meat from animals to which certain hormones have been administered (the "hormone ban"). In 1996, the United States initiated a WTO dispute with respect to the hormone ban. A WTO panel and the Appellate Body found that the measure was inconsistent with WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the European Communities, the predecessor to the EU, was to come into compliance with its obligations by May 13, 1999, but it failed to do so. Accordingly, in May 1999, the United States requested authorization from the Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT 1994. The EC did not contest that it had failed to comply with its WTO obligations, but it objected to the level of suspension proposed by the United States.

On July 12, 1999, a WTO arbitrator determined that the level of nullification or impairment suffered by the United States as a result of the WTO inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the EC and its Member States of tariff concessions and related obligations under the GATT 1994, covering trade up to $116.8 million per year. In a notice published in the *Federal Register* in July 1999, USTR announced that the United States was acting pursuant to this authorization by initiating proceedings under Section 301 to impose 100 percent *ad valorem* duties on certain products of certain EC Member States.

In February 2005, a WTO panel was established to consider the EU's claims that it had brought its hormone ban into compliance with its WTO obligations and that the increased duties imposed by the United States were no longer authorized by the DSB. In 2008, the panel and Appellate Body confirmed that the July 1999 DSB authorization remained in effect.

In January 2009, USTR: (1) removed certain products from the 1999 list of products subject to 100 percent *ad valorem* duties; (2) imposed 100 percent *ad valorem* duties on some new products from certain EU Member States; (3) modified the coverage with respect to particular EU Member States; and (4) raised the level of duties on one product. The trade value of the products subject to the modified list did not exceed the $116.8 million per year authorized by the WTO.

In March 2009, USTR delayed the effective date of the additional duties (items two through four above) imposed under the January 2009 modifications in order to allow additional time for reaching an agreement with the EU. The effective date of the removal of duties under the January modifications remained March 23, 2009. Accordingly, subsequent to March 23, 2009, the additional duties put in place in July 1999 remained applicable to a reduced list of products.

In May 2009, the United States and the EU concluded a MOU which, under the first phase of the MOU scheduled to conclude in August 2012, obligated the EU to open a new duty-free tariff rate quota (TRQ) for beef not produced with certain growth promoting hormones. The United States in turn agreed not to impose duties above those in effect as of March 23, 2009.

On August 3, 2012, the United States and the EU, by mutual agreement, entered into a second phase of the MOU, to expire in one year. Under phase two, USTR terminated the remaining additional duties, and the EU expanded the TRQ from 20,000 to 45,000 metric tons.

In August 2013, the United States and the EU extended phase two for an additional two years, until August 2015. USTR has continuously monitored the operation of the TRQ.

On December 9, 2016, representatives of the U.S. beef industry requested that USTR reinstate trade action against the EU because the TRQ is not providing benefits sufficient to compensate for the harm caused by the EU's hormone ban. On December 28, 2016, USTR published a *Federal Register* notice seeking public comments on specific EU products, in order to consider possible reinstatement of duties. USTR held a public hearing on February 15, 2017. USTR is engaged in discussions with the European Commission on possible modifications to the operation of the TRQ in order to address U.S. industry concerns.

3. Other Monitoring and Enforcement Activities

Subsidies Enforcement

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

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

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

During 2017, USTR and E&C staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by E&C officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. U.S. Government officers stationed at posts where E&C staff are not present have also handled such inquiries.

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

Monitoring and Challenging Foreign Antidumping, Countervailing Duty, and Safeguard Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Subsidies Agreement permit WTO Members to impose antidumping (AD) 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.

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

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

During the past year, over 100 trade remedy actions involving exports from the United States were closely monitored, notable examples of which include: 1) (Antidumping) Australia's investigation of cooling tower water treatment controllers, El Salvador's investigation of latex paint, and China's separate investigations of halogenated butyl rubber, styrene monomer, hydriodic acid, and ethanalomines; 2) (Countervailing Duty) Peru's investigation of ethanol; and 3) (Safeguards) The Gulf Cooperation Council's investigation of chemical plasticizers, India's investigation of solar cells, Turkey's investigation of pneumatic tires, and Vietnam's investigation of fertilizer.

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

Disputes under Free Trade Agreements

CAFTA-DR: In the Matter of Guatemala – Issues Relating to the Obligations under Article 16.2.1(a) of the CAFTA-DR

On July 30, 2010, the United States requested cooperative labor consultations with Guatemala pursuant to Article 16.6.1 of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). In its request, the United States stated that Guatemala appeared to be 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. The request specifically stated that the United States had identified significant failures by Guatemala to enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade, including: (1) the Ministry of Labor's (MOL) failure to investigate alleged labor law violations; (2) the MOL's failure to take enforcement action once it had identified a labor law violation; and, (3) the judicial system's failure to enforce labor court orders in cases involving labor law violations.

The United States and Guatemala held consultations on September 8-9, 2010, and on December 6, 2010, but were unable to resolve the matter. On May 16, 2011, the United States requested a meeting of the Free Trade Commission (FTC) under CAFTA-DR Article 20.5.2. The FTC met on June 7, 2011, but was unable to resolve the dispute.

On August 9, 2011, the United States requested the establishment of a panel under CAFTA-DR Article 20.6.1. The Panel was constituted on November 30, 2012, with Mr. Kevin Banks as Chair and with Mr. Theodore Posner and Mr. Mario Fuentes Destarac serving as the other Members.

The Parties agreed to suspend the work of the Panel while they negotiated a Labor Enforcement Plan in which Guatemala agreed to take significant actions to strengthen its enforcement of its labor laws. On April 26, 2013, the Parties signed the 18-point Enforcement Plan and agreed to maintain the arbitral panel's suspension during its implementation and review.

On September 19, 2014, after having concluded that Guatemala had not achieved sufficient progress in realizing the commitments and aims of the Enforcement Plan, the United States proceeded with the dispute settlement proceedings. Both disputing Parties presented a series of written submissions to the Panel in accordance with the Rules of Procedure for Chapter 20 (Dispute Settlement) of the CAFTA-DR. Eight non-governmental entities also submitted written views to the Panel as provided under the CAFTA-DR.

The Panel held a hearing in Guatemala City on June 2, 2015. On November 4, 2015, the proceedings were temporarily suspended after Mr. Fuentes Destarac resigned from the Panel for reasons of availability. The Panel resumed work on November 27, 2015, when Mr. Ricardo Ramírez Hernández accepted his nomination to serve as a member of the Panel.

The Panel's final report in the proceedings was released on June 26, 2017. In its final report, the Panel agreed with the United States that Guatemala had failed to effectively enforce its labor laws by failing to secure compliance with court orders with respect to 74 workers at eight worksites (claim 1), and Guatemala had also failed to impose sanctions or other actions after a company obstructed labor inspections (claim 2). However, the Panel ultimately rejected the U.S. claims that these failures resulted in a breach of the CAFTA-DR because it concluded that the United States had failed to demonstrate that Guatemala's enforcement failures constituted a sustained or recurring course of action or inaction, or that the failures occurred in a manner affecting trade. The Panel found a third claim to be outside its terms of reference and therefore declined to make findings upon it.

CAFTA-DR: United States – Dehydrated Ethyl Alcohol

On April 1, 2014, Costa Rica requested formal consultations under the dispute settlement provisions of the CAFTA-DR regarding the tariff treatment by the United States of ethyl alcohol (ethanol) dehydrated in Costa Rica from non-originating feedstock. On April 8, 2014, El Salvador notified the United States that it considers it has a substantial trade interest in the matter and would therefore participate in the consultations. Formal consultations were held on June 11, 2014. On September 29, 2014, Costa Rica requested a meeting of the Free Trade Commission, and the FTC meeting took place on November 6, 2014.

NAFTA: United States – Textiles

On September 27, 2016, Canada requested NAFTA Chapter Twenty consultations with respect to an ongoing U.S. Customs enforcement action against a Canadian company (Tricots Liesse) that had made numerous false claims that certain textiles met NAFTA rules of origin. The United States and Canada held consultations on November 10, 2016, in Washington, DC.

4. Monitoring Foreign Standards-related Measures and SPS Barriers

The Trump Administration commits significant resources to identify and confront unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as from technical regulations, standards, and conformity assessment procedures (standards-related measures) that restrict U.S. exports of safe, high-quality products. SPS measures, technical regulations, and standards serve a vital role in safeguarding countries and their people, including health protection, safety, and the environment. Conformity assessment procedures are procedures such as testing and certification requirements used to determine if products comply with underlying standards and technical requirements.

U.S. trade agreements provide that SPS and standards-related measures enacted by U.S. trading partners to meet legitimate objectives, such as the protection of health and safety as well as the environment, must not act as unnecessary obstacles to trade. Greater engagement with U.S. trading partners and increased monitoring of their practices can help ensure that U.S. trading partners are complying with their obligations. This engagement helps facilitate trade in safe, high-quality U.S. products. USTR, through its Trade Policy Staff Committee (TPSC), works to ensure that SPS and standards-related measures do not act as discriminatory or otherwise unwarranted restrictions on market access for U.S. exports.

USTR uses tools, including its Annual Report and the National Trade Estimate Report (NTE), to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. These reports describe the actions that USTR and other agencies have taken to address the specific trade concerns identified, as well as ongoing processes for monitoring SPS and standards-related actions that affect trade. USTR's activities in the WTO SPS Committee and the WTO TBT Committee are at the forefront of these efforts (*for additional information, see Chapter V.E.3 and Chapter V.E.8.*). USTR also engages on these issues with U.S. trading partners through mechanisms established by free trade agreements, such as the CAFTA-DR, and through regional and multilateral organizations, such as the APEC and the OECD.

In 2018, USTR will continue to deploy significant resources to identify and confront unjustified SPS and standards-related barriers. The NTE Report will continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during the past year, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made.

5. Special 301

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act (enacted in 1994), and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242), USTR must identify those countries that deny adequate and effective protection for intellectual property (IP) rights or deny fair and equitable market access for persons that rely on IP protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as "Priority Foreign Countries" (PFC), unless those countries are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IP.

In addition, USTR has created a Special 301 "Priority Watch List" (PWL) and "Watch List" (WL). Placement of a trading partner on the PWL or WL indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons relying on IP. Countries placed on the PWL receive increased attention in bilateral discussions with the United States concerning the identified problem areas. USTR develops an action plan for each foreign country identified on the PWL for at least one year.

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

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

2017 Special 301 Review Results

On April 27, 2017, USTR announced the results of the 2017 Special 301 Review. The 2017 Special 301 Report was the result of stakeholder input and interagency consultation.

In 2017, USTR requested written submissions from the public through a notice published in the *Federal Register* on December 28, 2016 (https://www.regulations.gov, Docket Number USTR-2016-0026). In addition, on March 8, 2017, USTR conducted a public hearing that provided the opportunity for interested persons to testify before the interagency Special 301 Subcommittee about issues relevant to the review. The hearing featured testimony from representatives of foreign governments, industry groups, academics, and nongovernmental organizations. USTR posted on its website the transcript of the Special 301 public hearing, and also offered a post-hearing comment period during which hearing participants could submit additional written comments in support of, or in response to, hearing testimony. The *Federal Register* notice for the 2017 review cycle – and post hearing comment period – drew submissions from 57 interested parties, including 16 trading partner governments. The submissions that USTR received were available to the public online at https://www.regulations.gov.

For more than 25 years, the Special 301 Report has identified positive advances as well as areas of continued concern. The Report has reflected changing technologies, promoted best practices, and situated these critical issues in their policy context, underscoring the importance of IP protection and enforcement to the United States and our trading partners.

During this period, there has been significant progress in a variety of countries. The Special 301 Report has reflected important advances in many other markets over the past 27 years, including in Australia, Israel, Italy, Japan, Korea, Philippines, Qatar, Spain, Taiwan, the United Arab Emirates, and Uruguay.

Still, considerable concerns remain. In 2017, USTR received stakeholder input on more than 100 trading partners, but focused the review on the nominations contained in submissions that complied with the requirement in the *Federal Register* notice to identify whether a particular trading partner should be designated as PFC, or placed on the PWL or WL, or not listed in the Report, and that were filed by the deadlines provided in the notice. Following extensive research and analysis, USTR listed 11 countries on the Priority Watch List and 23 countries on the Watch List. Several countries, including Chile, China, India, Indonesia, Thailand, and Turkey, have been listed every year since the Report's inception. The 2017 listings were as follows:

Priority Watch List: Algeria; Argentina; Chile; China; India; Indonesia; Kuwait; Russia; Thailand; Ukraine; and Venezuela.

Watch List: Barbados; Bolivia; Brazil; Bulgaria; Canada; Colombia; Costa Rica; Dominican Republic; Ecuador; Egypt; Greece; Guatemala; Jamaica; Lebanon; Mexico; Pakistan; Peru; Romania; Switzerland; Turkey; Turkmenistan; Uzbekistan; and Vietnam.

When appropriate, USTR may conduct an Out-of-Cycle Review (OCR) to encourage progress on IP issues of concern. OCRs provide an opportunity for heightened engagement with trading partners and others to address and remedy such issues. In the case of a country-specific OCR, successful resolution of identified IP concerns can lead to a change in a trading partner's status on the Special 301 list outside of the typical time frame for the annual Special 301 Report. In some cases, USTR calls for the OCR; in others, the trading partner governments can request an OCR based on projections for improvements in IP protection and enforcement. In the 2017 report, USTR announced it would conduct OCRs of Priority Watch List country Kuwait and Watch List country Colombia, as well as of Tajikistan, which was not listed. USTR also initiated an OCR in September 2017 of Thailand. As a result of this OCR, USTR moved Thailand from the PWL to the WL in December 2017 in consideration of the progress Thailand made to improve IP protection and enforcement, including in the areas of patents and pharmaceuticals, trademarks, and copyright.

USTR also conducts an OCR focused on online and physical marketplaces that are reportedly engaged in piracy and counterfeiting and have been the subject of enforcement action or that may merit further investigation for possible IP infringements. USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin to publish the Notorious Markets List (NML) separately from the Special 301 Report, as an "Out-of-Cycle Review of Notorious Markets," in order to increase public awareness and guide related enforcement efforts. The results of the 2017 Notorious Markets OCR were published on January 12, 2018, and highlight developments since the issuance of the previous Notorious Markets OCR in December 2016. The 2017 List highlights 25 online markets and 18 physical markets around the world that are reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting. The List highlights illicit streaming devices as an emerging piracy model of growing concern. The report also calls on several e-commerce platforms to improve takedown procedures, proactive measures, and cooperation with right holders—particularly small and medium-sized businesses—to decrease the volume and prevalence of counterfeit and pirated goods on their platforms. Since publication of the first Notorious Markets List, several online markets closed or saw their business models disrupted as a result of enforcement efforts. In some instances, in an effort to legitimize their overall business, companies made the decision to close down problematic aspects of their operations; others cooperated with authorities to address unauthorized conduct on their sites. Notwithstanding the progress that has occurred, online piracy and counterfeiting continue to grow, requiring robust, sustained, and coordinated responses by governments, private sector stakeholders, and consumers.

The Special 301 Review, including its country specific and Notorious Markets OCRs, serves a critical function by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets. Special 301 promotes the job creation, economic development, and many other benefits that adequate and effective IP protection and enforcement support. The Special 301 Report and Notorious Markets List inform the public and our trading partners and serve as a positive catalyst for change. USTR remains committed to meaningful and sustained engagement with our trading partners, with the goal of resolving these challenges. Information related to Special 301 (including transcripts and video), the Notorious Markets List, and USTR's overall IP efforts can be found at https://ustr.gov/issue-areas/intellectual-property.

6. Section 1377 Review of Telecommunications Agreements

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

In its 2017 Section 1377 Review, USTR focused on issues related to: cross-border data flows; independent and effective regulators; limits on foreign investment; barriers to competition; international termination rates; satellite services; telecommunications equipment trade; and local content requirements. USTR described these issues in its annual National Trade Estimate Report. This approach allowed USTR to describe, in one comprehensive report, all of the overlapping barriers concerning telecommunications services and goods, along with related digital trade issues.

7. Antidumping Actions

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

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

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

If the U.S. Department of Commerce's final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, "by reason of" the dumped imports, the U.S. Department of Commerce (Commerce) will issue an antidumping order and direct CBP to assess, upon further instruction by Commerce, antidumping duties and require cash deposits on imported goods. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded.

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

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

The United States initiated 54 antidumping investigations in 2017 and imposed 32 antidumping orders.

8. Countervailing Duty Actions

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

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

The United States initiated 25 CVD investigations and imposed 11 new CVD orders in 2017.

9. Other Import Practices

Section 337

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

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

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

During 2017, the USITC instituted 59 new Section 337 investigations and commenced 14 ancillary proceedings, of which 7 were based on requests for modification or rescission of outstanding Commission remedial orders. The USITC also issued, in calendar year 2017, remedial orders in sixteen investigations (including one consolidated investigation), as follows: *Certain Electric Skincare Devices*, 337-TA-959; *Certain Table Saws Incorporating Active Injury Mitigation Technology*, 337-TA-965; *Certain Woven Textile Fabrics*, 337-TA-976; *Certain Arrowheads*, 337-TA-977; *Certain Pumping Bras*, 337-TA-988; *Certain Network Devices*, 337-TA-945; *Certain Air Mattress Systems*, 337-TA-971; *Certain Automatic Teller Machines (I)*, 337-TA-972; *Certain Medical Training Devices*, 337-TA-1008*; Certain Automatic Teller Machines (II)*, 337-TA-989; *Certain Intravascular Administration Sets*, 337-TA-1048; *Certain Liquid Crystal eWriters*, 337-TA-1035; *Certain Hand Dryers*, 337-TA-1015; *Certain Digital Video Receivers*, 337-TA-1001; *Certain Personal Transporters*, 337-TA-1021/1007; *Certain L-Tryptophan*, 337-TA-1005. Presidential review of the last two investigations (*Personal Transporters* and *L-Tryptophan*) are ongoing; all other determinations and orders became final after presidential review.

Section 201

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

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

As of January 1, 2018, the United States had no measures in place under Section 201. The United States did not impose any Section 201 measures during 2017. The USITC instituted two Section 201 investigations in 2017: (1) crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products) on May 23, 2017; and (2) large residential washers on June 5, 2017. The ITC reached affirmative determinations of serious injury or threat of serious injury in both proceedings, and delivered its reports to the President on November 13, 2017, and December 4, 2017, respectively.

10. Trade Adjustment Assistance

Overview and Assistance for Workers

The Trade Adjustment Assistance (TAA) for Workers, Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs are authorized under Title II of the Trade Act of 1974, as amended. These programs, collectively referred to as the Trade Adjustment Assistance Program (TAA Program), provide assistance to workers who have been adversely affected by foreign trade.

The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015), Title IV of the Trade Preferences Extension Act of 2015 (Public Law 114-27), was signed into law on June 29, 2015. The TAA Program offers trade-affected workers an opportunity to retrain and retool for new jobs.

The TAA Program currently offers the following services to eligible workers: rapid response, employment and case management services, tailored training, out of area job search and relocation allowances, weekly income support through Trade Readjustment Allowances (TRA), ATAA/RTAA wage supplements for older workers, and a health coverage tax credit for eligible TAA recipients.

In FY 2017, $716,364,000 was allocated to State Governments to fund aspects of the TAA program. This included $391,419,000 for "Training and Other Activities," which includes funds for training, job search allowances, relocation allowances, employment and case management services, and related state administration; $293,705,000 for TRA benefits; and $31,240,000 for ATAA/RTAA benefits.

For a worker to be eligible to apply for TAA, the worker must be part of a group of workers that is the subject of a petition filed with the U.S. Department of Labor (DOL). Three workers of a company, a company official, a union or a duly authorized representative, or the American Job Center operator or partner may file a petition with the DOL. In response to the filing, the DOL conducts an investigation to determine whether foreign trade was an important cause of the workers' job loss or threat of job loss. If the DOL determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the firm to apply for TAA, the DOL will issue a certification. In FY 2017, an estimated 94,017 workers became eligible for the program.

The DOL administers the TAA Program through the Employment and Training Administration (ETA), with State Governments administering TAA benefits on behalf of the United States for members of TAA-certified worker groups. Once covered by a certification, individual workers apply for benefits and services through the American Job Center network. American Job Centers can be located on the Internet at http://www.careeronestop.org/ReEmployment/, or by calling 1-877-US2-JOBS. Most benefits and services have specific individual eligibility criteria that must be met, such as prior work history, unemployment insurance eligibility, and individual skill levels.

Trade Adjustment Assistance for Farmers

On January 6, 2015, the Congress passed the Trade Preferences Extension Act of 2015, which reauthorized the TAA for Farmers Program for FY 2015 through 2021. However, the Congress did not appropriate funding for new participants for FY 2017. As a result, the U.S. Department of Agriculture did not accept any new petitions or applications for benefits in FY 2017.

Assistance for Firms and Industries

The U.S. Economic Development Administration's (EDA) Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized by Chapters 3 and 5 of Title II of the Trade Act of 1974, as amended (19 U.S.C. § 2341 et seq.) (Trade Act). Public Law 93-618, as amended, provides for trade adjustment assistance for firms and industries (19 USC §§2341-2355; 2391). The Trade Preferences Extension Act (P.L. 114-27), Title IV of the Act, entitled the "Trade Adjustment Assistance Reauthorization Act of 2015," authorizes the TAAF Program through June 30, 2022.

The TAAF Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment to become more competitive in the global marketplace. To be certified for the program, a firm must show that an increase in imports of like or directly competitive articles contributed importantly to the decline in sales or production and to the separation or threat of separation of a significant portion of the firm's workers. The Secretary of the U.S. Department of Commerce is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the U.S. Department of Commerce's Economic Development Administration (EDA). The U.S. Economic Development Administration's regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed by visiting http://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28806.pdf.

In FY 2016, EDA awarded a total of $20 million in TAAF Program funds to its national network of 11 Trade Adjustment Assistance Centers, each of which is assigned a different geographic service area. During FY 2016, EDA certified 67 petitions for eligibility and approved 78 adjustment proposals.

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

11. United States Preference Programs

Overview

The United States has four "preference" programs designed to encourage economic growth in developing countries by offering access to the U.S. market in the form of preferential duty reduction or duty elimination for eligible imports, for countries meeting eligibility criteria defined by Congress. These programs are: the African Growth and Opportunity Act (AGOA), the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI)/Caribbean Basin Trade Partnership Agreement (CBTPA), and the Nepal Trade Preference Program (NTPP). Individual countries may be covered by more than one program. In such countries, importers of eligible goods may choose among programs when purchasing these goods from beneficiary countries.

U.S. imports benefiting from preferential access under these programs totaled $34.7 billion during 2017, up 18.5 percent from 2016. This compares to an overall 7.2 percent increase in total U.S. goods imports for consumption from the world over the same period. The increase was largely due to a 32.4 percent increase ($3.1 billion) in the value of U.S. imports under AGOA (excluding GSP) due to a rebound in U.S. mineral fuel imports (mostly oil) and a $2.3 billion increase in GSP due to increases in various products including chemicals, plastics, and jewelry. Imports from CBI/CBTPA also rebounded from 2016.

As a share of total U.S. goods imports for consumption, imports under the U.S. preference programs increased from 1.3 percent in 2016 to 1.5 percent in 2017. Each program's respective share of total U.S. preferential imports in 2017 was as follows: GSP, 61.2 percent; AGOA (excluding GSP), 36.1 percent; and, CBI/CBTPA, 2.7 percent. The Nepal Trade Preference Program was implemented in December 2016, and oversaw roughly $2 million in imports or 0.01 percent of preference imports in 2017. See the sections below for more information on developments related to specific preference programs.

Generalized System of Preferences

History and Purposes

The U.S. Generalized System of Preferences (GSP) program was initially authorized by the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a ten-year period, beginning on January 1, 1976. Congress has extended the program 13 times, most recently in June 2015, continuing through December 31, 2017. GSP lapsed again on December 31, 2017.

An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and an important means of sustaining momentum for economic reform and liberalization in beneficiary countries. Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to U.S. exports in goods, services, and investment; (2) take steps to afford workers' internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement.

U.S. industry has noted that a country's participation in the GSP program helps to promote a business and investment environment that benefits U.S. investors as well as the beneficiary countries. The GSP program also helps to lower the cost of imported goods for U.S. consumers and businesses, including inputs used to manufacture goods in the United States. In addition, a new emphasis on enforcement of the GSP eligibility criteria provides a valuable new trade policy tool to assist the United States in reaching trade policy goals to benefit U.S. producers, farmers, ranchers, and workers.

Beneficiaries

As of January 1, 2018, there were 121 designated GSP beneficiary developing countries (BDCs) and territories, including Argentina, which was reinstated to GSP on that day. Forty-four countries and territories are designated least-developed beneficiary developing countries (LDBDCs) under GSP and are eligible for a broader range of duty-free benefits.

Enforcement of GSP Eligibility Criteria

On October 24, 2017, the Trump Administration announced in a press release (https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/october/ustr-announces-new-enforcement) its intention to heighten its focus on enforcing the GSP eligibility criteria and ensure that all countries receiving trade benefits are meeting the criteria established by Congress. This policy ensures that all GSP beneficiaries will be subject to periodic assessment of their compliance with all GSP eligibility criteria. This new effort includes a heightened focus on concluding outstanding GSP cases and a new interagency process to assess beneficiary country eligibility. This interagency process complements the current petition and public input process for country practice reviews, which will remain unchanged. The Administration is already implementing this new enforcement policy through actions with beneficiary countries around the world.

First, the new additional process will involve a triennial assessment by USTR and other relevant agencies of each GSP beneficiary country's compliance with the statutory eligibility criteria. If the assessment of a beneficiary country raises concerns regarding the country's compliance with an eligibility criterion, the Administration may self-initiate a full country practice review of that country's continued eligibility for GSP. The first assessment period will focus on GSP beneficiary countries in Asia, including Central Asian, South Asian, and East Asian GSP beneficiaries.

Second, in June 2017, the Administration announced in a press release (https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/june/ustr-announces-new-trade-preference) the first self-initiated GSP review in over two decades. This self-initiated review focuses on Bolivia's compliance with the GSP eligibility criteria related to child labor and worker rights. In December 2017, President Trump announced the suspension of a portion of Ukraine's duty-free access under GSP for failing to meet the GSP eligibility criteria related to adequate and effective protection of intellectual property rights. The President set the effective date of this partial suspension 120 days after publication of the proclamation to provide the Ukraine government an adequate opportunity to improve its protection of intellectual property rights.

Third, USTR intensified action to press for countries with outstanding country practice petitions to meet the 15 mandatory and discretionary GSP eligibility criteria or face a potential loss of their duty-free access to the U.S. market under GSP. Open GSP country practice cases include petitions on Indonesia and Uzbekistan regarding IPR protection; petitions on Georgia, Iraq, Thailand and Uzbekistan regarding worker rights or child labor concerns; and, a petition on Ecuador regarding arbitral awards. An application for new GSP benefits for Laos remained outstanding at the end of 2017 pending improvements to worker rights in that country. A complete list of the country practice and country eligibility petitions that remained under review as of December 2017 is available on the USTR website: https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0.

USTR emphasized in a large number of bilateral engagements with GSP eligible countries the need to meet all GSP eligibility criteria. At the Trade and Investment Framework Agreement (TIFA) and other bilateral meetings with Algeria, Argentina, Cambodia, Georgia, India, Indonesia, Moldova, Pakistan, the Philippines, Thailand, Tunisia, Ukraine, and Central Asia, USTR emphasized the need for countries to comply with all of the GSP criteria.

The President restored Argentina's GSP eligibility status, effective January 1, 2018, following resolution of certain arbitral disputes with U.S. companies, new commitments by the Argentine government to improve market access for U.S. agricultural products, and improved protection and enforcement of IPR. Due to certain remaining intellectual property rights concerns, the restoration of GSP benefits for Argentina will not apply to all eligible products.

Eligible Products

At the end of 2017, approximately 3,500 non-import sensitive products (as defined at the HS-8 tariff level) were eligible for duty-free treatment under GSP, with an additional 1,500 products reserved for eligibility from LDBDCs only. The list of GSP-eligible products from all beneficiaries includes certain manufactured goods and semi-manufactured goods; selected agricultural and fishery products; and many types of chemicals, minerals, and building materials that are not otherwise duty free. The GSP statute precludes certain import-sensitive articles from receiving GSP treatment, including most textiles and apparel, watches, most footwear, certain glassware, and some gloves and leather products. Additionally, USTR conducts an annual review process, during which U.S. producers can petition for the removal of certain products from GSP if they are negatively affected by those duty-free imports. This review also allows for the addition of products to the program if such products are not import sensitive.

The products that receive preferential market access only when imported from LDBDCs include crude petroleum, certain refined petroleum products, certain chemicals, plastics, animal and plant products, prepared foods, beverages, and rum, as well as many other products. On June 30, 2016, coverage was expanded to include "travel goods" (handbags, luggage, backpacks and goods found in pockets (such as wallets and eyeglass cases) whose addition to GSP had been authorized by the Trade Preference Extension Act of 2015 for LDBDCs and AGOA beneficiaries. On July 1, 2017, President Trump extended GSP duty-free treatment for these products for all other GSP beneficiaries, recognizing that this would help shift production of these products away from non-GSP countries with massive trade surpluses with the United States, such as China, to GSP beneficiaries.

In addition to the expansion of eligibility for travel goods referenced above, five other non-import sensitive products (flaked quinoa, certain acyclic acids, lemon oil, certain finishing agents, and nitrocellulose) were added to GSP eligibility for all GSP beneficiaries. Glycine was removed from GSP coverage for all GSP beneficiaries at the request of a U.S. firm. In addition, a Competitive Need Limitation (CNL) waiver was granted for a coniferous wood product from Brazil whose exports to the United States were just 0.3 percent above the CNL level. USTR removed two other products (certain pesticides from India, and certain natural stone products from Turkey) from GSP eligibility as a result of imports of these goods exceeding CNL.

Value of Trade Entering the United States under the GSP program

The value of U.S. imports claimed under the GSP program for 2017 was $21.2 billion, an 11.9 percent increase over the same period in 2016. This increase represented roughly 0.9 percent of all U.S. goods imports: 9.9 percent of goods imports from beneficiary countries; and 19.3 percent of goods imports from the beneficiary countries that would otherwise be subject to tariffs. Total U.S. imports of all products (both GSP eligible and non-eligible products) from GSP beneficiary countries increased by 12.2 percent, by value, over the same period. Top U.S. imports under the GSP program in 2017, by trade value, were motor vehicle parts, ferroalloys, jewelry of precious metal, worked monumental or building stone, rubber tires, travel goods, flavored waters including mineral and aerated waters, polyacetals/polyeethers/polyesters, electric motors and generators, and insulated cables and wires.

In 2017, based on trade value, the top five GSP BDC suppliers were, in order: India, Thailand, Brazil, Indonesia, and Turkey. Least-developed country beneficiaries accounted for an estimated $587 million in GSP imports, led by Cambodia, Burma, Congo (DROC), Nepal, Mozambique, Malawi, and Ethiopia. This was the largest level of imports from LBDCs recorded to date, accounting for 2.8 percent of all GSP imports.

The African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA), enacted in 2000, provides eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible for duty-free access under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2017, 38 sub-Saharan African countries were eligible for AGOA benefits. As a result of the 2017 annual AGOA eligibility review, 40 sub-Saharan African countries are eligible for AGOA benefits in 2018, following the reinstatement of The Gambia and Swaziland's AGOA eligibility, effective January 1, 2018.

AGOA Eligibility Review

AGOA requires the President to determine annually which of the sub-Saharan African countries listed in the Act are eligible to receive benefits under the legislation. These decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has continued to meet the eligibility criteria and whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized workers' rights. AGOA also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of internationally recognized human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, African governments, and other interested stakeholders. Through the AGOA eligibility review process, the annual AGOA Forum meeting *(see below)*, and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries in support of broad-based economic development. The annual review conducted in 2017 resulted in the reinstatement of The Gambia and Swaziland's AGOA eligibility, both effective January 1, 2018. The government of The Gambia has undertaken steps to meet the eligibility criteria related to rule of law and political pluralism, while the government of Swaziland has undertaken steps to meet the eligibility criteria related to internationally recognized worker rights.

An out-of-cycle review of Rwanda, Tanzania, and Uganda's AGOA eligibility was initiated on June 20, 2017 in response to a petition filed by the Secondary Materials and Recycled Textiles Association (SMART). The SMART petition asserts that a March 2016 decision by the East Africa Community (EAC), which includes Kenya, Rwanda, Tanzania, and Uganda, to phase in a ban on imports of used clothing and footwear is imposing significant economic hardship on the U.S. used clothing industry, and is in violation of the AGOA statutory eligibility criteria to make continual progress toward establishing a market based economy and eliminating barriers to U.S. trade and investment. USTR determined that an out-of-cycle review of Kenya's AGOA eligibility was not warranted at that time, due to actions Kenya took, including reversing tariff increases, effective July 1, 2017, and committing not to ban imports of used clothing through policy measures that are more trade-restrictive than necessary to protect human health. As of the end of 2017, the OCR review was ongoing.

AGOA Forum

The annual United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as the "AGOA Forum," is a Ministerial level meeting that brings together senior U.S. officials and their African counterparts to discuss ways to enhance trade and investment relations. On August 9-10, 2017, U.S. Trade Representative Lighthizer led the U.S. delegation to the 2017 AGOA Forum in Lomé, Togo. The U.S. delegation included senior government officials, a Congressional delegation, and private sector and civil society representatives. Included on the African side were trade and commerce ministers from the AGOA-eligible countries, heads of prominent African regional economic organizations, and private sector and civil society representatives. The Forum provided an opportunity for the Administration to lay the foundation for its trade policy approach to the sub-Saharan African region. With a theme of "The United States and Africa Partnering for Prosperity through Trade," the Forum highlighted the role of the private sector in expanding trade to support economic growth and poverty reduction. Through a number of the sessions, Forum participants discussed policies and measures that can help African countries to maximize the benefits of AGOA. Ambassador Lighthizer stressed in his opening remarks that "the United States is committed to Africa" and welcomed the opportunity for dialogue on ways to reduce impediments to U.S. trade and investment with the Continent. Noting both the history of U.S. bipartisan support for AGOA and the evolving landscape of global trade relationships, Ambassador Lighthizer called for renewed efforts to expand trade and investment under AGOA coupled with dialogue towards developing more reciprocal trade relations in the future.

Total AGOA (including GSP) imports rose to $13.8 billion in 2017 compared to $10.6 billion in 2016, mostly due to an increase in AGOA imports of oil (up 47.4 percent) to $9.5 billion in 2017 compared to $6.5 billion in 2016. AGOA non-oil trade rose 2.9 percent to $4.3 billion in 2017 from $4.2 billion in 2016. There was a 19.7 percent decrease in transportation equipment imports under AGOA from $1.6 billion in 2016 to $1.3 billion in 2017. There was a 2.0 percent increase in AGOA apparel trade ($1.03 billion compared to $1.01 billion in 2016), with larger percentage increases in agriculture trade ($552 million compared to $486 million in 2016), miscellaneous manufactures ($143 million compared to $115 million in 2016), and footwear trade ($30 million compared to $24 million in 2016). AGOA minerals and metals trade rebounded after a 2016 decline to ($826 million in 2017 compared to $546 million in 2016), as did chemicals and related products ($320 million $277 million in 2016). Machinery trade declined very slightly ($18.2 million vs. $18.5 million in 2016) as did electronic products ($23.6 million vs. $23.8 million in 2016).

Top U.S. imports under the AGOA program in 2017, by trade value, were mineral fuels, motor vehicles and parts, woven apparel, ferroalloys, and knit apparel. In 2017, based on trade value, the top five AGOA suppliers were, in order, Nigeria, Angola, South Africa, Chad, and Kenya.

Caribbean Basin Initiative

The Caribbean Basin Initiative (CBI) is comprised of legislation that offers duty relief for Caribbean imports into the United States, providing Caribbean products with a tariff advantage over other competing producers from developed countries with which the United States does not have such tariff preference programs. The trade benefits of the CBI have helped beneficiary countries to diversify their exports and contributed to their economic growth.

The CBI's central legislation is the Caribbean Basin Economic Recovery Act (CBERA), enacted in 1983. In 2017, 17 countries and territories received benefits under the program: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. Countries that enter bilateral trade agreements with the United States cease to be eligible for CBI benefits under the CBERA or CBTPA; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, and Panama are in this category. The United States-Caribbean Basin Trade Partnership Act (CBTPA), enacted in 2000, expanded the preferences, particularly for apparel; eight CBI beneficiaries currently qualify: Barbados, Belize, Curaçao, Guyana, Haiti, Jamaica, St. Lucia, and Trinidad and Tobago.

CBI benefits were further expanded with the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), the HOPE II Act of 2008 (HOPE II Act), and the Haitian Economic Lift Program Act of 2010 (HELP Act), which provided Haiti preferential treatment for its textile and apparel products. The U.S. Government works closely with the Haiti government and other national and international stakeholders to promote the viability of Haiti's apparel sector, to facilitate producer compliance with labor eligibility criteria, and to ensure full implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation requirements (https://ustr.gov/sites/default/files/Final%20Report%20Haiti%20HOPE%20II%202015.pdf) in accordance with the provisions of the HOPE II Act. In June 2015, the Trade Preferences Extension Act of 2015 (TPEA) extended trade benefits provided to Haiti in the HOPE Act, HOPE II Act, and the HELP Act until September 30, 2025. The TPEA also extended the value-added rule for apparel articles wholly assembled or knit-to-shape in Haiti until December 19, 2025.

In December 2017, USTR submitted its most recent biennial report (https://ustr.gov/sites/default/files/assets/reports/2017%20CBI%20Report.pdf) to the U.S. Congress on the operation of the CBERA and its companion programs under the CBI.

Program Results

- The total value of U.S. imports for consumption from beneficiary countries in 2017 was $5.9 billion, an increase of 9.9 percent from 2016. U.S. imports under the CBERA program were $961 million in 2017, up from $871 million in 2016.

- The value of U.S. domestic goods exports to the CBI countries in 2017 was $12.2 billion, an increase of 16.2 percent from 2016. U.S. exports to CBI countries account for 0.9 percent of total U.S. exports in 2017.

- The U.S. goods trade surplus with the CBI countries was $7.2 billion in 2017, an 18.8 percent increase from 2016.

Nepal Trade Preference Program (NTPP)

The Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”) was signed into law on February 24, 2016. Section 915 of the TFTEA directed the President to establish a new country-specific preference program to grant Nepal duty-free treatment for products covered by 66 eight digit tariff lines in the Harmonized Tariff Schedule (HTS). The program was implemented by Presidential Proclamation on December 15, 2016 and provides non-reciprocal preferential trade benefits to Nepal through December 31, 2025. These preferences were provided to assist Nepal in its recovery from the devastating April 2015 earthquake and subsequent aftershocks. Due to changes in the U.S. Harmonized Tariff System, the number of tariff lines for which Nepal is exempt from customs duties increased in July 2016 to 77 eight digit tariff lines. Of the 77 NTPP tariff lines, 31 are also duty free under the GSP scheme. The rest of these products were not GSP-eligible at the time. TFTEA was passed in 2015, but products became duty-free for Nepal in June 2016. In 2017, the first full year the NTPP had been in place, total imports under the program were $2 million and accounted for 2.5 percent of total U.S. imports from Nepal. The largest import categories were hats and headgear ($778,000) and shawls and scarves ($453,000).