V. TRADE ENFORCEMENT ACTIVITIES

The focus of this chapter is on actions taken by the U.S. government in 2016. As discussed in Chapter I, trade enforcement will be a major priority of the Trump Administration.

A. Enforcing U.S. Trade Agreements

1. Overview

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

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

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

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

Favorable Resolutions or Settlements

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

The United States has been able to achieve this preferred result in 34 disputes concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value-added tax exemptions for certain domestically produced aircraft; China's Demonstration Base / Common Service Platform export subsidy program; China's Automobile and Automobile Parts Export Bases prohibited subsidy program; China's value-added tax on integrated circuits; China's use of prohibited subsidies for green technologies; China's treatment of foreign financial information suppliers; China's subsidies for so-called Famous Brands; China's support for wind power equipment; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; India's compliance regarding its patent protection; Indonesia's barriers to the importation of horticultural products (2 disputes); Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' automotive regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

Litigation Successes

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 47 cases to date. In 2016, the United States prevailed in a dispute involving India's discriminatory local-content requirements for solar cells and modules under its National Solar Mission (two merged complaints). The United States also prevailed before panels in two ongoing proceedings: a dispute challenging Indonesia's barriers on the importation of horticultural products, beef, poultry, and animals; and a compliance challenge on the subsidies to Airbus for large civil aircraft granted by the European Union, Germany, France, the United Kingdom, and Spain that continue to breach WTO rules. In prior years, the United States prevailed in complaints involving: Argentina's import licensing restrictions and other trade-related requirements; Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights; China's measures related to the exportation of raw materials; China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's claim of compliance in the dispute involving China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's measures affecting electronic payment services; China's countervailing and antidumping duties on broiler parts from the United States; China's countervailing and antidumping duties on automobiles from the United States; China's export restrictions on rare earths and other materials; the EU's subsidies to Airbus for large civil aircraft; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; the EU's tariff treatment of certain information technology products; India's ban on poultry meat and various other U.S. agricultural products allegedly to protect against avian influenza; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural

chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; Mexico's discriminatory soft drink tax; the Philippines' discriminatory taxation of imported distilled spirits; and Turkey's measures affecting the importation of rice.

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

ITEC

On February 28, 2012, Executive Order 13601 established the Interagency Trade Enforcement Center, or ITEC, to bring additional approaches to addressing unfair trade practices and foreign trade barriers, and to significantly enhance the Government's capabilities to challenge such barriers and practices around the world. ITEC increased the efforts devoted to trade enforcement, as well as leveraged existing resources more efficiently across the Administration. Personnel from various contributing Government agencies comprise a deep pool of analytical support for trade enforcement efforts.

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law. Section 604 of it establishes at USTR the Interagency Center on Trade Implementation, Monitoring, and Enforcement (ICTIME). ICTIME is to support the activities of USTR in investigating potential disputes under the auspices of the WTO and pursuant to bilateral and regional trade agreements; monitoring and enforcing trade agreements to which the United States is a party; and monitoring implementation by foreign parties to trade agreements. The statute expressly provides that federal agencies may detail employees to ICTIME to support its functions.

In 2016, ITEC/ICTIME continued its work. ITEC/ICTIME has played a role in providing research and analysis in support of multiple important WTO matters including Argentina's import licensing restrictions and other trade-related requirements; China's export subsidies in export bases for automobiles and automotive parts; Indonesia's restrictive import licensing; India's local content restrictions on certain solar energy products; China's export subsidies in demonstration bases for various industries; China's use of hidden and discriminatory tax exemptions for certain Chinese-produced aircraft; China's domestic support for corn, wheat, and rice production; and China's administration of tariff-rate quotas for corn, wheat, and rice. USTR took action at the WTO to address these practices that the United States considers are inconsistent with WTO rules and affect opportunities for U.S. exporters. In addition, ITEC/ICTIME has also provided research and analysis to assist in defending disputes brought against the United States at the WTO and acquired translations of hundreds of foreign laws, regulations, and other measures related to trading partners' adherence to international trade obligations.

ITEC/ICTIME has provided an important monitoring and analysis function to evaluate China's compliance with the WTO reports regarding the raw materials, rare earths, and electronic payment services cases. In addition, ITEC/ICTIME, in coordination with the Department of Labor, provided extensive analysis, translations, and other critical support for the case filed under the Dominican Republic – Central American Free Trade Agreement (CAFTA-DR) involving labor rights in Guatemala.

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

2. WTO Dispute Settlement

The United States had some enforcement successes in 2016. Most notably: (i) The United States prevailed in a challenge (also resolving two previous complaints) to Indonesia's import barriers against U.S. agricultural products from beef to fruits and vegetables to poultry. The panel agreed Indonesia's import restrictions and prohibitions were against WTO rules. Those import barriers are limiting opportunities for American farmers. (ii) The United States successfully challenged the EU's claim of compliance in the large civil aircraft dispute. A WTO compliance panel issued a report finding that the European Union, Germany, France, the United Kingdom, and Spain continue to breach WTO rules through subsidies the WTO previously found to have caused adverse effects to the United States. The compliance panel also found that these European governments further breached WTO rules by granting more than $4 billion in new subsidized financing for the A350 XWB – causing tens of billions of dollars in additional adverse effects to the U.S. industry. (iii) The United States prevailed in a dispute (covering two complaints) to India's "localization" rules that discriminate against U.S. solar cells and modules by requiring use of Indian products. American solar exports to India dropped 90 percent after the prohibited requirements took effect.

The United States also resolved three WTO disputes in 2016 without undertaking panel proceedings: (i) The United States reported that China has ended discriminatory value-added tax exemptions for certain aircraft produced in China. China had exempted domestic aircraft from a 17 percent value-added tax (VAT) while imposing those taxes on imported aircraft. (ii) China signed a Memorandum of Understanding with the United States in which China agreed to take specific actions that would remove all the WTO-inconsistent elements of its "Demonstration Bases-Common Service Platform" export subsidy program. Those prohibited export subsidies were being given to manufacturers and producers across seven economic sectors and dozens of sub-sectors located in more than one hundred and fifty industrial clusters throughout China. (iii) The United States had challenged a Chinese export subsidies program to auto and auto parts enterprises in China and reported that the instruments challenged in this dispute are no longer supporting these programs.

The United States launched four WTO actions in 2016, with USTR requesting WTO consultations: (i) With China on its administration of tariff-rate quotas (TRQs) for rice, wheat, and corn. China's administration of these TRQs is not transparent, predictable, or fair, and China's TRQ administration restricts imports. (ii) With China regarding its excessive support for farmers. By setting prices for rice, wheat, and corn well above market levels, China encourages overproduction by its farmers, disadvantaging U.S. farmers seeking export opportunities in China. (iii) With China on its export duties and quotas on various forms of nine different raw materials. These raw materials are key inputs into a variety of Made-in-America products from a range of sectors, including aerospace, automotive, electronics, chemicals, and more. (iv) With China following China's failure to bring its AD/CVD orders against imports of U.S. chicken broiler products into compliance with WTO rules.

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

3. Other Monitoring and Enforcement Activities

Subsidies Enforcement

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

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

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

During 2016, USTR and E&C staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by E&C officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. U.S. Government officers stationed at posts where E&C staff are not present have also handled such inquiries.

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

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

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

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

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

During the past year, over 100 trade remedy actions involving exports from the United States were closely monitored, notable examples of which include: (Antidumping) Brazil's investigation of acetic esters; Canada's investigation of gypsum board; China's separate investigations of distilled dried grains and iron-based amorphous alloy ribbon (strip); El Salvador's investigation of latex paint; and Korea's investigation of butyl glycol ether; and Turkey's investigation of cotton, (Countervailing Duty) China's investigation of distilled dried grains, (Safeguards) Chile's separate investigations of steel wire and steel nails; Malaysia's investigation of steel concrete reinforcing bar; the Gulf Cooperation Council's separate investigations of flat-rolled products of iron or non-alloy steel, and ferro silico manganese; Vietnam's investigation of semi-finished and certain finished products of alloy and non-alloy steel; and Zambia's investigation of flat-rolled products of iron, non-alloy steel, trailers and semi-trailers.

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

Disputes under Free Trade Agreements

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

On July 30, 2010, the United States requested cooperative labor consultations with Guatemala pursuant to Article 16.6.1 of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). In its request, the United States stated that Guatemala appeared to be failing to meet its obligations

under Article 16.2.1(a) with respect to the effective enforcement of Guatemalan labor laws directly related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work. The request specifically stated that the United States had identified significant failures by Guatemala to enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade, including: (1) the Ministry of Labor's (MOL) failure to investigate alleged labor law violations; (2) the MOL's failure to take enforcement action once it had identified a labor law violation; and (3) the judicial system's failure to enforce labor court orders in cases involving labor law violations.

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

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

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

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

The Panel held a hearing in Guatemala City on June 2, 2015. On November 4, 2015, the proceedings were temporarily suspended after Mr. Fuentes Destarac resigned from the Panel for reasons of availability. The Panel resumed work on November 27, 2015, when Mr. Ricardo Ramírez Hernández accepted his nomination to serve as a member of the Panel. The Panel's final report in the proceedings is expected in 2017.

CAFTA – DR: United States – Dehydrated Ethyl Alcohol

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

4. Monitoring Foreign Standards-related Measures and SPS Barriers

The Administration deploys significant resources to identify and confront unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as from technical regulations, standards, and conformity assessment procedures (standards-related measures) that restrict U.S. exports of safe, high-quality products. SPS measures, technical regulations, and standards serve a vital role in safeguarding

countries and their people, including by protecting health, safety, and the environment. Conformity assessment procedures are procedures such as testing and certification requirements used to determine that products comply with underlying standards and technical requirements.

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

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

In 2017, USTR will continue to deploy significant resources to identify and confront unjustified SPS and standards-related barriers. The NTE Report will continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during the past year, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made.

B. U.S. Trade Laws

1. Section 301

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

Operation of the Statute

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

In each investigation, USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, USTR must take action. If they are determined to be unreasonable or

discriminatory and to burden or restrict U.S. commerce, USTR must determine whether action is appropriate and if so, what action to take.

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

Developments during 2016

USTR received no Section 301 petitions during 2016. As described below, there were developments in the following Section 301 matter.

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

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

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

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

In January 2009, USTR decided to modify the action taken in July 1999 by: (1) removing some products from the list of products subject to 100 percent *ad valorem* duties since July 1999; (2) imposing 100 percent *ad valorem* duties on some new products from certain EU Member States; (3) modifying the coverage with respect to particular EU Member States; and (4) raising the level of duties on one of the products that was being maintained on the product list. The trade value of the products subject to the modified action

continued not to exceed the $116.8 million per year level authorized by the WTO in July 1999. The effective date of the modifications was to be March 23, 2009.

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

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

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

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

On December 9, 2016, representatives of the U.S. beef industry requested that USTR reinstate trade action against the EU because the TRQ is not providing benefits sufficient to compensate for the harm caused by the EU's hormone ban. On December 28, 2016, USTR published a *Federal Register* notice seeking public comments and scheduling a hearing in connection with the request.

2. Special 301

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act (enacted in 1994), and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242), USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as "Priority Foreign Countries" (PFC), unless those countries are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

In addition, USTR has created a Special 301 "Priority Watch List" (PWL) and "Watch List" (WL). Placement of a trading partner on the PWL or WL indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property.

Countries placed on the PWL receive increased attention in bilateral discussions with the United States concerning problem areas.

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

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

2016 Special 301 Review Results

On April 27, 2016, USTR announced the results of the 2016 Special 301 Review. The 2016 Special 301 Report was the result of stakeholder input and interagency consultation.

In 2016, USTR continued to enhance public engagement in the Special 301 process, to facilitate sound, well balanced assessments of IPR protection and enforcement efforts of particular trading partners, and to help ensure that the Special 301 Review is based on a full understanding of the various IPR issues in trading partner markets. USTR requested written submissions from the public through a notice published in the *Federal Register* on January 11, 2016 (https://www.regulations.gov, Docket Number USTR-2015-0022). In addition, on March 2, 2016, USTR conducted a public hearing that provided the opportunity for interested persons to testify before the interagency Special 301 Subcommittee about issues relevant to the review. The hearing featured testimony from representatives of foreign governments, industry groups, and nongovernmental organizations. The USTR posted on its website the transcript and video of the Special 301 hearing, and also offered a post-hearing comment period during which hearing participants and interested parties could submit additional information in support of, or in response to, hearing testimony. The 2016 *Federal Register* notice – and post hearing comment period – drew submissions from 62 interested parties, including 16 trading partner governments. The submissions that USTR received were available to the public online at https://www.regulations.gov.

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

During this period, there has been significant progress in a variety of countries. For instance, Korea, which appeared on the Priority Watch List in the original 1989 Fact Sheet, has since been removed from both the Priority Watch List and the Watch List. There have also been important advances in many other markets over the past 27 years that have been reflected in the Special 301 Report, including in Australia, Israel, Italy, Japan, Philippines, Qatar, Spain, Taiwan, the United Arab Emirates, and Uruguay.

Still, considerable concerns remain. In 2016, USTR received stakeholder input on nearly 100 trading partners, but focused the review on the 73 nominations contained in submissions that complied with the requirement in the *Federal Register* notice to identify whether a particular trading partner should be designated as PFC, or placed on the PWL or WL, or not listed in the Report, and that were filed by the deadlines provided in the notice. Following extensive research and analysis, USTR listed 11 countries on the Priority Watch List and 23 countries on the Watch List. Several countries, including Chile, China, India, Indonesia, Thailand, and Turkey, have been listed every year since the Report's inception. The 2016 listings are as follows:

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

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

When appropriate, USTR may conduct an Out-of-Cycle Review (OCR) to encourage progress on IPR issues of concern. OCRs provide an opportunity for heightened engagement with trading partners and others to address and remedy such issues. In the case of a country specific OCR, successful resolution of identified IPR concerns can lead to a change in a trading partner's status on the Special 301 list outside of the typical time frame for the annual Special 301 Report. In some cases, USTR calls for the OCR; in others, the trading partner governments can request an OCR based on projections for improvements in IPR protection and enforcement. For example, in 2015-2016, USTR removed Tajikistan from the Watch List in 2016 after conducting an OCR which identified steps Tajikistan had taken to improve IPR protection and enforcement including providing *ex officio* authority to customs authorities. Although Spain is not listed in the 2016 Special 301 Report, USTR determined that the OCR first announced in 2013 focusing on whether Spain had met certain specific benchmarks related to tackling copyright piracy on the Internet should continue. USTR also announced that it would conduct OCRs of Watch List countries Colombia and Pakistan, as well as of Tajikistan which was not listed. These four reviews are ongoing.

USTR also conducts an OCR focused on online and physical marketplaces that are reportedly engaged in piracy and counterfeiting and have been the subject of enforcement action or that may merit further investigation for possible IPR infringements. USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin to publish the Notorious Markets List separately from the Special 301 Report, as an "Out-of-Cycle Review of Notorious Markets," in order to increase public awareness and guide related enforcement efforts. The results of the 2016 Notorious Markets OCR were published on December 21, 2016 and highlight developments since the issuance of the previous Notorious Markets OCR in December 2015. Since publication of the first Notorious Markets List, several online markets closed or saw their business models disrupted as a result of enforcement efforts. In some instances, in an effort to legitimize their overall business, companies made the decision to close down problematic aspects of their operations; others cooperated with authorities to address unauthorized conduct on their site. Notwithstanding the progress that has occurred, online piracy and counterfeiting continue to grow, requiring robust, sustained, and coordinated responses by governments, private sector stakeholders, and consumers.

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

3. Section 1377 Review of Telecommunications Agreements

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

In its 2016 Section 1377 Review, USTR focused on barriers for Internet-enabled services, including restrictions on cross-border data flows; independent and effective regulators; limits on foreign investment; barriers to competition; international termination rates; satellites services; telecommunications equipment trade; and local content requirements. USTR described these issues in its annual National Trade Estimate report. This approach allowed USTR to describe, in one comprehensive report, all of the overlapping barriers concerning telecommunications services and goods, along with related digital trade issues.

4. Antidumping Actions

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

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

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

If Commerce's final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the dumped imports, an antidumping order is issued and CBP collects antidumping duties on imported goods. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded or the bonds posted are released.

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

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

The United States initiated 35 antidumping investigations in 2016 and imposed 30 antidumping orders.

5. Countervailing Duty Actions

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

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

The United States initiated 16 CVD investigations and imposed 16 new CVD orders in 2016.

6. Other Import Practices

Section 337

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

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

investigation if it determines that there is reason to believe there has been a violation of Section 337. Additionally, seizure orders can be issued for repeat or multiple attempts to import merchandise already subject to a general or limited exclusion order. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

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

During calendar year 2016, the USITC instituted 54 new Section 337 investigations and commenced 17 proceedings based on requests for modification or rescission of outstanding Commission orders. The USITC also issued, in calendar year 2016, remedial orders in ten investigations, as follows: *Certain Beverage Brewing Capsules*, 337-TA-929; *Certain Stainless Steel*, 337-TA-933; *Certain Dental Implants*, 337-TA-934; *Certain Personal Transporters*, 337-TA-935; *Certain Footwear Products*, 337-TA-936; *Certain Three-Dimensional Cinema Systems*, 337-TA-939; *Certain Network Devices*, 337-TA-944; *Certain Ink Cartridges*, 337-TA-946; *Certain Document Cameras*, 337-TA-967; *Certain Computer Cables*, 337-TA-975. All of these orders became final after presidential review.

Section 201

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

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

As of January 1, 2017, the United States had no measures in place under Section 201. The United States did not impose any Section 201 measures during 2016, and did not commence any safeguard investigations.

7. Trade Adjustment Assistance

Overview and Assistance for Workers

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

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

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

In FY 2016, $626,806,000 was allocated to State Governments to fund aspects of the TAA program. This included $391,452,000 for "Training and Other Activities," which includes funds for training, job search allowances, relocation allowances, employment and case management services, and related state administration; $209,374,000 for TRA benefits; and $25,980,000 for ATAA/RTAA benefits.

For a worker to be eligible to apply for TAA, the worker must be part of a group of workers that is the subject of a petition filed with the U.S. Department of Labor (DOL). Three workers of a company, a company official, a union or a duly authorized representative, or the American Job Center operator or partner may file a petition with the DOL. In response to the filing, DOL conducts an investigation to determine whether foreign trade was an important cause of the workers' job loss or threat of job loss. If the DOL determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the firm to apply for TAA, DOL will issue a certification. In FY 2016, the program served an estimated 126,844 workers.

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

Trade Adjustment Assistance for Farmers

On January 6, 2015, the U.S. Congress passed the Trade Preferences Extension Act of 2015, which reauthorized the TAA for Farmers Program for fiscal years 2015 through 2021. However, the U.S.

Congress did not appropriate funding for new participants for FY 2016. As a result, USDA did not accept any new petitions or applications for benefits in FY 2016.

Assistance for Firms and Industries

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

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

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

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

8. United States Preference Programs

Overview

The United States has a number of programs designed to encourage economic growth in developing countries by offering access to the U.S. market in the form of preferential duty reduction or elimination for eligible imports. These programs are: the African Growth and Opportunity Act (AGOA), the Generalized System of Preferences (GSP), and the Caribbean Basin Initiative (CBI)/Caribbean Basin Trade Partnership Agreement (CBTPA). Individual countries may be covered by more than one program. In such countries, exporters may choose among programs when seeking preferential access to the U.S. market.

U.S. imports benefiting from preferential access under these programs totaled $29.0 billion during 2016, up 6 percent from 2015. This compares to an overall 2.3 percent increase in total U.S. goods imports for consumption from the world over the same period. The increase was largely due to an 18 percent increase ($1.4 billion) in the value of U.S. imports under AGOA (excluding GSP) due to a rise in U.S. mineral fuel imports (mostly oil) and a $1.0 billion increase in GSP due mainly to jewelry, plastics, and electrical machinery imports. The increase was somewhat offset by a $660 million decline in imports (mostly organic chemicals) under CBI/CBTPA.

As a share of total U.S. goods imports for consumption, imports under the U.S. preference programs increased from 1.2 percent in 2015 to 1.3 percent in 2016. Each program's respective share of total U.S.

preferential imports in 2016 was as follows: GSP, 65 percent; AGOA (excluding GSP), 32 percent; and the CBI/CBTPA, 3 percent. See the sections below for more information on developments related to specific preference programs.

Generalized System of Preferences

History and Purposes

The U.S. Generalized System of Preferences (GSP) program was initially authorized by the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a ten-year period, beginning on January 1, 1976. Congress has extended the program 13 times, most recently in June 2015, continuing through December 31, 2017. Calendar year 2016 marked GSP's first full year of operations since 2012, after a lapse between the program's expiration in June 2013 and its renewal in June 2015.

The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for a wide range of products imported from designated beneficiary countries and territories. Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) take steps to afford workers' internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. U.S. industry has noted that a country's participation in the GSP program helps to promote a business and investment environment that benefits U.S. investors as well as the beneficiary countries. The GSP program also helps to lower the cost of imported goods for U.S. consumers and businesses, including inputs used to manufacture goods in the United States.

Beneficiaries

As of January 1, 2017, there were 120 designated GSP beneficiary developing countries (BDCs) and territories, including 44 countries and territories that are least-developed beneficiary developing countries (LDBDCs), which are eligible for a broader range of duty-free benefits.

On September 30, 2015, the President announced that Seychelles, Uruguay, and Venezuela had become "high income" countries as defined by the World Bank and that, consistent with the GSP statute, they would become ineligible for GSP benefits effective January 1, 2017. On September 14, 2016, the President announced that Burma would be added to the GSP program as a LDBDC, and that Burma would also be added to the list for the ASEAN group (which allows cumulation with other ASEAN members, including non-LDBDC GSP beneficiaries, to make it easier to qualify for GSP's value added requirement). This designation became effective on November 13, 2016.

Eligible Products

At the end of 2016, approximately 5,000 products were eligible for duty-free treatment under GSP, with nearly 1,500 products reserved for LDBDCs only. The list of GSP-eligible products from all beneficiaries includes most dutiable manufactures and semi-manufactures; selected agricultural and fishery products; and many types of chemicals, minerals, and building materials that are not otherwise duty free. The GSP statute precludes certain import-sensitive articles from receiving GSP treatment, including most textiles and apparel, watches, most footwear, glassware considered to be import-sensitive, and some gloves and leather products.[36] The products that receive preferential market access only when imported from LDBDCs include

[36] The Trade Preferences Extension Act of 2015 (Public Law 114-27), allows certain handbags, luggage, and flat goods to be considered for designation for duty-free treatment under GSP. These products were previously prohibited by law (19 USC 2463) from receiving GSP treatment.

crude petroleum, certain refined petroleum products, certain chemicals, plastics, animal and plant products, prepared foods, beverages, and rum, as well as many other products. On June 30, 2016, the U.S. Government announced that duty-free treatment under GSP would be expanded to include "travel goods": handbags, luggage, backpacks and goods found in pockets (such as wallets and eyeglass cases) for LDBDCs (and AGOA beneficiaries). At the same time, the United States deferred a decision on whether to also extend duty-free treatment for these products for other GSP beneficiaries.

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

Program Results

- *Value of Trade Entering the United States under the GSP program*: The value of U.S. imports claimed under the GSP program in 2016 was 18.07 billion, a 5.69 percent increase over 2015. This represented roughly 0.8 percent of all U.S. goods imports; 9.2 percent of goods imports from beneficiary countries; and 18.2 percent of goods imports from the beneficiary countries that would otherwise be subject to tariffs. By comparison, total U.S. imports of all products (both GSP eligible and non-eligible products) from GSP beneficiary countries decreased by 2.3 percent, by value, over the same period.[37] Top U.S. imports under the GSP program in 2016, by trade value, were motor vehicle parts; jewelry of precious metal; worked monumental or building stone and articles thereof; new pneumatic rubber tires; ferroalloys; flavored waters including mineral and aerated waters; electric motors and generators; air conditioning machines; optical fiber cables, insulated wire and electrical conductors; and taps, cocks, and valves for pipes, boiler shells, tanks and parts thereof.

  In 2016, based on trade value, the top five GSP BDC suppliers were, in order: India, Thailand, Brazil, Indonesia, and the Philippines. Nine of the top 50 GSP BDCs in 2015 were LDBDCs. In order of GSP trade value, these were Cambodia, Congo (DRC), Mozambique, Nepal, Ethiopia, Malawi, Bhutan, Burma (Myanmar) and Madagascar.

- *The GSP Program's Contribution to Economic Development in Developing Nations*: The GSP program helps countries diversify and expand their exports, an important development goal. A new USTR report on the Impact of Trade Preference on Poverty and Hunger (available at https://ustr.gov/sites/default/files/TPEA-Preferences-Report.pdf) provides statistics and examples that provide additional information on this contribution. For instance, Cambodia became the third largest bicycle exporter to the United States (though still far below China and Taiwan) as a result of the eligibility of bicycles for GSP for least developed countries only. Cambodia is also rapidly expanding its exports of the newly eligible travel goods. Several GSP beneficiaries witnessed significant increases in GSP trade in 2016, including Pakistan, Uruguay, Cambodia, and Ghana.

- *Efforts to promote wider distribution of the use of GSP benefits among beneficiaries*: As directed by the U.S. Congress, the Obama Administration sought to broaden the use of the GSP program's benefits among beneficiary countries. In 2016, USTR facilitated or carried out GSP outreach activities in Armenia, Burma, Pakistan, Paraguay, and Ukraine as well as briefings at the government-to-government level with a number of countries. For additional details and multiple-language GSP guides and country-specific analyses, go to "GSP in Use – Country Specific Information" under "Generalized System of Preferences" on the USTR website at

[37] Based on GSP-eligible countries as of July 31, 2016.

https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun.

Annual Reviews

The GSP Annual Review provides an opportunity to add or remove countries and/or products from eligibility under GSP based on petitions submitted by stakeholders and taking into account shifting market conditions (with respect to products) and concerns about individual beneficiaries' conformity with the statutory criteria for eligibility.

Conclusion of the 2015-2016 GSP Annual Product Review

The results of the 2015-2016 GSP Annual Product Review were announced in a Presidential Proclamation dated June 30, 2016. As discussed above, there was a significant expansion of GSP eligibility for "travel goods" for LDBDCs and AGOA beneficiaries. Consideration of duty-free treatment for those products for other BDCs was deferred at that time; an additional hearing was held regarding possible duty-free benefits for other BDCs on October 18, 2016. This issue was still pending at the end of 2016.

Product addition petitions for three other products were either denied or deferred. Three products were removed from GSP eligibility for India, and two more products of India lost GSP eligibility as a result of exceeding Competitive Need Limitations, as did one product from the Philippines. Three products were granted waivers of Competitive Need Limitations (one each from Brazil, Thailand, and Tunisia). The complete results of the 2015/2016 Annual Product Review and related Federal Register notices are available on the USTR website at https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20152016 and https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp.

A number of outstanding country practice petitions remained under review at year's end including petitions on Indonesia, Ukraine, and Uzbekistan regarding IPR protection; petitions on Georgia, Iraq, Thailand and Uzbekistan regarding worker rights or child labor concerns; and a petition on Ecuador regarding arbitral awards. USTR actively engaged with all of these countries, noting the link between their compliance with the GSP statutory criteria and their continued GSP eligibility. A country eligibility petition from Argentina was accepted for review on November 7, 2016, while the country eligibility review for Laos remained pending at the end of 2016. A complete list of the country practice and country eligibility petitions that remained under review as of December 2016 is available at https://ustr.gov/node/6526.

USTR announced the closure of two eligibility reviews during the year. Eligibility reviews focused on workers' rights were concluded for Fiji and Niger based on steps taken in those countries to address concerns raised in third party petitions.

2016/2017 GSP Annual Review

On August 25, 2016, a notice was published in the *Federal Register* launching the 2016/2017 GSP Annual Review. That notice is available at https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20162017. USTR has decided to accept for review five petitions to add a product to the list of those eligible for duty-free treatment under GSP, one petition to remove a product from GSP eligibility for all GSP beneficiary countries, and seven petitions to waive CNLs. Petitions submitted in response to that notice may be found at the same web site. Results from the 2016/2017 review are expected to be announced in June 2017.

The African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA), enacted in 2000, provides eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2016, 38 sub-Saharan African countries were eligible for AGOA benefits.

AGOA Eligibility Review

AGOA requires the President to determine annually which of the sub-Saharan African countries listed in the Act are eligible to receive benefits under the legislation. These decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has continued to meet the eligibility criteria and whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, among others, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized workers' rights. AGOA also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of internationally recognized human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, African governments, and other interested stakeholders. Through the AGOA eligibility review process, the annual AGOA Forum meeting *(see below)*, and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries in support of broad-based economic development. The annual review conducted in 2016 resulted in the reinstatement of the Central African Republic (CAR)'s AGOA eligibility, effective January 1, 2017, as a result of steps the government of CAR has undertaken to meet eligibility criteria related to rule of law issues.

An out-of-cycle review of South Africa's AGOA eligibility was initiated on July 21, 2015. On November 5, 2015, President Obama determined that South Africa had not made continual progress toward the elimination of several longstanding barriers to U.S. trade and investment, including unwarranted barriers to U.S. poultry, pork, and beef, and, therefore, was out of compliance with AGOA eligibility requirements. As a result, he notified Congress and the government of South Africa of his intent to suspend duty-free treatment for all AGOA-eligible agricultural goods from South Africa. On January 11, 2016, President Obama issued a proclamation to suspend South Africa's AGOA benefits in the agricultural sector on March 15, 2016. The two-month delay in the suspension of benefits was intended to provide South Africa with time to implement actions negotiated with the United States to resolve the outstanding barriers to U.S. trade. South Africa subsequently took the necessary actions to come into compliance with the relevant AGOA criteria. As a result, President Obama issued a proclamation on March 14, 2016 that revoked the earlier proclamation, and thus allowed South Africa's AGOA benefits in the agricultural sector to continue.

AGOA Forum

The annual United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as the "AGOA Forum," is a ministerial level meeting that brings together senior U.S. officials and their African counterparts to discuss ways to enhance trade and investment relations. At the September 2016 AGOA Forum held in Washington, DC, USTR and senior officials from more than a dozen U.S. Government agencies met with numerous African trade ministers, leaders of African regional economic organizations, and representatives of the African and American private sectors and civil society to discuss issues and strategies for advancing trade, investment, and economic development in Africa, as well as ways to increase two-way U.S.-African trade in light of the recent 10 year extension of AGOA. Based on a year-

long strategic review to consider past experiences and emerging trends, and to identify paths forward toward a more sustainable long-term U.S.-Africa trade and investment partnership, in September 2016 USTR issued a report entitled "Beyond AGOA—Looking to the Future of U.S.-Africa Trade and Investment." The report presents the case for deepening U.S.-Africa economic engagement beyond AGOA, explores substantive building blocks potentially important to a new U.S.-Africa trade architecture, and outlines several options for moving forward.

Total AGOA (including GSP) imports rose to $10.58 billion in 2016 compared to $9.27 billion in 2015 mostly due to an increase in AGOA imports of oil (up 24.6 percent) to $6.41 billion in 2016 compared to $5.15 billion in 2015. AGOA non-oil trade rose (1.1 percent) to $4.2 billion in 2016 from $4.1 billion in 2015, primarily due to an increase in transportation equipment imports under AGOA (8.3 percent) to $1.65 billion in 2016 compared to $1.52 billion in 2015. There were also increases in AGOA apparel trade ($1.01 billion compared to $992.6 million in 2015), agriculture trade ($487.5 million compared to $480.5 million in 2015), miscellaneous manufactures ($114.9 million compared to $76.8 million in 2015), and footwear trade ($23.6 million compared to $20.2 million in 2015). These increases were partly offset by sharp declines in AGOA minerals and metals trade ($545.3 million in 2016 compared to $607.2 million in 2015), chemicals and related products ($276.9 million compared to $367.8 million in 2015), and machinery trade ($18.4 million compared to $25.1 million in 2015),

Top U.S. imports under the AGOA program in 2016, by trade value, were mineral fuels, motor vehicles and parts, woven apparel, knit apparel, and iron and steel. In 2016, based on trade value, the top five AGOA suppliers were, in order, Nigeria, South Africa, Angola, Chad, and Kenya.

Caribbean Basin Initiative

The Caribbean Basin Initiative (CBI) is the term used to describe a collection of legislation that offers duty-relief for Caribbean imports into the United States, providing Caribbean products with a tariff advantage over other competing producers from developed countries with which the United States does not have such tariff preference programs. During the review period, the CBI remained a vital element in the United States' economic relations with its neighbors in Central America and the Caribbean.

The CBI began with the Caribbean Basin Economic Recovery Act (CBERA) and subsequently was expanded through the United States-Caribbean Basin Trade Partnership Act (CBTPA). In 2016, 17 countries and territories received benefits under the program: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. Countries which enter bilateral trade agreements with the United States cease to be eligible for CBI benefits under the CBERA or CBTPA; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, and Panama are in this category.

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

30, 2025. The TPEA also extended the value-added rule for apparel articles wholly assembled or knit-to-shape in Haiti until December 19, 2025.

In December 2015, USTR submitted its most recent biannual report to the U.S. Congress on the operation of the CBERA and its companion programs under the CBI. The report can be found on the USTR website, https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi.

Program Results:

- The total value of U.S. imports from beneficiary countries in 2014 was $8.2 billion, a decrease of $687.7 million from the previous year and of $3.6 billion from 2012. The decline in U.S. imports from CBI beneficiaries in both 2013 and 2014 was mostly due to a sharp decrease in U.S. imports of crude petroleum and refined petroleum products, reflecting falling U.S. consumption, coupled with increased U.S. production of crude petroleum. The shut down and maintenance of several refinery plants by Trinidad's Petrotrin refinery may also have impacted imports.

- The CBI's share of total U.S. imports was 0.4 percent in 2014 and 2013.

- The total value of U.S. exports to beneficiary countries was $12.8 billion in 2014,[38] up $314.6 million from 2013, but down $6.5 billion from 2012, due primarily to the entry into force of the U.S.-Panama TPA. The CBI's share of total U.S. exports was 0.9 percent in 2014 and 2013. The CBI region as a whole ranked as the 23rd largest market for U.S. exports.

[38] Domestic exports, free alongside ship (F.A.S.) value.