

# II. THE WORLD TRADE ORGANIZATION

## A. Introduction

This chapter outlines the work of the World Trade Organization (WTO) in 2015 – particularly relating to implementing the results of the Ninth Ministerial Conference in Bali and addressing unresolved issues under the Doha Development Agenda (DDA) in the build up to the WTO’s Tenth Ministerial Conference (MC10) in Nairobi, Kenya – and the work anticipated in 2016. This chapter also details work of WTO Standing Committees and their subsidiary bodies, provides an overview of the implementation and enforcement of the WTO Agreement, and discusses accessions of new members to this rules-based organization.

The United States maintains an abiding commitment to the rules-based multilateral trading system, which advances the well-being of the people of the United States and of our trading partners. The WTO, since its inception in 1995, has represented the multilateral foundation for U.S. trade policy, playing a vital role in securing new economic opportunities for American workers, farmers, ranchers, manufacturers, and service providers and promoting global growth and development with widely shared benefits. The United States continues to take a leadership role at the WTO, working to ensure that trade makes a powerful contribution in expanding the global economy.

The WTO provides a forum for enforcing U.S. rights under the various WTO agreements to ensure that the United States receives the full benefits of WTO membership. The WTO agreements also provide a foundation for high-standard U.S. bilateral and regional agreements that make a positive contribution to a dynamic and open global trading system based on the rule of law. On a day-to-day basis, the WTO provides opportunities for advancing U.S. interests through its more than 20 standing committees (not including numerous additional working groups, working parties, and negotiating bodies). These groups meet regularly to permit WTO Members to exchange views, work to resolve questions of Members’ compliance with commitments, and develop initiatives aimed at systemic improvements.

The DDA is the ninth round of multilateral trade negotiations since the end of World War II. At the WTO’s Eighth Ministerial Conference in Geneva, Switzerland in December 2011, there was a consensus among Ministers that the DDA was at an impasse, with “significantly different perspectives on possible results.” The agreed summary for the Ministerial Conference noted that “Members need to more fully explore different negotiating approaches,” and reiterated previous ministerial guidance that, where progress can be achieved on specific elements of the DDA, provisional or definitive agreements might be reached before all elements of the negotiating agenda are fully resolved.

During the course of 2012 and 2013, Members took this guidance to heart in working collectively to complete at the WTO’s Ninth Ministerial Conference in December 2013 a “Bali Package,” which included, in the form of the groundbreaking Trade Facilitation Agreement (TFA), the first new multilateral agreement in the nearly 20-year history of the WTO. The TFA, when fully implemented, will ensure that all WTO Members apply a variety of trade-facilitating customs and related measures that promise to substantially decrease the costs associated with trading and increase the value and volume of global trade. The Bali Package also included important results on agriculture, such as decisions on food security, tariff-rate quota administration, export competition, and development, including a new Monitoring Mechanism to allow experience-based reviews of the implementation and operation of special and differential treatment provisions in WTO agreements. WTO Members agreed on November 27, 2014 to three decisions that support the implementation of the Bali package, one each on the TFA, public stockholding for food security and the post-Bali work program.

Much of the work in the WTO in 2015 focused on attempting to negotiate additional results for the WTO's Tenth Ministerial Conference, which was held in Nairobi from December 15-18, 2015. At the Ministerial Conference, WTO Members succeeded in building on the results of Bali by reaching agreement on multiple agriculture issues, including export competition, and concluding decisions on key issues for the benefit of the least developed countries (LDCs). However, for the first time since the launch of the DDA in 2001, Ministers could not agree to reaffirm the Doha mandates going forward. The United States joined a number of other Members in insisting that the moment had come to abandon further negotiations under the DDA given its limited results and multiple failures in 14 years of negotiations. As a result, the United States expects that future discussions in the WTO will focus on developing new approaches and taking up new issues in negotiations, without being restricted by the outdated manner in which Members previously agreed to approach the negotiations over 15 years ago. This will be a historic turning point for the WTO, allowing Members to reestablish the negotiating credibility of the multilateral trading system and to achieve results that reflect the many changes in the global economy since the beginning of the Doha Round.

Beyond WTO negotiations, the United States and other WTO Members in 2016 renewed their focus on the day-to-day work of the WTO's standing committees and other bodies. These bodies remained instrumental in promoting transparency in WTO Members' trade policies and they also provided a critical fora for monitoring and resisting protectionist pressures. Through discussions in these fora, Members sought detailed information on individual Members' trade policy actions and collectively considered them in light of WTO rules and their impact on individual Members and the trading system as a whole. The discussions enabled Members to assess their trade-related actions and policies in light of concerns that other Members raised and to consider and address those concerns in domestic policymaking. The United States also took advantage of opportunities in standing committees to consider how implementation of existing WTO provisions can be enhanced and to discuss areas that may hold potential for developing future rules.

## **B. Moving Beyond the Doha Development Agenda and Other Priority WTO Activities**

The DDA was launched in Doha, Qatar, in November 2001, at the Fourth WTO Ministerial Conference, where Ministers provided a mandate for negotiations on a range of subjects and work in WTO Committees, including in the following areas: agriculture; industrial goods market access; services; trade facilitation; WTO rules (*i.e.*, trade remedies, fisheries subsidies, and regional trade agreements); and development. In addition, the Ministers agreed to provide further direction on the implementation of the WTO Agreement. The goal of the DDA, when launched, was to reduce trade barriers in order to expand global economic growth, development, and opportunity; however, after more than 14 years of limited successes and multiple failures, many WTO Members approached 2015 as a final moment to negotiate results under the DDA.

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, has overseen the agenda and negotiations under the DDA in cooperation with the WTO General Council. The WTO Director General has served as Chairman of the TNC.

At the Ninth Ministerial Conference in Bali in December 2013, Members hailed the completion of the Bali Package, which the new WTO Director General, Roberto Azevêdo, described as a much-needed vote of confidence in the WTO's ability to complete multilateral trade negotiations. The Bali Package included the completion of the first new multilateral agreement in the history of the WTO, the TFA. It also included a Ministerial Declaration directing Members to take up other parts of the Doha Agenda. Initial discussions on this so-called "post-Bali work program" began early in 2014 but immediately faced questions regarding the willingness of advanced developing countries to contribute commensurate to their status as major traders.

The United States and others attempted in early 2015 to find creative paths to resolve the impasses on difficult issues, such as market access and agricultural domestic support, but other key players insisted on the same positions that they held since 2008, which had previously led to a failure to reach agreement. As a result, WTO Members were not able to complete the post-Bali work program and failed to even develop specific options for the work program.

During the later months of 2015, WTO Members focused on a more limited set of possible outcomes and initiated a frank exchange of views on the future of the DDA beyond Nairobi. The United States and many other Members stated that they could not agree to reaffirm the DDA mandates in Nairobi and continue negotiations under the DDA architecture beyond 2015 in light of its obvious defects. A number of other WTO Members disagreed and insisted that the DDA must continue until final outcomes are negotiated in all areas of the DDA.

While Members were able to reach agreement on several important areas in Nairobi, such as agricultural export competition and rules of origin for LDC preference programs, the impasse over next steps remains. As a result, the Nairobi Ministerial Declaration explicitly acknowledges the differing views of the WTO Membership regarding the future of WTO negotiations and does not reaffirm the DDA mandates or the continuation of DDA negotiations. However, Members did confirm their commitment to advance negotiations on unresolved Doha issues, including agriculture, non-agriculture market access, services, development, TRIPS, and rules.

Additionally, those WTO Members involved in expansion negotiations on the Information Technology Agreement (ITA) concluded negotiations on the plurilateral ITA in Nairobi, and 28 WTO Members released a statement noting their commitment to reinvigorate negotiations in the WTO on fisheries subsidies, identifying their specific goals for new WTO disciplines.

The WTO is much more than a negotiating forum. It also provides a venue where Members can resolve disputes between them. And beyond this, the WTO demonstrates its value every day through the work of the standing committees and other WTO bodies. In 2015, the United States made effective use of the General Council and WTO subsidiary bodies to raise the profile of trade protectionist actions by other Members. In a number of instances, these efforts led to satisfactory outcomes to resolve such actions.

Overall the United States noted the critical importance of discussions during the course of 2015 on the future of the negotiating functions of the WTO. Nairobi marks a turning point for the WTO, as Members look ahead to exploring new approaches to old issues and to taking up new issues in a variety of negotiating formats.

### **Prospects for 2016**

In the follow up in 2016 to the MC10 results in Nairobi, the United States expects to work with other ready WTO Members to identify specific opportunities to negotiate meaningful agreements in the WTO in an effort to move beyond the DDA. It also remains important to sustain and enhance the WTO's critical work in monitoring and providing a forum for resisting protectionism. Accordingly, the United States will continue to devote additional attention to making the best possible use of the WTO's existing committees and other structures, using them both to advance specific U.S. trade policy objectives as well as to ensure the ongoing strength and credibility of the multilateral trading system.

# 1. Committee on Agriculture Special Session

## Status

WTO members agreed to initiate negotiations for continuing the agricultural trade reform process one year before the end of the Uruguay Round implementation period, *i.e.*, by the end of 1999. Talks in the Special Session of the Committee on Agriculture (“COA Special Session”) began in early 2000 under the original mandate of Article 20 of the Agreement on Agriculture (Agriculture Agreement). At the Fourth WTO Ministerial Conference in Doha, Qatar in November 2001, the agriculture negotiations became part of the single undertaking, and negotiations in the Special Session of the Committee on Agriculture were conducted under the mandate agreed upon at Doha, which called for: “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.” This mandate, which called for ambitious results in three areas (so called “pillars”), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005.

## Major Issues in 2015

In 2015, the United States continued to lead the effort to approach the Doha negotiations with a focus on how countries might realistically work together to advance the negotiations. The Chairs of the Agriculture Negotiations held negotiations in formal and informal settings to assess Members’ views on substantive issues on the agriculture negotiations and on the work program mandated at the WTO’s Ninth Ministerial Conference in Bali in December 2013. The United States continued to urge Members to approach the overall Doha negotiations on the basis of a realistic assessment of possibilities for progress. Throughout 2015, U.S. negotiators undertook discussions at various levels (technical and political) and in various formats (bilateral and small group) to determine Members’ views and look for ways to move the negotiations forward, in line with U.S. interests and priorities.

The basis of these discussions continued to be from the Bali package of Decisions from the WTO’s Ninth Ministerial Conference in December 2013, in areas related to agriculture. On December 19, at MC 10 in Nairobi, WTO Ministers adopted new decisions related to export competition, public stockholding for food security purposes, and a special safeguard mechanism (SSM). In the decision on export competition, Members agreed to the elimination of all forms of export subsidies, as well as new disciplines on export financing and international food aid. In the decision on public stockholding for food security, Members committed to negotiate and make concerted efforts within the COA to agree and adopt a permanent solution. The decision on an SSM for developing country Members agreed that negotiations on an SSM would also be pursued in dedicated sessions of the COA Special Session in the future in the context of broader agricultural market access negotiations.

## Prospects for 2016

A major focus in 2016 will be informal discussions about the future direction of multilateral agricultural liberalization, drawing on lessons learned from the Doha negotiations and new developments in international agricultural trade since the launch of the Doha negotiations in 2001.

## **2. Council for Trade in Services Special Session**

### **Status**

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000 pursuant to the Uruguay Round mandate of the General Agreement on Trade in Services (GATS) to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001 recognized the work already undertaken in the services negotiations and set deadlines for initial market access requests and offers. The services negotiations thus became one of the core market access pillars of the Doha Round, along with agriculture and nonagricultural goods.

### **Major Issues in 2015**

The CTS-SS met on several occasions during 2015. In the first half of the year, the CTS-SS focused on developing the services components of the comprehensive work program called for by the Bali Ministerial Declaration. These efforts proved unsuccessful, as Members could not reach consensus. During the second half of the year, the CTS-SS turned its attention to the possibility of a deliverable on transparency for MC 10 in Nairobi. This effort also failed as Members could not reach consensus to proceed toward the development of a text.

### **Prospects for 2016**

The United States continues to believe that a high level of ambition for services liberalization is a key to economic growth and prosperity. To that end, the United States will continue to pursue new ideas and approaches to promote services trade liberalization.

## **3. Negotiating Group on Non-Agricultural Market Access**

### **Status**

The U.S. Government's longstanding objective in the Non-Agricultural Market Access (NAMA) negotiations – which cover manufactures, mining, fuels, and fish products – has been to obtain a balanced market access package that provides new export opportunities for U.S. businesses through the liberalization of global tariffs and non-tariff barriers. Trade in industrial goods accounts for more than 90 percent of world merchandise trade<sup>1</sup> and more than 90 percent of total U.S. goods exports. In developing countries, industrial goods comprise 94 percent of goods exports, more than 65 percent of which corresponds to manufactures – an increasing share of which is exported to other developing countries.<sup>2</sup> Therefore, there is a substantial interest in improving market access conditions among developing countries. Yet, many emerging economies still charge very high tariffs on imported industrial goods, with ceiling tariff rates exceeding 150 percent in some cases. Thus, achieving broad market-opening outcomes is critical to stimulating trade and driving economic development as the global economy continues to recover.

The NAMA negotiations, however, have remained at an impasse since the Eighth Ministerial Conference at the end of 2011. Without significant market-opening commitments from advanced developing economies, there is little prospect for achieving robust trade liberalization for industrial goods on a multilateral basis.

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<sup>1</sup> WTO, International Trade Statistics 2015.

<sup>2</sup> WTO document WT/COMTD/W/143/Rev.5.

## Major Issues in 2015

There were a number of informal meetings of the Negotiating Group on Market Access in 2015 but no new substantive discussions occurred related to either the tariff or nontariff elements of the NAMA negotiations.

## Prospects for 2016

In 2016, the United States intends to work with other WTO Members to pursue fresh and credible approaches to meaningful multilateral trade liberalization.

## 4. Negotiating Group on Rules

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), while preserving the basic concepts, principles, and effectiveness of these Agreements and their instruments and objectives. Ministers directed that the negotiations take into account the needs of developing and least developed country Members. The Doha Round mandate also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: (1) the antidumping remedy, often including procedural and domestic industry injury issues potentially applicable to the countervailing duty remedy; (2) subsidies and the countervailing duty remedy, including fisheries subsidies; and (3) regional trade agreements (RTAs). Incremental progress has been made on these issues in recent years, and Members have considered draft texts for antidumping, subsidies, including disciplines on fisheries subsidies, and countervailing measures, yet no consensus has been reached to date.

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing RTAs under the existing WTO provisions. To that end, the General Council in December 2006 adopted a decision for the provisional application of the “Transparency Mechanism for Regional Trade Agreements” to improve the transparency of RTAs. A total of 209 RTAs have been considered under the Transparency Mechanism since then. Pursuant to its mandate, in the past, the Rules Group has explored the establishment of further standards governing the relationship of RTAs to the global trading system. However, such discussions have failed to produce common ground on how to clarify or improve existing RTA rules.

## Major Issues in 2015

The Rules Group met informally in February, April, May, June, July, October, November, and December 2015. During the February – June meetings, Members were provided with opportunities to discuss how Rules Group issues would be involved in the Post-Bali Work Programme (PBWP) due in July. In these meetings, there were also several transparency reports on the consultations conducted by the Chair with individual delegations. The Chair reported that while delegations expressed diverging views on whether and to what extent the various Rules Group issues should be included in the PBWP, the prevailing view was that a serious discussion on the role of the Rules Group would not be possible until the general approach and level of ambition on the core issues (*i.e.*, agriculture, NAMA, and services) was defined. In the end, Members could not reach consensus by the July deadline for the PBWP. During the July - December meetings, the Chair called the Members together for their views on several papers submitted by: the Friends of Anti-Dumping Negotiations (FANs); Australia; the African, Caribbean, and Pacific Countries (ACP);

the European Union (EU); Russia; Japan; New Zealand (with co-sponsors); and Peru. While numerous Members expressed their opinions on the proposals put forth and other possible options, no agreement was reached on a Rules Group outcome for MC-10. The United States joined 27 other Members in issuing a Joint Ministerial Statement on Fisheries Subsidies in Nairobi that expressed support for reinvigorating work in the WTO to strengthen disciplines on fisheries subsidies and enhance their transparency.

### **Prospects for 2016**

In 2016, the United States will continue to focus on preserving the effectiveness of trade remedy rules, improving transparency and due process in trade remedy proceedings, and strengthening existing subsidies rules. The United States will continue to seek stronger disciplines and greater transparency in the WTO with respect to fisheries subsidies. The United States will also pursue disciplines on fisheries subsidies in other negotiations and fora such as the Transatlantic Trade and Investment Partnership negotiations, building on the result of the Trans-Pacific Partnership negotiations.

On RTAs, the United States will continue to advocate for increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system. The Transparency Mechanism<sup>3</sup> will continue to be applied in the consideration of additional RTAs.

## **5. Preparatory Committee on Trade Facilitation**

### **Status**

In 2013, a major U.S. Doha Round priority was met when Members concluded negotiations on the WTO TFA on December 6 at the Ninth WTO Ministerial Conference. This agreement establishes transparent and predictable multilateral trade rules under the WTO that will reduce opaque border procedures and unwarranted delays of at the border that can add costs that are the equivalent of significant tariffs and are the types of nontariff barriers that U.S. and other exporters most frequently cite.

Members established a Preparatory Committee on Trade Facilitation (PCTF) at the Ninth Ministerial Conference. The PCTF subsumed the Negotiating Group on Trade Facilitation and was established to conduct the legal review of the TFA, accept Category A notifications from developing country Members (that is, commitments that will be implemented without a transition period), and draft a Protocol to amend the WTO Agreement to insert the TFA into Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). Inserting the TFA into Annex 1A of the WTO Agreement allows it to enter into force once two-thirds of WTO Members notify the WTO of their acceptance. The PCTF

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<sup>3</sup> At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism (TM) for all regional trade agreements (WT/L/671), which was agreed upon in the Negotiating Group on Rules and implemented in 2007. In December 2010, the Rules Group initiated a review of the operation of the RTA TM, and the Chair invited Members to submit any proposals to modify the TM in light of the experience gained under its operation. While the TM has on the whole significantly improved transparency with respect to RTAs, some of its operational aspects could be improved. Most notably, while there is no doubt that the TM applies to all RTAs – whether negotiated under GATT 1994, the GATS, or the GATT Enabling Clause – practical questions of the venue of consideration have arisen when parties to an agreement differ among themselves in their view of the relevant WTO provision for concluding a particular preferential agreement. While such underlying differences go beyond the scope of the review of the TM, the United States in January 2011 submitted a proposal to help ensure the consideration of RTAs that have been “dually notified” under such circumstances, so as to eliminate, or at least reduce, disagreement and procedural challenges in a way that is without prejudice to any underlying rights. The U.S. submission (TN/RL/W/248, dated January 24, 2011) proposes a specific solution, in the form of a proposed change to paragraph 18 of the TM, to consolidate the consideration of all RTAs in a single committee, the Committee on Regional Trade Agreements.

completed the legal review in July 2014, and Members reached agreement on the Protocol text which they adopted on 27 November 2014. In 2015, the PCTF reviewed Members' efforts to notify their acceptance and implement the TFA.

For many Members, the TFA will bring improved transparency and an enhanced rules-based approach to border regimes, and will be an important element of broader ongoing domestic strategies to increase economic output and attract greater investment. There is also a growing understanding that the TFA will address squarely factors holding back increased regional integration and south-south trade. Implementation of the TFA also will bring particular benefits to small and medium-sized businesses, enabling them to increase participation in the global trading system.

### **Major Issues in 2015**

In 2015, the PCTF met primarily to receive developing country Members' notifications of Category A commitments, as well as review progress made and Members' experiences with acceptances of the Protocol. The PCTF met in March, June, and October of 2015. During these meetings, a number of Members reported on their experiences in carrying out domestic reforms needed to meet the commitments under the TFA, their efforts to secure ratification of the agreement, and challenges they faced. The discussions revealed that Members actively are undertaking steps to complete their respective domestic acceptance processes, thereby enabling them to notify their acceptance of the TFA Protocol. Many developing country Members recognize that they and their exporters have an interest in seeking implementation by their neighbors of the TFA commitments.

The United States submitted its letter of acceptance to the WTO on January 23, 2015. As of December 31, 2015, 63 WTO Members had notified their acceptance of the TFA. In addition to the United States, acceptances have been submitted by: Australia, Belize, Botswana, Brunei, China, Cote d'Ivoire, EU (on behalf of its 28 Member States), Grenada, Guyana, Hong Kong China, Japan, Kenya, Korea, Lao PDR, Liechtenstein, Malaysia, Mauritius, Burma (Myanmar), New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Saint Lucia, Singapore, Switzerland, Chinese Taipei, The former Yugoslav Republic of Macedonia, Togo, Thailand, Trinidad and Tobago, Ukraine, Vietnam, and Zambia.

Substantial capacity building assistance is provided for trade facilitation. As part of this, over the course of the negotiations and since the Bali Ministerial, the WTO and multilateral and bilateral assistance organizations like the U.S. Agency for International Development (USAID) have undertaken training programs with developing country Members to help them assess their individual situations regarding capacity and make progress in implementing the provisions of the TFA. Further, to meet its commitment to help developing countries and LDCs implement the TFA, the United States, along with four other donors, announced the launch of the Global Alliance for Trade Facilitation (GATF) during the 2015 WTO Ministerial Conference in Kenya. The GATF is a new multi-donor model of assistance that partners with the private sector to support rapid and full implementation of the TFA. In addition to support provided by the United States, Australia, Canada, Germany and the United Kingdom, the partnership is supported by a Secretariat created by the World Economic Forum, the International Chamber of Commerce, and the Center for International Private Enterprise, and by private sector representatives and others who are contributing their expertise and resources for this noteworthy mission.

### **Prospects for 2016**

In 2016, WTO Members will continue to undertake necessary steps to complete their respective domestic acceptance processes, thereby enabling them to accept the TFA Protocol. The PCTF will continue to accept Category A notifications and convene for Members to share experiences in implementation of the TFA.

The United States, along with other Members, will work to support entry into force of the TFA in 2016, in order to maintain the momentum and focus on full implementation of the agreement.

There will also be a focus on ensuring that developing country Members seeking to obtain technical assistance to implement fully provisions of the TFA are matched with donors and that technical assistance projects are prioritized and funded. Donors, including the United States, remain eager to partner with developing countries that are committed to implementation of the TFA.

## **6. Committee on Trade and Environment Special Session**

### **Status**

Following the 2001 WTO Ministerial Conference at Doha, the TNC established a Special Session of the Committee on Trade and Environment (CTESS) to implement the mandate in paragraph 31 of the Doha Declaration. Paragraph 31 of the Doha Declaration includes a mandate to pursue negotiations, without prejudging their outcome, in three areas:

- i. the relationship between existing WTO rules and specific trade obligations set out in Multilateral Environmental Agreements (MEAs) (with the negotiations limited to the applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs in question);
- ii. procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and
- iii. the reduction or, as appropriate, elimination of tariff and non-tariff barriers to trade in environmental goods and services.

### **Major Issues in 2015**

An information session was held in March 2015 to recall for delegations the various elements of the negotiations and the state-of-play. The CTESS met again in November 2015 to approve the new CTESS Chairperson and to provide an opportunity for the new Chairperson to hear delegations' views on the negotiations, which had not changed.

### **Prospects for 2016**

The United States remains fully committed to a positive WTO trade and environment agenda; however, given the deep substantive divergences that have proven difficult to resolve in the CTESS, the United States has sought additional ways to make progress on trade and environment issues. For example, in 2015, the United States, together with 16 other WTO Members, engaged in plurilateral negotiations on an Environmental Goods Agreement (EGA), which will build on the results achieved in APEC on environmental goods liberalization (*see Chapters III.B.3 and IV.A.*). The EGA was launched in 2014 by 14 WTO Members. Today, there are 17 EGA participants.

## 7. Dispute Settlement Body Special Session

### Status

Following the Doha Ministerial Conference in 2001, the TNC established the Special Session of the Dispute Settlement Body (DSB-SS) to fulfill the Ministerial mandate found in paragraph 30 of the Doha Declaration which provides: “We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far, as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.” In July 2003, the General Council decided that: (1) the timeframe for conclusion of the negotiations on clarifications and improvements of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) be extended by one year (*i.e.*, to aim to conclude the work by May 2004 at the latest); (2) this continued work will build on the work done to date, and take into account proposals put forward by Members as well as the text put forward by the Chair of the DSB-SS; and (3) the first meeting of the DSB-SS when it resumed its work be devoted to a discussion of conceptual ideas. Due to complexities in negotiations, deadlines were not met. In August 2004, the General Council decided that Members should continue work toward clarification and improvement of the DSU, without establishing a deadline, and these negotiations have continued since.

### Major Issues in 2015

The DSB-SS met three times during 2015. In previous phases of the review of the DSU, Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions to the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. The Chair of the review issued a Chair’s text in July 2008 “to take stock of” the work to date and to provide a basis for its continuation. In 2015, delegations continued to engage on the basis of the comments received in the previous phase, seeking to advance the work on their proposals.

The United States has advocated two proposals, both of which are reflected in the Chair’s text. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public as the norm and give greater public access to submissions and panel reports. In addition to open hearings, public submissions and early public release of panel reports, the U.S. proposal calls on WTO Members to consider rules for “*amicus curiae*” submissions – submissions by nonparties to a dispute. WTO rules currently allow such submissions but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In addition, the United States and Chile submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among Members. The joint proposal contained specifications aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so. As part of this proposal, the United States has also proposed guidance for WTO Members to provide to WTO adjudicative bodies in particular areas where important questions have arisen in the course of various disputes.

## **Prospects for 2016**

In 2016, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2016.

## **8. Council for Trade-Related Aspects of Intellectual Property Rights Special Session**

### **Status**

The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), Special Session met briefly two times in 2015 in order for the Chairman of the Special Session to provide an update to the Membership on the results of Chair-led consultations with individual Members. The status had not changed since the previous year's reporting: there was no consensus among Members to continue engaging in this negotiation until progress was first made in other areas.

### **Major Issues in 2015**

In 2015, the United States and a group of other Members continued to maintain their common position that the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits must: be voluntary; have no legal effects for non-participating members; be simple and transparent; respect different systems of protection of GIs; respect the principle of territoriality; preserve the balance of the Uruguay Round; and, consistent with the mandate, be limited to the protection of wines and spirits. The United States and this group of Members (the Joint Proposal group) continued to maintain that the mandate of the TRIPS Council Special Session is clearly limited to the establishment of a system of notification and registration of GIs for wines and spirits and that discussions cannot move forward on any other basis. The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu support the Joint Proposal under which Members would voluntarily notify the WTO of their GIs for wines and spirits for incorporation into a registration system. During 2011, Israel formally became a cosponsor of the Joint Proposal.

The EU, together with a number of other Members, continued to support their alternative proposal for a binding, multilateral system for the notification and registration of GIs for all products, not only wines and spirits, which all Members would be required to use. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would benefit from a presumption of eligibility for protection as a GI in other WTO Members. Although a third proposal, from Hong Kong, China remains on the table, this proposal has received little support.

### **Prospects for 2016**

If discussions resume, in light of the failure on Nairobi on reaffirm the DDA, Members will discuss whether negotiations are limited to GIs for wines and spirits (the position of the Joint Proposal proponents, based on the unambiguous text of Article 23.4 of the TRIPS Agreement) or whether these negotiations should be extended to cover GIs for goods other than wines and spirits (the position of the EU and certain other WTO members). The United States will continue to aggressively oppose expanding negotiations, will continue to pursue additional support for the Joint Proposal in the coming year, and will seek a more flexible and pragmatic approach from supporters of the EU proposal.

## 9. Committee on Trade and Development Special Session

The Special Session of the Committee on Trade and Development (CTD-SS) was established by the TNC in February 2002, to fulfill the Doha Round mandate to review all WTO special and differential (S&D) provisions “with a view to strengthening them and making them more precise, effective, and operational.” Under existing S&D provisions, Members provide developing country Members with technical assistance and transitional arrangements toward implementation of WTO agreements. S&D provisions also enable Members to provide developing country Members with better-than-MFN access to markets.

As part of the S&D review, developing country Members submitted a total of 88 Agreement-Specific Proposals (ASPs) as part of the S&D review. Thirty-eight of these proposals were referred to other negotiating groups and WTO bodies for consideration (Category II proposals). Of the proposals remaining for consideration in the CTD-SS, Members reached an “in principle” agreement on draft decisions for 28 proposals at the 2003 Cancun Ministerial Conference (Cancun 28) following intensive negotiations. While these proposals were supposed to be a part of a larger package of agreements, they were never adopted due to the breakdown of the DDA negotiations.

At the 2005 Hong Kong Ministerial Conference, Members reached agreement on five ASPs: access to WTO waivers; coherence; duty-free and quota-free treatment (DFQF) for LDC Members; Trade-Related Investment Measures (TRIMS); and flexibility for LDC Members that have difficulty implementing their WTO obligations. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration.

Ministers at Hong Kong instructed the CTD-SS to expeditiously complete the review of the outstanding ASPs and report to the General Council, with clear recommendations for a decision. With respect to the 38 Category II proposals, Ministers instructed the CTD-SS to continue to coordinate its efforts with relevant bodies to ensure that work was concluded and recommendations for a decision made to the General Council. Ministers also mandated the CTD-SS to resume work on all outstanding issues, including a proposal submitted in 2002 by the African Group to negotiate a Monitoring Mechanism (“the Mechanism”) for effective monitoring of S&D provisions.

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough “accounting” of the remaining ASPs. Though the number of proposals had been reduced considerably since their introduction, divergences among Members’ positions on the remaining proposals were quite wide. The Chair of the CTD-SS worked closely with the Chairs of the other negotiating groups and committees to which the proposals had been referred due to their technical complexity. The Chairs reported that there had been very little development on these proposals. However, some of the Chairs of the negotiating bodies indicated that a number of the issues raised in the proposals form an integral part of the ongoing negotiations. In addition, there are a number of bodies in which discussions on the proposals are continuing on the basis of revised language tabled by the proponents.

At the Eighth Ministerial Conference in December 2011, Ministers agreed to expedite work to finalize the Monitoring Mechanism and to take stock of the Cancun 28 proposals. Members reached agreement on the establishment of the Monitoring Mechanism, and adopted the corresponding text at the Ninth Ministerial in December 2013. As a result, regular meetings of the newly-established Monitoring Mechanisms now take place in dedicated sessions of the Committee on Trade and Development. By contrast, Members have not reached convergence on the Cancun 28 or other ASPs despite intensive engagement at times, including in 2013 and more recently in 2015 at MC10 in Nairobi.

## **Major Issues in 2015**

The CTD-SS met infrequently during the first half of 2015, as Members considered how to best move forward with the ASPs.

In September 2015, the G90 submitted new textual proposals on 25 S&D provisions. The CTD-SS carried out intensive work on these proposals in both formal and informal meetings over the fall, and Members expressed concerns about these proposals. The discussion was moved into small group meetings in the hope that text-based negotiations would contribute to a better understanding of the underlying concerns flagged in the proposals, and this led to the G90 tabling a revised list of 16 of the proposals in the lead up to MC 10 in Nairobi. Despite intense engagement, however, Members were not able to reach convergence on the revised proposals.

One of the major sticking point in reaching agreement was ultimately the scope of the beneficiaries of the proposals, and whether proposals should be applicable to all developing countries, or if there should be a more limited application. The Chair noted in her final report that in order to be able to find common ground, all delegations should start seriously thinking of creative solutions that minimize concerns and find alternative ways of solving the problems highlighted in the proposals.

## **Prospects for 2016**

The United States stands ready to continuing such discussions in the Committee on Trade and Development's Monitoring Mechanism. The Mechanism, which was mandated to cover all special and differential provisions contained in all multilateral WTO agreements and Ministerial and General Council Decisions, presents the ideal forum to take up Members' S&D concerns. Further, the Mechanism is not precluded from making recommendations to relevant WTO bodies, including recommendations that propose the initiation of negotiations aimed at improving the S&D provision.

# **C. Work Programs Established in the Doha Development Agenda**

## **1. Working Group on Trade, Debt, and Finance**

### **Status**

Ministers at the 2001 Doha Ministerial Conference established the mandate for the Working Group on Trade, Debt, and Finance (WGTDF). Ministers instructed the WGTDF to examine the relationship between trade, debt, and finance and to examine and make recommendations on possible steps, within the mandate and competence of the WTO, to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed country Members. Ministers further instructed the WGTDF to consider possible steps to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

## **Major Issues in 2015**

The WGTDF met twice in 2015, on March 26-27 and September 29.

The meeting on March 26-27, 2015, was held in a seminar format to examine challenges faced by developing countries in accessing trade finance after the financial crisis. A Secretariat Note had been revised to incorporate the outcome of new surveys completed by the African Development Bank (AfDB)

and the Asian Development Bank (ADB). The seminar featured speakers from Members' governments, the private sector, and international institutions. It was held back-to-back with the meeting of the Director-General's Expert Group on Trade Finance. During the seminar, participants highlighted a number of key points, and some suggested that the WTO and its Director-General should pay greater attention to trade financing gaps.

At the meeting on September 29, 2015, the WGTDF examined a factual Note by the Secretariat on the invocation of Article II:6 of the GATT 1994. While a range of views was expressed on the use of this provision, including on its use in a more complex global economic environment, some Members expressed interest in pursuing the discussion on exchange rates and trade, including the impact of exchange rate misalignments on tariffs, within the terms of the Working Group's mandate. At this meeting, the Secretariat also provided a short update of recent developments on trade finance work following the March seminar. Members confirmed the usefulness of the seminar and provided clear support to the continuation of the work of the Working Group. The Working Group noted that the Director-General intends to announce new initiatives relating to trade, debt, and finance and will report on these initiatives when more information is made available.

On October 16, 2015, the Working Group adopted its annual report for submission to the General Council.

### **Prospects for 2016**

Looking forward, taking into account that WTO Members did not reaffirm DDA mandates at MC10 in Nairobi, WGTDF Members expect to continue to examine the relationship between trade, debt and finance, and steps that might be taken within the WTO framework to enhance the capacity of the system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries. Members will also seek to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. Among the specific items that Members will likely discuss further include exchange rates and trade and trade finance.

## **2. Working Group on Trade and Transfer of Technology**

### **Status**

During the 2001 Doha Ministerial Conference, WTO Ministers agreed to an “examination . . . of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.” To fulfill that mandate, the TNC established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, and tasked the WGTTT to report on its progress to the 2003 Ministerial Conference at Cancun. At that meeting, Ministers extended the time period for the WGTTT's examination. WTO Ministers further continued this work during the 2005 Hong Kong Ministerial Conference. During the 2013 Ministerial Conference in Bali, WTO Ministers noted that the working group “has covered a number of issues and has helped to enhance Members' understanding of the complex issues that encompass the nexus between trade and transfer of technology.” However, they also observed that more work remains to be done, and directed “that the Working Group should continue its work in order to fully achieve the mandate of the Doha Ministerial Declaration.”

## **Major Issues in 2015**

During 2015, WTO Members continued their consideration of the relationship between trade and transfer of technology on the basis of submissions by WTO Members and presentations by intergovernmental organizations. Discussion focused on the Secretariat's presentation on a November 2012 WTO Workshop on "Environmental Technology Dissemination; Challenges and Opportunities related to Environmental Technology Dissemination." The discussion underscored the complex technology transfer process and its relationship to trade.

## **Prospects for 2016**

No WGTTT meetings have been scheduled yet for 2016, and the status and future focus of the working group is not clear at this time, taking into account that WTO Members did not reaffirm DDA mandates at MC10 in Nairobi.

## **3. Work Program on Electronic Commerce**

### **Status**

Pursuant to the 2005 Hong Kong Ministerial Declaration, Members continue to work on ways to advance the Work Program on Electronic Commerce. At the 2015 Tenth Ministerial Conference in Nairobi, Ministers agreed to extend once again, until the next Ministerial Conference, the current practice of not imposing customs duties on electronic transmissions. In addition, they agreed to continue the Work Program.

### **Major Issues in 2015**

WTO Members continued discussion on topics in the United States paper on Electronic Commerce submitted to CTS in 2014, including cross-border information flows and localization requirements.

### **Prospects for 2016**

The United States will continue to work with other Members to maintain a liberal trade environment for electronically-traded goods and services, seeking to ensure that trade rules remain relevant to electronic commerce. As in the past, the General Council will assess the Work Program's progress and consider any recommendations, including the status of the customs duties moratorium on electronic transmissions.

## **D. General Council Activities**

The WTO General Council is the highest level decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet no less than once every two years.

Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit amendments to the WTO Agreement for consideration by Members, and grant waivers of obligations. The General Council or the Ministerial Conference must approve the terms for all accessions to the WTO. Technically, both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are General Council meetings that are convened for the purpose of discharging the responsibilities of the DSB and TPRB, respectively.

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee. In addition, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups with mandates to report to the General Council, such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. These mandates are part of the DDA set out in the Doha Ministerial Declaration, and this report reviews these groups' work in subsections of Section C.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building. Throughout 2015, the Chairman of the General Council, together with the WTO Director General, conducted informal consultations with large groupings comprising the Heads of Delegation of the entire WTO Membership and as well as a wide variety of smaller groupings of WTO Members at various levels. The Chairman and Director General convened these consultations with a view to resolving outstanding issues on the General Council's agenda.

## **Major Issues in 2015**

Activities of the General Council in 2015 included:

*Implementation of the Bali Outcomes:* The General Council discussed the status of implementation in each area agreed at the Ninth WTO Ministerial in Bali in December 2013. This primarily included an effort to agree to a post-Bali work program for the Doha Round. The General Council abandoned this effort in July 2015 after a second missed deadline, and when it became clear that a consensus agreement would not be possible.

*Preparation for the MC10:* In the fall of 2015, the major focus of the General Council was to prepare for MC10 in Nairobi, which took place December 15-19, 2015. This included both practical considerations, as well as extensive discussions on the possible negotiated outcomes for MC10.

*Work under the Doha Work Program:* Under the auspices of the DDA, the General Council continued its discussions related to small economies, LDCs, Aid for Trade, and the development assistance aspects of cotton and e-commerce.

*WTO Accessions:* Kazakhstan was invited by the Membership to become the 162<sup>nd</sup> Member of the WTO at a General Council meeting in July 2015. Afghanistan and Liberia were invited to become the 163<sup>rd</sup> and 164<sup>th</sup> Members of the WTO at MC 10 in December 2015.

*Waivers of Obligations:* The General Council adopted three decisions concerning the introduction of Harmonized System 2002, 2007, and 2012 nomenclature changes into WTO schedules of tariff concessions as well as waivers related to the Caribbean Basin Economic Recovery Act, the African Growth Opportunity Act, Canada's preferences with the Caribbean and LDC obligations under Article 70.8 and 70.9 of the TRIPS Agreement. The General Council also reviewed a number of previously agreed waivers, including

the U.S. waiver related to the Former Territory of the Pacific Islands and Annex II of this report contains a detailed list of Article IX waivers currently in force.

### **Prospects for 2016**

In addition to its management of the WTO and oversight of implementation of the WTO Agreement, the General Council will have detailed discussions throughout the year to implement the decisions taken at MC 10 in Nairobi.

## **E. Council for Trade in Goods**

### **Status**

The WTO Council for Trade in Goods (CTG) oversees the activities of 12 committees (Agriculture, Antidumping Practices, Customs Valuation, Import Licensing, Information Technology, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade, and Trade-Related Investment Measures) and the Working Party on State Trading Enterprises.

The CTG is the central oversight body in the WTO for all agreements related to trade in goods and the forum for discussing issues and decisions that may ultimately require the attention of the General Council for resolution or a higher-level discussion, and for putting issues in a broader context of the rules and disciplines that apply to trade in goods. For example, the CTG considers the use of the waiver provisions under Article IX of the Marrakesh Agreement and in 2015 gave initial approval to waivers for trade preferences, including those that the United States granted to the Africa Growth and Opportunity Act countries.

### **Major Issues in 2015**

In 2015 the CTG held three formal meetings, in March, June, and November. The CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for raising concerns regarding actions that individual Members had taken with respect to the operation of goods-related WTO agreements. In 2015, this included extensive discussions initiated by the United States and other WTO Members on Indonesia's policies restricting imports and exports; Russia's trade restricting measures; Nigeria's import restrictions, bans, and local content requirements; Ecuador's measures restricting imports; Pakistan's discriminatory taxes; and India's port closures with respect to apple imports, among other serious market access issues. In addition, three other major issues were discussed in the CTG in 2015:

*Waivers:* In light of the introduction of HS 2002, 2007, and 2012 changes to the Schedules of Tariff Concessions, the CTG approved three collective requests for extensions of waivers related to the implementation of the Harmonized Tariff System. The CTG forwarded these approvals to the General Council for adoption. The CTG also considered and approved requests by the United States relating to the Caribbean Basin Economic Recovery Act (CBERA) and the Africa Growth and Opportunity Act (AGOA). The CTG considered, but did not approve, a waiver request from Jordan relating to export subsidies.

*EU Enlargement:* In accordance with procedures under Article XXVIII:3 of the GATT 1994, the CTG considered and approved the EU's requests to extend the time period for the withdrawal of concessions regarding the 2013 enlargement to include Croatia.

*EAEU Enlargement:* In accordance with procedures under Article XXVIII:3 of the GATT 1994, the CTG considered and approved Armenia and the Kyrgyz Republic's requests to extend the time period for the withdrawal of concessions regarding their respective accessions to the Eurasian Economic Union (EAEU).

## **Prospects for 2016**

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Waiver requests and goods-specific market access concerns are likely to continue to be prominent issues on the CTG agenda.

## **1. Committee on Agriculture**

### **Status**

The WTO Committee on Agriculture oversees the implementation of the Agriculture Agreement and provides a forum for Members to consult on matters related to provisions of the Agreement. In many cases, the Agriculture Committee resolves problems of implementation, permitting Members to avoid invoking dispute settlement procedures. The Agriculture Committee also has responsibility for monitoring the possible negative effects of agricultural reform on least developed countries (LDC) and net food importing developing country (NFIDC) Members.

Since its inception, the Agriculture Committee has proven to be a vital instrument for the United States to monitor and enforce the agricultural trade commitments undertaken by Members in the Uruguay Round. Under the Agriculture Agreement, Members agreed to provide annual notifications of progress in meeting their commitments in agriculture, and the Agriculture Committee has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

### **Major Issues in 2015**

The Agriculture Committee held three formal meetings, in March, June, and September 2015, to review progress on the implementation of commitments negotiated in the Uruguay Round. At the meetings, Members undertook reviews based on notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

In total, 124 notifications were subject to review during 2015. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States regularly raised points with respect to domestic support in many Members, including Australia, Brazil, China, Costa Rica, the EU, India, Indonesia, Russia, and Thailand. The United States also encouraged countries, including China, India, and Turkey, to bring their domestic support notifications up to date. The United States used the review process to question Brazil's Program for Product Flow (PEP – *Prêmio para Escoamento do Produto*) and Program for Producer-paid Equalization Subsidy (PEPRO – *Prêmio de Equalização pago ao Produtor*) for rice, wheat, and corn; Costa Rica's rice support program; China's cotton reserves purchasing program; India's Food Subsidy Bill; and Turkey's wheat flour export policies under the Turkish Grain Board. In addition, the United States used the review process to seek information regarding poultry import restrictions in Ghana and Angola as well as India's National Agricultural Insurance Scheme, landholding laws and export assistance programs. The United States raised questions with respect to the administration of tariff-rate quotas by the Dominican Republic and Honduras, and tariff-rate-quota fill issues with China and Switzerland.

During 2015, the Agriculture Committee addressed a number of other issues related to the implementation of the Agriculture Agreement, such as: (1) convening the second annual dedicated discussion on export competition, as follow-up to the Bali Ministerial outcomes; and (2) exchanging views on approaches to strengthening Committee work relating to transparency.

### **Prospects for 2016**

The United States will continue to make full use of the Agriculture Committee to ensure transparency through timely notification by Members and to enhance surveillance of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, and trade-distorting practices of WTO Members. The United States will also work with other Members as the Agriculture Committee continues to implement Bali Ministerial decisions and begins implementation of new DDA provisions on export competition agreed at MC 10 in Nairobi in December 2015. In addition, the United States will continue to work closely with the Agriculture Committee Chair and Secretariat to find ways to improve the timeliness and completeness of notifications and to increase the effectiveness of the Committee overall.

The Agriculture Committee will continue to monitor and analyze the impact of Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs in accordance with the Agriculture Agreement. The Committee agreed to hold regular meetings in March, June, September, and November of 2016.

## **2. Committee on Market Access**

### **Status**

In January 1995, WTO Members established the Committee on Market Access (MA Committee), which is responsible for the implementation of concessions related to tariffs and non-tariff measures that are not explicitly covered by another WTO body, as well as for verification of new concessions on market access in the goods area. The Committee reports to the WTO Council on Trade in Goods.

### **Major Issues in 2015**

The MA Committee held two formal meetings in June and September 2015, and four informal sessions or consultations, to discuss the following topics: (1) ongoing and future work on WTO Members' tariff schedules to reflect changes to the Harmonized System (HS) tariff nomenclature and any other tariff modifications; (2) the WTO Integrated Data Base (IDB) and Consolidated Tariff Schedules (CTS) database; (3) Member notifications of quantitative restrictions; and (4) other market access issues as raised by Members.

*Updates to the HS nomenclature:* The MA Committee examines issues related to the transposition and renegotiation of the schedules of Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the World Customs Organization has amended the HS tariff classification system relating to tariff nomenclature in 1996, 2002, 2007, and 2012. Using agreed examination procedures, WTO Members have the right to object to modifications in another Member's tariff schedule that result from changes in the HS nomenclature, if such modifications affect the Member's bound tariff commitments. Members may pursue unresolved objections under Article XXVIII of GATT 1994.

In 2015, the MA Committee continued its work concerning the introduction and verification of HS2002 changes to Members' WTO tariff schedules. Throughout the year, the United States worked closely with other Members and the WTO Secretariat to ensure that all Members' bound tariff commitments are properly

reflected in their updated schedule. To date, the HS2002 files for 123 Members – including the United States – have been certified, with only 7 files outstanding.

Multilateral review of tariff schedules under the HS2007 procedures continued at informal Committee meetings throughout 2015. The multilateral verification process in the Committee will be ongoing through 2016. The U.S. 2007 transposition file was circulated for multilateral review and approved by the Committee during the first half of 2015.

With respect to the HS2012 nomenclature changes, the General Council approved procedures (WT/L/831) in 2011 to introduce those changes to schedules of concessions using the CTS database. However, that work will not commence for some time in the Committee since it is in the midst of updating Members' bound commitments into HS2007 nomenclature. This lag can create difficulties in determining whether Members' MFN duties – which were applied in HS2012 nomenclature beginning January 1, 2012 – are consistent with their WTO bound commitments. The United States was the first WTO Member to submit its tariff schedule in HS2012 nomenclature to the WTO Secretariat in September 2012.

*Integrated Data Base (IDB):* Members are required to notify information on annual tariffs and trade data, linked at the level of tariff lines, to the IDB as a result of a General Council Decision adopted in July 1997. On the tariff side, the IDB contains MFN current bound duties and MFN current applied duties. Additional information covering preferential duties is also included if provided by Members. On the trade side, it contains value and quantity data on imports by country of origin by tariff line. The WTO Secretariat periodically reports on the status of Member submissions to the IDB, the most recent of which can be found in WTO document G/MA/IDB/2/Rev.41 and 42. The United States notifies this data in a timely fashion every year. However, several Members are not up to date in their submissions. The public can access tariff and trade data notified to the IDB through the WTO's Tariff Online Analysis (TAO) facility at <https://tariffanalysis.wto.org>. The WTO Secretariat is also currently working to integrate into the IDB historical tariff and import information for 29 Members covering years 1988 to 1995.

*Consolidated Tariff Schedules (CTS) database:* The MA Committee continued work on implementing an electronic structure for tariff and trade data. The CTS database includes tariff bindings for each WTO Member that reflect its Uruguay Round tariff concessions, HS 1996 and 2002 amendments to tariff nomenclature and bindings, and any other Member rectifications/modifications to its WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables.

*Notification Procedures for Quantitative Restrictions (QRs):* On December 1, 1995, the Council for Trade in Goods adopted a revised Decision on Notification Procedures for Quantitative Restrictions. On 3 July 2012, the Council for Trade in Goods adopted a Decision on Notification Procedures for Quantitative Restrictions (G/L/59/Rev.1), which provides that WTO Members should make complete notifications of the quantitative restrictions (QRs), which they maintain at two-year intervals thereafter, and shall notify changes to their QRs when these changes occur.

Under the revised notification procedures for quantitative restrictions, the Committee continued to examine the quantitative restrictions notifications submitted by Members (G/MA/QR/3). Several Members have submitted notifications on QRs, including Hong Kong, Japan, Costa Rica, the EU, Turkey, Ukraine, Thailand, Korea, Australia, New Zealand, Macao China, and Canada. The United States mostly recently notified its quantitative restrictions for the 2014-2016 cycle.

*Other Market Access Issues:* The Committee also approved procedures for the derestriction of negotiating material of the Tokyo Round, conducted between 1973 and 1979, and some negotiating material of the five

earlier GATT rounds. The procedures are almost identical to those used by the WTO General Council to derestrict GATT 1947 restricted documents.

### **Prospects for 2016**

The ongoing work program of the MA Committee, while highly technical, aims to ensure that all WTO Members' schedules of tariff commitments are up-to-date and available in electronic spreadsheet format. The Committee will continue to explore technical assistance needs related to data submissions, work to finalize Members' amended schedules based on the HS2002 amendments, continue work on the transposition of Members' tariff schedules to HS2007 nomenclature, and potentially begin work on 2012 schedules.

## **3. Committee on the Application of Sanitary and Phytosanitary Measures**

### **Status**

The Committee on the Application of Sanitary and Phytosanitary Measures (the SPS Committee) provides a forum for review of the implementation and administration of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), consultation on Members' existing and proposed SPS measures, technical assistance, other informational exchanges, and the participation of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: for food safety, the Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (OIE); and for plant health, the International Plant Protection Convention (IPPC).

The SPS Committee also discusses and provides guidelines on specific provisions of the SPS Agreement. These discussions provide an opportunity to develop procedures to assist Members in meeting specific SPS obligations. For example, the SPS Committee has issued procedures or guidelines regarding: notification of SPS measures; the "consistency" provisions under Article 5.5 of the SPS Agreement; equivalence; transparency regarding the provisions for S&D; and regionalization. Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments negotiating accession to the WTO may attend Committee meetings as observers. In addition, representatives from a number of international organizations attend Committee meetings as observers on an *ad hoc* meeting by meeting basis, including: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); Codex; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA); and the World Bank.

### **Major Issues in 2015**

In 2015, the SPS Committee held meetings in March, June, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions with respect to risk assessment, transparency, use of international standards, equivalence, and regionalization.

The United States views these exchanges as useful, as they facilitate a growing familiarity with the provisions of the SPS Agreement and increased recognition of the value of the SPS Committee as a forum for Members to discuss SPS-related trade issues. Many Members, including the United States, utilized these meetings to raise concerns regarding new and existing SPS measures of other Members. In 2015, the United States raised a number of concerns with existing or proposed measures of other Members, including proposed changes by China and the EU to their respective measures relating to approvals for "genetically modified organisms", France's Ban on Bisphenol A (BPA), Costa Rica's suspension on the issuance of

import certificates for avocados, and the EU's proposals to assess, classify and regulate chemicals classified as endocrine disruptors. Further, the United States, with a view to transparency, informed the SPS Committee of U.S. measures, both new and proposed. A special thematic discussion on risk communication was held on the margins of the July Committee meeting and a workshop on transparency was held on the margins of the October Committee meeting.

The Committee did not conclude work on its report of the SPS Committee's fourth review of the implementation of the SPS Agreement due to differences of views among Members on the role of the SPS Committee with respect to private and commercial standards. The United States remains quite concerned about whether private and commercial standards is an appropriate issue to which the SPS Committee should be devoting resources and continues to work with the Committee and other Members to address that concern.

*Notifications:* Because it is critical for trading partners to know and understand each other's laws and regulations, the SPS notification process, with the Committee's consistent encouragement, is becoming an increasingly important mechanism in the facilitation of international trade. The process also provides a means for Members to report on determinations of equivalence and S&D. The United States made 159 SPS notifications to the WTO Secretariat in 2015, and submitted comments on 122 SPS measures notified by other Members.

### **Prospects for 2016**

The SPS Committee will hold three meetings in 2016 with informal sessions anticipated to be held in advance of each meeting. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The SPS Committee will continue to monitor Members' implementation activities, and the discussion of specific trade concerns will continue to be an important part of the Committee's activities.

In 2016, the United States anticipates that the SPS Committee will continue to provide a venue for Members to discuss specific trade concerns and to exchange information. The SPS Committee will also continue to monitor the use by Members, and development by Codex, the OIE, and the IPPC, of international standards, guidelines, and recommendations.

## **4. Committee on Trade-Related Investment Measures**

### **Status**

The Agreement on Trade-Related Investment Measures (the TRIMS Agreement), which entered into force with the establishment of the WTO in 1995, prohibits investment measures that are inconsistent with national treatment obligations under Article III:4 of the GATT 1994 and reinforces the prohibitions on quantitative restrictions set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions of foreign investors, such as measures that require, or provide benefits for, the use of local inputs ("local content requirements") or measures that restrict a firm's imports to an amount related to the quantity of its exports or foreign exchange earnings ("trade balancing requirements"). The Agreement includes an illustrative list of measures that are inconsistent with Articles III:4 and XI:1 of the GATT 1994.

Developments relating to the TRIMS Agreement are monitored and discussed both in the Council for Trade in Goods and in the Committee on Trade-Related Investment Measures (TRIMS Committee). Since its establishment in 1995, the TRIMS Committee has been a forum for the United States and other Members

to address concerns, gather information, and raise questions about the maintenance, introduction, or modification of trade-related investment measures by Members.

### **Major Issues in 2015**

The TRIMS Committee held two formal meetings during 2015, in April and October, during which the United States and other Members continued to discuss particular local content measures of concern to the United States. The United States explored these concerns through written questions to certain countries to seek a better understanding of a variety of potentially trade-distortive local content requirements.

Many local content measures before the Committee remain in place after several years. For example, the United States, joined by Japan and the EU, continued to raise questions about possible local content requirements in Indonesia's measures pertaining to mineral and coal mining and oil and gas exploration, noting that it had raised these concerns every year since 2009. The United States also asked Indonesia in this context about plans to restrict the export of unprocessed and unrefined mining products. The United States, the EU, Japan, and Canada also continued to press Nigeria to respond to questions from 2011 on possible local content requirements in measures pertaining to the oil and gas industry. The questions from the United States are contained in WTO document G/TRIMS/W/89. The United States also raised this issue at the Council for Trade in Goods, emphasizing in particular Nigeria's failure to respond to written questions. In addition, the United States, the EU, and Japan posed questions to Indonesia regarding potential TRIMS concerns in the telecommunications sector, an issue that has been raised in the Committee since 2009.

The United States also raised new measures during 2015. In particular, the United States raised questions about apparent local content requirements with respect to 4G LTE equipment in Indonesia. The United States and the EU also posed questions to Indonesia about its investment and trade laws, noting that certain vaguely worded provisions could be interpreted as a legal basis for new barriers to trade when the laws are fully implemented through regulations. The United States also posed questions to Russia on programs related to SOE purchases generally, and to SOE purchases of agricultural equipment specifically, in order to determine whether these programs are conditioned on use of local content.

During 2015, the United States continued to address questions from India on certain measures in the renewable energy sector taken by California, Michigan, and by public utilities in the cities of Austin, Texas and Los Angeles, California. In 2013, the United States responded to certain questions posed by India in this regard; the U.S. responses are contained in WTO document G/TRIMS/W/129/Rev.1.

### **Prospects for 2016**

The United States will continue to engage other Members in efforts to promote compliance with the TRIMS Agreement.

## **5. Committee on Subsidies and Countervailing Measures**

### **Status**

The SCM Agreement provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty action taken by individual WTO Members – to address subsidized trade that causes harmful commercial effects. Subsidies contingent upon export performance or the use of domestic over imported goods are prohibited. All other subsidies are permitted but are actionable (through countervailing duty or WTO dispute settlement actions) if they

are (i) “specific”, *i.e.*, limited to a firm, industry, or group thereof within the territory of a WTO Member, and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another Member.

## Major Issues in 2015

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two regular meetings and two special meetings in 2015, in April and October. The SCM Committee continued to review the consistency of Members’ domestic laws, regulations, and actions with the SCM Agreement’s requirements, as well as Members’ notifications of their subsidy programs to the SCM Committee. Other items addressed in the course of the year included: the three “counter notifications” by the United States of unreported subsidy programs in China and one counter notification of unreported subsidy programs in India; a submission by the United States of questions to China under Article 25.8 of the SCM Agreement; examination of ways to improve the timeliness and completeness of subsidy notifications; the “export competitiveness” of India’s textile and apparel sector; review of the export subsidy program extension mechanism for certain small economy developing country Members; filling the opening on the five-member Permanent Group of Experts; and updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the SCM Agreement. Further information on these various activities is provided below.

*Review and Discussion of Notifications:* Throughout the year, Members submitted notifications of: (1) new or amended countervailing duty legislation and regulations; (2) countervailing duty investigations initiated and decisions taken; and (3) Members’ subsidy programs. Notifications of countervailing duty legislation and actions, as well as subsidy notifications, were reviewed and discussed by the SCM Committee at its April and October meetings.

In reviewing notified countervailing duty legislation and subsidies, SCM Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the SCM Agreement. As of October 2015, 106 WTO Members (counting the EU as a single Member) have notified their countervailing duty legislation or lack thereof, and 28 Members have so far failed to make a legislative notification.<sup>4</sup> In 2015, the SCM Committee reviewed notifications of new or amended countervailing duty laws and regulations from Armenia, Australia, Bahrain, Brazil, Cameroon, Qatar, Saudi Arabia, and the United States.<sup>5</sup>

As for countervailing duty measures, 12 Members notified countervailing duty actions they took during the latter half of 2014, and 12 Members notified actions they took in the first half of 2015. The SCM Committee reviewed actions taken by: Australia, Brazil, Canada, China, Egypt, the EU, India, Mexico, Peru, Russia, Turkey, the United States, and Ukraine.

In 2015, the SCM Committee examined dozens of new and full subsidy notifications covering various time periods. Unfortunately, numerous Members have yet to make even an initial subsidy notification to the WTO, although many of them are least-developed country Members.

*Counter notifications:* Under Article 25.1 of the SCM Agreement, Members are obligated to regularly provide a subsidy notification to the SCM Committee. Prior to October 2011, China had only submitted a

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<sup>4</sup> These notifications do not include notifications submitted by Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, and Slovenia before these Members acceded to the European Community.

<sup>5</sup> In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and countervailing duty actions by a Member generally took place in the Antidumping Committee.

single subsidy notification, in 2006 (covering the years 2001 – 2004). India submitted a subsidies notification in 2010 – that only included three programs – after not providing any notification for 10 years. The United States and other Members have repeatedly expressed deep concern about the notification record of China and India (among others). During the 2010 fall meeting of the SCM Committee, the United States foreshadowed potential resort to the counter notification mechanism under Article 25.10 of the SCM Agreement. This provision states that when a Member fails to notify a subsidy, any other Member may bring the matter to the attention of the Member failing to notify.

Pursuant to Article 25.10, the United States filed counter notifications in October 2011 with respect to over 200 unreported subsidy measures in China and 50 unreported subsidy measures in India – the first counter notifications ever filed by the United States. Although not required by the SCM Agreement, included as part of the counter notification of China was access to translations of each measure in the counter notifications. While China submitted its second subsidy notification (covering 2005 – 2008) shortly after the U.S. counter notification, it covered very few of the subsidy programs referenced in the U.S. counter notification. In May 2012, India submitted a supplemental subsidy notification covering certain fishery programs, including programs at the sub-central level. However, none of the programs in the supplemental notification were those referenced by the U.S. counter notification of programs in India. At both meetings of the SCM Committee in 2015, the United States continued to press China and India to notify the outstanding programs identified in the U.S. 2011 counter notifications.

In the fall of 2014, the United States submitted its second counter notification of subsidy measures in China. This counter notification was based on the Article 25.8 questions submitted to China in October 2012. Because China did not respond to these questions after two years, the United States was compelled to counter notify the measures at issue. This counter notification included 110 subsidy measures, covering, *inter alia*, steel, semiconductors, non-ferrous metals, textiles, fish, and various sector-specific stimulus initiatives. As part of this counter notification, the United States provided hyperlinks in its submission to complete translations of each measure counter notified.

In the fall of 2015, the United States submitted its third counter notification of subsidy measures in China. All of the measures in this counter notification pertain to China’s policy of promoting its “strategic, emerging industries” (SEI). This counter notification was based on the Article 25.8 questions submitted to China in the spring of 2014. Once again, because China did not respond to these questions, the United States was compelled to counter notify the measures at issue. Over 60 subsidy measures were included in the counter notification. The specific sectors China has selected as SEIs include the following: (1) new energy vehicles, (2) new materials (a category that includes textile products), (3) biotechnology, (4) high-end equipment manufacturing, (5) new energy, (6) next generation information technology, and (7) energy conservation and environmental protection. As with other industrial planning measures in China, sub-central governments appear to play an important role in implementing China’s SEI policy. Shortly after the United States submitted its third counter notification, China submitted its third subsidy notification; however, many of the measures in the counter notifications of the United States were not notified.

Taking all three counter notifications into account, the United States has now counter notified over 360 Chinese subsidy measures.

*Submission of Article 25.8 questions:* Article 25.8 of the SCM Agreement provides: “Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.” Because China’s three notifications to date have been significantly incomplete (*e.g.*, only central government-level programs have been notified) and late (*e.g.*, the notification filed in 2011 only covered up through 2008), the United States has regularly submitted extensive, detailed questions

to China under Article 25.8. Under Article 25.9, China is obligated to provide a response “as quickly as possible and in a comprehensive manner.” As noted above, when China has not responded to the United States’ questions submitted under Article 25.8 after a reasonable period of time, the United States has counter notified the subsidy measures at issue. In the spring of 2015, the United States submitted questions to China under Article 25.8 on various measures that appear to be fishery subsidies. Many of the measures were first listed in China’s Trade Policy Report. To date, China has not responded to the United States’ questions.

*Notification improvements:* In March 2009, the Chairman of the Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss “ways to improve the timeliness and completeness of notifications and other information flows on trade measures.” The United States fully supported the continuation of this initiative in 2015 in light of Members’ poor record in meeting their subsidy notification obligations. In 2010, the United States took the initiative under this agenda item to review the subsidy notification record of several large exporters in failing to provide complete and timely subsidy notifications. Of primary concern in this regard was China. As noted above, the United States continues to devote significant time and resources to researching, monitoring, and analyzing China’s subsidy practices. The United States has also been working with several other larger exporting countries bilaterally to assist and encourage them to meet their subsidy notification obligations.

In 2011, the United States submitted a specific proposal under Article 25.8 of the SCM Agreement to strengthen and improve the notification procedures of the SCM Committee. As noted above, under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy subject to the requirement of notification. Unfortunately, many requests under Article 25.8 have not been answered or are only partially answered orally after significant delay. To address this problem, the United States proposed that the SCM Committee establish deadlines for the submission of written answers to Article 25.8 questions and include all unanswered Article 25.8 questions on the bi-annual agendas of the SCM Committee until the questions are answered.<sup>6</sup> In 2015, the United States continued to advocate for a revised proposal, which sets out specific deadlines for responses to questions.<sup>7</sup> Many Members supported the proposal, while several other Members, such as China, India, South Africa, and Brazil, voiced concerns.

*The “export competitiveness” of India’s textile and apparel sector:* Under the SCM Agreement, developing countries receive special and differential treatment with respect to certain subsidy disciplines under Article 27. For developing countries listed in Annex VII of the SCM Agreement, which includes India, the general prohibition on export subsidies does not apply until: (1) per capita GNP reaches a designated threshold of \$1,000 per annum, or (2) eight years after the country achieves “export competitiveness” for a particular product. Article 27.6 of the SCM Agreement defines export competitiveness as the point when an exported product reaches a share of 3.25 percent of world trade for two consecutive calendar years. Export competitiveness is determined to exist either via notification by the Annex VII developing country having reached export competitiveness or on the basis of a computation undertaken by the WTO SCM Committee Secretariat at the request of any Member.

In February 2010, the United States formally requested the Secretariat, pursuant to Article 27.6 of the SCM Agreement, to compute the export competitiveness of India’s textile and apparel sector. The Secretariat submitted its results to the Committee in March 2010. The calculations appear to support the conclusion that India has reached export competitiveness in the textile and apparel sector. In light of the Secretariat’s calculations, the United States has pressed India to identify the current export subsidy programs that benefit the textile and apparel sector and commit to a phase-out schedule to end all such programs to the extent they benefit the textile and apparel sector. In response, India has raised certain technical questions as to the

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<sup>6</sup> G/SCM/W/555; 21 October 2011.

<sup>7</sup> G/SCM/W/557/Rev.1; September 22, 2014.

appropriate definition of “product” and the precise starting point of the phase-out period under Articles 27.5 and 27.6 of the SCM Agreement. The United States will continue to pursue this issue.

*Extension of the transition period for the phase out of export subsidies:* Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. To address the concerns of certain small economies, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the 2001 Doha Ministerial Conference to provide for facilitated annual extensions of the time available to eliminate certain notified export subsidies.<sup>8</sup> In 2007, the General Council, acting on an SCM Committee recommendation, decided to extend the application of the special procedure. An important outcome of these negotiations, upon which the United States and other developed and developing countries insisted, was that the beneficiaries must eliminate all export subsidy programs no later than 2015 and that they will have no recourse to further extensions beyond 2015. The final two-year phase-out period (2014-2015) is provided for in Article 27.4 of the SCM Agreement and ended on December 31, 2015.

*Permanent Group of Experts:* Article 24 of the SCM Agreement directs the SCM Committee to establish a Permanent Group of Experts (PGE), “composed of five independent persons, highly qualified in the fields of subsidies and trade relations” and that “[t]he experts will be elected by the Committee and one of them will be replaced every year.” The SCM Agreement articulates three possible roles for the PGE: (1) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy within the meaning of Article 3 of the SCM Agreement; (2) to provide, at the request of the SCM Committee, an advisory opinion on the existence and nature of any subsidy; and (3) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties.

At the beginning of 2015, the members of the Permanent Group of Experts were: Mr. Akio Shimizu (Japan); Mr. Zhang Yuqing (China); Mr. Welber Barral (Brazil), Mr. Chris Parlin (United States), and Mr. Subash Pillai (Malaysia). Mr. Ichiro Araki (Japan) was elected at the regular fall meeting to replace the outgoing Mr. Shimizu. Therefore, at the end of 2015, the five members of the PGE were: Mr. Zhang Yuqing (until 2016), Mr. Welber Barral (until 2017), Mr. Chris Parlin (until 2018), Mr. Subash Pillai (until 2019), and Mr. Ichiro Araki (until 2020).

*The Methodology for Annex VII (b) of the SCM Agreement:* Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment. Specifically, the export subsidies of these Members are not prohibited, and therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as “least-developed countries” (Annex VII(a)) as well as countries that had, at the time of the negotiation of the SCM Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).<sup>9</sup> A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. In 2001, at the WTO Fourth Ministerial Conference in Doha, decisions were made, which, *inter alia*, led to the adoption of an approach

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<sup>8</sup> Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under these special procedures.

<sup>9</sup> Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d’Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

to calculate the \$1,000 threshold in constant 1990 dollars and to require that a Member be above this threshold for three consecutive years before graduation. The WTO Secretariat updated these calculations in 2015.<sup>10</sup>

### **Prospects for 2016**

In 2016, the United States will continue to analyze the latest subsidy notification submitted by China in the fall of 2015, particularly with respect to China's fishery sector, and will focus on other possible subsidy programs in China not notified, particularly those that may be prohibited under the SCM Agreement, those administered at the provincial and local levels, and those provided to sectors for which China has yet to notify any subsidies (*e.g.*, steel). The United States will continue to seek to engage India bilaterally to commit to a phase out of its export subsidy programs to the extent that they benefit the textile and apparel sector. More generally, the SCM Committee will continue to work in 2016 to improve the timeliness and completeness of Members' subsidy notifications and, in particular, will continue to discuss the proposal made by the United States to improve and strengthen the SCM Committee's procedures under Article 25.8 of the SCM Agreement. Finally, the subsidy notification of the United States, covering fiscal years 2013 and 2014, will likely be reviewed by the SCM Committee in the spring of 2016.

## **6. Committee on Customs Valuation**

### **Status**

The purpose of the Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation, referred to herein as the "Valuation Agreement") is to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement is important for U.S. exporters, particularly to ensure that market access opportunities achieved through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied. The use of arbitrary and inappropriate "uplifts" in the valuation of goods by importing countries when applying tariffs can result in an unwarranted doubling or tripling of effective duties.

### **Major Issues in 2015**

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2015. The Valuation Agreement also established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO), with a view to ensuring, at the technical level, uniformity in interpretation and application of the Valuation Agreement. The Technical Committee held two meetings in 2015.

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Customs Valuation Committee continued to provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

While no Members currently maintain the Special & Differential Treatment (S&D) reservation concerning the use of minimum values, there are still Members whose use of minimum import prices is problematic and is a practice inconsistent with the provisions of the Valuation Agreement.

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<sup>10</sup> See G/SCM/110/Add.12.

We note that in keeping with its Accession to the WTO, Yemen will start fully implementing the Valuation Agreement by December 31, 2016.

The United States has used the Customs Valuation Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology – that have experienced difficulties related to the conduct of customs valuation and preshipment inspection regimes.

Achieving universal acceptance of the Valuation Agreement was an important objective of the United States in the Uruguay Round. The Valuation Agreement was initially negotiated in the Tokyo Round, but until entry into force of the WTO Agreement, adherence to it was voluntary. A proper valuation methodology under the Valuation Agreement, avoiding arbitrary determinations or officially established minimum import prices, is essential for the realization of market access commitments. Just as important, the implementation of the Valuation Agreement often is an initial concrete and meaningful step by developing country Members toward reforming their customs administrations, diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

An important part of the Customs Valuation Committee's work is the examination of customs valuation legislation to implement Valuation Agreement commitments and individual Member practices. As of December 2015, 94 Members had notified their national legislation on customs valuation (these figures do not include the 28 individual EU Member States, which also are WTO Members). In addition, 62 Members have notified its "Implementation and Administration of the Agreement on Customs Valuation" *checklist of issues* created by the Tokyo Round Committee on May 5, 1981. Thirty-five Members have not yet made any notification of their national legislation on customs valuation. At the Committee's May and October 2015 meetings, the Committee undertook its examination of the customs valuation legislation of: Bahrain, Belize, Cabo Verde; Colombia, Ecuador; the Gambia; Guinea, Honduras, Mali; the Republic of Moldova; Montenegro, Nepal, Nicaragua; Nigeria; Russia; Rwanda; Saint Vincent and the Grenadines; South Africa, and Sri Lanka. In addition, the Committee concluded the review of the national legislation of Lesotho, St. Vincent and the Grenadines, Ukraine; and Uruguay. Where the Committee's examination of these Members' customs valuation legislation was not concluded because of outstanding responses, or Members have reverted in 2015, the examination will continue in 2016.

Working with information provided by U.S. exporters, the United States played a leading role in these examinations, submitting in some cases a series of detailed questions as well as suggestions toward improved implementation. In addition to raising questions for Members whose customs valuation legislation is under examination, the United States is still awaiting replies to a number of outstanding questions submitted to Indonesia requesting notification of its preshipment inspection program to the Committee.

The Customs Valuation Committee's work throughout 2015 continued to reflect a cooperative focus among all Members to ensure implementation of the Valuation Agreement. The Committee also took note of technical assistance activities carried out by the Secretariat of the WCO and its Members related to customs valuation. The Committee also noted that technical assistance in the area of customs valuation is now incorporated into the WTO-wide technical assistance program, which encompasses regional activities on market access issues, including customs valuation.

### **Prospects for 2016**

The Customs Valuation Committee's work in 2016 will include reviewing the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other

Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. In this regard, the Committee will continue to provide a forum for sustained focus on issues arising from practices of Members with regard to their implementation of the Valuation Agreement, to ensure that Members' customs valuation regimes do not utilize arbitrary or fictitious values, such as through the use of minimum import prices. In addition, the United States will build on the momentum created by a workshop on reference price databases held in the Committee in September 2014, by encouraging continued dialogue on the benefits of advance rulings on valuation for traders and customs administrations, and by sharing best practices and experience. Further, the United States will continue to emphasize the synergy between the Customs Valuation Agreement and the TFA. In particular, as part of Technical Assistance discussions in the Customs Valuation Committee, that United States intends to explore using TFA technical assistance capacity building to further Members' understanding and compliance with the Valuation Agreement in order to address technical assistance issues, which the Committee considers as a matter of high priority.

## **7. Committee on Rules of Origin**

### **Status**

The objective of the Agreement on Rules of Origin (the ROO Agreement) is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The ROO Agreement provides important disciplines for conducting preferential and nonpreferential origin regimes, such as the obligation to provide, upon request of a trader, an assessment of the origin they would accord to a good within 150 days of that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program to develop harmonized rules of origin for nonpreferential trade. The Harmonization Work Program (HWP) is more complex than initially envisioned under the ROO Agreement, which provided for the work to be completed within three years after its commencement in July 1995. This HWP continued throughout 2015 and will continue into 2016.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which held meetings in April and October of 2015. In addition, the ROO Committee met in an informal dedicated session in July 2015 to discuss preferential rules of origin for LDCs. The Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin along with relevant judicial decisions and administrative rulings of general application. The ROO Agreement also established a Technical Committee on Rules of Origin (Technical Committee) under the auspices of the World Customs Organization to assist in the HWP.

### **Major Issues in 2015**

As of December 2015, 95 Members have notified the WTO concerning nonpreferential rules of origin. In these notifications, 44 Members notified that they apply nonpreferential rules of origin, and 51 Members notified that they did not have a nonpreferential rule of origin regime. Thirty-eight Members have not notified nonpreferential rules of origin. All WTO Members have notified the WTO, either through the ROO Committee or other WTO bodies, that they apply at least one set of preferential rules of origin.

The ROO Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the ROO Committee has been active in its review of the ROO Agreement's implementation. Virtually all issues and concerns cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that are not transparent, allow

discrimination, and lack predictability. The ROO Committee has given substantial attention to the implementation of the ROO Agreement's disciplines related to transparency.

The ongoing HWP has attracted a great deal of attention and resources from WTO Members. Members working through the Technical Committee and the ROO Committee have made progress toward completion of this effort, despite the large volume and magnitude of complex issues, which must be addressed for hundreds of specific products.

U.S. proposals for the HWP have been developed based on a Section 332 study, which was conducted by the U.S. International Trade Commission (USITC) pursuant to a request by USTR. The U.S. proposals reflect input received from ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations in the ROO Committee. Representatives from several U.S. Government agencies continue to be involved in the HWP, including USTR, U.S. Customs and Border Protection, the U.S. Department of Commerce (Commerce), and the U.S. Department of Agriculture (USDA).

In 2006, the General Council agreed that following resolution of the core policy issues, the Committee would complete its remaining work on the HWP by December 2007. Notwithstanding this deadline, the HWP has not been completed.

While the ROO Committee made some progress towards fulfilling the mandate of the ROO Agreement to establish harmonized nonpreferential rules of origin, a number of fundamental issues, including many with respect to product-specific rules for agricultural and industrial goods and the scope of the prospective obligation to apply the harmonized nonpreferential rules of origin equally for all purposes, remain to be resolved.

Because of the impasse among Members on: (i) the product specific rules related to the 94 core policy issues; (ii) the absence of a common understanding of the scope of the prospective obligation to apply the harmonized nonpreferential rules of origin equally for all purposes; and (iii) the growing concern among Members that the final result of the HWP negotiations would not be consistent with the objectives of the HWP set forth in Article 9 of the ROO Agreement, the General Council recognized that its guidance was needed on how to resolve these issues. In 2007, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the aforementioned issues.

In 2015, the Committee initiated a transparency exercise to exchange information about nonpreferential rules of origin that individual Members have in place. Some Members presented to the Committee their current nonpreferential rules of origin and shared their experiences regarding application of such rules. In addition, the Committee also heard presentations about the impact of rules of origin on international trade and on customs operations from the WCO, the International Trade Centre (ITC), the International Chamber of Commerce, and UNCTAD. Although the HWP has not been completed, in 2011 the ROO Committee agreed to initiate the transposition of draft harmonized nonpreferential rules of origin into more recent versions of the Harmonized System nomenclature. This work was completed in 2015.

### **Prospects for 2016**

The Committee will continue to discuss the future organization of the Committee's work and divergences in Members' views of how to continue the HWP. In accordance with the decision taken by the General Council in July 2007, and subject to future guidance from the General Council, the ROO Committee will continue to focus on technical issues, including the technical aspects of the overall architecture of the HWP

product specific rules, through informal consultations. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these issues. The Committee will also review the implementation of the Ministerial Decision on Preferential Rules of Origin for LDCs that was adopted at the Nairobi Ministerial (WT/MIN(15)/47).

## 8. Committee on Technical Barriers to Trade

### Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary standards and mandatory technical regulations for products and the procedures (such as testing or certification) used to determine whether a particular product meets such voluntary standards or technical regulations (conformity assessment procedures). One of the main objectives of the TBT Agreement is to prevent the use of regulations as unnecessary barriers to trade while ensuring that Members retain the right to regulate, *inter alia*, for the protection of health, safety, or the environment, at the levels they consider appropriate.

The TBT Agreement applies to industrial as well as agricultural products, although it does not apply to SPS measures or specifications for government procurement, which are covered under separate agreements. TBT Agreement rules help to distinguish legitimate standards, conformity assessment procedures, and technical regulations from protectionist measures and other measures that act as unnecessary obstacles to trade. For example, the TBT Agreement requires Members to apply standards, technical regulations, and conformity assessment procedures in a nondiscriminatory fashion and, in particular, requires that technical regulations be no more trade restrictive than necessary to meet a legitimate objective and be based on relevant international standards, except where international standards would be ineffective or inappropriate to meet a legitimate objective.

The Committee on Technical Barriers to Trade (the TBT Committee) serves as a forum for consultation on issues associated with implementing and administering the TBT Agreement. The TBT Committee is composed of representatives of each WTO Member and provides an opportunity for Members to discuss concerns about specific standards, technical regulations, and conformity assessment procedures that a Member proposes or maintains. The TBT Committee also allows Members to discuss systemic issues affecting implementation of the TBT Agreement (*e.g.*, transparency, use of good regulatory practices, regulatory cooperation), and to exchange information on Members' practices related to implementing the TBT Agreement and relevant international developments.

*Transparency:* The TBT Agreement requires each Member to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on its standards, technical requirements, and conformity assessment procedures, or making the appropriate referral. The TBT Agreement also requires Members to notify proposed technical regulations and conformity assessment procedures and to take comments received from other Members into account. These obligations provide a key benefit to the public. Through the U.S. Government's implementation of these obligations, the public is able to obtain information on proposed technical regulations and conformity assessment procedures of other WTO Members and to provide written comments for consideration on those proposals before they are finalized.

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point for purposes of the TBT Agreement (NIST can be contacted via email at: [usatbtep@nist.gov](mailto:usatbtep@nist.gov) or [notifyus@nist.gov](mailto:notifyus@nist.gov) or via the Internet at: <http://www.nist.gov/notifyus>). The inquiry point responds to requests for information concerning Federal and State standards, technical regulations, and conformity assessment procedures, as

well as voluntary standards and conformity assessment procedures developed or adopted by nongovernmental bodies. Upon request, NIST will provide copies of notifications of proposed technical regulations and conformity assessment procedures that other Members have made under the TBT Agreement, as well as contact information for other Members' TBT inquiry points. NIST maintains the "Notify U.S. Service" through which U.S. entities receive, via e-mail, WTO notifications of proposed or revised domestic and foreign technical regulations and conformity assessment procedures for manufactured products. U.S. entities can access the services through the website: <https://www.nist/notifyus>. NIST refers requests for information concerning SPS measures to USDA, which is the U.S. inquiry point pursuant to the SPS Agreement.

The opportunity provided by the TBT Agreement for interested parties in the United States to influence the development of proposed technical regulations and conformity assessment procedures being developed by other Members by allowing them to provide written comments on proposed measures and submit them through the U.S. inquiry point helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve its operation occur as part of the triennial review process (*see below*). Obligations, such as the prohibition on discrimination and the requirement that technical regulations not be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

The TBT Committee also plays an important monitoring and oversight role. It has served as a constructive forum for discussing and resolving issues and avoiding disputes. Since its inception, an increasing number of Members, including developing countries, have used the Committee to highlight trade problems.

Article 15.4 of the TBT Agreement requires the Committee to review the operation and implementation of the TBT Agreement every three years. Six such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13, G/TBT/19, G/TBT/26, and G/TBT/32), the most recent in 2012. From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling, good regulatory practice, international standards, and regulatory cooperation.

### **Major Issues in 2015**

The TBT Committee met three times in 2015, March (G/TBT/M/65), June (G/TBT/M/66), and November (G/TBT/M/67). At these meetings, Members made statements informing the Committee of measures they had taken to implement the TBT Agreement and to administer measures in compliance with the Agreement. Members also used Committee meetings to raise concerns about specific technical regulations, standards, or conformity assessment procedures that have been proposed or adopted by other Members. Measures garnering significant Committee attention included nutrition labeling requirements for food (Chile, Ecuador, Peru, and Indonesia); tobacco-related measures (New Zealand, Ireland, Singapore, and the EU); regulations on alcoholic beverages (Russia, Thailand, and Ecuador); and continued concern regarding regulations for Registration of Chemicals (China, Taiwan, Korea, and the EU); the development of China-specific standards in the information technology sphere for the banking and insurance sectors; testing procedures for toys (Brazil, Colombia, Turkey, Gulf Cooperation Council, and Indonesia); and India's testing and certification requirements for telecommunications and Information Communication and Telecommunication products.

The Seventh Triennial Review of the Operation and Implementation of the TBT Agreement was conducted in 2015. Ninety-four proposals were made by 22 Members through papers and during informal discussions

of the TBT Committee on the topics including: Good Regulatory Practices, Regulatory Cooperation, Conformity Assessment Procedures, Standards, Transparency, Technical Assistance, Special and Differential Treatment, and on the Operation of the Committee. The major proposals from the United States, which were accepted by Members, included recommendations to discuss approaches to the use of national and regional quality infrastructure for facilitating trade in respect of standards, technical regulations and conformity assessment procedures<sup>11</sup>, and to discuss the notification of regional technical regulations and conformity assessment procedures and recommend best practices.<sup>12</sup>

- Outcomes on Good Regulatory Practices include continuing to exchange information on Good Regulatory Practice mechanisms adopted by Members and continuing to discuss how Regulatory Impact Assessment (RIA) can facilitate the implementation of the TBT Agreement, including a discussion of the challenges faced by developing countries.
- Regulatory Cooperation was a new topic identified by Members for discussion in the 7th Triennial Review. With respect to Regulatory Cooperation, the Committee agreed to deepen its information exchange on Regulatory Cooperation between Members, to share information and experiences related to emerging or ongoing issues in specific sectors, and to discuss effective elements of Regulatory Cooperation. It is anticipated that the first discussion on Regulatory Cooperation will focus on energy efficiency standards.
- The recommendations on Conformity Assessment include three areas of work identified in the 6<sup>th</sup> Triennial Review: approaches to conformity assessment, use of relevant international standards and guides, and facilitating the recognition of conformity assessment results.
- The recommendations on Standards relate to exchanging information on how Members reference standards in technical regulations, and developing further transparency in standards setting, including the publication of work programs and comment periods for draft standards on websites, and compliance to the Code of Good Practice for local government and non-government standardizing bodies.
- Recommendations for improved Transparency focused on the functioning of Inquiry Points, coherent use of WTO notification formats for proposed technical regulations, increasing the availability of translations, and improving the use and function of on-line tools managed by the WTO Secretariat.
- For Technical Assistance and Special and Differential Treatment, the Committee will continue to exchange information.
- Finally, with respect to the Operation of the Committee, Members agreed to continue holding thematic sessions.

The complete outcomes of the 7<sup>th</sup> Triennial Review are summarized in G/TBT/37.

### **Prospects for 2016**

In 2016, the TBT Committee will continue to monitor Members' implementation of the TBT Agreement. U.S. priorities will continue to focus on resolving specific trade concerns, as well as monitoring on the

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<sup>11</sup> G/TBT/W/415/Rev.1.

<sup>12</sup> G/TBT/W/411/Rev.1.

implementation of the outcomes of the 7<sup>th</sup> Triennial Review. In March 2016, the TBT Committee will hold two thematic sessions. The first will be on Regulatory Impact Assessment and how it can facilitate the implementation of the TBT Agreement. The second thematic session will be on the developments in international and regional conformity assessment systems and obligations related to conformity assessment in Regional Trade Agreements (RTAs), relating to the recognition and acceptance of conformity assessment results. In June 2016, the Committee will hold thematic session on how to reference Standards in technical regulations, and on Regulatory Cooperation. In November 2016, the Committee will conduct the Eighth Special Meeting on Procedures for Information Exchange and hold thematic sessions on Technical Assistance and Regulatory Cooperation.

## **9. Committee on Antidumping Practices**

### **Status**

The Antidumping Agreement sets forth detailed rules and disciplines prescribing the manner and basis on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Antidumping Agreement is overseen by the Committee on Antidumping Practices (the Antidumping Committee), which operates in conjunction with two subsidiary bodies, the Working Group on Implementation (the Working Group) and the Informal Group on Anticircumvention (the Informal Group).

The Antidumping Committee is an important venue for reviewing Members' compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experiences with respect to Members' application of antidumping remedies.

The Working Group is an active body which focuses on practical issues and concerns relating to implementation. The activities of the Working Group permit Members to develop a better understanding of their respective policies and practices for implementing the provisions of the Antidumping Agreement based on papers submitted by Members on specific topics. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for consideration. To date, the Antidumping Committee has adopted Working Group recommendations on the following five antidumping topics: (1) the period of data collection for antidumping investigations; (2) the timing of notifications under Article 5.5; (3) the contents of preliminary determinations; (4) the time period to be considered in making a determination of negligible imports for purposes of Article 5.8; and (5) an indicative list of elements relevant to a decision on a request for extension of time to provide information pursuant to Articles 6.1 and 6.1.1.

The Working Group has drawn a high level of participation by Members, in particular capital-based experts and officials of antidumping administering authorities. Since the inception of the Working Group, the United States has submitted papers on most topics and has been an active participant at all meetings. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Antidumping Agreement's provisions and exploring options for improving practices among antidumping administrators.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision by Ministers.

## Major Issues in 2015

In 2015, the Antidumping Committee held meetings in April and October. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Antidumping Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2015.

*Notification and Review of Antidumping Legislation:* To date, 78 Members have notified that they currently have antidumping legislation in place, and 35 Members have notified that they maintain no such legislation. In 2015, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Armenia, Australia, Bahrain, Brazil, Qatar, Saudi Arabia, and the United States. Several Members, including the United States, were active in formulating written questions and in making follow up inquiries at the Antidumping Committee meetings.

*Notification and Review of Antidumping Actions:* In 2015, 34 Members notified that they had taken antidumping actions during the latter half of 2014, while 33 Members reported having taken actions in the first half of 2015. Members identified these actions, as well as outstanding antidumping measures currently maintained by Members, in semi-annual reports submitted for the Antidumping Committee's review and discussion. The semi-annual reports for the second half of 2014 were issued in document series "G/ADP/N/265/..." and the semi-annual reports for the first half of 2015 were issued in document series "G/ADP/N/272/..." At its April and October 2015 meetings, the Antidumping Committee also reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

*Working Group on Implementation:* The Working Group held meetings in April and October 2015. Beginning in 2003, the Working Group has held discussions on several agreed topics, including: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; (4) judicial, arbitral, or administrative reviews under Article 13; and (5) price undercutting by dumped imports. In 2009, the Working Group agreed to include the following additional topics for discussion: (1) constructed export prices; (2) other known causes of injury; (3) threat of material injury; (4) accuracy and adequacy of evidence to justify the initiation of an investigation; and (5) the determination of the likelihood of continuation or recurrence of dumping and injury in sunset reviews. The discussions in the Working Group on all of these topics have focused on submissions by Members describing their own practice.

At the April 2015 meeting, the Working Group agreed to test a new approach for work based on a topic-centered discussion, with a discussant to facilitate the dialogue and informal presentations by Members.

For the October 2015 meeting, the Working Group selected the topic of administrative, arbitral, and judicial review under Article 13. A representative from Canada served as the discussant and several Members, including the United States, made informal presentations.

*Informal Group on Anticircumvention:* In 2015, the Informal Group held one meeting in April 2015. A new paper submitted by the United States entitled "Anti-Dumping Duty Evasion Services" was discussed.

## **Prospects for 2016**

Work will proceed in 2016 on the areas that the Antidumping Committee and the Working Group addressed this past year, and the Informal Group will continue to meet on relevant topics as the Members deem appropriate. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Antidumping Committee is important for ensuring that Members' antidumping laws are properly drafted and implemented, thereby contributing to a well-functioning, rules-based trading system. Since notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members, which should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2016. The semi-annual reports are accessible to the general public on the WTO website. This transparency promotes improved public knowledge and appreciation of the trends and focus of all WTO Members' antidumping actions.

Discussions in the Working Group will continue to play an important role as more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in the technical issues related to understanding how Members implement these rules when administering their laws pursuant to the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum that was established to discuss these technical and administrative issues. For these reasons, the United States will continue to use the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws as written, but also the operational practices that Members employ to implement them. In 2016, the Working Group will assess the effectiveness of the topic-centered discussion approach and decide whether to continue this approach for upcoming meetings and, if so, discuss and select topics accordingly.

The work of the Informal Group will also continue in 2016 according to the framework for discussion on which Members have agreed.

## **10. Committee on Import Licensing**

### **Status**

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with the mutually-agreed rules for the application of these widely used measures. The Import Licensing Committee normally meets twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations set out in the Import Licensing Agreement. The Committee also receives questions from Members on the licensing regimes of other Members, whether or not those regimes have been notified to the Committee. The Committee meetings also address specific observations and complaints concerning Members' licensing systems. These reviews are not intended to substitute for dispute settlement procedures; rather, they offer Members an opportunity to focus multilateral attention on licensing measures and procedures that they find problematic, to receive information on specific issues and to clarify problems, and possibly to resolve issues before they become disputes.

## Major Issues in 2015

In 2015, the Import Licensing Committee held its meetings in April and October. In accordance with Articles 1.4(a), 5.4, and 8.2(b) of the Import Licensing Agreement and procedures agreed to by the Committee, all Members, upon joining the WTO, must notify the sources of the information pertaining to their laws, regulations, and administrative procedures relevant to import licensing. Any subsequent changes to these measures must also be published and notified. Since the entry into force of the WTO Agreement, 107 Members<sup>13</sup> have notified the Committee of their measures or publications under these provisions (as of the last meeting held on October 20, 2015). During 2015, the Committee received 16 notifications (as of October 20, 2015) from the following 13 Members: Australia; Brazil; Cameroon; the EU; Hong Kong, China; Mexico; Montenegro; Macao, China; Paraguay; Peru; Philippines; Russia; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. These notifications can be found in document series G/LIC/N/1/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

With regard to notifications of new import licensing procedures or changes in such procedures (required by Articles 5.1 through 5.4 of the Agreement), the Committee reviewed<sup>14</sup> 16 notifications from ten Members (up to October 20, 2015): Australia; Brazil; the EU; Hong Kong, China; Indonesia; Malawi; Mexico; Paraguay; Sri Lanka; and Viet Nam. These notifications can be found in documents series G/LIC/N/2/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

Article 7.3 of the Import Licensing Agreement requires all Members to provide prompt replies to the annual Questionnaire on Import Licensing Procedures; Committee procedures set a deadline of September 30 each year. While not all Members provide responses every year, since the entry into force of the WTO Agreement, 110 Members have made notifications under this provision (as of October 20, 2015). The number of Members submitting annual notifications has increased from 11 Members in 1995, when the WTO was established, to 36 Members in 2015. All of these notifications, including the U.S. responses to the Questionnaire on Import Licensing Procedures (G/LIC/N/3/USA/12), may be found in document series G/LIC/N/3/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

The United States remained one of the most active members of the Import Licensing Committee in 2015, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. In 2015, the United States raised concerns about the import licensing procedures of: Bangladesh (pharmaceuticals); India (boric acid and apples); Indonesia (cell phones, handheld computers and tablets); Mexico (steel); and, Vietnam (distilled spirits; transparency). The United States and other Members submitted written questions on these and other issues. Written questions and replies to and from Members submitted to the Committee concerning notifications and import licensing procedures may be found in document series G/LIC/Q/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

*Notifications and Other Documentation:* The United States continues to work within the Committee to seek to enhance Members' efforts to comply with the Agreement's notification requirements. In so doing, transparency remains the primary goal.

## Prospects for 2016

The administration of import licensing procedures continues to be a significant topic of discussion in the day-to-day implementation of Members' WTO obligations. The use of such measures to monitor and to regulate imports has increased. Import licensing also remains a factor in the administration of tariff-rate quotas and the application of safeguard measures, technical regulations, and sanitary and phytosanitary

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<sup>13</sup> The EU and its Member States counted as one Member for purposes of this notification.

<sup>14</sup> Four new documents submitted on October 8, 2015 by Russia will be reviewed at the next Committee meeting.

requirements. The proliferation of import licensing requirements is a continuing source of concern, as many such requirements appear to be administered in a manner that restrict trade. The United States will continue to advocate for increased transparency and proper use of import licensing procedures, and will continue to closely monitor licensing procedures to ensure that the procedures, do not, in themselves, restrict imports in a manner inconsistent with Members' WTO obligations.

## **11. Committee on Safeguards**

### **Status**

The Committee on Safeguards (the Safeguards Committee) was established to administer the WTO Agreement on Safeguards (the Safeguards Agreement). The Safeguards Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994. Effective rules on safeguards are important to the viability and integrity of the multilateral trading system. The availability of a safeguard mechanism gives WTO Members the assurance that they can act quickly to help industries adjust to import surges, providing them with flexibility they would not otherwise have to open their markets to international competition. At the same time, WTO rules on safeguards ensure that such actions are of limited duration and are gradually less restrictive over time.

The Safeguards Agreement incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). Among its key provisions, the Safeguards Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions of the criteria for serious injury determinations; requires that safeguard measures be steadily liberalized over their duration; establishes maximum periods for safeguard actions; requires a review no later than the midterm of any measure with a duration exceeding three years; allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements.

The Safeguards Agreement requires Members to notify the Safeguards Committee of their laws, regulations, and administrative procedures relating to safeguard measures. It also requires Members to notify the Safeguards Committee of various safeguards actions, such as: (1) the initiation of an investigatory process; (2) a finding by a Member's investigating authority of serious injury or threat thereof caused by increased imports; (3) the taking of a decision to apply or extend a safeguard measure; and (4) the proposed application of a provisional safeguard measure.

### **Major Issues in 2015**

The Safeguards Committee held two regular meetings in April and October 2015.

During its two meetings in 2015, the Safeguards Committee continued its review of Members' laws, regulations, and administrative procedures based on notifications required under Article 12.6 of the Safeguards Agreement. The Safeguards Committee reviewed the national legislation of Armenia, Bahrain, Brazil, the EU, Malawi, New Zealand, Qatar, Saudi Arabia, and the United States.

The Safeguards Committee reviewed Article 12.1(a) notifications regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, or the initiation of a review process relating to the extension of an existing measure, from the following Members: Armenia on Harvesters and Modules Thereof and Tableware and Kitchenware of Porcelain and Steel; Chile on Steel Wire Rod; Colombia on Bars and Rods of Low-Carbon Steel;; Egypt on Automotive Batteries; India on

Cold-Rolled Flat Products and Hot-Rolled Flat Products of Non-alloy and Other Alloy Steel in Coils on a Width of 600 mm or More; Indonesia on Dextrose Monohydrate; Malaysia on Hot-Rolled Coils; Morocco on Paper in Rolls and Paper in Reams, and Wire Rods and Reinforcing Bars; Philippines on Newsprint and Steel Angle Bars; Russia on Pipes and Tubes of Stainless Steel; Thailand on Hot Rolled Steel Flat Products; Tunisia on Ceramic Tiles; and Turkey on Porcelain and Ceramic Tableware and Kitchenware, Wallpaper and Similar Wallcoverings, and Transmission Apparatus Incorporating Reception Apparatus (Cellular Portable Telephone), Ukraine on Flexible Porous Plates, Blocks and Sheets of Polyurethane Foams; Vietnam on Monosodium Glutamate; and Zambia on Flat-Rolled Products of Iron, Non-Alloy Steel, Trailers and Semi-Trailers.

The Safeguards Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports from the following Members: Armenia on Harvesters and Modules Thereof, and Tableware and Kitchenware of Porcelain; Costa Rica on Pounded Rice; Ecuador on Wood and Bamboo Flooring; Egypt on Steel Rebar and Automotive Batteries; India on Saturated Fatty Alcohols; Indonesia on Coated Paper and Paperboard, Bars and Rods, and I and H Sections of Other Alloy Steel; Jordan on Writing and Printing Paper; Malaysia on Hot-Rolled Steel Plate; Morocco on Cold-Rolled Sheets and Plated or Coated Sheets; Philippines on Newsprint and Steel Angle Bars; Thailand on Non-Alloy Hot-Rolled Steel Flat Products in Coils and Not in Coils; Turkey on Wallpaper and Similar Wallcoverings; and Ukraine on Motor Cars and Casing and Pump-Compressor Seamless Steel Pipes.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply or extend a safeguard measure from the following Members: Armenia on Harvesters and Modules Thereof, and Tableware and Kitchenware of Porcelain; Costa Rica on Pounded Rice; Ecuador on Wood and Bamboo Flooring; Egypt on Steel Rebar; India on Saturated Fatty Alcohols; Indonesia on Coated Paper and Paperboard, Bars and Rods, and I and H Sections of Other Alloy Steel; Malaysia on Hot-Rolled Steel Plate; Morocco on Cold-Rolled Sheets and Plated or Coated Sheets; Philippines on Newsprint and Steel Angle Bars; Russia on Pipes and Tubes of Stainless Steel; Thailand on Hot-Rolled Steel Flat Products, and Non-Alloy Hot-Rolled Steel Flat Products in Coils and Not in Coils; Turkey on Wallpaper and Similar Wallcoverings; and Ukraine on Motor Cars.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: Chile on Steel Wire Rod; Ecuador on Wood and Bamboo Flooring; Egypt on White Sugar; India on Hot-Rolled Flat Products of Non-Alloy and Other Alloy Steel in Coils of a Width of 600mm or More; Malaysia on Hot-Rolled Steel Plate; Morocco on Cold-Rolled Sheets and Plated or Coated Sheets; and Zambia on Flat-Rolled Products of Iron, Non-Alloy Steel, Trailers and Semi-Trailers.

The Safeguards Committee received notifications of the termination of a safeguard investigation with no definitive safeguard measure imposed, or the expiration or termination of a definitive safeguard measure, from the following Members: Colombia on Bars and Rods of Low-Carbon Steel; India on Slabstock Polyol of Molecular Weight 3000 to 4000, Sodium Di-Chromate, and Cold-Rolled Flat Products; and Philippines on Galvanized Iron and Pre-Painted Sheets and Coils.

Also, at the meeting in April, at the request of the United States, the Safeguards Committee once again separately discussed the non-notification of safeguard measures by Russia. Prior to the meeting in October, Russia had submitted information to the Secretariat that detailed the status of each measure and this information was captured in the Safeguards Committee's annual report. Separately, at the request of the United States, the Safeguards Committee also discussed the non-notification of legislation by the Kingdom of Bahrain.

Finally, at the Safeguards Committee meeting in April, the Friends of Safeguards Procedures (FSP) – a 10 delegation group of WTO Members, including the United States – organized an informal discussion group. The informal discussion group consisted of presentations by various WTO Members on the rate and amount of the increase in imports of the subject merchandise and unforeseen developments. At the Safeguards Committee meeting in October, the topics were: public hearings and other appropriate means, and public file/inspection of file.

### **Prospects for 2016**

The Safeguards Committee’s work in 2016 will continue to focus on the review of safeguard actions that have been notified to the Safeguards Committee and on the review of notifications of any new or amended safeguards legislation. The United States will also work on its own, as well as with the FSP, to continue to address systemic issues of concern with safeguard proceedings as issues arise.

## **12. Working Party on State Trading Enterprises**

### **Status**

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principles of nondiscriminatory treatment, and make purchases or sales solely in accordance with commercial considerations. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding) defines a state trading enterprise for the purposes of providing a notification. Members are required to submit new and full notifications to the Working Party on State Trading Enterprises (WP-STE) for review every two years.

The WP-STE was established in 1995 to review, *inter alia*, Member notifications of STEs and the coverage of STEs that are notified, and to develop an illustrative list of relationships between Members and their STEs and the kinds of activities engaged in by these enterprises.

### **Major Issues in 2015**

The WP-STE held two formal meetings, on June 25, 2015 and October 12, 2015. At both meetings, the WP-STE reviewed a counter-notification, submitted by the United States, of the state trading enterprises of China. This counter-notification followed previous attempts to encourage China to file a notification. On June 13, 2014, the United States met with China in Geneva, Switzerland. At this meeting, the United States raised its concerns regarding China's lack of notification and stated that if such notification would not be forthcoming as part of the June 30 biennial obligation to submit an updated notification to the WP-STE, a Member may make a counter-notification under paragraph 4 of the Article XVII Understanding. No such notification was subsequently made, and the issue was not otherwise satisfactorily resolved. On August 7, 2014, the United States exercised its right under paragraph 4 and made a counter-notification that included 153 enterprises. Shortly after the October 2015 meeting, China submitted a notification as a reply to the counter-notification, providing additional information regarding its STEs.

At its June 2015 meeting, the WP-STE discussed a paper entitled “Agricultural Exporting State Trading Enterprises” from Canada and considered a presentation by Australia on its experience in fulfilling its notification obligations in changing circumstances. Several Members, including the United States, participated in the discussion.

At the October 2015 meeting, Members reviewed STE notifications from 18 Members: Barbados, Canada, Ecuador, Haiti, India, Indonesia, Korea, Kyrgyz Republic, Laos, Malawi, Malaysia, Mauritius, Moldova, Montenegro, New Zealand, Nicaragua, Qatar, and Togo.

During the meeting, at the request of the United States and the EU, the WP-STE also discussed the issue of Russia's notification obligations, and, at the request of the EU, the Russian United Grain Company. Finally, Members discussed the possibility of meeting on a more regular (e.g., semi-annual) basis.

### **Prospects for 2016**

The WP-STE will continue its review of new notifications and its examination of how to improve Member compliance with STE notification obligations to enhance transparency of STEs. The WP-STE is formally scheduled to meet in October 2016, although Members are considering whether the WP-STE should also meet earlier in 2016 in addition to the October meeting. Also, the United States will continue to work with other WTO Members on the China and Russia notification issues.

## **F. Council on Trade-Related Aspects of Intellectual Property Rights**

### **Status**

The TRIPS Council monitors implementation of the TRIPS Agreement, provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement sets minimum standards of protection for copyrights and related rights, trademarks, geographical indications (GIs), industrial designs, patents, integrated circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights (IPR) through civil actions for infringement, actions at the border and, at least with respect to copyright piracy and trademark counterfeiting, in criminal actions.

The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural, chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods.

Developed Members were required to fully implement the obligations of the TRIPS Agreement by January 1, 1996, and developing country Members generally had to achieve full implementation by January 1, 2000. LDC Members have had their transition period for full implementation of the TRIPS Agreement extended to July 1, 2021. The extension of this deadline provides, as before, that "This Decision is without prejudice to the Decision of the Council for TRIPS of June 27, 2002, on 'Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with respect to Pharmaceutical Products' (IP/C/25), and to the right of least developed country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement." On November 6, 2015, the TRIPS Council extended the transition period for LDC Members to implement Sections 5 and 7 of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and recommended waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals also until January 1, 2033, which was adopted by the WTO General Council on November 30, 2015.

## Major Issues in 2015

In 2015, the TRIPS Council held three formal meetings. In addition to its continuing work on reviewing the implementation of the Agreement, the TRIPS Council's activities in 2015 focused on the positive relationship between intellectual property (IP) and innovation, under agenda items co-sponsored by the United States and other WTO Members. The TRIPS Council also continued its consideration of the relationship of the TRIPS Agreement to the Convention on Biological Diversity of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health, and of technology transfer and technical cooperation.

*Intellectual Property and Innovation:* At the October, June, and March TRIPS Council meetings, the United States co-sponsored agenda items on the positive contributions of IP to innovation. In October 2015, for example, the United States advanced an agenda on the integral linkage between innovation, entrepreneurship, and economic growth, including exchanges of information between a broad and diverse set of developed and developing countries on economic data, commercial experience, and government policymaking in this area. IP, innovation, and entrepreneurship are intrinsically linked. Innovators are often our entrepreneurs, who in turn rely heavily on intellectual property rights to attract investment, protect their new technologies from theft, and generate revenue for future research, development, commercialization, and employment. And together, IP, innovation, and entrepreneurship play a critical developmental role. The case studies delegations explored at the Council confirm vividly what the theoretical and empirical literature amply demonstrates. Intellectual property rights play a critical role in delivering on the promise of the world's entrepreneurs, whose innovative new technologies fuel domestic and international economic growth, and help raise global standards of living.

In June 2015, the United States led an initiative in the TRIPS Council to emphasize the vital role IP plays in attracting capital and investment to fuel innovation. The initiative underscored the important linkage between IP and financing for capital-intensive R&D, and how increased respect for IP rights can not only increase access to, but also lower the cost of, investment for innovative businesses and startups. Representatives from the United States shared stories on the critical role of investors, like banks, stock markets, venture capital, and angel investors, in the innovation life cycle, from early research and development to later-stage manufacturing and commercialization. These stories shed light on how IP protection can reduce the financial risk associated with innovation, and enhance the economic and social benefits achieved with R&D investment.

In March 2015, as part of International Women's Day, the United States facilitated a first-of-its-kind exchange in the Council on the accomplishments of women creators and innovators and addressed the challenges they continue to confront. This opportunity gave delegations from around the world the chance to exchange best practices and policy experience in promoting women innovators. Innovation is not only an economic imperative for creating jobs and promoting economic growth, but a social imperative as well – to deliver on the promise of innovation for all people. Innovation provides a vital source for not only economic empowerment, but also gender parity, for women and girls. At the WTO, countries focused on two such sources – trade and intellectual property rights protection.

*Review of Developing Country Members' TRIPS Agreement Implementation:* During 2015, the TRIPS Council continued to conduct ongoing reviews of developing country Members' and newly acceded Members' implementation of the TRIPS Agreement and to provide assistance to developing country Members in implementing the Agreement. The United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation by highlighting specific concerns regarding individual Members' implementation of the Agreement's obligations.

*Intellectual Property and Access to Medicines:* The August 30, 2003 solution (the General Council Decision on “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health,” in light of the statement read out by the General Council Chairperson) continues to apply to each Member until the formal amendment to the TRIPS Agreement replacing its provisions takes effect for that Member. The amendment text adopted by the General Council in December 2005, and the statement by the Chairperson, preserve all substantive aspects of the August 30, 2003 solution and do not alter the substance of the previously agreed to solution. The United States was the first Member to submit its acceptance of the amendment to the WTO. As of January 5, 2016, a total of 63 Members had accepted the amendment, which will enter into force for those Members that have accepted it upon its acceptance by two thirds of the membership of the WTO.

*TRIPS-related WTO Dispute Settlement Cases:* In April 2007, the United States initiated WTO dispute settlement proceedings over deficiencies in China’s legal regime for the protection and enforcement of IPR by requesting consultations with China. The Panel circulated its report on January 26, 2009. The Panel found that China's denial of copyright protection to works that did not meet China’s content review standards was inconsistent with the TRIPS Agreement. The Panel also found it inconsistent with the TRIPS Agreement for China to provide for simple removal of an infringing trademark as the only precondition for the sale at public auction of counterfeit goods seized by Chinese customs authorities.

With respect to the U.S. claim regarding thresholds in China’s law that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties, the panel clarified that China must provide for criminal procedures and penalties to be applied to willful trademark counterfeiting and copyright piracy on a commercial scale. The Panel agreed with the United States that Article 61 of the TRIPS Agreement requires China not to set its thresholds for prosecution of piracy and counterfeiting so high as to ignore the realities of the commercial marketplace. The Panel did find, however, that it needed more evidence in order to decide whether the actual thresholds for prosecution in China’s criminal law are so high as to allow commercial-scale counterfeiting and piracy to occur without the possibility of criminal prosecution. The DSB adopted the panel report on March 20, 2009, and China made a number of changes to its legal regime. The United States continues to monitor China’s compliance with the DSB recommendations and rulings.

The United States also continues to monitor EU compliance with a 2005 ruling of the DSB that the EU’s regulation on food-related GIs was inconsistent with the EU’s obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

The United States also continues to monitor WTO Members’ implementation of their TRIPS Agreement obligations and will consider the further use of the WTO dispute settlement mechanism as appropriate.

*Technical Cooperation and Capacity Building:* As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building for consideration at the fall TRIPS Council meeting (October 2015) (see IP/C/W/610/Add.5). Priority needs reports submitted by LDCs were discussed in the TRIPS Council as well as in informal consultations.

*Implementation of Article 66.2:* Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to LDC Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation related Issues and Concerns, and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation. Developed country Members are required to provide detailed reports every third year,

with annual updates, on these incentives. In October 2015, the United States provided an updated report on specific U.S. Government institutions and incentives, as required (*see* IP/C/W/611/Add.5/Rev.1).

*Implementation of the TRIPS Agreement by LDCs:* On June 11, 2013, the TRIPS Council reached consensus on a decision to extend the transition period under Article 66.1 of the TRIPS Agreement for least-developed WTO Members. Under this decision, LDCs are not required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4, and 5, until July 1, 2021, or until such a date on which they cease to be a LDC Member, whichever date is earlier. On November 6, 2015, the TRIPS Council reached consensus to extend the transition period for LDC Members to implement Sections 5 and 7 of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and reached consensus to recommend waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals also until January 1, 2033, which the WTO General Council adopted on November 30, 2015.

*Non-Violation and Situation Complaints:* On November 23, 2015, the TRIPS Council reached agreement to extend the moratorium on non-violation and situation complaints under the TRIPS Agreement for two years until the next Ministerial in 2017. The moratorium was originally introduced in Article 64 of the TRIPS Agreement, for a period of five years following the entry into force of the WTO Agreement (i.e., until December 31, 1999). The moratorium has been referred to and extended in several WTO Ministerial documents, most recently in 2013. In 2015, the TRIPS Council intensified its discussions on this issue, including on the basis of a communication by the United States to the Council outlining the U.S. position on non-violation and situation complaints. This communication (document number [IP/C/W/599](#)) addressed the relevant TRIPS Agreement provisions, WTO and GATT disputes, and provided responses to issues raised by other WTO Members.

## **Prospects for 2016**

In 2016, the TRIPS Council will continue to focus on IP and innovation as well as its built-in agenda, including possibly issues related to the LDC transition period for implementing the TRIPS Agreement, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as enforcement and other relevant new developments.

U.S. objectives for 2016 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue with WTO members, including regarding the technical assistance and capacity-related needs of developing countries, and especially LDCs, in connection with TRIPS Agreement implementation;
- continue to encourage a fact-based discussion within the TRIPS Council regarding TRIPS Agreement provisions;
- ensure that provisions of the TRIPS Agreement are not weakened;
- continue to advance discussions on IP and Innovation, including through data-driven discussions on IPR that promote concrete outcomes; and
- intensify discussions within the TRIPS Council on the application of NVNI under the TRIPS Agreement.

## **G. Council for Trade in Services**

### **Status**

The GATS is the first multilateral, legally-enforceable agreement covering trade and investment in the services sector. The GATS is designed to reduce or eliminate governmental measures that prevent services from being freely supplied across borders or from within an economy through locally-established services firms with foreign ownership. The GATS includes specific commitments by WTO Members to restrict their use of restrictive measures and provides a forum for further negotiations to open services markets over time.

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. This includes a technical review of GATS Article XX.2 provisions; review of waivers from specific commitments pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the WTO; a periodic review of developments in the air transport sector; the transitional review mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China; implementation of GATS Article VII; a review of Article II exemptions (to most-favored nation treatment); and notifications made to the General Council pursuant to GATS Articles III.3, V.5, V.7, and VII.4. Four subsidiary bodies report to the CTS: The Committee on Specific Commitments, the Committee on Trade in Financial Services, the Working Party on Domestic Regulation, and the Working Party on GATS Rules.

### **Major Issues in 2015**

The CTS met several times during 2015. The CTS received a number of notifications pursuant to GATS Article III:3 (transparency) and GATS Article V:7 (economic integration).

The operationalization of the LDC services waiver was discussed frequently during the year. The December 2013 Ministerial Decision mandated the Council to initiate a process aimed at operationalizing the waiver. Through this process, the LDC Group submitted a collective request in July 2014, which contained an extensive list of areas in which LDCs were seeking to receive preferential treatment with regard to the services trade policies of other Members. A high-level meeting was held in early 2015 at which Members in a position to do so indicated any preferences they were prepared to extend in response to the collective request. At mid-year 2015, individual Members began submitting formal notifications of treatment they were applying pursuant to waiver. By year end, nineteen Members had submitted notifications, including the United States.

### **Prospects for 2016**

The CTS will continue discussions related to its mandated reviews and various notifications related to GATS implementation, as well as other topics raised by Members.

## **1. Committee on Trade in Financial Services**

### **Status**

The Committee on Trade in Financial Services (CTFS) provides a forum for Members to explore financial services market access and regulatory issues, including implementation of existing trade commitments.

## **Major Issues in 2015**

The CTFS met in March and June 2015.

Members continued to monitor acceptance of the Fifth Protocol to the GATS. In accepting the protocol, financial services commitments made in 1994 would be replaced by those agreed to during the 1995-1997 extended negotiations on financial services. All Members have accepted the protocol with the exception of Brazil.

The CTFS continued its work on regulatory issues in financial services. The Committee invited representatives of the Financial Action Task Force to present on the objectives of the organization and recent developments in the financial sector.

The topic of trade in financial services and development continued to receive attention from the CTFS. During the year, the CTFS continued discussion on financial inclusion, based on the Background Note, “Financial Inclusion and the GATS” prepared by the Secretariat at the request of CTFS members. Argentina, China, India, Korea, Nigeria, Russia, and Turkey each made presentations on their respective approaches to financial inclusion.

## **Prospects for 2016**

The CTFS will continue to use its broad and flexible mandate to discuss various issues, including ratification of existing commitments as well as market access and regulatory issues. Discussions will continue on trade in financial services and development, as well as on regulatory and technical issues.

## **2. Working Party on Domestic Regulation**

### **Status**

GATS Article VI:4 on Domestic Regulation provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. A Ministerial Decision assigned priority to the professional services sector, and Members subsequently established the Working Party on Professional Services (WPPS). In May 1997, the WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998, although their full implementation is suspended pending completion of the ongoing round of services negotiations. The text of these disciplines is found in WTO document S/L/64 (December 17, 1998).

In May 1999, the CTS established the Working Party on Domestic Regulation (WPDR), which took on the mandate of the WPPS. The WPDR is charged with determining whether any new disciplines are deemed necessary beyond those negotiated for the accountancy sector. At the December 2005 Hong Kong Ministerial Conference, Ministers directed the WPDR to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations.

## **Major Issues in 2015**

The WPDR met in March and June 2015.

During 2015, Members continued discussing their experiences with domestic regulation disciplines in services provisions of regional trade agreements (RTAs). The discussion has revealed that domestic regulation provisions in RTAs have generally been based upon existing GATS obligations, as well as the negotiating mandate contained in Article VI:4. A representative of the International Organization for Standardization (ISO) updated the Working Party on activities of the ISO in the field of services standards, and replied to questions by members of the Working Party. There was no text-based negotiation of domestic regulation disciplines in the WPDR during 2015.

The United States continues to take the view that any horizontal disciplines must advance regulatory transparency while respecting the right of WTO Members to regulate, as recognized by the GATS, in a manner which meets the legitimate policy objectives of national and subnational regulatory authorities.

### **Prospects for 2016**

At this time, no meetings of the WPDR have been scheduled during 2016, and the future focus of the Working Group is not clear.

## **3. Working Party on GATS Rules**

### **Status**

The Working Party on GATS Rules (WPGR) provides a forum to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, and subsidies in the context of the GATS in accordance with the Doha Work Program resulting from the Hong Kong Ministerial Conference in December 2005. That program called for Members to intensify their efforts to conclude the negotiations on rulemaking under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies).

### **Major Issues in 2015**

The WPGR met in March and June 2015.

The WPGR continued its technical discussion to examine so-called emergency safeguard provisions in regional trade agreements (RTAs). However, there was little engagement by Members. On government procurement of services, Members continued discussing a draft WTO Staff Working Paper on the scope of government procurement related commitments in RTAs. The EU delegation proposed that the WPGR analyze how Members treat foreign-owned or controlled service suppliers established in their markets with respect to government procurement; however, Members have not agreed to address this topic. With respect to subsidies, the WPGR continued to face an impasse among Members on next steps for advancing this issue; there was little discussion of this issue during 2015. The United States continues to press for responses to a series of questions it put forward in 2010 (contained in document S/WPGR/W/59), designed to identify specific concerns that new subsidies disciplines would aim to address. To date, there has not been a single response. Absent any real evidence of a problem to solve, Members have no clear impetus to begin developing new disciplines.

### **Prospects for 2016**

At this time, no meetings of the WPGR have been scheduled during 2016, and the future focus of the Working Group is not clear.

## **4. Committee on Specific Commitments**

### **Status**

The Committee on Specific Commitments (CSC) examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees the application of the procedures for the modification of schedules under GATS Article XXI. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral committee, which is currently the case for all sectors except financial services.

### **Major Issues in 2015**

The CSC held meetings in March, June, and October 2015. The CSC continued its work on “new services,” based on the informal Secretariat Note prepared by the Secretariat at the request of CSC members. The Committee did not take up any substantive discussions on scheduling issues during 2015.

### **Prospects for 2016**

Work will continue on technical issues and new services.

## **H. Dispute Settlement Understanding**

### **Status**

The Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU), which is annexed to the WTO Agreement, provides a mechanism to settle disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the DSB, which consists of representatives of the entire membership of the WTO and is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB, and authorize retaliation. The DSB makes all its decisions by consensus unless the WTO Agreement provides otherwise.

### **Major Issues in 2015**

The DSB met 18 times in 2015 to oversee disputes and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and nongovernmental panelists.

*Roster of Governmental and Non-Governmental Panelists:* Article 8 of the DSU makes it clear that panelists may be drawn from either the public or private sector and must be “well-qualified,” such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. Since 1985, the Secretariat has maintained a roster of nongovernmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating

candidates' qualifications and encouraging the appointment of well qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2015, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

Pursuant to the requirements of the Uruguay Round Agreements Act (URAA), the present WTO panel roster appears in the background information in Annex II. The list in the roster notes the areas of expertise of each roster member (goods, services, and/or TRIPS).

*Rules of Conduct for the DSU:* The DSB completed work on a code of ethical conduct for WTO dispute settlement and, on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2015.

The Rules of Conduct elaborate on the ethical standards built into the DSU to maintain the integrity, impartiality, and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts.

The Rules of Conduct also provide parties an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by the U.S. Congress in section 123(c) of the URAA, which directed USTR to seek conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also: (1) arbitrators; (2) experts participating in the dispute settlement mechanism (*e.g.*, the Permanent Group of Experts under the SCM Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; and (4) the support staff of the Appellate Body.

As noted above, the Rules of Conduct established a disclosure based system. Examples of the types of information that covered persons must disclose are set forth in Annex II to the Rules, and include: (1) financial interests, business interests, and property interests relevant to the dispute in question; (2) professional interests; (3) other active interests; (4) considered statements of personal opinion on issues relevant to the dispute in question; and (5) employment or family interests.

*Appellate Body:* Pursuant to the DSU, the DSB appoints seven persons to serve on an Appellate Body, which is to be a standing body with members serving four year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. The DSB also agreed that Appellate Body members would serve on a part-time basis and sit periodically in Geneva. The original seven Appellate Body members were Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Mr. Claus-Dieter Ehlermann of Germany, Mr. Said El-Naggar of Egypt, Mr. Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Mr. Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano, and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on December 11, 1997. At its meeting held on October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Mr. El-Naggar and Mr. Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years

commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Mr. Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia, and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 11, 2001. On November 7, 2003, the DSB agreed to appoint Ms. Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Mr. Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart, and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006. At its meeting held on November 19 and 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista of the Philippines and Ms. Jennifer Hillman of the United States as members of the Appellate Body for four years commencing on December 11, 2007, and to appoint Mr. Shotaro Oshima of Japan and Ms. Yuejiao Zhang of China as members of the Appellate Body for four years commencing on June 1, 2008. On November 12, 2008, Mr. Baptista notified the DSB that he was resigning for health reasons, effective in 90 days. On December 22, 2008, the DSB decided to deem the term of the position to which Mr. Baptista was appointed to expire on June 30, 1999, and to fill the position previously held by Mr. Baptista for a four-year term. On June 19, 2009, the DSB agreed to appoint Mr. Ricardo Ramírez Hernández of Mexico as a member of the Appellate Body for four years commencing on July 1, 2009, to appoint Mr. Peter Van den Bossche of Belgium as a member of the Appellate Body for four years commencing on December 12, 2009, and to reappoint Mr. Unterhalter for a final term of four years commencing on December 12, 2009. On November 18, 2011, the DSB agreed to appoint Mr. Thomas Graham of the United States and Mr. Ujal Bhatia of India as members of the Appellate Body for four years commencing on December 11, 2011. On May 24, 2012, the DSB agreed to appoint Mr. Seung Wha Chang of Korea as a member of the Appellate Body for four years commencing on June 1, 2012, and to reappoint Ms. Zhang for a final term of four years commencing on June 1, 2012. On March 26, 2013, the DSB agreed to reappoint Mr. Ramírez Hernández of Mexico for a final term of four years commencing on July 1, 2013. On November 25, 2013, the DSB agreed to reappoint Mr. Van den Bossche of Belgium for a final term of four years commencing on December 12, 2013. On September 26, 2014, the DSB agreed to appoint Mr. Shree Baboo Chekitan Servansing of Mauritius to a term of four years commencing on October 1, 2014. On November 25, 2015, the DSB agreed to reappoint Mr. Bhatia of India and Mr. Graham of the United States for a final term of four years each commencing on December 11, 2015 (*the names and biographical data for the Appellate Body members during 2015 are included in Annex II of this report*).

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two year term for the first Chairperson, and one year terms for subsequent Chairpersons. In 2001, the Appellate Body amended its working procedures to provide for no more than two consecutive terms for a Chairperson. Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi served as Chairperson from December 17, 2004 to December 16, 2005; Mr. Ganesan served as Chairperson from December 17, 2005 to December 16, 2006; Mr. Sacerdoti served as Chairperson from December 17, 2006 to December 17, 2007; Mr. Baptista served as Chairperson from December 18, 2007, to December 17, 2008; Mr. Unterhalter served as Chairperson from December 18, 2008 to December 16, 2010; Ms. Bautista served as Chairperson from December 17, 2010 to June 14, 2011; Ms. Hillman served as Chairperson from June 15, 2011 until December 10, 2011; Ms. Zhang served as Chairperson from December 11, 2011 to December 31, 2012; Mr. Ramirez served as

Chairperson from January 1, 2013 to December 31, 2014; and Mr. Peter Van den Bossche served as Chairperson from January 1, 2015 to December 31, 2015.

In 2015, the Appellate Body issued nine reports on the following issues: (1) on challenges by the EU, the United States, and Japan to Argentina's import restrictions; (2) on a challenge by Vietnam to U.S. anti-dumping measures on shrimp; (3) on challenges by Canada and Mexico to U.S. compliance in the country of origin labeling for meat dispute; (4) on a challenge by the United States to India's import restrictions on U.S. agricultural products; (5) on a challenge by Guatemala to Peru's additional import duties on agricultural products; and (6) on a challenge by Mexico to U.S. compliance in the dispute involving dolphin safe labeling for tuna products. In the disputes in which it was not a party, the United States participated as a third party.

*Dispute Settlement Activity in 2015:* During the DSB's first 21 years in operation, WTO Members filed 501 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, 14 in 2007, 19 in 2008, 14 in 2009, 17 in 2010, 8 in 2011, 27 in 2012, 17 in 2013; 15 in 2014, and 13 in 2015). During that period, the United States filed 108 complaints against other Members' measures and received 122 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints. A number of disputes commenced in earlier years remained active in 2015. What follows is a description of those disputes in which the United States was a complainant, defendant, or third party during the past year.

## **Prospects for 2016**

While there were improvements to the multilateral trading system's dispute settlement system as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2016, the United States expects the DSB to continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. Participants will continue to consider reform proposals in 2016.

## **Disputes Brought by the United States**

In 2015, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2015 where the United States was a complainant (listed alphabetically by responding party). As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes by invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

### *Argentina — Measures Affecting the Importation of Goods (DS444)*

On August 21, 2012, the United States requested consultations with Argentina regarding certain measures affecting the importation of goods into Argentina. These measures include the broad use of non-transparent and discretionary import licensing requirements that have the effect of restricting U.S. exports as well as burdensome trade balancing commitments that Argentina requires as a condition for authorization to import goods.

Between 2008 and 2013, Argentina greatly expanded the list of products subject to non-automatic import licensing requirements, with import licenses required for approximately 600 eight-digit tariff lines in

Argentina's goods schedule. In February 2012, Argentina adopted an additional licensing requirement that applies to all imports of goods into the country. In conjunction with these licensing requirements, Argentina has adopted informal trade balancing requirements and other schemes, whereby companies seeking to obtain authorization to import products must agree to export goods of an equal or greater value, make investments in Argentina, lower prices of imported goods, and/or refrain from repatriating profits.

Through these measures, the United States was concerned that Argentina was acting inconsistently with its WTO obligations, including with Article XI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), which generally prohibits restrictions on imports of goods, including those made effective through import licenses. The United States was also concerned the measures breached various provisions of the *Agreement on Import Licensing Procedures*, which contains requirements related to the administrative procedures used to implement import licensing regimes.

The United States and Argentina held consultations on September 20-21, 2012, but these consultations failed to resolve the dispute. On December 17, 2012, the United States, together with the EU and Japan, requested the WTO to establish a dispute settlement panel to examine Argentina's import restrictions, and a panel was established on January 28, 2013. The Director General composed the panel as follows: Ms. Leora Blumberg, Chair; and Ms. Claudia Orozco and Mr. Graham Sampson, Members.

Argentina repealed its product-specific non-automatic import licenses which had been the subject of consultations and the U.S. panel request on January 25, 2013. However, it continued to maintain a discretionary non-automatic import licensing requirement applicable to all goods imported into Argentina, as well as informal trade balancing and similar requirements.

On August 22, 2014, the Panel issued its report. The Panel found Argentina's import licensing requirement and its trade balancing requirements to be inconsistent with Article XI of the GATT 1994.

On September 26, 2014, Argentina appealed the panel findings. The parties made written submissions to the Appellate Body during the fall of 2014, and the Appellate Body held an oral hearing on November 3 and 4, 2014.

The Appellate Body issued its report on January 15, 2015. In its report, the Appellate Body rejected Argentina's arguments, upholding the Panel's findings that Argentina's import licensing requirement and trade balancing requirements are inconsistent with Article XI of the GATT 1994. On January 26, 2015, the DSB adopted the panel and Appellate Body reports.

At the DSB meeting held on February 23, 2015, Argentina informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respects its WTO obligations, and that it would need a reasonable period of time (RPT) to do so. The United States and Argentina agreed that the RPT would be 11 months and 5 days, ending on December 31, 2015. In December 2015, Argentina issued modified import licensing requirements. The United States has significant questions about how the adoption of these measures could serve to bring Argentina's import licensing measures into compliance with its WTO obligations, and the United States is working to address these concerns.

#### *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (DS363)*

On April 10, 2007, the United States requested consultations with China regarding certain measures related to the import and/or distribution of imported films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications). On July 10, 2007, the United States requested supplemental

consultations with China regarding certain measures pertaining to the distribution of imported films for theatrical release and sound recordings.

Specifically, the United States was concerned that certain Chinese measures: (1) restricted trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual home entertainment products, sound recordings, and publications; and (2) restricted market access for, or discriminated against, imported films for theatrical release and sound recordings in physical form, and foreign service providers seeking to engage in the distribution of certain publications, audiovisual home entertainment products, and sound recordings. The Chinese measures at issue appeared to be inconsistent with several WTO provisions, including provisions in the GATT 1994 and GATS, as well as specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on June 5-6, 2007 and July 31, 2007, but they did not resolve the dispute. On October 10, 2007, the United States requested the establishment of a panel, and on November 27, 2007, a panel was established. On March 27, 2008, the Director General composed the panel as follows: Mr. Florentino P. Feliciano, Chair; and Mr. Juan Antonio Dorantes and Mr. Christian Häberli, Members.

The report of the panel was circulated to WTO Members and made public on August 12, 2009. In the final report, the panel made three critical sets of findings. First, the panel found that China's restrictions on foreign invested enterprises (and in some cases foreign individuals) from importing films for theatrical release, audiovisual home entertainment products, sound recordings, and publications are inconsistent with China's trading rights commitments as set forth in China's protocol of accession to the WTO. The panel also found that China's restrictions on the right to import these products are not justified by Article XX(a) of the GATT 1994. Second, the panel found that China's prohibitions and discriminatory restrictions on foreign owned or controlled enterprises seeking to distribute publications and audiovisual home entertainment products and sound recordings over the Internet are inconsistent with China's obligations under the GATS. Third, the panel also found that China's treatment of imported publications is inconsistent with the national treatment obligation in Article III:4 of the GATT 1994.

In September 2009, China filed a notice of appeal to the WTO Appellate Body, appealing certain of the panel's findings. First, China contended that its restrictions on importation of the products at issue are justified by an exception related to the protection of public morals. Second, China claimed that while it had made commitments to allow foreign enterprises to partner in joint ventures with Chinese enterprises to distribute music, those commitments did not cover the electronic distribution of music. Third, and finally, China claimed that its import restrictions on films for theatrical release and certain types of sound recordings and DVDs were not inconsistent with China's commitments related to the right to import because those products were not goods and therefore were not subject to those commitments. The United States filed a cross appeal on one aspect of the panel's analysis of China's defense under GATT Article XX(a). On December 21, 2009, the Appellate Body issued its report. The Appellate Body rejected each of China's claims on appeal. The Appellate Body also found that the Panel had erred in the aspect of the analysis that the United States had appealed. The DSB adopted the Appellate Body and panel reports on January 19, 2010. On July 12, 2010, the United States and China notified the DSB that they had agreed on a 14 month period of time for implementation, to end on March 19, 2011.

China subsequently issued several revised measures, and repealed other measures, relating to the market access restrictions on books, newspapers, journals, DVDs and music. As China acknowledged, however, it did not issue any measures addressing theatrical films. Instead, China proposed bilateral discussions with the United States in order to seek an alternative solution. The United States and China reached agreement in February 2012 on a Memorandum of Understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year and substantial additional revenue for

foreign film producers. The MOU will be reviewed after five years in order to discuss additional compensation for the U.S. side.

#### *China – Measures Relating to the Exportation of Various Raw Materials (DS394)*

On June 23, 2009, the United States requested consultations with China regarding China's export restraints on a number of important raw materials. The materials at issue are: bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc. These materials are inputs for numerous downstream products in the steel, aluminum, and chemical sectors.

The United States challenged China's export restraints on these raw materials as inconsistent with several WTO provisions, including provisions in the GATT 1994, as well as specific commitments made by China in its WTO accession agreement. Specifically, the United States challenged certain Chinese measures that impose: (1) quantitative restrictions in the form of quotas on exports of bauxite, coke, fluorspar, silicon carbide, and zinc ores and concentrates, as well as certain intermediate products incorporating some of these inputs; and (2) export duties on several raw materials. The United States also challenged other related export restraints, including export licensing restrictions, minimum export price requirements, and requirements to pay certain charges before certain products can be exported, as well as China's failure to publish relevant measures.

The United States and China held consultations on July 30 and September 1-2, 2009, but did not resolve the dispute. The EU and Mexico also requested and held consultations with China on these measures. On November 19, 2009, the EU and Mexico joined the United States in requesting the establishment of a panel, and on December 21, 2009, the WTO DSB established a single panel to examine all three complaints. On March 29, 2010, the Director General composed the panel as follows: Mr. Elbio Rosselli, Chair; Ms. Dell Higginson and Mr. Nugroho Wisnumurti, Members.

The panel's final report was circulated to Members on July 5, 2011. The panel found that the export duties and export quotas that China maintains on various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc constitute a breach of WTO rules and that China failed to justify those measures as legitimate conservation measures, environmental protection measures, or short supply measures. The panel also found that China's imposition of minimum export price, export licensing, and export quota administration requirements on these materials, as well as China's failure to publish certain measures related to these requirements, is inconsistent with WTO rules.

On January 30, 2012, the Appellate Body issued a report affirming the panel's findings on all significant claims. In particular, the Appellate Body confirmed that: China may not seek to justify its imposition of export duties as environmental or conservation measures; China failed to demonstrate that certain of its export quotas were justified as measures for preventing or relieving a critical shortage; and the Panel correctly made recommendations for China to bring its measures into conformity with its WTO obligations. The Appellate Body also found that the panel erred in making findings related to licensing and administration claims, declaring those findings moot, and erred in its legal interpretation of one element of the exception set forth in Article XX(g) of the GATT 1994.

The DSB adopted the Appellate Body report, and the panel report as modified by the Appellate Body report, on February 22, 2012. The United States, the EU, Mexico, and China agreed that China would have until December 31, 2012, to comply with the rulings and recommendations.

At the conclusion of the RPT for China to comply, it appeared that China had eliminated the export duties and export quotas on the products at issue in this dispute, as of January 1, 2013. However, China maintains

export licensing requirements for a number of the products. The United States continues to monitor actions by China that might operate to restrict exports of raw materials at issue in this dispute.

#### *China – Certain Measures Affecting Electronic Payment Services (DS413)*

On September 15, 2010, the United States requested consultations with China concerning issues relating to certain restrictions and requirements maintained by China pertaining to electronic payment services (EPS) for payment card transactions and the suppliers of those services. EPS enable transactions involving credit card, debit card, charge card, check card, automated teller machine (ATM) card, prepaid card, or other similar card or money transmission product, and manage and facilitate the transfers of funds between institutions participating in such card-based electronic payment transactions.

EPS provide the essential architecture for card-based electronic payment transactions, and EPS are supplied through complex electronic networks that streamline and process transactions and offer an efficient and reliable means to facilitate the movement of funds from the cardholders purchasing goods or services to the individuals or businesses that supply them. EPS consist of a network, rules and procedures, and operating system that allow cardholders' banks to pay merchants' banks the amounts they are owed. EPS suppliers receive, check and transmit the information that processors need to conduct the transactions. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable net payment flows among the institutions involved in card-based electronic transactions. The best known EPS suppliers are credit and debit card companies based in the United States.

China instituted and maintains measures that operate to block foreign EPS suppliers, including U.S. suppliers, from supplying these services, and that discriminate against foreign suppliers at every stage of a card-based electronic payment transaction. The United States challenged China's measures affecting EPS suppliers as inconsistent with China's national treatment and market access commitments under the GATS.

The United States and China held consultations on October 27 and 28, 2010, but these consultations did not resolve the dispute. The United States requested the establishment of a panel on February 11, 2011. On March 25, 2011, the DSB established a panel to consider the claims of the United States. On July 4, 2011, the Director General composed the panel as follows: Mr. Virachai Plasai, Chair; and Ms. Elaine Feldman and Mr. Martín Redrado, Members. The panel held its meetings with the parties on October 26-27, 2011, and December 13-14, 2011.

The Panel issued its report to the Parties on May 25, 2012. The Panel Report was circulated to the WTO Membership on July 16, 2012. China did not appeal the Panel's findings, and the Panel Report was adopted by the DSB on August 31, 2012.

The United States prevailed on significant threshold issues, including:

- EPS is a single service (or EPS are integrated services) and each element of EPS is necessary for a payment card transaction to occur.
- EPS is properly classified under the same subsector, item (viii) of the GATS Annex on Financial Services, which appears as subsector (d) of China's Schedule ("All payment and money transmission services, including credit, charge, and debit cards...") as the United States argued, and no element of EPS is classified as falling in item xiv of the GATS Annex on Financial services ("settlement and clearing of financial assets, including securities, derivative products, and other negotiable instruments"), as China argued and for which China has no WTO commitments.

- In addition to the “four-party” model of EPS (*e.g.*, Visa and MasterCard), the “three-party” model (*e.g.*, American Express) and other variations, and third party issuer processor and merchant processors also are covered by subsector (d) of China’s Schedule.

With respect to the U.S. GATS national treatment claims, the Panel found the following violations:

- China imposes requirements on issuers of payment cards that payment cards issued in China bear the “Yin Lian/UnionPay logo,” and furthermore, through these, China requires issuers to become members of the CUP network, and that the cards they issue in China meet certain uniform business specifications and technical standards, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;
- China imposes requirements that all terminals (ATMs, merchant processing devices, and point of sale (POS) terminals) in China that are part of the national card inter-bank processing network be capable of accepting all payment cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;
- China imposes requirements on acquirers (those institutions that acquire payment card transactions and that maintain relationships with merchants) to post the Yin Lian/UnionPay logo, and furthermore, China imposes requirements that acquirers join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability, and that terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;

With respect to the U.S. GATS market access claims, the Panel found that China’s requirements related to certain Hong Kong and Macao transactions are inconsistent with Article XVI:2(a) of the GATS because, contrary to China’s Sector 7.B(d) mode 3 market access commitments, China maintains a limitation on the number of service suppliers in the form of a monopoly.

The United States and China agreed that a RPT for China to implement the DSB recommendations and rulings would be 11 months from the date of adoption of the recommendations and rulings, that is, until July 31, 2013.

To date, China has taken some compliance steps by removing certain restrictive measures. However, China continues to block market access for foreign EPS suppliers. In particular, China has not adopted regulations under which foreign EPS suppliers could apply for approval to operate in China.

In April 2015, the State Council of China issued a formal decision announcing that China’s market would be open to foreign suppliers that seek to provide EPS for domestic currency payment card transactions. The People’s Bank of China followed this in July 2015 by publishing a draft licensing regulation for public comment. The United States continues to press China to complete the adoption of the regulatory mechanisms needed to provide market access for foreign EPS suppliers.

*China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States (DS414)*

On September 15, 2010, the United States filed a request for consultations regarding China's imposition of antidumping duties and countervailing duties on imports of grain oriented flat rolled electrical steel (GOES) from the United States.

In June 2009, China's Ministry of Commerce (MOFCOM) initiated two investigations on GOES from the United States. On April 10, 2010, based on determinations that American steel had been dumped into their market and subsidized, MOFCOM imposed antidumping duties ranging from 7.8 percent to 64.8 percent and countervailing duties ranging from 11.7 percent and 44.6 percent.

China's antidumping and subsidy determinations in the GOES investigations appeared to violate numerous WTO requirements. Specifically, the United States was concerned, *inter alia*, that China initiated the countervailing duty investigation without sufficient evidence; failed to objectively examine the evidence; failed to disclose "essential facts" underlying its conclusions; failed to provide an adequate explanation of its calculations and legal conclusions; improperly used investigative procedures; and failed to provide non-confidential summaries of Chinese submissions.

The United States and China held consultations on November 1, 2010, but did not resolve the dispute. In February 2011, the United States requested the establishment of a panel. In March 2011, the DSB established a panel. On May 10, 2011, the panel was composed by the agreement of the parties, as follows: Mr. John Adank, Chair; and Mr. Anthony Abad and Mr. Jan Heukelman, Members. Meetings with the Panel took place in September and December 2011.

In June 2012, the Panel issued its report, upholding U.S. claims that China had breached a number of substantive and procedural obligations under the WTO Agreement in imposing antidumping and countervailing duties on GOES from the United States. The Panel found that China initiated the countervailing duty investigation with respect to several alleged programs based on insufficient evidence, failed to provide non-confidential summaries of submissions containing confidential information, calculated the subsidy rates for U.S. companies in a manner unsupported by the facts, calculated the "all others" subsidy rate and dumping margin without a factual basis, failed to disclose essential facts and failed to explain the calculation of the "all others" subsidy rate and dumping margin, and made unsupported findings that U.S. exports caused injury to China's domestic industry.

In July 2012, China filed a notice of appeal challenging certain aspects of the panel report. The Appellate Body held a hearing in August 2012. In October 2012, the Appellate Body issued its report, and rejected all of China's claims on appeal.

In November 2012, the DSB adopted the panel and Appellate Body reports. The same month, China announced its intention to implement the DSB recommendations and rulings in the dispute, and stated that it would need a RPT in which to do so.

In early 2013, following unsuccessful bilateral discussions on the length of the RPT, the United States requested that an arbitrator determine the RPT pursuant to Article 21.3(c) of the DSU. The oral hearing was held on April 4, 2013, and the arbitrator issued the award of 8.5 months on May 3, 2013. The RPT expired on July 31, 2013. That same day, China issued a re-determination based on a review of the existing evidence and information in the primary antidumping and countervailing duty investigations at issue.

The re-determination continued the imposition of antidumping and countervailing duties on imports of GOES from the United States. As in its original determination, in the re-determination China found that U.S. exports caused material injury to the domestic industry. The United States considered that China failed to comply with the DSB findings, and on January 13, 2014, requested consultations pursuant to Article 21.5 of the DSU.

Specifically, with respect to its injury re-determination, the United States was concerned that China failed to objectively examine the evidence, and failed to base its findings on positive evidence. The United States also was concerned that China failed to disclose the “essential facts” underlying its conclusions; and failed to provide an adequate explanation of its re-determination.

The United States and China held consultations on January 24, 2014, but did not resolve the dispute. On February 13, 2014, the United States requested the establishment of a compliance panel, and the compliance panel was established on February 26, 2014 -- with the same Chair and Members of the original panel serving on the compliance panel.

The compliance panel issued its report on July 31, 2015, and the DSB adopted the report at its meeting on August 31, 2015. As in the original proceeding, the compliance panel upheld U.S. claims that China’s antidumping and countervailing duty determinations were inconsistent with WTO rules. In particular, the compliance panel found numerous defects in China’s determination that U.S. exports caused adverse price effects in the Chinese market, and that U.S. exports caused injury to China’s domestic industry. The compliance panel also found that China failed to disclose the essential facts underlying its revised material injury determination. As a result, the WTO panel found that China failed to comply with the recommendations and rulings of the DSB in this dispute.

In April 2015, after the compliance panel’s meeting with the parties and after the parties had submitted all of their submissions, China’s MOFCOM revoked the antidumping and countervailing duties on GOES from the United States.

*China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS431)*

On March 13, 2012, the United States requested consultations with China regarding China’s export restraints on rare earths, tungsten and molybdenum. These materials are vital inputs in the manufacture of electronics, automobiles, steel, petroleum products, and a variety of chemicals that are used to produce both everyday items and highly sophisticated, technologically advanced products, such as hybrid vehicle batteries, wind turbines, and energy efficient lighting.

The United States challenged China’s export restraints on these materials as inconsistent with several WTO provisions, including provisions in the GATT 1994, as well as specific commitments made by China in its WTO accession agreement. Specifically, the United States challenged: (1) China’s quantitative restrictions in the form of quotas on exports of rare earth, tungsten and molybdenum ores and concentrates, as well as certain intermediate products incorporating some of these inputs; (2) China’s export duties on rare earths, tungsten, and molybdenum; and (3) China’s other export restraints including prior export performance and minimum capital requirements.

The United States, together with the EU and Japan, held consultations with China on April 25-26, 2012, but the consultations did not resolve the dispute.

On June 29, 2012, the EU and Japan joined the United States in requesting the establishment of a panel, and on July 23, 2012, the WTO DSB established a single panel to examine all three complaints. On September 24, 2012, the Director General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair; Mr. Hugo Cayrús and Mr. Darlington Mwape, members. The panel held its meetings with the parties on February 26-28, 2013, and June 18-19, 2013.

On March 26, 2014, the panel issued its report. The panel found that the export quotas and export duties that China maintains on various forms of rare earths, tungsten, and molybdenum constitute a breach of

WTO rules and that China failed to justify those measures as legitimate conservation measures or environmental protection measures, respectively. The panel also found that China's imposition of prior export performance and minimum capital requirements is inconsistent with WTO rules.

On August 7, 2014, the Appellate Body issued a report affirming the panel's findings on all significant claims. In particular, the Appellate Body confirmed that China may not seek to justify its imposition of export duties as environmental measures. The Appellate Body also confirmed, while modifying some of the panel's original reasoning, that China had failed to demonstrate that its export quotas were justified as measures for conserving exhaustible natural resources.

On August 29, 2014, the DSB adopted the panel and Appellate Body reports. In September 2014, China announced its intention to implement the DSB recommendations and rulings in the dispute, and stated that it would need a RPT in which to do so. The United States, the EU, Japan, and China agreed that China would have until May 2, 2015, to comply with the recommendations and rulings.

China announced that it had eliminated its export quotas on the products at issue in this dispute as of January 1, 2015, and its export duties as of May 1, 2015.

China, however, maintains export licensing requirements for these products. Accordingly, the United States continues to monitor actions by China that might operate to restrict exports of the materials at issue in this dispute.

*China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States (DS427)*

On September 20, 2011, the United States filed a request for consultations regarding China's imposition of antidumping and countervailing duties on imports of chicken broiler products from the United States.

On September 27, 2009, China's MOFCOM initiated antidumping and countervailing duty investigations of imports of chicken broiler products from the United States. On September 26, 2010 and August 30, 2010, China imposed antidumping and countervailing duties, respectively. The United States' review of MOFCOM's determinations sustaining antidumping and countervailing duties indicated that China was acting inconsistently with numerous WTO obligations, such as abiding by applicable procedures and legal standards, including by finding injury to China's domestic industry without objectively examining the evidence, by improperly calculating dumping margins and subsidization rates, and by failing to adhere to various transparency and due process requirements.

The United States and China held consultations on October 28, 2011, but were unable to resolve the dispute. On December 8, 2011, the United States requested the establishment of a panel. The DSB established a panel on January 20, 2012. On May 24, 2012, the WTO Director General composed the panel as follows: Mr. Faizullah Khilji, Chair; and Mr. Serge Fréchette and Ms. Claudia Orozco, Members. The Panel held its meetings with the parties on September 27-28, 2012, and December 4-5, 2012.

The Panel's report, which upheld nearly all the claims brought by the United States, was circulated on August 2, 2013. In particular, the Panel found MOFCOM's substantive determinations and procedural conduct in levying the duties was inconsistent with China's WTO obligations. With respect to the substantive errors, the Panel's report found China breached its obligations by:

- Levying countervailing duties on U.S. producers in excess of the amount of subsidization;
- Relying on flawed price comparisons for its determination that China's domestic industry had suffered injury;

- Unjustifiably declining to use the books and records of two major U.S. producers in calculating their costs of production; failing to consider any of the alternative allocation methodologies presented by U.S. producers and instead using a weight-based methodology resulting in high dumping margins; improperly allocating distinct processing costs to other products inflating dumping margins; and allocating one producer's costs in producing non-exported products to exported products creating an inflated dumping margin; and
- Improperly calculating the “all others” dumping margin and subsidy rates.

With respect to the procedural failings, the Panel found that China breached its WTO obligations by:

- Denying a hearing request during the investigation;
- Failing to require the Chinese industry to provide non-confidential summaries of information it provided to MOFCOM; and
- Failing to disclose essential facts to U.S. companies including how their dumping margins were calculated.

The DSB adopted the panel report on September 25, 2013. On December 19, 2013, the United States and China agreed that China would have until July 9, 2014 to comply with the panel's findings.

MOFCOM announced on December 25, 2014 that it was initiating a reinvestigation of U.S. producers in response to the panel report. MOFCOM released re-determinations on July 8, 2014, that maintained recalculated duties on U.S. broiler products. The United States is evaluating China's redeterminations closely to assess its implications for China's compliance in this dispute.

#### *China — Certain Measures Affecting the Automobile and Automobile-Parts Industries (DS450)*

On September 17, 2012, the United States requested consultations with China concerning China's auto and auto parts “export base” program. Under this program, China appears to provide extensive subsidies to auto and auto-parts exporting enterprises located in designated regions known as “export bases.” It appears that China is providing these subsidies in contravention of its obligation under Article 3 of the SCM Agreement, which prohibits the provision of subsidies contingent upon export performance. China also appears to have failed to comply with various transparency related obligations, including its obligation to notify the challenged subsidies as required by the SCM Agreement, and to publish the measures at issue in an official journal and to translate the measures into one or more of the official languages of the WTO as required by China's Protocol of Accession.

The United States and China held consultations in November 2012. After consultations, China removed or did not renew key provisions. The United States continues to monitor China's actions with respect to the matters at issue in this dispute.

#### *China — Measures related to Demonstration Bases and Common Service Platform Programs (DS489)*

On February 11, 2015, the United States requested consultations regarding China's “Demonstration Bases-Common Service Platform” export subsidy program. Under this program, China appears to provide prohibited export subsidies through “Common Service Platforms” to manufacturers and producers across seven economic sectors and dozens of sub-sectors located in more than one hundred and fifty industrial clusters, known as “Demonstration Bases.”

Pursuant to this Demonstration Bases-Common Service Platform program, China provides free and discounted services as well as cash grants and other incentives to enterprises that meet export performance

criteria and are located in 179 Demonstration Bases throughout China. Each of these Demonstration Bases is comprised of enterprises from one of seven sectors: (1) textiles, apparel and footwear; (2) advanced materials and metals (including specialty steel, titanium and aluminum products); (3) light industry; (4) specialty chemicals; (5) medical products; (6) hardware and building materials; and (7) agriculture. China maintains and operates this extensive program through over 150 central government and sub-central government measures throughout China.

The United States held consultations with China on March 13 and April 1-2, 2015, but the consultations did not resolve the dispute.

On April 9, 2015, the United States requested the establishment of a panel, and on April 22, 2015, the WTO DSB established a panel to examine the complaint.

#### *China – Tax Measures Concerning Certain Domestically Produced Aircraft (DS501)*

On December 8, 2015, the United States requested consultations with China concerning its measures providing tax advantages in relation to the sale of certain domestically produced aircraft in China. It appears that China exempts the sale of certain domestically produced aircraft from China's value-added tax (VAT), while imported aircraft continue to be subject to the VAT. The aircraft subject to the exemptions appear to include general aviation, regional, and agricultural aircraft. China has also failed to publish the measures that establish these exemptions.

These measures appear to be inconsistent with Articles III:2 and III:4 of the GATT 1994. China also appears to have acted inconsistently with its obligations under Article X:1 of the GATT 1994, as well as a number of specific commitments made by China in its WTO accession agreement. The parties will be consulting on this matter in early 2016.

#### *European Union – Measures concerning meat and meat products (hormones) (DS26, 48)*

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. The panel found that the EU ban is inconsistent with the EU's obligations under the SPS Agreement, and that the ban is not based on science, a risk assessment, or relevant international standards.

Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that, while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case, the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU. The value of the suspension of concessions represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be \$116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$116.8 million.

On November 3, 2003, the EU notified the WTO that it had amended its hormones ban. On November 8, 2004, the EU requested consultations with respect to “the United States’ continued suspension of concessions and other obligations under the covered agreements” in the EU – Hormones dispute. The Appellate Body issued its report in the *U.S. – Continued Suspension* (WT/DS320) dispute on October 16, 2008.

On October 31, 2008, USTR announced that it was considering changes to the list of EU products on which 100 percent *ad valorem* duties had been imposed in 1999. A modified list of EU products was announced by USTR on January 15, 2009.

On December 22, 2008, the EU requested consultations with the United States and Canada pursuant to Articles 4 and 21.5 of the DSU, regarding the EU’s implementation of the DSB’s recommendations and rulings in the EU–Hormones dispute. In its consultations request, the EU stated that it considered that it has brought into compliance the measures found inconsistent in EU–Hormones by, among other things, adopting its revised ban in 2003. Consultations took place in February 2009.

Pursuant to a Memorandum Of Understanding (MOU) between the United States and the EU, further litigation in the EU-Hormones compliance proceeding has been suspended.

For additional information on the U.S suspension of concessions and the MOU, please see the discussion of the associated Section 301 investigation in section 5.B.1 of this report.

#### *European Union – Measures affecting the approval and marketing of biotechnology products (DS291)*

Since the late 1990s, the EU has pursued policies that undermine agricultural biotechnology and trade in biotechnological foods. After approving a number of biotechnological products through October 1998, the EU adopted an across the board moratorium under which no further biotechnology applications were allowed to reach final approval. In addition, six Member States (Austria, France, Germany, Greece, Italy, and Luxembourg) adopted unjustified bans on certain biotechnological crops that had been approved by the EU prior to the adoption of the moratorium. These measures have caused a growing portion of U.S. agricultural exports to be excluded from EU markets, and unfairly cast concerns about biotechnology products around the world, particularly in developing countries.

On May 13, 2003, the United States filed a consultation request with respect to: (1) the EU’s moratorium on all new biotechnology approvals; (2) delays in the processing of specific biotech product applications; and (3) the product specific bans adopted by six EU Member States (Austria, France, Germany, Greece, Italy, and Luxembourg). The United States requested the establishment of a panel on August 7, 2003. Argentina and Canada submitted similar consultation and panel requests. On August 29, 2003, the DSB established a panel to consider the claims of the United States, Argentina, and Canada. On March 4, 2003, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

The panel issued its report on September 29, 2006. The panel agreed with the United States, Argentina, and Canada that the disputed measures of the EU, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the SPS Agreement. In particular:

- The panel found that the EU adopted a *de facto*, across the board moratorium on the final approval of biotechnological products, starting in 1999 up through the time the panel was established in August 2003.

- The panel found that the EU had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in “undue delays” in violation of the EU’s obligations under the SPS Agreement.
- The panel identified specific, WTO inconsistent “undue delays” with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.
- The panel upheld the United States’ claims that, in light of positive safety assessments issued by the EU’s own scientists, the bans adopted by six EU Member States on products approved in the EU prior to the moratorium were not supported by scientific evidence, and were thus inconsistent with WTO rules.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EU notified the DSB that the EU intended to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a RPT for implementation. On June 21, 2006, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU on a one year period of time for implementation, to end on November 21, 2007. On November 21, 2007, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU to extend the implementation period to January 11, 2008.

On January 17, 2008, the United States submitted a request for authorization to suspend concessions and other obligations with respect to the EU under the covered agreements at an annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the EU’s failure to bring measures concerning the approval and marketing of biotechnology products into compliance with the recommendations and rulings of the DSB. On February 6, 2008, the EU requested arbitration under Article 22.6 of the DSU, claiming that the level of suspension proposed by the United States was not equivalent to the level of nullification or impairment. The EU and the United States mutually agreed to suspend the Article 22.6 arbitration proceedings as of February 18, 2008. The United States may request resumption of the proceedings following a finding by the DSB that the EU has not complied with the recommendations and rulings of the DSB.

Subsequent to the suspension of the Article 22.6 proceeding, the United States has been monitoring EU developments and has been engaged with the EU in discussions with the goal of normalizing trade in biotechnology products.

*European Union – Subsidies on large civil aircraft (DS316)*

On October 6, 2004, the United States requested consultations with the EU, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Article XVI:1 of the GATT 1994. Consultations were held on November 4, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings.

The United States and the EU were unable to reach an agreement within the 90 day time frame. Therefore, the United States filed a request for a panel on May 31, 2005. The panel was established on July 20, 2005. The U.S. request challenged several types of EU subsidies that appear to be prohibited, actionable, or both.

On October 17, 2005, the Deputy Director General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair; and Mr. John Adank and Mr. Thinus Jacobsz, Members. The panel met with the parties on

March 20-21 and July 25-26, 2007, and met with the parties and third parties on July 24, 2007. The panel granted the parties' request to hold part of its meetings with the parties in public session. This portion of the panel's meetings was videotaped and reviewed by the parties to ensure that business confidential information had not been disclosed before being shown in public on March 22 and July 27, 2007.

The Panel issued its report on June 30, 2010. It agreed with the United States that the disputed measures of the EU, France, Germany, Spain, and the United Kingdom were inconsistent with the SCM Agreement. In particular:

- Every instance of "launch aid" provided to Airbus was a subsidy because in each case, the terms charged for this unique low interest, success dependent financing were more favorable than were available in the market.
- Some of the launch aid provided for the A380, Airbus's newest and largest aircraft, was contingent on exports and, therefore, a prohibited subsidy.
- Several instances in which German and French government entities created infrastructure for Airbus were subsidies because the infrastructure was not general, and the price charged to Airbus for use resulted in less than adequate remuneration to the government.
- Several government equity infusions into the Airbus companies were subsidies because they were on more favorable terms than available in the market.
- Several EU and Member State research programs provided grants to Airbus to develop technologies used in its aircraft.
- These subsidies caused adverse effects to the interests of the United States in the form of lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Chinese Taipei, Korea, Mexico, and Singapore.

The EU filed a notice of appeal on July 21, 2010. The WTO Appellate Body conducted an initial hearing on August 3, 2010 to discuss procedural issues related to the need to protect business confidential information and highly sensitive business information and issued additional working procedures to that end on August 10, 2010. The Appellate Body held two hearings on the issues raised in the EU's appeal of the Panel's findings of WTO inconsistent subsidization of Airbus. The first hearing, held November 11-17, 2010, addressed issues associated with the main subsidy to Airbus, launch aid, and the other subsidies challenged by the United States. The second hearing held December 9-14, 2010, focused on the Panel's findings that the European subsidies caused serious prejudice to the interests of the United States in the form of lost sales and declining market share in the EU and other third country markets. On May 18, 2011, the Appellate Body issued its report. The Appellate Body affirmed the Panel's central findings that European government launch aid had been used to support the creation of every model of large civil aircraft produced by Airbus. The Appellate Body also confirmed that launch aid and other challenged subsidies to Airbus have directly resulted in Boeing losing sales involving purchases of Airbus aircraft by easyJet, Air Berlin, Czech Airlines, Air Asia, Iberia, South African Airways, Thai Airways International, Singapore Airlines, Emirates Airlines, and Qantas – and lost market share, with Airbus gaining market share in the EU and in third country markets, including China and South Korea, at the expense of Boeing. The Appellate Body also found that the Panel applied the wrong standard for evaluating whether subsidies are export subsidies, and that the Panel record did not have enough information to allow application of the correct standard.

On December 1, 2011, the EU provided a notification in which it claimed to have complied with the DSB recommendations and rulings. On December 9, 2011, the United States requested consultations regarding the notification and also requested authorization from the DSB to impose countermeasures. The United States and the EU held consultations on January 13, 2012. On December 22, 2011, the EU objected to the level of suspension of concessions requested by the United States, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. On January 19, 2012, the United States and the EU requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

On March 30, 2012, in light of the parties' disagreement over whether the EU had complied with the DSB's recommendations and rulings, the United States requested that the DSB refer the matter to the original Panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on April 13, 2012. On April 25, 2012, the compliance Panel was composed with the members of the original Panel: Mr. Carlos Pérez del Castillo, Chair; Mr. John Adank and Mr. Thinus Jacobsz, Members.

The parties filed submissions in the compliance proceeding in late 2012, and the compliance Panel held a meeting with the parties on April 16-17, 2013. The Panel is expected to circulate its final report in 2016.

*European Union – Regime for the importation, sale, and distribution of bananas – Recourse to Article 21.5 of the DSU by the United States (WT/DS27)*

On June 29, 2007, the United States requested the establishment of a panel under Article 21.5 of the DSU to review whether the EU had failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request related to the EU's apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador, Guatemala, Honduras, Mexico, and the United States. That proceeding had resulted in findings that the EU's banana regime discriminated against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999. The EU committed to shift to a tariff only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EU on January 1, 2006 included a zero duty tariff-rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas did not have access to this duty-free tariff-rate quota and were subject to a 176 euro per ton duty. The United States brought challenges under GATT Articles I:1 and XIII.

Ecuador requested the establishment of a similar compliance panel on February 23, 2007, and a panel was composed in response to that request on June 15. In response to the United States request, the Panel was established on July 12, 2007. On August 13, 2007, the Director General composed the Panel as follows: Mr. Christian Häberli, Chair; and Mr. Kym Anderson and Mr. Yuqing Zhang, Members. Mr. Häberli and Mr. Anderson were members of the original Panel in this dispute.

The Panel granted the parties' request to open the substantive meeting with the parties, as well as a portion of the third-party session, to the public. The public observed these meetings from a gallery in the room in which the meetings were conducted.

The Panel issued its report on May 19, 2008. The Panel agreed with the United States that the EU's regime was inconsistent with the EU's obligations under Articles I:1, XIII:1, and XIII:2 of the GATT 1994, and that the EU had failed to implement the recommendations and rulings of the DSB.

On August 28, 2008, the EU filed a notice of appeal. The Appellate Body granted a joint request by the parties to open its hearing to the public, and the public was able to observe the hearing via a closed circuit television broadcast. The Appellate Body issued its report on November 26, 2008. The Appellate Body

found that the EU had failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EU's procedural arguments alleging the United States was barred from bringing the compliance proceeding and agreed with the panel that the EU's duty-free tariff-rate quota reserved only for some countries was inconsistent with Article XIII of the GATT 1994. The Panel in this dispute had also found that the EU's banana import regime was in violation of GATT Article I. The EU did not appeal that finding. The DSB adopted the Appellate Body report on December 22, 2008.

On December 15, 2009, the United States and the EU initialed an agreement designed to lead to settlement of the dispute. In the agreement, the EU undertakes not to reintroduce measures that discriminate among bananas distributors based on the ownership or control of the distributor or the source of the bananas, and to maintain a nondiscriminatory, tariff only regime for the importation of bananas. The United States-European Union agreement complements an agreement initialed on the same date between the EU and several Latin American banana supplying countries (the GATB). That agreement provides for staged EU tariff cuts that will bring the EU into compliance with its obligations under the WTO Agreement. The GATB was signed on May 31, 2010, and the United States-European Union agreement was signed on June 8, 2010. The agreements will enter into force following completion of certain domestic procedures. Upon entry into force, the EU will need to request formal WTO certification of its new tariffs on bananas. The GATB provides that once the certification process is concluded, the EU and the Latin American signatories to the GATB will settle their disputes and claims. Once that has occurred, the United States will also settle its dispute with the EU.

The GATB entered into force on May 1, 2012, following completion of certain domestic procedures. The EU's revised tariff commitments on bananas were formally certified through the WTO certification process (document WT/Let/868 of October 30, 2012). Pursuant to the GATB, the EU, and the Latin American signatories to the GATB settled their disputes and claims on November 8, 2012. As the GATB has entered into force and both the EU and the United States have completed necessary domestic procedures, the United States-European Union agreement entered into force on January 24, 2013. The United States will also settle its dispute with the EU.

*European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States (DS389)*

On January 16, 2009, the United States requested consultations regarding certain EU measures that prohibit the import of poultry meat and poultry meat products that have been processed with chemical treatments designed to reduce the amount of microbes on poultry meat, unless such pathogen reduction treatments (PRTs) have been approved. The EU further prohibits the marketing of poultry meat and poultry meat products if they have been processed with PRTs. In December 2008, the EU formally rejected the approval of four PRTs whose approval had been requested by the United States, despite the fact that EU scientists have repeatedly concluded that poultry meat and poultry meat products treated with any of these four PRTs does not present a health risk to European consumers. The EU's maintenance of its import ban and marketing regulation against PRT poultry appears to be inconsistent with its obligations under the SPS Agreement, the Agriculture Agreement, the GATT 1994, and the TBT Agreement. Consultations were held on February 11, 2009, but those consultations failed to resolve the dispute. The United States requested the establishment of a panel on October 8, 2009, and the DSB established a panel on November 19, 2009.

*India — Measures Concerning the Importation of Certain Agricultural Products from the United States (DS430)*

On March 6, 2012, the United States requested consultations with India regarding its import prohibitions on various agricultural products from the United States. India asserts these import prohibitions are

necessary to prevent the entry of avian influenza into India. However, the United States has not had an outbreak of highly pathogenic avian influenza (“HPAI”) since 2004. With respect to low pathogenic avian influenza (“LPAI”), the only kind of avian influenza found in the United States since 2004, international standards do not support the imposition of import prohibitions, including the type maintained by India. The United States considers that India’s restrictions are inconsistent with numerous provisions of the SPS Agreement, including Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 7, and Annex B, and Articles I and XI of GATT 1994.

The United States and India held consultations on April 16-17, 2012, but were unable to resolve the dispute. The United States requested the establishment of a WTO panel on May 24, 2012. At its meeting on June 25, 2012, the WTO DSB established a panel. On February 18, 2014, the WTO Director General composed the Panel as follows: Mr. Stuart Harbinson as Chair; and Ms. Delilah Cabb and Mr. Didrik Tønseth, Members. The panel held meetings with the Parties on July 24-25, 2013 and December 16-17, 2013.

The Panel issued its report on October 14, 2014. In its report, the panel found in favor of the United States. Specifically, the Panel found that India’s restrictions breach its WTO obligations because they are: are not based on international standards or a risk assessment that takes into account available scientific evidence; arbitrarily discriminate against U.S. products because India blocks imports while not similarly blocking domestic products; constitute a disguised restriction on international trade; are more trade restrictive than necessary since India could reasonably adopt international standards for the control of avian influenza instead of imposing an import ban; fail to recognize the concept of disease free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined; and were not properly notified in a manner that would allow the United States and other WTO Members to comment on India’s restrictions before they went into effect. India filed its notice of appeal on January 26, 2015.

On 4 June 2015, the Appellate Body issued its report in this dispute, upholding the Panel’s findings that India’s restrictions: are not based on international standards or a risk assessment that takes into account available scientific evidence; arbitrarily discriminate against U.S. products because India blocks imports while not similarly blocking domestic products; are more trade restrictive than necessary since India could reasonably adopt international standards for the control of avian influenza instead of imposing an import ban; and fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined.

On July 13, 2015, India informed the DSB that it intended to implement the DSB’s recommendations and rulings and would need a RPT to do so. On December 8, 2015, the United States and India agreed that the RPT would be 12 months, ending on June 19, 2016.

#### *India – Solar Local Content I / II (DS456)*

In February 2013, the United States requested WTO consultations with India concerning domestic-content requirements for participation in an Indian solar-power generation program known as the National Solar Mission (“NSM”). Under Phase I of the NSM, which India initiated in 2010, India provided guaranteed, long-term payments to solar power developers contingent on the purchase and use of solar cells and solar modules of domestic origin. India continued to impose domestic content requirements for solar cells and modules under Phase II of the NSM, which India launched in October 2013. In March 2014, the United States held consultations with India on Phase II of the NSM. In April 2014, after two rounds of unsuccessful consultations with India, the United States requested that WTO DSB establish a dispute settlement panel. In May 2014, the DSB established a WTO panel to examine India’s domestic content requirements under its NSM program. On September 24, 2014, the parties agreed to compose the Panel as follows: Mr. David Walker as Chair; and Mr. Pornchai Danvivathana and Mr. Marco Tulio Molina Tejada, Members. The

Panel held meetings with the Parties on February 3-4, 2015, and April 28-29, 2015. The Panel is expected to issue its final public report in early 2016.

*Indonesia – Import Restrictions on Horticultural Products, Animals, and Animal Products (DS455, DS465 and DS478)*

On May 8, 2014, the United States, joined by New Zealand, requested consultations with Indonesia concerning certain measures affecting the importation of horticultural products, animals, and animal products into Indonesia. The measures on which consultations were requested include Indonesia's import licensing regimes for horticultural products and for animals and animal products, as well as certain prohibitions and restrictions that Indonesia imposes through these regimes.

The United States previously had requested consultations on prior versions of Indonesia's import licensing regimes. Indonesia established import licensing regimes governing the importation of horticultural products and animals and animal products in 2012. The United States was concerned about these regimes and certain measures imposed through them and, on January 10, 2013, requested consultations with Indonesia. Indonesia subsequently amended or replaced its import licensing regulations, changing their structure and requirements. The United States requested consultations again, this time joined by New Zealand, on August 30, 2013. Indonesia again amended its import licensing regimes shortly thereafter, and the consultation request in the current dispute (DS478) followed.

The United States is concerned that Indonesia, through its import licensing regimes, imposes numerous prohibitions and restrictions on the importation of covered products, including: (1) prohibiting the importation of certain products altogether; (2) imposing strict application windows and validity periods for import permits; (3) restricting the type, quantity, and country of origin of products that may be imported; (4) requiring that importers actually import a certain percentage of the volume of products allowed under their permits; (5) restricting the uses for which products may be imported; (6) imposing local content requirements; (7) restricting imports on a seasonal basis; and (8) setting a "reference price" below which products may not be imported. The Indonesian measures at issue appeared to be inconsistent with several WTO provisions, including Article XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement.

The United States and New Zealand held consultations with Indonesia on June 19, 2014, but these consultations failed to resolve the dispute. On March 18, 2015, the United States, together with New Zealand, requested the WTO to establish a dispute settlement panel to examine Indonesia's import restrictions. A panel was established on May 20, 2015. The Director General Composed the panel as follows: Mr. Christian Espinoza Cañizares, Chair; and Mr. Gudmundur Helgason and Ms. Angela Maria Orozco Gómez, Members.

The United States submitted its first written submission on November 13, 2015. The parties will make further written submissions and meet with the Panel in the course of 2016.

### **Disputes Brought Against the United States**

Section 124 of the URAA requires, *inter alia*, that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO: each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2015 for disputes in which the United States was a responding party (listed by DS number).

*United States – Section 110(5) of the Copyright Act (DS160)*

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States was in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; and Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The Panel issued its final report on June 15, 2000 and found that one of the two exemptions provided by section 110(5) is inconsistent with the U.S. WTO obligations. The Panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the period of time to be given the United States to implement the Panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits to the EU as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case was \$1.1 million per year. On January 7, 2002, the EU sought authorization from the DSB to suspend its obligations *vis-à-vis* the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration.

However, because the United States and the EU had been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002.

On June 23, 2003, the United States and the EU notified the WTO of a mutually satisfactory temporary arrangement regarding the dispute. Pursuant to this arrangement, the United States made a lump sum payment of \$3.3 million to the EU, to a fund established to finance activities of general interest to music copyright holders, in particular awareness raising campaigns at the national and international level and activities to combat piracy in the digital network. The arrangement covered a three year period, which ended on December 21, 2004.

*United States – Section 211 Omnibus Appropriations Act (DS176)*

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the consistency of Section 211 with the TRIPS Agreement and requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU, the WTO Director General composed the panel on October 26, 2000. The Director General composed the panel as follows: Mr. Wade Armstrong, Chair; and Mr. François Dessemontet and Mr. Armand de Mestral, Members. The Panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002.

The Appellate Body reversed the Panel's one finding against the United States and upheld the Panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The Panel and Appellate Body reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to implement the recommendations and rulings. The RPT for implementation ended on June 30, 2005. On June 30, 2005, the United States and the EU agreed that the EU would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

*United States – Antidumping measures on certain hot-rolled steel products from Japan (DS184)*

Japan alleged that Commerce and the USITC's preliminary and final determinations in their antidumping investigations of certain hot rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 2000, the Director General composed the panel as follows: Mr. Harsha V. Singh, Chair; and Mr. Yanyong Phuangrath and Ms. Lidia di Vico, Members. On February 28, 2001, the Panel circulated its report, in which it rejected most of Japan's claims, but found that, *inter alia*, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the Panel report.

The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002 arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, Commerce issued a new final determination in the hot rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. The RPT ended on July 31, 2005. With respect to the outstanding implementation issue, on July 7, 2005, the United States and Japan agreed that Japan would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

*United States – Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) (DS217/234)*

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, South Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23, 2001. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair; and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

The Panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the Panel found that the CDSOA

constitutes a specific action against dumping and subsidies and, therefore, is inconsistent with the Antidumping and SCM Agreements as well as Article VI of the GATT 1994. The Panel also found that the CDSOA distorts the standing determination conducted by Commerce and, therefore, is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts Commerce's consideration of price undertakings (agreements to settle antidumping and countervailing duty investigations). The Panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the Panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Antidumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the Panel's adverse findings on October 1, 2002.

The Appellate Body issued its report on January 16, 2003, upholding the Panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the Panel's finding on standing. The DSB adopted the Panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a RPT for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the Antidumping Agreement, the SCM Agreement, and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

On January 15, 2004, eight complaining parties (Brazil, Canada, Chile, the EU, India, Japan, South Korea, and Mexico) requested WTO authorization to retaliate. The remaining three complaining parties (Australia, Indonesia, and Thailand) agreed to extend to December 27, 2004 the period of time in which the United States had to comply with the WTO rulings and recommendations in this dispute. On January 23, 2004, the United States objected to the requests from the eight complaining parties to retaliate, thereby referring the matter to arbitration. On August 31, 2004, the Arbitrators issued their awards in each of the eight arbitrations. They determined that each complaining party could retaliate, on a yearly basis, covering the total value of trade not exceeding, in U.S. dollars, the amount resulting from the following equation: amount of disbursements under CDSOA for the most recent year for which data are available relating to antidumping or countervailing duties paid on imports from each party at that time, as published by the U.S. authorities, multiplied by 0.72.

Based on requests from Brazil, the EU, India, Japan, South Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004. On December 23, 2004, January 7, 2005 and January 11, 2005, the United States reached agreements with Australia, Thailand, and Indonesia that these three complaining parties would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from 9 to 30 percent on a list of U.S. products. On September 1, 2005, Japan began imposing additional duties of 15 percent on a list of U.S. products.

On February 8, 2006, U.S. President George W. Bush signed the Deficit Reduction Act into law. That Act included a provision repealing the CDSOA. Certain of the complaining parties nevertheless continued to impose retaliatory measures because they considered that the Deficit Reduction Act failed to bring the United States into immediate compliance. Thus, on May 1, 2006, the EU renewed its retaliatory measure and added eight products to the list of targeted imports. Japan renewed its retaliatory measure on September

1, 2006, retaining the same list of targeted imports. Mexico adopted a new retaliatory measure on September 14, 2006, imposing duties of 110 percent on certain dairy products through October 31, 2006. Since that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

Since 2007, only the EU and Japan have maintained retaliatory measures against the United States in connection with this dispute, and have modified those measures on an annual basis. On April 30, 2015, the EU announced that it would maintain unchanged the list of products subject to retaliation, but would increase the duty on those products from 0.35% to 1.5%. According to the EU, the total value of trade covered does not exceed \$3,295,333. On September 18, 2015, Japan notified the DSB that it would not impose retaliatory measures for the coming year, due to a low amount of relevant disbursements in fiscal year 2014.

*United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (DS285)*

On March 13, 2003, Antigua and Barbuda (“Antigua”) requested consultations regarding its claim that U.S. Federal, State, and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003.

Antigua requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of Antigua, the WTO Director General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chair; and Mr. Virachai Plasai and Mr. Richard Plender, Members. The Panel’s final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. Federal laws (18 U.S.C. §§ 1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several Panel findings. The Appellate Body overturned the Panel’s findings regarding the state statutes, and found that the three U.S. Federal gambling laws at issue “fall within the scope of ‘public morals’ and/or ‘public order’” under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needed to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the Panel and Appellate Body reports on April 20, 2005. On May 19, 2005, the United States stated its intention to implement the DSB recommendations and rulings. On August 19, 2005, an Article 21.3(c) arbitrator determined that the RPT for implementation would expire on April 3, 2006.

At the DSB meeting of April 21, 2006, the United States informed the DSB that the United States was in compliance with the recommendations and rulings of the DSB in the dispute. On June 8, 2006, Antigua requested consultations with the United States regarding U.S. compliance with the DSB recommendations and rulings. The parties held consultations on June 26, 2006. On July 5, 2006, Antigua requested the DSB to establish a panel pursuant to Article 21.5 of the DSU, and a panel was established on July 19, 2006. The chair of the original panel and one of the panelists were unavailable to serve. The parties agreed on their replacements, and the panel was composed as follows: Mr. Lars Anell, Chair; and Mr. Mathias Francke and Mr. Virachai Plasai, Members. The report of the Article 21.5 Panel, which was circulated on March 30, 2007, found that the United States had not complied with the recommendations and rulings of the DSB in this dispute.

On May 4, 2007, the United States initiated the procedure provided for under Article XXI of the GATS to modify the schedule of U.S. commitments so as to reflect the original U.S. intent of excluding gambling and betting services.

The DSB adopted the report of the Article 21.5 panel on May 22, 2007. On June 21, 2007, Antigua submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua under the GATS and the TRIPS. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration was carried out by the three panelists who served on the Article 21.5 Panel.

On December 21, 2007, the Article 22.6 arbitration award was circulated. The arbitrator concluded that Antigua's annual level of nullification or impairment of benefits is \$21 million, and that Antigua may request authorization from the DSB to suspend its obligations under the TRIPS Agreement in this amount. On December 6, 2012, Antigua submitted a request under Article 22.7 of the DSU for authorization to suspend concessions or other obligations under the TRIPS Agreement consistent with the award of the Arbitrator. At the DSB meeting of January 28, 2013, the DSB authorized Antigua to suspend concessions or other obligations under the TRIPS Agreement consistent with the award of the Arbitrator.

During 2007 and early 2008, the United States reached agreement with every WTO Member, aside from Antigua, that had pursued a claim of interest in the GATS Article XXI process of modifying the U.S. schedule of GATS commitments so as to exclude gambling and betting services. Antigua and the United States have continued in their efforts to achieve a mutually agreeable resolution to this matter.

#### *United States – Subsidies on large civil aircraft (DS317)*

On October 6, 2004, the EU requested consultations with respect to “prohibited and actionable subsidies provided to U.S. producers of large civil aircraft.” The EU alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three month timeframe for the negotiations and agreed that, during negotiations, they would not request panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EU requested the establishment of a panel to consider its claims. The EU filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered.

A panel was established with regard to the October claims on July 20, 2005. On October 17, 2005, the Deputy Director General established the panel as follows: Ms. Marta Lucía Ramírez de Rincón, Chair; and Ms. Gloria Peña and Mr. David Unterhalter, Members. Since that time, Ms. Ramirez and Mr. Unterhalter have resigned from the Panel. They have not been replaced.

The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On December 8, 2006, the WTO issued notices changing the designation of this panel to DS353. The summary below of *United States – Subsidies on large civil aircraft (Second Complaint) (DS353)* discusses developments with regard to this panel.

#### *United States – Subsidies on large civil aircraft (Second Complaint) (DS353)*

On June 27, 2005, the EU filed a second request for consultations regarding large civil aircraft subsidies allegedly applied by the United States. The section above on *United States – Subsidies on Large Civil Aircraft (DS317)* discusses developments with regard to the dispute arising from the initial request for

consultations. The June 2005 request covered many of the measures in the initial consultations, as well as many additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On November 22, 2006, the Deputy Director General composed the panel as follows: Mr. Crawford Falconer, Chair; and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members.

The Panel granted the parties' request to open the substantive meetings with the parties to the public via a screening of a videotape of the public session. The sessions of the Panel meeting that involve business confidential information and the Panel's meeting with third parties were closed to the public.

On March 31, 2011, the Panel circulated its report with the following findings:

#### Findings against the EU

- Most of the NASA research spending challenged by the EU did not go to Boeing.
- Most of the U.S. Department of Defense research payments to Boeing were not subsidies or did not cause adverse effects to Airbus.
- Treatment of patent rights under U.S. Government contracts is not a subsidy specific to the aircraft industry.
- Treatment of certain overhead expenses in U.S. Government contracts is not a subsidy.
- Washington State infrastructure and plant location incentives were not a subsidy or did not cause adverse effects.
- Commerce research programs were not a subsidy specific to the aircraft industry.
- The U.S. Department of Labor payments to Edmonds Community College in Snohomish County, Washington, were not specific subsidies.
- Kansas and Illinois tax programs were not subsidies or did not cause adverse effects.
- The Foreign Sales Corporation/Extraterritorial Income tax measures were a WTO inconsistent subsidy, but as the United States removed the subsidy in 2006, there was no need for any further recommendation.

#### Findings against the United States

- NASA research programs conferred a subsidy to Boeing of \$2.6 billion that caused adverse effects to Airbus.
- Tax programs and other incentives offered by the State of Washington and some of its municipalities conferred a subsidy of \$16 million that caused adverse effects to Airbus.
- Certain types of research projects funded under the U.S. Department of Defense's Manufacturing Technology and Dual Use Science and Technology programs were a subsidy to Boeing of approximately \$112 million that caused adverse effects to Airbus.

On April 1, 2011, the EU filed a notice of appeal on certain findings, and on April 28, 2011, the United States filed a notice of other appeal. The Appellate Body held hearings on August 16-19, 2011, and October 11-14, 2011. On March 12, 2012, the Appellate Body circulated its report with the following findings:

- The Panel erred in its analysis of whether NASA and DoD research funding was a subsidy. However, the Appellate Body affirmed the Panel's subsidy finding with regard to NASA research funding and DoD research funding through assistance instruments on other grounds. The Appellate Body declared the Panel's findings with regard to DoD procurement contracts moot, but made no further findings.
- The Panel correctly found that NASA and DoD rules regarding the allocation of patent rights were not, on their face, specific subsidies. The Appellate Body found that Panel should have addressed the EU allegations of de facto specificity, but was unable to complete the Panel's analysis of this issue.
- The Panel correctly found that Washington state tax measures and industrial revenue bonds issued by the city of Wichita were subsidies.
- The Panel erred in concluding that the WTO DSB was not obligated to initiate information-gathering procedures requested by the EU, but this error did not require any modification in the panel's ultimate findings.
- The Panel correctly concluded that NASA research funding and DoD funding of research through assistance instruments caused adverse effects to Airbus.
- The Panel erred in analyzing the effects of the Wichita industrial revenue bonds separately from other tax measures. The Appellate Body grouped the Wichita measure with the other tax benefits.
- The Panel erred in concluding that Washington state tax benefits, in tandem with FSC/ETI tax benefits, caused lost sales, lost market share, and price depression of the Airbus A320 and A340 product lines. The Appellate Body found that the evidence before it justified a finding of lost sales only in two instances, involving 50 A320 airplanes.

On March 23, 2012, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on April 13, 2012, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On September 23, 2012, the United States notified the DSB that it has brought the challenged measures into compliance with the recommendations and rulings of the DSB.

On September 25, 2012, the EU requested consultations regarding the U.S. notification. The United States and the EU held consultations on October 10, 2012. On October 11, 2012, the EU requested that the DSB refer the matter to the original Panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on October 23, 2012. On October 30, 2012, the compliance Panel was composed with the members of the original Panel: Mr. Crawford Falconer, Chair; and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members. The compliance Panel held a meeting with the parties on October 29-31, 2013. The Panel is expected to issue a report in 2016.

On September 27, 2012, the EU requested authorization from the DSB to impose countermeasures. On October 22, 2012, the United States objected to the level of suspension of concessions requested by the EU, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. On November 27, 2012, the

United States and the EU each requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

*United States – Measures Concerning the Importation, Marketing, and Sale of Tuna and Tuna Products (WT/DS381)*

On October 24, 2008, Mexico requested consultations regarding U.S. dolphin-safe labeling provisions for tuna and tuna products. These provisions prohibit labeling tuna and tuna products as dolphin-safe if the tuna was caught by using purse-seine nets intentionally set on dolphins, a technique Mexico uses to catch tuna in the Eastern Tropical Pacific Ocean. Mexico challenged three U.S. measures: (1) the Dolphin Protection Consumer Information Act (19 U.S.C. § 1385); (2) certain dolphin-safe labeling regulations (50 C.F.R. §§ 216.91-92); and (3) the Ninth Circuit decision in *Earth Island v. Hogarth*, 494 F.3d. 757 (Ninth Cir. 2007). On April 20, 2009, at Mexico's request, the DSB established a WTO panel to examine these measures. Mexico alleged that these measures accord imports of tuna and tuna products from Mexico less favorable treatment than like products of national origin and like products originating in other countries and fail to immediately and unconditionally accord imports of tuna and tuna products from Mexico any advantage, favor, privilege, or immunity granted to like products in other countries. Mexico further alleged that the U.S. measures create unnecessary obstacles to trade and are not based on relevant international standards. Mexico alleges that the U.S. measures are inconsistent with Articles I and III of the GATT 1994 and Article 2 of the TBT Agreement.

On December 14, 2009, the Panel was composed by the Director-General to include Mr. Mario Matus, Chair, Ms. Elizabeth Chelliah, and Mr. Franz Perrez. The Panel issued its interim report on May 5, 2011, and its final report to the parties on July 8, 2011. The final report was circulated to Members and the public on September 15, 2011.

The Panel found the U.S. dolphin safe provisions are technical regulations within the meaning of Annex 1.1 of the TBT Agreement; not inconsistent with Article 2.1 of the TBT Agreement because they do not afford less favorable treatment to Mexican tuna products; inconsistent with Article 2.2 of the TBT Agreement because they are more trade restrictive than necessary to achieve their objectives; and not inconsistent with Article 2.4 of the TBT Agreement because the alternative measure put forth by Mexico would not be an effective means of achieving the objective of the U.S. measures. The Panel exercised judicial economy with respect to the GATT 1994 claims in light of its findings under Article 2.1 of the TBT Agreement.

The United States appealed aspects of the report on January 20, 2012, and Mexico appealed aspects of the report on January 25, 2012. The Appellate Body circulated its report on May 16, 2012. In its key findings, the Appellate Body rejected the U.S. appeal and upheld the Panel's finding that the measure at issue is a technical regulation; agreed with Mexico's appeal and overturned the Panel's finding that the U.S. measure is consistent with the national treatment provisions of Article 2.1 of the TBT Agreement; agreed with the U.S. appeal and overturned the Panel's finding that the measure at issue is more trade restrictive than necessary under Article 2.2 of the TBT Agreement; and agreed with the U.S. appeal and overturned the Panel's finding that the AIDCP is a relevant international standard within the meaning of Article 2.4 of the TBT Agreement.

On June 13, 2012, the DSB adopted the Appellate Body report, and the Panel report as modified by the Appellate Body report. On September 17, 2012, the United States and Mexico notified the DSB that they agreed on a RPT for the United States to implement the recommendations and rulings of the DSB, ending on July 13, 2013.

On July 23, 2013, the United States announced that it had fully complied with the DSB's recommendations and rulings through a final rule of the National Oceanic and Atmospheric Administration (NOAA) that came into effect on July 13, 2013. The final rule enhances the documentary requirements for certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught outside the Eastern Tropical Pacific.

On November 25, 2013, Mexico requested that the DSB establish a compliance panel to determine whether the U.S. dolphin-safe labeling provisions, as amended by the new final rule, are consistent with U.S. WTO obligations. At its meeting on January 22, 2014, the DSB referred the matter to the original Panel, and on January 27, 2014 the Panel was composed with the members of the original Panel. Mexico has claimed that the U.S. dolphin-safe labeling provisions are inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994.

The Panel met with the parties on August 19-21, 2014. The Panel issued its report on April 14, 2015. In its report, the Panel found that the amended dolphin-safe labeling measure was inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994 and, although the measure was preliminarily justified under Article XX(g) of the GATT 1994, was not applied consistently with the Article XX chapeau.

The United States appealed aspects of the compliance panel's report on June 5, 2015, and Mexico appealed aspects of the report on June 10, 2015. The Appellate Body circulated its report on November 20, 2015. The Appellate Body found that the compliance panel had erred in its analytical approach to the amended measure, and it reversed the Panel's findings as to the measure's consistency with the covered agreements as to the eligibility criteria, the certification requirements, and the tracking and verification requirements. The Appellate Body found, however, that because the compliance panel had not made a proper factual assessment of the matter, the Appellate Body could not complete the analysis and made no findings as to those three regulatory distinctions under either Article 2.1 of the TBT Agreement or Article XX of the GATT 1994. The Appellate Body also found that analysis of other aspects of the measure did not depend on factual findings and that these aspects rendered the measure inconsistent with Article 2.1 of the TBT Agreement and Article XX of the GATT 1994.

On December 3, 2015, the DSB adopted the Article 21.5 Appellate Body report and Article 21.5 panel report, as modified by the Appellate Body report.

#### *United States – Certain Country of Origin Labeling (COOL) Requirements (Canada) (DS384)*

On December 1, 2008, Canada requested consultations with the United States regarding U.S. mandatory country of origin labeling (COOL) provisions. Canada requested supplemental consultations with the United States regarding this matter on May 7, 2009. Canada challenges the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the USDA Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the USDA Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture. These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.

Canada alleges that the COOL requirements are inconsistent with Articles III:4, IX:2, IX:4, and X:3(a) of the GATT 1994, Articles 2.1, 2.2, and 2.4 of the TBT Agreement, or in the alternative, Articles 2, 5, and 7 of the SPS Agreement, and Articles 2(b), 2(c), 2(e), and 2(j) of the Agreement on Rules of Origin. Canada asserts that these violations nullify or impair the benefits accruing to Canada under those Agreements and

further appear to nullify or impair the benefits accruing to Canada within the meaning of GATT 1994 Article XXIII:1(b).

Consultations were held on December 16, 2008, and supplemental consultations were held on June 5, 2009. On October 7, 2009, Canada requested the establishment of a panel, and on November 19, 2009, the DSB established a single panel to examine both this dispute and Mexico's dispute regarding COOL (see WT/DS386). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The Panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breaches TBT Article 2.1 because it affords Canadian livestock less favorable treatment than it affords U.S. livestock. With respect to Article 2.2 of the TBT Agreement, the Panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the Panel found that the COOL measure breaches TBT Article 2.2 because it fails to fulfill its legitimate objective of providing consumer information on origin with respect to meat products. The Panel also found that the Vilsack Letter breaches GATT Article X:3 because it does not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the Panel's findings on Article 2.1 and 2.2. On March 28, 2012, Canada appealed certain aspects of the Panel's Article 2.2 analysis, the Panel's failure to make a finding on its claim under Articles III:4 of the GATT 1994, and made a conditional appeal on its claim under Article XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the Panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the Panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the Panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the Panel's finding that COOL measure has a disparate impact on Canadian livestock. However, the Appellate Body reasoned that the analysis could not end there but that the Panel should have analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that the COOL measure did not as it imposes costs that are disproportionate to the information conveyed by the labels. Having upheld the Panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Canada's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the RPT for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the RPT ends on May 23, 2013.

On May 24, 2013, the United States announced that it had fully implemented the DSB's recommendations and rulings through a new final rule issued by USDA on May 23, 2013. The final rule modifies the labeling provisions for muscle cut covered commodities to require the origin designations to include information about where each of the production steps (*i.e.*, born, raised, slaughtered) occurred and removes the allowance for commingling.

On September 25, 2013, at the request of Canada, the DSB referred the matter raised by Canada in its panel request to a compliance panel to determine whether the COOL program, as amended by the May 23 final rule, is consistent with U.S. WTO obligations. Canada makes claims under Articles 2.1 and 2.2 of the TBT Agreement and Articles III:4 and XXIII:1(b) of the GATT 1994.

On October 20, 2014, the compliance Panel circulated its final report. The Panel found that the amended COOL measure is inconsistent with Article 2.1 of the TBT Agreement because it accords imported Canadian livestock treatment less favorable than that accorded to like domestic livestock. In particular, the Panel found that this was so because the measure results in a detrimental impact on the competitive opportunities of Canadian livestock, and this detrimental impact does not stem exclusively from a legitimate regulatory distinction. The Panel further found that Canada had not made a *prima facie* case that the amended COOL measure is more trade restrictive than necessary and, therefore, inconsistent with Article 2.2 of the TBT Agreement. With respect to the GATT 1994 claims, the Panel found that the amended COOL measure violates Article III:4 of the GATT 1994 because it has a detrimental impact on the competitive opportunities of imported Canadian livestock, and thus accords “less favourable treatment” to imported products. In light of this finding, the Panel exercised judicial economy with regard to Canada’s non-violation claim under Article XXIII:1(b) of the GATT 1994.

On November 28, 2014, the United States filed its notice of appeal, and on December 5, 2014, the United States filed its appellant submission. The United States appealed the Panel’s findings on Article 2.1 of the TBT Agreement and on Article III:4 of the GATT 1994. The United States also challenged the Panel’s failure to address the availability of the exceptions provided for in Article XX of the GATT 1994. On December 12, 2014, Canada appealed other of the Panel’s findings.

On May 18, 2015, the Appellate Body circulated its report. The Appellate Body upheld the compliance Panel’s findings with respect to Article 2.1. of the TBT Agreement. In particular, it maintained the compliance Panel’s conclusions with respect to the alleged lack of accuracy of the labels, the burdens imposed by “heightened” recordkeeping and verification requirements, and the relevance of exemptions from the labeling requirements. The Appellate Body also upheld the compliance Panel’s ultimate determination with respect to Article 2.2 of the TBT Agreement.

On June 4, 2015, Canada sought authorization to suspend concessions under the covered agreements. On June 16, 2015, the United States objected to the level of suspension of concessions or obligations sought by Canada, thus referring the matter to arbitration pursuant to Article 22.6 of the DSU. On December 7, 2015, the decision by the Arbitrator was circulated to Members. In considering the level of nullification or impairment of the benefits accruing to Canada, the Arbitrator rejected requests to consider the domestic effect of the amended COOL measure on Canadian prices, and instead focused on the trade impact of the amended COOL measure. The Arbitrator found that the level of nullification or impairment attributable to the amended COOL measure was CAD 1,054,729 million annually. On December 21, 2015, the DSB granted authorization to Canada to suspend concessions consistent with the award of the Arbitrator, and pursuant to the DSU, the authorization shall be equivalent to the level of nullification or impairment.

On December 18, 2015, the President signed legislation repealing the country of origin labeling requirement for beef and pork. This action withdraws the WTO-inconsistent measure and brings the United States into compliance with the WTO’s recommendations and rulings.

#### *United States – Certain Country of Origin Labeling (COOL) Requirements (Mexico) (DS386)*

On December 17, 2008, Mexico requested consultations regarding U.S. mandatory country of origin labeling (COOL) provisions. Mexico requested supplemental consultations with the United States regarding this matter on May 7, 2009. Mexico challenges the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the USDA Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the USDA Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture.

These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.

Mexico alleges that the COOL requirements are inconsistent with Articles III:4, IX:2, IX:4, and X:3(a) of the GATT 1994, Articles 2.1, 2.2, 2.4, 12.1, and 12.3 of the TBT Agreement, or in the alternative, Articles 2, 5, and 7 of the SPS Agreement, and Articles 2(b), 2(c), and 2(e), of the Agreement on Rules of Origin. Mexico asserts that these violations nullify or impair the benefits accruing to Mexico under those Agreements and further appear to nullify or impair the benefits accruing to Mexico within the meaning of GATT 1994 Article XXIII:1(b).

Consultations were held on February 27, 2009, and supplemental consultations were held on June 5, 2009. On October 9, 2009, Mexico requested the establishment of a panel in this dispute, and November 19, 2009, the DSB established a single panel to examine both this dispute and Canada's dispute regarding COOL (see WT/DS384). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The Panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breaches TBT Article 2.1 because it affords Mexican livestock less favorable treatment than it affords U.S. livestock. Under TBT Article 2.2, the Panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the Panel found that the COOL measure breaches TBT Article 2.2 because it fails to fulfill its legitimate objective of providing consumer information on origin with respect to meat products.

The Panel rejected Mexico's claim under TBT Article 2.4 that the United States was required to base origin under the COOL measure on the principle of substantial transformation, concluding that using this principle would be an ineffective and inappropriate means to fulfill the U.S. legitimate objective of providing consumers with information about the origin of the meat products they buy. The Panel also rejected Mexico's claims under TBT Articles 12.1 and 12.3, concluding that the United States did not fail to take account of Mexico's needs as a developing country Member.

Finally, the Panel found that the Vilsack Letter breaches GATT Article X:3 because it does not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the Panel's findings on Article 2.1 and 2.2. On March 28, 2012, Mexico appealed certain aspects of the Panel's Article 2.2 analysis, and made a conditional appeal on its claims under Articles III:4 and XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the Panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the Panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the Panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the Panel's finding that the COOL measure has a disparate impact on Mexican livestock. However, the Appellate Body reasoned that the analysis could not end there but that the Panel should have analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that the COOL measure did not as it imposes costs that are disproportionate to the information conveyed by the labels. Having upheld the Panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Mexico's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the RPT for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the RPT ends on May 23, 2013.

On May 24, 2013, the United States announced that it had fully implemented the DSB's recommendations and rulings through a new final rule issued by USDA on May 23, 2013. The final rule modifies the labeling provisions for muscle cut covered commodities to require the origin designations to include information about where each of the production steps (*i.e.*, born, raised, slaughtered) occurred and removes the allowance for commingling.

On September 25, 2013, at the request of Mexico, the DSB referred the matter raised by Mexico in its panel request to a compliance Panel to determine whether the COOL program, as amended by the May 23 final rule, is consistent with U.S. WTO obligations. Mexico makes claims under Articles 2.1 and 2.2 of the TBT Agreement and Articles III:4 and XXIII:1(b) of the GATT 1994.

On October 20, 2014, the compliance Panel circulated its final report. The Panel found that the amended COOL measure is inconsistent with Article 2.1 of the TBT Agreement because it accords imported Mexican livestock treatment less favorable than that accorded to like domestic livestock. In particular, the Panel found that this was so because the measure results in a detrimental impact on the competitive opportunities of Mexican livestock, and this detrimental impact does not stem exclusively from a legitimate regulatory distinction. The Panel further found that Mexico had not made a *prima facie* case that the amended COOL measure is more trade restrictive than necessary and, therefore, inconsistent with Article 2.2 of the TBT Agreement. With respect to the GATT 1994 claims, the Panel found that the amended COOL measure violates Article III:4 of the GATT 1994 because it has a detrimental impact on the competitive opportunities of imported Mexican livestock, and thus accords "less favourable treatment" to domestic products. In light of this finding, the Panel exercised judicial economy with regard to Mexico's non-violation claim under Article XXIII:1(b) of the GATT 1994.

On November 28, 2014, the United States filed its notice of appeal, and on December 5, 2014, the United States filed its appellant submission. The United States appealed the Panels' findings on Article 2.1 of the TBT Agreement and on Article III:4 of the GATT 1994. The United States also challenged the Panel's failure to address the availability of the exceptions provided for in Article XX of the GATT 1994. On December 12, 2014, Mexico appealed other of the Panel's findings.

On May 18, 2015, the Appellate Body released its report. The Appellate Body upheld the compliance Panel's findings with respect to Article 2.1. of the TBT Agreement. In particular, it maintained the compliance Panel's conclusions with respect to the accuracy of the labels, the burdens imposed by recordkeeping and verification requirements, and the impact of exemptions. The Appellate Body also upheld the compliance Panel's ultimate determination with respect to Article 2.2 of the TBT Agreement. However, in the context of Article 2.2., the Appellate Body found that the compliance Panel should have completed its analysis regarding the "gravity of the consequences of non-fulfilment," noting that difficulties and imprecision that arise in this analysis do not excuse the Panel from reaching an overall conclusions.

On June 4, 2015, Mexico sought authorization to suspend certain concessions and other obligations under the covered agreements. On June 12, 2015, Mexico revised the amount of suspension of concessions sought. Mexico removed this item from the agenda of the DSB meeting on June 17, 2015, and submitted a revised request for authorization from the DSB. On June 22, 2015, the United States objected to the level of suspension of concessions or obligations sought by Mexico, thus referring the matter to arbitration pursuant to Article 22.6 of the DSU. On December 7, 2015, the decision by the Arbitrator was circulated to Members. In considering the level of nullification or impairment of the benefits accruing to Mexico, the Arbitrator rejected requests to consider the domestic effect of the amended COOL measure on Mexican

prices, and instead focused on the trade impact of the amended COOL measure. The Arbitrator found that the level of nullification or impairment attributable to the amended COOL measure was U.S. \$227,758 million annually. On December 21, 2015, the DSB granted authorization to Mexico to suspend concessions consistent with the award of the Arbitrator, and pursuant to the DSU, the authorization shall be equivalent to the level of nullification or impairment.

On December 18, 2015, the President signed legislation repealing the country of origin labeling requirement for beef and pork. This action withdraws the WTO-inconsistent measure and brings the United States into compliance with the WTO's recommendations and rulings.

#### *United States – Anti-dumping Measures on Certain Shrimp from Vietnam (DS404)*

On February 1, 2010, the United States received from Vietnam a request for consultations pertaining to antidumping duties imposed by the United States pursuant to the final results issued by Commerce in several administrative reviews of the antidumping duty order on imports of certain frozen and canned warm water shrimp from Vietnam. Vietnam claimed that certain actions by Commerce and U.S. Customs and Border Protection with respect to several administrative reviews and with respect to any ongoing or future administrative review or sunset review concerning this antidumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles I, II, VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 2.4.2, 6.8, 6.10, 9.1, 9.3, 9.4, 11.2, 11.3, 18.1, and 18.4 and Annex II of the Antidumping Agreement; Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; and Vietnam's Protocol of Accession.

The United States and Vietnam held consultations on March 23, 2010. On April 19, 2010, Vietnam requested that the DSB establish a panel. The DSB did so at its meeting on May 18, 2010. On July 26, 2010, the Director General composed the panel as follows: Mr. Mohammad Saeed, Chair; and Ms. Deborah Milstein and Mr. Iain Sanford, Members.

The Panel circulated its report on July 11, 2011. The Panel found that the use of "zeroing" in the second and third administrative reviews of the shrimp antidumping order was inconsistent with Article 2.4 of the Antidumping Agreement, and the use of "zeroing" in administrative reviews is inconsistent "as such" with Article 9.3 of the Antidumping Agreement and Article VI:2 of the GATT 1994. The Panel also found that the use of antidumping margins determined using "zeroing" to calculate the "all others" rate in the second and third administrative reviews was inconsistent with Article 9.4 of the Antidumping Agreement. The Panel found that the application to the Vietnam-wide entity of an antidumping margin different from the "all others" rate was also inconsistent with Article 9.4 of the Antidumping Agreement. The Panel rejected Vietnam's claim that Commerce's determination to limit the number of individually examined respondents was inconsistent with various provisions of the Antidumping Agreement, and the Panel rejected Vietnam's claims relating to "continued use," finding those claims to be outside the Panel's terms of reference.

On September 2, 2011, the DSB adopted its recommendations and rulings as set out in the Panel's report. The United States and Vietnam agreed that the RPT for the United States to implement the recommendations and rulings of the DSB would end on July 2, 2012.

#### *United States — Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from Vietnam (DS429)*

On February 21, 2012, the United States received from Vietnam a request for consultations pertaining to antidumping duties imposed by the United States pursuant to the final results issued by Commerce in a number of administrative reviews and the sunset review of the antidumping duty order on imports of certain frozen and canned warm water shrimp from Vietnam. Vietnam claimed that certain actions by Commerce

with respect to the administrative reviews identified, and with respect to any ongoing or future administrative review, as well as the sunset review concerning this antidumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles I:1, VI: 1, VI:2, and X:3(a) of the GATT 1994; Articles 1, 2.1, 2.4, 2.4.2, 6, 9, 11, 17.6(i), and Annex II of the Antidumping Agreement; Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU; and Vietnam's Protocol of Accession. Specifically, Vietnam complained that Commerce used "zeroing" in the administrative reviews of the antidumping duty order on imports of shrimp, Commerce failed to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, the treatment of the Vietnam-wide entity as a "single entity" and the application of adverse facts available to the entity, the use of dumping margins determined using a "zeroing" methodology in the final determination of the sunset review, and the use of WTO-inconsistent antidumping duty assessment rates applied to unliquidated entries that are assessed following a section 129 determination that implements an adverse DSB ruling.

The United States and Vietnam held consultations on March 28, 2012. On December 17, 2012, Vietnam requested the establishment of a panel. Vietnam filed a revised panel request on January 17, 2013. The DSB established a panel on February 27, 2013 and the Parties agreed to the composition of the panel on July 12, 2013, as follows: Mr. Simon Farbenbloom, Chair; and Mr. Adrian Makuc and Mr. Abd El Rahman Ezz El Din Fawzy, Members.

The Panel met with the parties on December 10-11, 2013 and March 25-26, 2014.

The Panel circulated its report on November 17, 2014. The Panel rejected Vietnam's claim that the use of "zeroing" in administrative reviews was inconsistent "as such" with Article 9.3 of the Antidumping Agreement and Article VI: of the GATT 1994, but found that the use of "zeroing" was inconsistent with these provision "as applied" in three of the administrative reviews at issue. The Panel found that Commerce's presumption that all producers and exporters in Vietnam belonged to a single, non-market ("NME") entity was inconsistent "as such" and "as applied" in the administrative reviews at issue with Articles 6.10 and 9.2 of the Antidumping Agreement. The Panel rejected Vietnam's claim that the manner in which Commerce determined the NME-wide entity rate, in particular concerning the use of facts available, was inconsistent "as such" with Articles 6.8 and 9.4 and Annex II of the Antidumping Agreement; but found that the United States acted inconsistently with Article 9.4 of the Antidumping Agreement in assigning the NME-wide entity a duty rate exceeding the ceiling applicable under that provision in the administrative reviews at issue. The Panel also rejected Vietnam's claim that section 129(c)(1) was inconsistent with Articles 1, 9.2, 9.3, 11.1, and 18.1 of the Antidumping Agreement. Finally, the Panel found that Commerce's reliance on WTO-inconsistent margins of dumping in its likelihood-of-dumping determination in the first sunset review was inconsistent with Article 11.3 of the Antidumping Agreement; and that Commerce's reliance on WTO-inconsistent margins of dumping in its treatment of requests for revocation made by certain Vietnamese producers/exporters in two of the administrative reviews at issue was inconsistent with Article 11.2 of the Antidumping Agreement.

On January 6, 2015, of its Vietnam appealed the Panel's finding that Vietnam had failed to establish that Section 129(c)(1) is inconsistent "as such" with Articles 1, 9.2, 9.3, 11.1, and 18.1 of the Antidumping Agreement. On January 26, 2015, the United States filed an appellee's submission in opposition to Vietnam's appeal. The oral hearing in the appeal was held on March 2, 2015.

On April 7, 2015, the Appellate Body issued its report. The Appellate Body upheld the Panel's finding that Vietnam had not established that section 129(c)(1) is inconsistent "as such" with Articles 1, 9.2, 9.3, 11.1, and 18.1 of the Antidumping Agreement.

On April 22, 2015, the DSB adopted its recommendations and rulings in the dispute. On May 20, the United States stated its intention to comply with the DSB's findings in a manner that respects its WTO obligations and that it would need a RPT to do so.

On September 17, 2015, Vietnam requested that the RPT be determined through arbitration pursuant to Article 21.3(c) of the DSU.

By joint letter dated October 7, 2015, Vietnam and the United States agreed on Mr. Simon Farbenbloom as the Arbitrator. On December 15, 2015, the Arbitrator issued his award, deciding that the RPT would be 15 months, ending on July 22, 2016.

*United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*

On April 24, 2012, India requested consultations concerning countervailing measures on certain hot-rolled carbon steel flat products from India. India challenged the Tariff Act of 1930, in particular sections 771(7)(G) regarding accumulation of imports for purposes of an injury determination and 776(b) regarding the use of “facts available”. India also challenged Title 19 of the Code of Federal Regulations, sections 351.308 regarding “facts available” and 351.511(a)(2)(i)-(iv), which relates to Commerce's calculation of benchmarks. In addition, India challenged the application of these and other measures in Commerce's countervailing duty determinations and the USITC's injury determination. Specifically, India argued that these determinations were inconsistent with Articles I and IV of the GATT 1994 and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22 and 32 of the SCM Agreement. The DSB established a panel to examine the matter on August 31, 2012. The panel was composed by the Director General on February 18, 2013, as follows: Mr. Hugh McPhail, Chair; Mr. Anthony Abad and Mr. Hanspeter Tschaeni, Members.

The Panel met with the parties on July 9-10, 2013, and on October 8-9, 2013. The Panel circulated its report on July 14, 2014. The Panel rejected India's claims against the U.S. statutes and regulations concerning facts available and benchmarks under Articles 12.7 and 14(d) of the SCM Agreement, respectively, but found that the U.S. statute governing accumulation was inconsistent with Article 15 of the SCM Agreement because it required the accumulation of both dumped and subsidized imports in the context of countervailing investigations. Consequently, the Panel also found that the ITC's injury determination breached U.S. obligations under Article 15.

The Panel rejected India's challenges under Article 1.1(a)(1) of the SCM Agreement to Commerce's “public body” findings in two instances, as well as most of India's claims with respect to Commerce's application of facts available under Article 12.7 in the determination at issue. The Panel also rejected most of India's claims against Commerce's specificity determinations under Article 2.1, and its calculation of certain benchmarks used in the proceedings under Article 14(d). The Panel found that Commerce's determination that certain low-interest loans constituted “direct transfers” of funds was consistent with Article 1.1(a)(1), but that Commerce's determination that a captive mining program constituted a financial contribution was not consistent with Article 1.1(a). Finally, the Panel found that Commerce did not act inconsistently with Articles 11, 13, 21 and 22 of the SCM Agreement when it analyzed new subsidy allegations in the context of review proceedings.

On August 8, 2014, India appealed the Panel's findings; on August 13, 2014, the United States also appealed certain of the Panel's findings. The Appellate Body released its report on December 8, 2014.

The Appellate Body upheld the Panel's findings regarding the U.S. benchmarks regulation, but found that certain instances of Commerce's application of these regulations was inconsistent with Article 14(d). The Appellate Body also upheld the Panel's findings regarding accumulation, finding that the application of the

U.S. statute in the injury determination at issue was inconsistent with Article 15 of the SCM Agreement, and that the U.S. statute was inconsistent with that provision, although on different grounds than those found by the Panel. The Appellate Body rejected India's interpretation of "public body" under Article 1.1(a)(1), but reversed the Panel's finding that Commerce acted consistently in making the public body determination at issue on appeal. Regarding specificity, the Appellate Body rejected each of India's appeals under Article 2.1(c), as it did with respect to India's challenge to the Panel's finding under Article 1.1(a)(1)(i) relating to "direct transfers of funds". The Appellate Body also reversed the Panel's finding that Commerce had acted inconsistently with Article 1.1(a)(1)(iii) in finding that captive mining program constituted a provision of goods. Finally, the Appellate Body upheld the Panel's rejection of India's claims under Articles 11, 13 and 21 regarding new subsidy allegations. The Appellate Body reversed the Panel's findings under Article 22 of the SCM Agreement, but was unable to complete the analysis. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on December 19, 2014.

At the DSB meeting held on January 16, 2015, the United States notified the DSB of its intention to comply with the recommendations and rulings and indicated it would need a RPT to do so. On March 24, 2015, the United States and India informed the DSB that they had agreed on an RPT of 15 months, ending on March 19, 2016.

#### *United States — Countervailing Duty Measures on Certain Products from China (DS437)*

On May 25, 2012, China requested consultations regarding numerous U.S. countervailing duty determinations in which the U.S. Department of Commerce had determined that various Chinese state-owned enterprises were "public bodies" under Article 1.1(a)(1) of the SCM Agreement, with a view towards extending the Appellate Body's analysis in DS379 to those determinations. China challenged various other aspects of these investigations as well, including but not limited to Commerce's calculation of benchmarks, initiation standard, determination of specificity of the subsidies, use of facts available, and finding that export restraints were a countervailable subsidy.

Consultations were held in July 2012, and a panel was established in September 2012. The Panel was composed by the Director-General on November 26, 2012, as follows: Mr. Mario Matus, Chair; Mr. Scott Gallacher and Mr. Hugo Perezcano Díaz, Members. The Panel met with the parties on April 30-May 1, 2013, and on June 18-19, 2013. The panel circulated its report on July 14, 2014. The Panel found that Commerce's determinations in 12 investigations that certain state-owned enterprises were "public bodies" were inconsistent with Article 1.1(a)(1) of the SCM Agreement, based on the Appellate Body's analysis in DS379. However, the Panel found in favor of the United States with respect to China's claims regarding Commerce's calculation of benchmarks, initiation of investigations, and use of facts available, and the Panel upheld most of Commerce's specificity determinations. The Panel also found that China established that Commerce acted inconsistently with Article 11.3 of the SCM Agreement by initiating countervailing duty investigations of export restraints.

On August 22, 2014, China appealed the Panel's findings regarding Commerce's calculation of benchmarks, specificity determinations, and use of facts available. On August 27, 2014, the United States appealed the Panel's finding that a section of China's panel request setting forth claims related to Commerce's use of facts available was within the panel's terms of reference. The Appellate Body held a hearing in Geneva on October 16-17, 2014, with Ujal Singh Battia and Seung Wha Chang as Members, and Peter Van den Bossche as Chairman.

On December 18, 2014, the Appellate Body circulated its report. On benchmarks, the Appellate Body reversed the Panel and found that Commerce's determination to use out-of-country benchmarks in four countervailing duty investigations was inconsistent with Articles 1.1(b) and 14(d) of the SCM

Agreement. On specificity, the Appellate Body rejected one of China's claims with respect to the order of analysis in *de facto* specificity determinations. However, the Appellate Body reversed the Panel's findings that Commerce did not act inconsistently with Article 2.1 when it failed to identify the "jurisdiction of the granting authority" and "subsidy programme" before finding the subsidy specific. On facts available, the Appellate Body accepted China's claim that the Panel's findings regarding facts available are inconsistent with Article 11 of the DSU, and reversed the Panel's finding that Commerce's application of facts available was not inconsistent with Article 12.7 of the SCM Agreement. Lastly, the Appellate Body rejected the U.S. appeal of the Panel's finding that China's panel request failed to meet the requirement of Article 6.2 of the DSU to present an adequate summary of the legal basis its claim sufficient to present the problem clearly.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on January 16, 2015. In a letter dated February 13, 2015, the United States notified the DSB of its intention to comply with its WTO obligations and indicated it would need a RPT to do so.

On June 26, 2015, China requested that the RPT be determined through arbitration pursuant to Article 21.3(c) of the DSU. On July 17, 2015, the Director General appointed Mr. Georges M. Abi-Saab as the arbitrator. On October 9, 2015, the arbitrator issued his award, deciding that the RPT would be 14 months and 16 days, ending on April 1, 2016.

*United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina (DS447)*

On August 30, 2012, Argentina requested consultations regarding inaction by the United States to authorize importation of fresh bovine meat from Argentina. U.S. law prohibits the importation of fresh meat from countries, pending a determination by the USDA as to whether, and under what import conditions, if any, such products can be safely imported without introducing foot-and-mouth disease (FMD) into the United States. At issue in this matter were the status of three applications by Argentina to the USDA to revise its prohibition and permit the importation of fresh bovine meat. Specifically, Argentina contended that U.S. measures are inconsistent with Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 8, and 10.1 of the SPS Agreement, and Article I:1 and Article XI:1 of the GATT 1994.

Consultations were held on October 18 and 19, 2012. Argentina requested the establishment of a panel on December 6, 2012, and the DSB established a panel on January 28, 2013. On August 8, 2013, the Director General composed the Panel as follows: Mr. Eirik Glenne, Chair; and Mr. Jaime Coghi and Mr. David Evans, Members. The Panel met with the parties on January 28 and 29, 2014, and September 2, 4-5, 2014.

The final report was issued on July 24, 2015. The Panel's report concluded that the U.S. measures were inconsistent with U.S. obligations under the SPS Agreement and the GATT 1994.

Prior to the issuance of the panel report, USDA issued two administrative documents (in August 2014 and July 2015) that lift the FMD ban on Argentina, and permit the importation of fresh bovine meat under certain conditions. In light of the regulatory actions taken by USDA prior to the conclusion of the panel proceeding, the United States notified the DSB at its meeting held on August 31, 2015, that the United States had addressed the matters raised in this dispute.

*United States — Measures Affecting the Importation of Fresh Lemons (DS448)*

On September 3, 2012, Argentina requested consultations regarding the U.S. failure thus far to grant import authorization for fresh lemons from Northwest Argentina. Consultations were held on October 17-18, 2012, in Geneva, Switzerland. Argentina submitted its request for establishment of a dispute settlement panel on December 6, 2012.

*United States — Countervailing and Anti-Dumping Measures on Certain Products from China (DS449)*

On September 17, 2012, the United States received a request for consultations from China regarding Public Law 112-99 (“P.L. 112-99”) and determinations and actions made by Commerce, the USITC, and the U.S. Customs and Border Protection in connection with 31 joint antidumping and countervailing duty proceedings. China alleged in its consultation request that the retroactive nature of Section 1 of P.L. 112-99 and the difference in effective dates between Sections 1 and 2 of P.L. 112-99 are violations of GATT Article X. China further alleged that dozens of antidumping and countervailing duty proceedings initiated between November 20, 2006 and March 13, 2012 violated the United States’ WTO obligations because the United States had no basis under domestic law to identify and avoid “double remedies” and U.S. authorities failed to “investigate and avoid double remedies.”

China and the United States held consultations on November 5, 2012. On November 30, China requested the establishment of a panel. China and the United States held consultations on November 5, 2012. On November 30, China requested the establishment of a panel, and on December 17, 2012 a panel was established. On March 4, 2013, the Director General composed the panel as follows: Mr. José Graça Lima, Chair; and Mr. Donald Greenfield and Mr. Arie Reich, Members. The panel met with the parties on July 2-3, 2013, and August 27-28, 2013.

On March 27, 2014, the panel issued a report that rejected all of China’s claims concerning the WTO-consistency of P.L. 112-99. However, the panel found that U.S. authorities failed to “investigate and avoid double remedies.” Therefore, the panel found that 25 countervailing duty proceedings involving imports from China initiated between November 20, 2006, and March 13, 2012 were inconsistent with U.S. WTO obligations.

On April 8, 2014, China appealed the panel’s interpretation of Article X:2 of the GATT 1994. On April 17, 2014, the United States filed its own appeal, challenging the sufficiency of China’s panel request under Article 6.2 of the DSU, and requesting reversal of the panel’s findings relating to the 25 countervailing duty proceedings involving imports from China.

On July 7, 2014, the Appellate Body issued its report. The Appellate Body found that the panel erred in its legal interpretation of Article X:2 of the GATT, and reversed the Panel’s findings with respect to P.L. 112-99. The Appellate Body was unable to complete the analysis to determine the consistency of P.L. 112-99 with Article X:2 due to the lack of undisputed facts on the record. The Appellate Body found that China’s panel request complied with Article 6.2 of the DSU.

On July 22, 2014, the DSB adopted its recommendations and rulings in the dispute. On August 21, 2014, the United States stated its intention to comply with the DSB recommendations and rulings, and that it would need a RPT to do so. The United States and China initially agreed to an RPT of 12 months. The United States and China subsequently agreed to extend the RPT, so as to expire on August 5, 2015. At the DSB meeting on August 31, 2015, the United States notified the DSB that it had implemented the recommendations and rulings of the DSB in the dispute.

*United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464)*

On August 29, 2013, the United States received from Korea a request for consultations pertaining to antidumping and countervailing duty measures imposed by the United States pursuant to final determinations issued by Commerce following antidumping and countervailing duty investigations regarding large residential washers (“washers”) from Korea. Korea claimed that Commerce’s

determinations, as well as certain methodologies used by Commerce, are inconsistent with U.S. commitments and obligations under Articles 1, 2, 2.1, 2.4, 2.4.2, 5.8, 9.3, 9.4, 9.5, 11, and 18.4 of the AD Agreement, Articles 1.1, 1.2, 2.1, 2.2, 10, 14, and 19.4 of the SCM Agreement, Articles VI, VI:1, VI:2, and VI:3 of the GATT 1994, and Article XVI:4 of the WTO Agreement. Specifically, Korea challenges Commerce's alleged use of "zeroing" and application of the second sentence of Article 2.4.2 of the AD Agreement, as applied in the washers antidumping investigation and "as such." Korea also challenges Commerce's determinations in the washers countervailing duty investigation that Article 10(1)(3) of Korea's Restriction of Special Taxation Act ("RSTA") is a subsidy that is specific within the meaning of Article 2.1 of the SCM Agreement, Commerce's determination of the amount of subsidy benefit received by a respondent under Article 10(1)(3) of the RSTA, Commerce's determination that Article 26 of the RSTA is a regionally specific subsidy, and Commerce's imposition of countervailing duties on one respondent that were attributable to tax credits that the respondent received for investments that it made under Article 26 of the RSTA.

The United States and Korea held consultations on October 3, 2013. On December 5, 2013, Korea requested that the DSB establish a panel, January 22, 2014, a panel was established. On June 20, 2014, the Director General composed the panel as follows: Ms. Claudia Orozco, Chair; and Mr. Mazhar Bangash and Mr. Hanspeter Tschaeni, Members. The panel held meetings with the parties on March 10-11, 2015, and on May 20-21, 2015. The panel is expected to issue its report in 2016.

*United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)*

On December 3, 2013, the United States received from China a request for consultations pertaining to antidumping measures imposed by the United States pursuant to final determinations issued by Commerce following antidumping investigations regarding a number of products from China, including certain coated paper suitable for high-quality print graphics using sheet-fed presses, certain oil country tubular goods, high pressure steel cylinders, polyethylene terephthalate film, sheet, and strip; aluminum extrusions; certain frozen and canned warm water shrimp; certain new pneumatic off-the-road tires; crystalline silicon photovoltaic cells, whether or not assembled into modules; diamond sawblades and parts thereof; multilayered wood flooring; narrow woven ribbons with woven selvedge; polyethylene retail carrier bags; and wooden bedroom furniture. China claimed that Commerce's determinations, as well as certain methodologies used by Commerce, are inconsistent with U.S. obligations under Articles 2.4.2, 6.1, 6.8, 6.10, 9.2, 9.3, 9.4, and Annex II of the AD Agreement and Article VI:2 of the GATT 1994. Specifically, China challenges Commerce's application in certain investigations and administrative reviews of a "targeted dumping methodology," "zeroing" in connection with such methodology, a "single rate presumption for non-market economies," an "NME-wide methodology" including certain "features". China also challenges a "single rate presumption" and the use of "adverse facts available" "as such."

The United States and China held consultations on January 23, 2014. On February 13, 2014, China requested that the DSB establish a panel, and a panel was established on March 26, 2014. On August 28, 2014, the Director General composed the panel as follows: Mr. José Pérez Gabilondo, Chair; and Ms. Beatriz Leycegui Gardoqui and Ms. Enie Neri de Ross, Members. The panel held meetings with the parties on July 14-16, 2015, and on November 17-19, 2015. The panel is expected to issue its report in 2016.

*United States – Conditional Tax Incentives for Large Civil Aircraft (DS487)*

On December 19, 2014, the EU requested consultations with the United States with respect to "conditional tax incentives established by the State of Washington in relation to the development, manufacture, and sale of large civil aircraft." The EU alleges that such tax incentives are prohibited subsidies that are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement. Consultations were held on February 2, 2015, and a

panel was established on February 23, 2015. The panel was composed by the Director General on April 22, 2015, as follows: Mr. Daniel Moulis, Chair; Mr. Terry Collins-Williams and Mr. Wilhelm Meier, Members. The panel is expected to issue its report in 2016.

*United States — Anti-Dumping Measures on Oil Country Tubular Goods from Korea (DS488)*

On April 18, 2014, the United States received from Korea a request for consultations pertaining to antidumping duties imposed on oil country tubular goods from Korea. Korea claimed that the calculation by Commerce of the constructed value profit rate for Korean respondents was inconsistent with U.S. obligations under Articles 2.2, 2.2.2, 2.4, 6.2, 6.4, 6.9, and 12.2.2 of the Antidumping Agreement and Articles I and X:3 of the GATT 1994. Korea also claimed that Commerce's decision regarding the affiliation of a certain Korean respondent to a supplier, and the effects of that decision, was inconsistent with Articles 2.2.1.1 and 2.3 of the Antidumping Agreement and that its selection of two mandatory respondents was inconsistent with Article 6.10, including Articles 6.10.1 and 6.10.2. Korea further claimed that Commerce's methodology for disregarding a respondent's exports to third-country markets was inconsistent "as such" and "as applied" in the investigation at issue with Article 2.2 of the Antidumping Agreement.

The United States and Korea held consultations on January 21, 2015. On February 23, Korea requested the establishment of a panel. The DSB established a panel on March 25, 2015, and the Parties agreed to the composition of the panel on July 13 as follows: Mr. John Adank, Chair; and Mr. Abd El Rahman Ezz El Din Fawzy and Mr. Gustav Brink, Members.

*United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia (DS491)*

On March 13, 2015, Indonesia requested consultations concerning antidumping and countervailing duty measures pertaining to certain coated paper suitable for high-quality print graphics using sheet-fed presses. Indonesia alleges inconsistencies with Article VI of the GATT 1994, Articles 1, 3.5, 3.7 and 3.8 of the Antidumping Agreement, and Articles 2.1, 12.7, 10, 14(d), 15.5, 15.7 and 15.8 of the SCM Agreement.

With respect to the countervailing duty measures, Indonesia challenges Commerce's determinations that Indonesia's provision of standing timber, log export ban and debt forgiveness program are countervailable subsidies. Indonesia claims that Commerce determined both that the standing timber was provided for less than adequate remuneration and that the log export ban distorted prices without factoring in prevailing market conditions. Indonesia also alleges, in regards to all three subsidies, that Commerce failed to examine whether there was a plan or scheme in place sufficient to constitute a "subsidy programme" within the meaning of the SCM Agreement. Indonesia further claims that Commerce did not identify whether each subsidy was "specific to an enterprise ... within the jurisdiction of the granting authority," as required by the SCM Agreement. In addition, Indonesia challenges Commerce's facts available determination in which it concluded that the Government of Indonesia forgave debt.

With respect to both the antidumping and countervailing duty measures, Indonesia alleges that the USITC threat of injury determination breached both the AD Agreement and SCM Agreement because it relied on allegation, conjecture, and remote possibility; was not based on a change in circumstances that was clearly foreseen and imminent; and showed no causal relationship between the subject imports and the threat of injury to the domestic industry.

Indonesia also raised an "as such" claim with respect to 19 U.S.C. § 1677(11)(B). Indonesia contends that the law does not consider or exercise "special care" as a result of the requirement that a tie vote in a threat of injury determination must be treated as an affirmative ITC determination.

Consultations between Indonesia and the United States took place in Geneva on June 25, 2015. A panel was established on September 28, 2015.

## **I. Trade Policy Review Body**

### **Status**

The Trade Policy Review Body (TPRB) is the subsidiary body of the General Council, created by the Marrakesh Agreement Establishing the WTO, to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines domestic trade policies of each Member on a schedule designed to review the policies of the full WTO Membership on a timetable determined by trade volume. The express purpose of the review process is to strengthen Members' adherence to WTO provisions and to contribute to the smoother functioning of the multilateral trading system. Moreover, the review mechanism serves as a valuable resource for improving the transparency of Members' trade and investment regimes. Members continue to value the review process, because it informs each government's own trade policy formulation and coordination.

The Member under review works closely with the WTO Secretariat to provide pertinent information for the process. The Secretariat produces an independent report on the trade policies and practices of the Member under review. Accompanying the Secretariat's report is the Member's own report. In a TPRB session, the WTO Membership discusses these reports together, and the Member under review addresses issues raised in the reports and answers questions about its trade policies and practices. Reports cover the range of WTO agreements – including those relating to goods, services, and intellectual property – and are available to the public on the WTO's website at <http://www.wto.org>. Documents are filed on the website's "Documents Online" database under the document symbol "WT/TPR."

TPRs of least developed country (LDC) Members often perform a technical assistance function, helping them improve their understanding of their trade policy structure's relationship with the WTO Agreements. The reviews have also enhanced these countries' understanding of the WTO Agreements, thereby better enabling them to comply and integrate into the multilateral trading system. In some cases, the reviews have spurred better interaction among government agencies. The reports' wide coverage of Members' policies also enables Members to identify any shortcomings in policy and specific areas where further technical assistance may be appropriate.

The TPRM requires Members, in between their reviews, to provide information on significant trade policy changes. The WTO Secretariat uses this and other information to prepare reports by the Director General on a regular basis on the trade and trade-related developments of Members and Observer Governments. The reports are discussed at informal meetings of the TPRB. The Secretariat consolidates the information it collects and presents it in the Director General's Annual Report on Developments in the International Trading Environment.

### **Major Issues in 2015**

During 2015, the TPRB reviewed the trade regimes of 24 Members (counting the EU as one). Members reviewed were Angola, Australia, Barbados, Brunei Darussalam, Cabo Verde, Canada, Chile, Dominican Republic, the EU, Guyana, Haiti, India, Japan, Jordan, Madagascar, Moldova, New Zealand, Pakistan, Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, Swaziland), and Thailand.

Since its inception in 1989 to the end of 2015, the TPRB has conducted 429 reviews. The reviews have covered 151 of 162 Members. Those Members not yet reviewed by the end-2015 are Cuba, Lao PDR, Montenegro, Russia, Samoa, Seychelles, Tajikistan, Ukraine, Vanuatu, and Yemen. Of the 34 LDC Members of the WTO, the TPRB had reviewed 31 by the end of 2015.

While each review highlights the specific issues and measures concerning the individual Member, certain common themes emerged during the course of the reviews conducted in 2015. These included:

- transparency in policy making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO Agreements (including acceptance and implementation of the WTO TFA);
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including the differences between applied and bound rates;
- customs valuation and customs clearance procedures;
- the use of trade remedy measures such as antidumping and countervailing duties;
- technical regulations and standards and their alignment with international standards;
- sanitary and phytosanitary measures;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- trade-related investment policy issues;
- sectoral trade policy issues, particularly liberalization in agriculture and certain services sectors; and
- technical assistance in implementing the WTO Agreements and experience with Aid for Trade, and the Enhanced Integrated Framework.

## **Prospects for 2016**

The TPRM continues to meet its transparency goals. It will continue to be an important tool for monitoring Members' compliance with WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. For 2016, the proposed program of reviews is Albania, Democratic Republic of the Congo, El Salvador, Fiji, Georgia, Guatemala, Honduras, Korea, Malawi, Maldives, Morocco, Russia, Saudi Arabia, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Tunisia, Turkey, Ukraine, United Arab Emirates, the United States, and Zambia.

## **J. Other General Council Bodies/Activities**

### **1. Committee on Trade and Environment**

#### **Status**

The WTO General Council created the Committee on Trade and Environment (CTE) on January 31, 1995, pursuant to the Marrakesh Ministerial Decision on Trade and Environment. Since then, the CTE has discussed many important issues, with a focus on those identified in the Doha Declaration. These issues include: market access associated with environmental measures (Doha paragraph 32(i)); the TRIPS Agreement and the environment (Doha paragraph 32(ii)); labeling for environmental purposes (Doha paragraph 32(iii)); capacity-building and environmental reviews (Doha paragraph 33); and discussion of the environmental aspects of the Doha negotiations (Doha paragraph 51). These issues identified in the Doha Declaration are separate from the issues contained in Doha paragraph 31 that are subject to specific

negotiating mandates taken up by the Committee on Trade and Environment Special Session (CTESS) (*for additional information, see Chapter II.B.6.*).

### **Major Issues in 2015**

In 2015, the CTE met twice under the Chairmanship of the Permanent Representative of Hong Kong, China, on June 22 and October 6.

As noted above, the CTE's work was organized under the mandate established in the Doha Ministerial Declaration, Paragraphs 32, 33, and 51. Discussions took place mainly on environmental requirements and market access issues under Paragraph 32(i): "The effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reductions of trade restrictions and distortions would benefit trade, the environment and development." Other items addressed by the CTE were under Paragraph 32(iii) on labelling requirements for environmental purposes, and item 1 of the CTE Work Program ("The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements").

Under Paragraph 32(i), delegations, notably the EU, Thailand, Chinese Taipei, and Canada, provided presentations on elements of their energy efficiency policies. Other presenters included: China, on its "Ecological Civilization Strategy," which is intended to intensify environmental protection and resource conservation; the International Hydropower Association, on behalf of Canada, on the "Hydropower Sustainability Assessment Protocol;" Malaysia, on its Timber Certification Scheme; Russia, on its national experience in the area of illegal logging; New Zealand and Norway, on efforts on tracking inefficient fossil fuel subsidies; and Ecuador, Mexico, the EU, and the United States, on their respective initiatives concerning illegal, unreported, and unregulated (IUU) fishing. Additionally, the Organization for Economic Co-operation and Development (OECD) briefed the CTE on the broad array of measures that are being used worldwide to improve energy efficiency, and the International Organization for Standardization (ISO) provided an overview of its standards relating to energy efficiency, including ISO 50001.

Under Paragraph 32 (iii), China presented on its environmental labelling scheme, which was established in 1993 and covers 97 product categories. Also, Chinese Taipei provided an overview of its Green Mark Programme launched in 1992.

No discussion took place under Paragraph 32(ii) (relevant provisions of the TRIPS Agreement); Paragraph 33 (technical assistance, capacity building, and environmental reviews); or Paragraph 51 (developmental and environmental aspects of the negotiations).

### **Prospects for 2016**

The United States is committed to using the CTE as the premier global forum for discussing trade and environment issues and will explore fresh and innovative approaches to the most challenging issues, including those related to trade and climate change.

## 2. Committee on Trade and Development

### Status

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT 1947's role in the economic development of less developed GATT Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. Since the Doha Development Round was launched, Members have established three additional subgroups of the CTD: a Subcommittee on LDCs; a Dedicated Session on Small Economies; and a Dedicated Session on Regional Trade Agreements (RTAs).

The CTD addresses trade issues of interest to Members with particular emphasis on issues related to the operation of the "Enabling Clause" (the 1979 Decision on Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries). In this context, the CTD focuses on the Generalized System of Preferences (GSP) programs, the Global System of Trade Preferences among developing country Members, and regional integration efforts among developing country Members. In addition, the CTD focuses on issues related to the fuller integration of all developing country Members into the international trading system, technical cooperation and training, trade in commodities, market access in products of interest to developing countries, and the special concerns of LDCs, small, and landlocked economies.

The CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development. Since the initiation of the DDA, the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as transparency in preferential trade agreements, expanding trade in products of interest to developing country Members, trade in commodities, the WTO's technical assistance and capacity building activities, and an overall assessment of the development aspects of the DDA and sustainable development goals. As directed in the 2005 Hong Kong Ministerial Declaration, the CTD also conducts annual reviews of steps taken by WTO Members to implement the decision on providing duty free, quota free (DFQF) market access to the LDC Members.

Work in the Subcommittee on LDCs and the Dedicated Sessions on Small Economies and RTAs has included review of market access challenges related to exports of LDC Members, LDC accessions to the WTO, trade-related needs of small, vulnerable economies, including island and landlocked states, and review of Member RTAs notified under the Enabling Clause.

### Major Issues in 2015

The CTD in Regular Session held five formal sessions in March, May, June, September, and November 2015. Activities of the CTD and its subsidiary bodies in 2015 included:

- *Focused Work on Trade and Development:* At the Eighth Ministerial Conference of the WTO, "Ministers reaffirm[ed] that development is a core element of the WTO's work. They also reaffirm[ed] the positive link between trade and development and call[ed] for focused work in the Committee on Trade and Development" (WT/MIN(11)/11). At the Ninth Ministerial Conference, Ministers reaffirmed their commitment to the development objectives set out in the Doha Declaration. In 2015, Members continued their consideration of submissions containing proposals for work under the MC8 mandate through the consideration of specific proposals.
- *Technical Cooperation and Training:* The Committee took note of the 2014 Annual Report on Technical Assistance and Training (WT/COMTD/W/209). According to the report, a total of 273

activities were undertaken by the Secretariat in 2014. Overall, close to 14,700 participants were trained during the year, which was an increase of seven percent over 2013. This growth was attributable to online courses, which for the first time accounted for more than 50 percent of participants.

- *Notifications Regarding Market Access for Developing and LDCs:* In 2015, notifications under the Enabling Clause were made concerning the GSP schemes of the EU (WT/COMTD/N/4/Add.7) and Japan (WT/COMTD/N/2/Add.16). In addition, Thailand notified to the CTD its DFQF market access scheme for LDCs (WT/COMTD/N/46). The CTD also considered issues relating to the notification status of the Gulf Cooperation Council (GCC) Customs Union, ASEAN-Korea RTA, and the India-Korea RTA.
- *Duty Free, Quota Free Market Access for LDCs Members:* The Decision taken at the Hong Kong Ministerial Conference on DFQF market access for LDCs remains a standing item on the CTD's agenda. A number of Members shared information on the steps they are taking to provide DFQF market access to LDCs' products, including in respect of preferential rules of origin. The September 2015 CTD meeting was devoted to DFQF market access for LDCs. The meeting provided an opportunity for Members to have an in-depth exchange on the issues involved with the implementation of DFQF market access for LDC products. To aid in the review of DFQF, the Decision additionally instructs the Secretariat to prepare a report on Members' DFQF market access for LDCs at the tariff line level based on their notifications. Discussion under this agenda item continued at the November 2015 meeting, at which the LDCs called on Members to provide DFQF market access for all products originating from LDCs in a manner that ensures stability, security, and predictability.
- *Dedicated Session on Small Economies:* The Dedicated Session on Small Economies held two formal meetings, in June and October 2015. At the June 2015 meeting, the Secretariat presented its research paper on "Challenges and Opportunities experienced by Small Economies when linking into Global Value Chains in Trade in Goods and Services." Members exchanged initial views on the paper and its findings. At the October 2015 meeting, Members considered the research paper prepared by the Secretariat in greater detail and focused on challenges small economies encounter when linking into global value chains (GVCs) in the agri-food and seafood sectors.
- *Aid for Trade:* The CTD held three sessions on Aid for Trade in 2015, in February, May, and October. Much of the work of the CTD in the area of Aid for Trade was devoted to preparation and staging of the Fifth Global Review of Aid for Trade (5GR), which took place 30 June to 2 July 2015. Various reports were released, including the joint OECD-WTO publication "Aid for Trade at a Glance 2015: Reducing Trade Costs for Inclusive, Sustainable Growth." The 18 plenary sessions were structured around the theme "Reducing Trade Costs for Inclusive, Sustainable Growth," with trade facilitation an area of focus. Twenty-eight side events were also organized by WTO Members, IGOs, and non-governmental organizations. Some of the overall messages that emerged from the 5GR included the development benefits of the implementation of the TFA; the economic opportunity of e-commerce, and the negative impact of non-tariff measures on raising costs for trade in goods.
- *LDC Subcommittee:* The LDC Subcommittee also held three meetings in 2015, in April, September, and October. During those meetings, Members considered market access for LDCs and trends in LDC trade, trade-related technical assistance and accession of LDCs. As part of the commemoration of the WTO's 20th anniversary, the Secretariat organized an event in October

2015 entitled “Twenty Years of Supporting the Integration of Least Developed Countries into the Multilateral Trading System.” Two panel sessions reviewed the progress made in integrating the LDCs into the multilateral trading system since the establishment of the WTO in 1995 and discussed how the WTO could help LDCs overcome the remaining challenges.

### **Prospects for 2016**

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including technical assistance and market access. It is anticipated that efforts to identify “focused work” will continue, taking into consideration the relevant sections of the Bali and Nairobi Ministerial Declarations. Members will also continue to work with the Secretariat in dedicated sessions to identify the challenges and opportunities experienced by small economies when linking into global value chains. In addition, the CTD’s examination of RTAs between developing country Members will continue as new RTAs are notified to the WTO. Work will continue on implementing the transparency mechanism for preferential trade agreements. The implementation of the Monitoring Mechanism, agreed to at the Bali Ministerial (WT/MIN(13)/W/17), will also continue in dedicated sessions of the CTD.

## **3. Committee on Balance-of-Payments Restrictions**

### **Status**

The Uruguay Round Understanding on Balance-of-Payments (BOP) substantially strengthened GATT disciplines on balance-of-payments-related trade measures. Under the WTO Agreement, any Member imposing restrictions for balance-of-payments purposes must consult regularly with the Committee on Balance-of-Payments Restrictions to determine whether the use of such restrictions is necessary or desirable to address a Member’s balance-of-payments difficulties. The Committee on Balance-of-Payments Restrictions works closely with the International Monetary Fund (IMF) in conducting consultations. Full consultations involve examining a Member’s trade restrictions and BOP situation, while simplified consultations provide for more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in its BOP.

### **Major Issues in 2015**

The Committee held consultations with Ukraine in April and June 2015, in accordance with the terms of reference of Article XII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994, following Ukraine’s January 20, 2015, notification that it was introducing certain measures for balance-of-payment purposes. The measure at issue came into force on February 25, 2015. The majority of WTO Members recognized Ukraine’s BOP difficulties and considered it had applied the measure in line with WTO provisions on BOP, although they encouraged Ukraine to remove the measure as soon as possible. In this regard, the Committee noted the commitment undertaken by Ukraine to terminate the measure by the end of 2015, as Ukraine had agreed with the IMF. Ukraine subsequently notified the Committee that, pursuant to legislative action taken in December 2015, it had removed the measure effective January 1, 2016.

The Committee also held consultations with Ecuador, in June and October 2015, in accordance with the terms of reference of Article XII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994, following Ecuador’s April 2, 2015, notification of the introduction of a temporary tariff surcharge for BOP purposes for a period of up to 15 months. Ecuador’s measure came into force on March 11, 2015. Following the October meeting, Ecuador presented a timetable for the

dismantlement of the measure, offering to reduce the tariff surcharge incrementally beginning in January 2016, with a complete phase out in June 2016.

### **Prospects for 2016**

The Committee is scheduled to continue its consultations with Ecuador in February 2016 and will press Ukraine to ensure that its measure was terminated at the end of 2015 as agreed.

Should a Member resort to new BOP measure, as noted above, WTO rules require a thorough program of consultation with the Committee on Balance-of-Payments Restrictions. The United States expects the Committee to continue to ensure that BOP provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

## **4. Committee on Budget, Finance and Administration**

### **Status**

The Committee on Budget, Finance and Administration (the Budget Committee) is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for Members' approval. The Budget Committee meets throughout the year to address the financial requirements of the organization. The budget process in the WTO operates on a biennial basis. As is the practice in the WTO, decisions on budgetary issues are taken by consensus. The United States is an active participant in the Budget Committee.

In the WTO, the assessed contribution of each Member is based on the share of that Member's trade in goods, services, and intellectual property. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. For the 2015 budget, the U.S. assessed contribution was 11.312 percent of the total budget assessment, or Swiss Francs (CHF) 22,114,960 (about \$21.6 million) (*details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2013 are provided in Annex II*).

### **Major Issues in 2015**

The Committee held ten meetings and presented five reports to the General Council in 2014. The Committee obtained and reviewed on a quarterly basis reports on the financial and budgetary situation of the Organization, the arrears of contributions from Members and Observers, the WTO Pension Plan, WTO risk management activities, and the financial situation due to negative interest impact. The Committee reviewed and took note of the annual report on diversity in the WTO Secretariat, the staff learning program, and the Human Resources annual report on grading structure and promotions. The Committee examined and proposed to the General Council for approval the 2016-2017 Biennium budget; this budget remained on a "zero nominal growth" basis for the 6<sup>th</sup> and 7<sup>th</sup> consecutive years. The Committee also discussed and approved a proposal to establish a Building Renovation Fund to anticipate long-term maintenance of the recently-restored WTO facility. A dedicated working group examined challenges surrounding long-term liabilities associated with the WTO's "after service health insurance" (ASHI) program and asked the Director General to develop a strategy proposal to ensure the long-term sustainability of these WTO employee and retiree benefits. The Committee also received regular updates on an Organizational Review process launched by the Director General in December 2013.

## Prospects for 2016

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis. The Committee is expected, among other 2016 priorities, to examine the establishment of an Audit Committee for the WTO.

## 5. Committee on Regional Trade Agreements

### Status

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party.

The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established in the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system. Prior to 1996, these reviews were typically conducted by a “working party” formed to review a specific agreement.

GATT Article XXIV is the principal provision governing free trade areas (FTAs), customs unions (CUs), and interim agreements leading to an FTA or CU concerning goods. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the “Enabling Clause,” provides a basis for certain agreements between or among developing country Members, also concerning trade in goods. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV of GATT 1994; and Articles V and Vbis of the GATS, which govern services and labor markets integration agreements. FTAs and CUs are authorized departures from the principle of MFN treatment, if relevant requirements are met.

### Major Issues in 2015

As of 21 December 2015, 452 regional trade agreements (RTAs) have been notified to the GATT or WTO, of which 265 are in force (137 covering goods only, 1 covering services only and 127 covering goods and services). RTAs include bilateral or plurilateral free trade agreements (FTAs), customs unions, and services agreements covered under GATS Article V and Vbis.

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs. The main features of the mechanism, agreed upon in the Negotiating Group on Rules, include: the early announcement of any RTA; guidelines regarding the notification of RTAs; the preparation by the WTO Secretariat, on its own responsibility and in full consultation with the parties, of a factual presentation on each notified RTA to assist Members in their consideration of the notified RTA; timeframes associated with the consideration of RTAs; provisions regarding subsequent notification and reporting with respect to notified RTAs; technical support for developing countries; and a division of work between the CRTA, entrusted to implement the mechanism *vis-à-vis* RTAs falling under Article XXIV of GATT 1994 and Article V of the GATS, and the Committee on Trade and Development (CTD), entrusted to do the same for RTAs falling under the Enabling Clause.

Since the implementation of the transparency mechanism in 2007, 209 agreements, counting goods and services notifications separately, have been considered (10 factual presentations representing 19 notifications in 2015). Of these agreements, 204 have been reviewed in the CRTA and five in the CTD. In

2015, the United States' FTAs with Bahrain and Colombia were reviewed in the CRTA under the transparency mechanism.

Under the transparency mechanism, the WTO Secretariat was tasked to establish and maintain an updated electronic database on individual RTAs. The database was launched in January 2009 and includes extensive information, all of which is available to the public. The RTAs database may be accessed at: <http://rtais.wto.org>.

### **Prospects for 2016**

Four sessions of the Committee on Regional Trade Agreements are foreseen in 2016.

## **6. Accessions to the World Trade Organization**

### **Status**

The WTO welcomed two new Members in 2015, and two additional Members had their terms of accession approved by the WTO. Seychelles and Kazakhstan both became WTO Members in 2015, on April 26 and November 30, respectively. They are the 161<sup>st</sup> and 162<sup>nd</sup> WTO Members. Liberia and Afghanistan completed their negotiations at the end of 2015, and WTO Members approved their terms of accession at MC10 in Nairobi, Kenya on December 15. Each of these countries is expected to accept its accession package through ratification in 2016, becoming the 163<sup>rd</sup> and 164<sup>th</sup> WTO Members.

At the end of 2015, the number of current applicants for WTO Membership (not including Liberia and Afghanistan) fell below twenty for the first time since 1993. Of the nineteen applicants<sup>15</sup> remaining, only three appear to be actively pursuing completion of their negotiations. Azerbaijan convened a Working Party (WP) in March, and Belarus re-activated its accession process in November. Ethiopia also has indicated that it is preparing to resume its accession process in 2016. While Lebanon and Iraq recorded no activity on their accessions, they also expressed interest to the WTO Secretariat in possibly moving forward next year.

Four WTO accession applicants (Equatorial Guinea, Libya, Sao Tome and Principe, and Syria) have not submitted the initial documents describing their respective foreign trade regimes. As a result, negotiations on their accessions have not commenced. These same four applicants failed to do so in 2014 as well. Working parties and bilateral negotiations with twelve other applicants – Algeria, Andorra, The Bahamas, Bhutan, Bosnia and Herzegovina, Comoros, Iran, Iraq, Lebanon, Serbia, Sudan, and Uzbekistan – remained dormant in 2015.

### *Background*

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as Article XII of the WTO Agreement provides. The accession process, with its emphasis on the implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for the adoption of policies and practices that encourage trade and investment and promote growth and development.

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<sup>15</sup> Accession Working Parties continue for Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan\*, Bosnia and Herzegovina, Comoros\*, Equatorial Guinea\*, Ethiopia\*, Iran, Iraq, Lebanon, Libya, Sao Tome and Principe\*, Serbia, Sudan\*, Syria, and Uzbekistan (the 8 countries marked with an asterisk are LDCs).

In a typical accession negotiation, a government writes the WTO Director General seeking accession to the WTO. This application is circulated to WTO Members and placed on the agenda of the next meeting of the WTO General Council, which establishes a WP composed of all interested WTO Members to review the applicant's trade regime, conduct the negotiations, and to make a recommendation to the General Council on the application. To initiate negotiations for the terms of its WTO Membership, the applicant then provides an initial description of its trade practices, *i.e.*, a Memorandum on the Foreign Trade Regime, (MFTR) and responds to questions and comments submitted by Members on that document. The WTO Secretariat schedules a first meeting of the WP and subsequent meetings as justified by new developments and documentation. The number of WP meetings needed to complete the negotiations, as well as the overall length of the accession process, largely depends on the speed with which the applicant addresses the issues identified by Members in the Working Party and moves to conclude negotiations on trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services, based on requests from WP Members. In addition, applicants are expected to make necessary legislative changes to implement WTO institutional and regulatory requirements and to eliminate existing WTO-inconsistent measures. Almost all "developed country" accession applicants, and many "developing country" accession applicants, take all of these actions on WTO rules prior to conclusion of the accession negotiations.<sup>16</sup>

At the conclusion of its work, the WP adopts the documents recording the agreed results of the negotiations (the "terms of accession" for the applicant developed with WP Members in bilateral and multilateral negotiations) and transmits them with its recommendation for approval to the General Council or to the Ministerial Conference. These terms, *i.e.*, the accession "package," consist of the "Report of the Working Party" and "Protocol of Accession," consolidated schedules of specific commitments on market access for goods and services, and agriculture schedules that include commitments on export subsidies and domestic supports. After General Council or Ministerial Conference approval, accession applicants submit the package to their domestic authorities for acceptance (ratification).<sup>17</sup> Thirty days after the WTO receives the applicant's instrument accepting the terms of accession, the applicant becomes a WTO Member.

The accession process requires attention and active engagement from both applicants and WTO Members. Undertaking accession negotiations is a serious decision for any country. Applicants already committed to economic reform, or that demonstrate a strong interest in using WTO provisions as the basis for their trade regimes, usually are the most successful in moving their accession towards completion (*e.g.*, by submitting usable documentation, market access offers, and legislation for WP review on a timely basis). Thus, the pace of the accession process generally depends on the applicant.

The accession process strengthens the international trading system by ensuring that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure market access opportunities from acceding countries, to work with accession applicants towards full implementation of WTO obligations, and to address outstanding trade issues covered by the WTO in a multilateral context.

*U.S. Leadership and Technical Assistance:* As a matter of longstanding policy, the United States takes a leadership role in all aspects of the accession negotiations, including in the bilateral, plurilateral, and

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<sup>16</sup> As outlined below, negotiations with applicants designated as "least developed" by the United Nations are subject to special procedures and guidelines, and they do not, as a rule, fully implement WTO provisions prior to accession. Transitional periods may also be negotiated, if necessary, with developing or other applicants that request them and can justify their necessity.

<sup>17</sup> The WP decision to adopt the accession package is by "consensus," *i.e.*, without objection by any WP Member. While there are provisions in the WTO Agreement for the Ministerial Conference or General Council to approve accessions by an affirmative vote of two-thirds of all Members, in practice, the Ministerial Conference or General Council also approve the terms of accession by consensus.

multilateral aspects of the negotiations. The U.S. objectives are to ensure that the applicant fully implements WTO provisions when it becomes a Member, to encourage trade liberalization in developing and transforming economies, and to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also has provided technical assistance to countries seeking accession to the WTO to help them meet the requirements and challenges presented, both by the negotiations and the process of implementing WTO provisions in their trade regimes. The U.S. Agency for International Development (USAID), the USDA, the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce, and the U.S. Trade and Development Agency have provided this assistance on behalf of the United States.

The U.S. assistance can include providing short term technical expertise focused on specific issues (*e.g.*, customs procedures, intellectual property rights protection, or sanitary and phytosanitary matters and technical barriers to trade, and/or a WTO expert in residence in the acceding country or customs territory. A number of the WTO Members that have acceded or completed negotiations since 1995 received technical assistance in their accession process from the United States at one time or another, including Afghanistan, Albania, Armenia, Bulgaria, Cape Verde, Croatia, Estonia, Georgia, Jordan, Kazakhstan, Kyrgyz Republic, Latvia, Laos, Liberia, Lithuania, Macedonia, Moldova, Montenegro, Nepal, Russia, Tajikistan, Ukraine, Vietnam, and Yemen. The United States provided resident experts for most of these countries for some portion of the accession process.

In 2015, the United States provided technical assistance for the accession process or post-accession implementation for the following accession applicants and WTO Members: Afghanistan, Kazakhstan, Tajikistan, and Ukraine. Among other current accession applicants, Algeria, Azerbaijan, Belarus, Bosnia and Herzegovina, Ethiopia, Iraq, Georgia, Lebanon, Serbia, and Uzbekistan also received U.S. technical assistance earlier in their accession processes. All but Belarus had dedicated WTO advisors coordinating shorter term assistance at some point in the negotiations.

### **Major Issues in 2015**

WTO Members approved the terms of accession for Seychelles on December 10, 2014, and Seychelles became a WTO Member on April 26, 2015. Kazakhstan's accession process concluded on July 27, 2015, and Kazakhstan became a WTO Member on November 30, 2015. Both attended MC 10 in Nairobi as Members. Liberia and Afghanistan also concluded their accession negotiations in 2015, in October and in November, respectively, and WTO Members approved their terms of accession in Nairobi. Seven formal or informal WP meetings occurred in 2015: for Afghanistan (1), Azerbaijan (1), Kazakhstan (2), and Liberia (3).

#### *Kazakhstan*

In 2015, WTO Members finished 19 years of consultation and negotiation on Kazakhstan's accession. Interested WTO Members worked through June to resolve outstanding issues on agricultural support, market access, and SPS requirements. Everything came together at the June 9-10 WP meeting: the draft WP report text was agreed and all brackets removed. Members in the committee adopted the final formal WP on June 22, and the WTO General Council approved Kazakhstan's WTO accession package on July 27. Kazakhstan's parliament ratified the package on October 31, 2015. Kazakhstan became the 162<sup>nd</sup> Member of the WTO on November 30, 2015.

#### *Azerbaijan*

Azerbaijan's 12<sup>th</sup> Working Party meeting convened in March 2015. WTO Members made progress toward agreeing on how Azerbaijan would implement certain WTO provisions, but were unable to reach a solution

on systemic issues identified in earlier meetings. Members also made little progress with respect to their bilateral negotiations on goods and services.

## **LDC Accessions**

WTO Members are committed to facilitating the accession processes of LDCs and to making WTO accession more accessible to these applicants. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries in response to the WTO General Council Decision on Accessions of Least Developed Countries (WT/L/508) adopted at the end of 2002, and in its addendum, adopted in July 2012 by the General Council.<sup>18</sup> The expanded guidelines established by these documents include provisions under the following pillars: (i) Benchmarks on Goods Concessions; (ii) Benchmarks on Services Commitments; (iii) Transparency in Accession Negotiations; (iv) Special and Differential (S&D) Treatment and Transition Periods; and, (v) Technical Assistance. Points (i) and (ii) establish that market access negotiations for the WTO accession of LDCs are to be guided by special principles and benchmarks more appropriate to the development level of LDC applicants. The transparency provisions confirm evolving practice in LDC accessions for the use of the good offices of the Chairperson of the Sub-Committee on LDCs, as well as the Chairpersons of the LDCs' Accession Working Parties to assist the conclusion of the accession process for LDCs. S&D treatment and technical assistance provisions of the guidelines also confirm the need for restraint and the broad use of transitional provisions when constructing market access commitments, as well as the need for action plans for transitional implementation of WTO provisions. Further, the guidelines confirm the need for enhanced technical assistance and capacity building in LDC accessions.

The United States and other developed country WTO Members support both the 2002 and the 2012 Decisions on LDC Accessions, adhering to the guidelines established by these documents in formulating more flexible negotiating positions on market access and WTO implementation commitments for LDCs. The purpose of the guidelines is to ensure that LDCs are prepared for the responsibilities of WTO Membership by promoting use of technical assistance and structuring transitional periods with action plans, and, in general, making extra efforts to facilitate LDC integration into the multilateral trading system. The guidelines will continue to establish the WTO accession process for LDCs as a tool for economic development, incorporating the applicant's own development program and schedule for receiving technical assistance into an action plan for progressive implementation of WTO rules.

*Developments in 2015:* With the completion of accession negotiations with Liberia and Afghanistan, in October and November 2015, respectively, the number of LDCs seeking WTO accession shrank to six<sup>19</sup>. None of these LDCs convened WP meetings in 2015 or issued new documents, but Ethiopia has informally indicated an interest in resuming its accession efforts, possibly in 2016. Bhutan's accession process remains dormant. Sao Tome and Principe and Equatorial Guinea have not yet provided documentation to begin negotiations.<sup>20</sup>

### *Afghanistan*

Afghanistan concluded bilateral market access negotiations for goods and services in 2013, and verified its consolidated Schedules in February 2014. In November of this year, Afghanistan completed the process by addressing a handful of issues left in the draft WP report and by reporting on its legislative

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<sup>18</sup> WT/L/508 and WT/L/508/Add.1.

<sup>19</sup> Bhutan, Comoros, Equatorial Guinea, Ethiopia, Sao Tome and Principe and Sudan.

<sup>20</sup> LDCs that have not yet applied for WTO accession include Eritrea, Timor-L'Este, Somalia, South Sudan, Kiribati, and Tuvalu.

implementation. WTO Members formally approved the accession package at MC 10 in December. We expect that Afghanistan will complete the ratification process and become a WTO member in 2016.

### *Liberia*

Liberia's first WP meeting was held in July 2012. In July 2014, consultations between Liberia and the WTO Secretariat established a "road map" for completion of Liberia's accession negotiations in time for approval by MC 10 in Nairobi in December 2015. To achieve that goal, the United States worked intensively with Liberia in bilateral meetings in April and July, and in three WP sessions, in May, July, and October. Based on that work, and on Liberia's dedication to enacting necessary legislation even in the wake of the Ebola crisis that ravaged Liberia in 2014 and 2015, Members approved Liberia's WTO accession at MC 10 in December. We expect that Liberia will complete the ratification process and become a WTO member in 2016.

### **Prospects for 2016**

With Seychelles and Kazakhstan joining the WTO, and Members approving the accession packages of both Afghanistan and Liberia in 2015, there are few countries poised to make significant progress on WTO accession in 2016. Of the remaining 19 applicants, 10 have not made progress for over five years.<sup>21</sup> While Serbia and Bosnia and Herzegovina's accession packages are fairly close to completion, domestic political conflicts may pose a barrier to moving forward. Among others, Azerbaijan, and Belarus have made efforts to resume work, but these negotiations are not at an advanced stage. Ethiopia, Lebanon and Iraq have also expressed interest in resuming work in 2016.

## **K. Plurilateral Agreements**

### **1. Committee on Trade in Civil Aircraft**

#### **Status**

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of three WTO plurilateral agreements (along with the Agreement on Government Procurement and the Information Technology Agreement) that are in force only for those WTO Members that have accepted it.<sup>22</sup>

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, engines, flight simulators, and related parts and components, and to provide these benefits on a nondiscriminatory basis to other signatories. In addition, the Signatories have agreed provisionally to provide duty-free treatment for ground maintenance simulators, although this item is not covered under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

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<sup>21</sup> Andorra, Bhutan, Equatorial Guinea, Iraq, Lebanon, Libya, Sao Tome and Principe, Sudan, Syria, and Uzbekistan.

<sup>22</sup> Additional information on this agreement can be found on the WTO's website at:

[http://www.wto.org/english/tratop\\_e/civair\\_e/civair\\_e.htm](http://www.wto.org/english/tratop_e/civair_e/civair_e.htm).

There are currently 32 Signatories to the Aircraft Agreement: Albania, Canada, the EU<sup>23</sup> (the following 20 EU Member States are also Signatories to the Aircraft Agreement in their own right: Austria, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom), Egypt, Georgia, Japan, Macao China, Montenegro, Norway, Switzerland, Chinese Taipei, and the United States. WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, South Korea, Mauritius, Nigeria, Oman, Russia, Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, and Ukraine. The IMF and UNCTAD are also observers.

The Committee on Trade in Civil Aircraft (Aircraft Committee), permanently established under the Aircraft Agreement, provides the Signatories an opportunity to consult on the operation of the Aircraft Agreement, to propose amendments to the Agreement, and to resolve any disputes.

### **Major Issues in 2015**

The Aircraft Committee held a special meeting on July 15, 2015, and a regular meeting on November 5, 2015. At the special meeting in July, the Committee continued to discuss its work on the revision of the Product Coverage Annex in order to bring it into conformity with the 2007 Harmonized Commodity and Description System. At the regular meeting in November, the Committee agreed by consensus to open for acceptance the Protocol (2015) Amending the Annex to the Agreement on Trade in Civil Aircraft.

### **Prospects for 2016**

The Aircraft Committee agreed to hold its next regular meeting in November 2016. The United States will continue to encourage recently-acceded WTO Members to become Signatories pursuant to their respective protocols of accession, and will continue to encourage current Committee observers and other WTO Members to become Signatories to the Aircraft Agreement.

## **2. Committee on Government Procurement**

### **Status**

#### Membership

The WTO Agreement on Government Procurement (GPA) is a “plurilateral” agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO’s single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement.

Forty-five WTO Members are parties to the GPA: Armenia; Canada; the EU and its 28 Member States (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom); Hong Kong China; Iceland; Israel; Japan; South Korea; Liechtenstein; Montenegro; the Netherlands with respect to

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<sup>23</sup> Currently comprising 28 Member States: Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.

Aruba; New Zealand; Norway; Singapore; Switzerland; Chinese Taipei; and the United States (collectively the GPA Parties).

As of the end of 2015, ten Members were in the process of acceding to the GPA: Albania; Australia; China; Georgia; Jordan; Kyrgyz Republic; Moldova; Oman; Tajikistan; and Ukraine. Four additional Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: the Republic of Macedonia; Mongolia; Russia; and Saudi Arabia. In 2015, both Moldova and Ukraine successfully concluded accession negotiations and were formally invited to join the WTO GPA on September 16, 2015 and November 11, 2015, respectively.

### *Australia*

Australia applied for accession to the GPA in June 2015 and submitted its initial market access offer on September 8, 2015. Australia has set out an ambitious goal of completing its accession in 2016.

### *China*

When China joined the WTO in 2001, it committed to commence negotiations to join the GPA “as soon as possible.” In April 2006, China agreed in the United States – China Joint Commission on Commerce and Trade (JCCT) to submit its initial offer of coverage by the end of 2007. Based on these commitments, China submitted its application for accession to the GPA and its Initial Appendix I Offer on December 28, 2007. The United States submitted its Initial Request for improvements in China’s Initial Offer in May 2008. In accordance with a commitment that China made at the United States-China Strategic and Economic Dialogue in July 2009, China submitted a report to the GPA Committee on its plans for submission of a revised offer and the difficulties it has encountered in revising its offer.

At the JCCT meeting in October 2009, China committed to table a revised offer in 2010. China submitted its first Revised Offer in July 2010. The United States submitted its Second Request for improvements in China’s revised offer in September 2010. China also submitted its responses to the Checklist of Issues for Provision of Information Relating to Accession in September 2008.

In April 2010, the United States submitted questions to China on its responses to the Checklist of Issues. China replied to U.S. questions in October 2010. At the JCCT meeting in December 2010, China committed to table a second revised offer in 2011. During President Hu’s January 2011 visit to Washington, China expressly committed that its second revised offer would include sub-central entities. On November 30, 2011, China submitted its second Revised Offer, which included several sub-central entities. On July 3, 2012, the United States submitted its Third Request for improvements in China’s offer. On November 29, 2012, China submitted its third Revised Offer. On December 30, 2013, China submitted its fourth Revised Offer, which included lower thresholds, increased coverage of sub-central entities, and improvements in other areas. During the 24th JCCT meeting in December 2013, China committed to circulate a further revised offer later in 2014, which would provide coverage commensurate, on the whole, with that of existing GPA Parties.

China reconfirmed this at the GPA Committee’s meetings in June and October 2014. Parties requested that China submit its further revised offer as early as possible and certainly before the end of 2014, in order to enable the Committee to give appropriate consideration to it at the Committee’s meeting scheduled for February 2015.

On December 22, 2014, China submitted its fifth Revised Offer. While this fulfilled China’s 2013 JCCT commitment to submit an offer in 2014, it did not meet the U.S. request for improvements and was not

commensurate with the coverage provided by the United States and other GPA parties. In 2015, the United States and China held bilateral discussions on China's accession, but China submitted no new offer.

#### *Jordan*

Jordan submitted its initial offer of coverage in 2002. It has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession did not make any progress in 2015.

#### *Kyrgyz Republic*

The Kyrgyz Republic's accession to the GPA, which had been inactive since 2003, moved forward in 2009 when it submitted updated responses to the Checklist of Issues, but has not made progress since then.

#### *Moldova*

Moldova applied for accession to the GPA in 2002, and submitted its initial offer in 2008. In September 2012, Moldova submitted a revised market access offer and in January 2014 a second revised offer. In June 2014 Moldova circulated a third revised offer. In response to comments and questions from the GPA Committee, Moldova amended its Law on Public Procurement to align it with the GPA. Moldova submitted its final offer in January 2015. In September 2015, the GPA Committee adopted a formal decision inviting Moldova to join the GPA. Moldova has six months to deposit its instrument of acceptance (by March 21, 2016) and formally join the GPA.

#### *Montenegro*

In October 2013 Montenegro submitted its application for accession to the GPA. In November 2013 Montenegro circulated its initial offer. In June 2014 Montenegro submitted its second offer which contained meaningful improvements. It submitted its final offer in July 2014. On October 29, 2014 the GPA Committee adopted a formal decision inviting Montenegro to join the GPA. Montenegro has six months to deposit its instrument of acceptance but in April 2015 requested a two month extension for reasons related to its Parliamentary review process. On June 15, Montenegro deposited its instruments of acceptance with the Director-General of the WTO. The GPA entered into force for Montenegro on July 15, 2015.

#### *New Zealand*

In October 2012, New Zealand commenced negotiations on its accession to the GPA with the submission of its application for accession, initial market access offer, and its replies to the Checklist of Issues. In September 2013, New Zealand circulated its revised market access offer. In July 2014 New Zealand submitted its final offer. On October 29, 2014 the GPA Committee adopted a formal decision inviting Montenegro to join the GPA. At New Zealand's request, New Zealand had nine months to deposit its instrument of acceptance. This request was made to address a change of government in New Zealand. On July 13, 2015, New Zealand deposited its instrument of acceptance with the Director-General of the WTO. The GPA entered into force for New Zealand on August 12, 2015.

#### *Tajikistan*

Consistent with Tajikistan's commitment to initiate GPA accession negotiations, made in the course of its accession to the WTO in March 2013, Tajikistan applied for accession to the GPA and submitted its initial offer in February 2015.

## *Ukraine*

Ukraine commenced its accession to the GPA in 2011 with the submission of its application for accession, and in August 2011, submitted its replies to the Checklist of Issues. In 2012, Ukraine updated the WTO GPA Committee on its progress in bringing its domestic legislation into compliance with the GPA's requirements and its preparations of an initial market access offer. Ukraine submitted its initial offer in December 2012 and a revised offer in March 2014. In October 2014 Ukraine submitted its second revised offer which included significant improvements but remained short of the coverage offered by current GPA parties. On June 29, 2015 Ukraine submitted its final offer which fully responded to parties requests for improvement. On November 11, 2015, the GPA Committee adopted a formal decision inviting Ukraine to join the GPA. Ukraine has six months to deposit its instrument of acceptance and formally join the GPA.

## Observerships

Thirty WTO Members have observer status in the GPA Committee: Albania, Argentina, Australia, Bahrain, Cameroon, Chile, China, Colombia, Costa Rica, Georgia, India, Indonesia, Jordan, the Kyrgyz Republic, Malaysia, Moldova, Mongolia, Oman, Pakistan, Panama, Russia, Saudi Arabia, Seychelles, Sri Lanka, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and Viet Nam. (The observerships of Costa Rica, Pakistan, Seychelles, and Thailand were approved in 2015). Four intergovernmental organizations, the International Monetary Fund (IMF), International Trade Centre (ITC), the Organization for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD), also have observer status.

## Revised GPA

On December 15, 2011, the GPA parties reached agreement on the conclusion of negotiations, which had been conducted over more than a decade, to revise the GPA. The outcome included a revision of the text of the GPA to streamline and clarify its obligations, to incorporate flexibilities that reflect modern procurement practices, and to facilitate its implementation. The revised GPA also significantly expanded the procurement covered under the GPA. As part of the GPA package, the GPA parties adopted a set of Future Work Programs to be undertaken by the GPA Committee following the entry into force of the revised GPA. These include programs related to: (i) the treatment of small and medium sized enterprises; (ii) sustainable procurement; (iii) the collection and dissemination of statistical data; (iv) exclusions and restrictions in GPA parties' Annexes; and (v) safety standards in international procurement. The GPA Committee has also approved a decision relating to the use of electronic means to fulfill notification requirements under Articles XIX and XXII of the revised GPA.

In March 2012, the GPA parties formally adopted the results of the revision of the GPA. The GPA parties also agreed to undertake the necessary domestic approval procedures so that the revised GPA could enter into force as soon as possible. On December 2, 2013, the United States deposited its instrument of acceptance. On December 3, 2013 GPA parties committed to bring the revised GPA into force by March 31, 2014.

The revised GPA entered into force on April 6, 2014 after ten parties, two-thirds of the parties<sup>24</sup> to the GPA at that time, deposited their instruments of acceptance. As of December 2015, fourteen parties had

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<sup>24</sup> On April 6, 2014 the 15 Parties to the GPA were: Armenia, Canada, the EU (and its 28 Member States -- Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic,

deposited their instruments of acceptance. Only Switzerland has yet to deposit its instruments of acceptance. U.S. obligations to Switzerland are defined under the 1994 GPA.

### **Major Issues in 2015**

The GPA Committee accelerated its implementation of the four (of five) Work Programs that were adopted as part of the revised GPA covering: small and medium enterprises, sustainable procurement, the collection and reporting of statistical data, and exclusions and restrictions in parties' Annexes. The Work Programs were established to facilitate the implementation of the GPA and inform any future negotiations. In 2015, the parties to the revised GPA submitted their reports under each of the four Work Programs to the GPA Committee.

The revised GPA calls upon the GPA parties to adopt arbitration procedures to facilitate resolution of disputes over modifications to coverage. The GPA parties completed several rounds negotiations and made significant progress on the text setting out these procedures in 2015.

In March, Tajikistan applied for accession to the GPA. In June, Australia applied for accession to the GPA.

In July, the GPA entered into force for Montenegro. In August, the GPA entered into force for New Zealand. In September, Moldova was formally invited to join the GPA. In November, Ukraine was formally invited to join the GPA.

During 2015, the GPA Committee held five formal and informal meetings (in February, April, June, September and November) focused on accessions, new members, arbitration procedures, and Work Programs. In addition, the GPA Committee held further discussions at the informal meetings on the accessions to the GPA of Australia, China, Moldova, Saudi Arabia, Tajikistan, and Ukraine.

### **Prospects for 2016**

Moldova and Ukraine are expected to formally join the GPA. The GPA Committee will continue to work to advance GPA accessions, in particular, of Australia, China, and Tajikistan. The GPA Committee hopes to complete the work on arbitration procedures. The GPA Committee will continue its work on implementing the five Work Programs.

## **3. The Information Technology Agreement and the Expansion of Trade in Information Technology Products**

### **Status**

The ITA<sup>25</sup> is a plurilateral agreement to eliminate tariffs on certain information and communications technology (ICT) products. The ITA covers a wide range of ICT products, including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. To date, 82 WTO Members are ITA participants with Kazakhstan joining the ITA in July

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Slovenia, Spain, Sweden, and the United Kingdom), Hong Kong China, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Taiwan (Chinese Taipei), and the United States.

<sup>25</sup> More formally known as the "WTO Ministerial Declaration on Trade in Information Technology Products" (WT/MIN(96)/16).

2015 and its ITA commitments taking effect upon accession in December 2015. Among these 82 ITA participants, however, Morocco has yet to submit the formal documentation to implement its ITA commitments, and El Salvador has indicated that implementation would begin after the completion of domestic legal procedural requirements.

Despite the tremendous growth in global trade in technology products, which has nearly tripled to over \$4 trillion annually, the product scope of the ITA had never been updated. In 2012, a subset of ITA participants launched negotiations to expand significantly the product coverage of ITA. Those negotiations were concluded this year, as elaborated below.

## **Major Issues in 2015**

### The Expansion of Trade in Information Technology Products:

In July 2015, the United States and over 50 WTO Members announced the landmark agreement to expand the list of ICT products subject to duty elimination. This agreement, referred to as “ITA Expansion”, commits parties to phase out hundreds of tariffs on additional ICT products all over the world.<sup>26</sup> ITA Expansion applies to a list of 201 products, including advanced semiconductors, high-tech medical devices, global positioning systems, software media, video game consoles, and high-tech ICT testing instrumentation. This is the first major tariff-elimination deal at the WTO in 18 years.

The WTO estimates that ITA Expansion will eliminate tariffs on roughly \$1.3 trillion in annual global trade of ICT products, which global industry estimates will increase annual global gross domestic product by an estimated \$190 billion. With implementation of ITA Expansion, over \$180 billion in annual American technology exports will no longer face burdensome tariffs in key markets around the globe.

In 2015, the parties also took steps to implement ITA Expansion. In December 2015, the parties completed the process to review and approve the draft tariff schedules clarifying how each party will implement the commitments of ITA Expansion, including the tariff elimination phase-out periods for the 201 products. With only a few exceptions, each party will eliminate import tariffs for the 201 products as of July 1, 2016, or eliminate import tariffs over a three-year period ending July 2019.

### ITA Committee:

The ITA established the Committee of Participants on the Expansion of Trade in Information Technology Products (“the ITA Committee”) to carry out the provisions of the ITA, among which are to review the current product coverage with a view to incorporate additional products, and consider any divergence among ITA participants in classifying ITA products.

The ITA Committee held two formal meetings in May and October 2015.<sup>27</sup> In those meetings, the ITA Committee continued its deliberations on the Non-Tariff Measures (NTMs) Work Program. With regard to its work on the Electro-Magnetic Compatibility/Electro-Magnetic Interference (EMC/EMI) Pilot Project, the ITA Committee took note that 29 ITA participants (including the EU as one participant) have provided survey responses to the ITA Committee, and encouraged those that had not provided the information to do so without further delay. In considering ways to advance and expand its work on NTMs beyond EMC/EMI, the ITA Committee held an industry-driven workshop to discuss NTMs in ICT sectors on May 7, 2015.

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<sup>26</sup> “Declaration on the Expansion of Trade in Information Technology Products” (WT/L/956).

<sup>27</sup> The minutes of these Committee meetings are contained in WTO documents G/IT/M/62 and G/ITA/M/63 (not yet released).

The main issues raised in the workshop were transparency, standards for recognition of test results, e-labeling, and energy efficiency.<sup>28</sup>

The ITA Committee also continued a discussion of classification divergences on certain ITA products. These discussions are aimed at eliminating differences in the way ITA participants classify ITA products in their national tariff schedules. In 2013, the ITA Committee adopted a decision to endorse the classification of 18 ITA Attachment B items in the Harmonized System (HS) 1996 nomenclature. For the 37 remaining items listed in Attachment B, or identified as “for Attachment B” in section 2 of Attachment A, the WTO Secretariat prepared and circulated a list of these remaining items and their possible classification in HS2007 nomenclature. ITA participants would be required to indicate those items for which their classification diverges from the list prepared by the Secretariat; if an ITA participant’s classification differs, then it must identify the HS2007 sub-heading (i.e. HS 6-digit level) under which it classifies the Attachment B product in question. After receiving responses from all ITA participants, the WTO Secretariat will compile the answers and circulate to the ITA Committee. On that basis, ITA participants would then be able to assess the next steps to reduce any remaining divergences in the classification of such ITA products.

### **Prospects for 2016**

With respect to implementation of ITA Expansion, the parties will submit their approved schedules as a modification to its WTO tariff schedule of concessions in accordance with the Decision on 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions (BISD 27S/25).

The ITA Committee will continue its on-going work to reduce divergences in the classification of products covered by the ITA as well as continue to examine the recommendations that were suggested by industry representatives at the May 2015 NTM workshop. The next meeting of the ITA Committee will be held in the first quarter of 2016.

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<sup>28</sup> A factual report on the workshop is contained in WTO document [G/IT/28](#).