II. THE WORLD TRADE ORGANIZATION

A. Introduction

This chapter reviews the impact of the World Trade Organization (WTO) over its 15 year history, and outlines the work of the WTO in 2009 and the work anticipated for 2010. This work includes the multilateral trade negotiations launched at Doha, Qatar in November 2001, known as the Doha Development Agenda (DDA or Doha Round). This chapter details the ongoing work under the DDA as well as that of the WTO standing Committees and their subsidiary bodies and provides a review of the implementation and enforcement of the WTO Agreement. The chapter also covers the accession negotiations to expand the WTO's membership to include governments seeking to reform their economies and join the rules-based global trading system.

The United States remains strongly committed 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 World Trade Organization (WTO) continues to serve as the multilateral foundation of U.S. trade policy, playing a vital role as a vehicle for ensuring the ability of American farmers, ranchers, manufacturers and service providers to pursue new economic opportunities while also enabling global growth and development. The United States continues to operate in a leadership role at the WTO, working to ensure that trade fulfills its potential as a powerful contributor to the revival of the global economy and the renewal of growth in which benefits are broadly shared. The WTO provides a forum for enforcing U.S. rights under the WTO agreements to ensure that Americans receive the many 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 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 to be carried out since the end of World War II. The DDA negotiations remain, along with the day-to-day implementation and enforcement of the rules governing world trade, a U.S. priority reflecting the imperative of continued multilateral trade liberalization as part of the foundation that contributes to stability and growth in a dynamic world economy.

Throughout 2009, the United States worked to advance the Doha Round trade negotiations on to a course that would move the DDA forward toward a successful final agreement, and rallied other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows and economic opportunities worldwide. WTO Members had in each of the previous three years sought to move the Doha negotiations into the end game through meetings of Ministers intended to reach agreement on modalities for agriculture and non-agricultural market access (NAMA). Each such effort failed. Therefore, in 2009, the United States introduced a fresh approach. In meetings of Leaders and Ministers in various fora throughout the year, as well as through the work of senior officials in Geneva, the United States promoted not only a reenergized multilateral work process, but also supplemented such work with sustained, direct bilateral engagement between key players to close gaps on core issues of market access in industrial goods, agriculture, and services. The fall of 2009 saw these efforts begin to pay off.

2009 also offered an important demonstration of the WTO's role as an effective bulwark against "protectionist" impulses. "Protectionism" was first recognized as a danger by G20 Leaders at the Summit in Washington, DC in November 2008, when Leaders specifically committed not to raise trade barriers for a twelve month period. Immediately following this Summit, WTO Members decided at a December 2008 meeting of the WTO General Council that the WTO would monitor and report on newly imposed restrictive trade measures, utilizing the WTO's existing Trade Policy Review Body (TPRB) to fulfill the task. The United States actively participates in this monitoring and reporting process, which is not limited to G20 countries, but tracks the actions of all WTO Members and Observers.

In January, March, July, and November 2009, the WTO Director-General and WTO Secretariat issued reports on trade and trade-related policy developments as related to the global financial and economic crisis. WTO Members reviewed the first three reports (issued in January, March, and July) at TPRB meetings in February, April, and July 2009, respectively. The November 2009 report is to be reviewed at a February 2010 TPRB meeting.

The Director-General's early reports articulated fears of "significant slippage" in the fight against protectionism. However, reports later in the year noted that the resort to so-called "high intensity" protectionist measures had been contained overall and that there have been numerous instances of countries taking trade liberalizing and facilitating measures in response to the crisis. Put to the test, the multilateral trading system has held firm. Both the presence of WTO rules and very visible monitoring efforts at the WTO contributed to creating an environment in which Members were able to reshape and reconsider measures that might otherwise have triggered a protectionist spiral. However, continued vigilance remains important. In addition to work done at the TPRB, the day-to-day work of the WTO remains instrumental in buttressing multilateral efforts to contain protectionist impulses. Members must continue to use the standing WTO committees and other WTO bodies to shine a spotlight on individual Members' actions. Through discussions in these fora, Members seek detailed information on these actions and collectively consider them in light of WTO rules and their impact on individual Members and the system as a whole. The Members whose actions are being considered are then better able to factor trade concerns into domestic policy-making and avoid these concerns when pursuing various initiatives.

G20 Leaders renewed their commitment to resist "protectionism" at Summits in London in April 2009 and in Pittsburgh in September 2009. Similar political commitments were also repeated in 2009 in APEC and by other WTO Members. As 2009 ended, the economic crisis continued to highlight the importance of maintaining and expanding open markets, setting the stage for further efforts in 2010 to successfully conclude the Doha Round negotiations. In order to support the G-20 Leaders' commitments to resist protectionist measures, the public monitoring by the WTO of Members' trade measures aimed at restricting trade will also continue in 2010.

Finally, the WTO held its seventh Ministerial Conference, from November 30 to December 2, 2009. Held in Geneva, the conference's theme was "The WTO, the Multilateral Trading System, and the Current Global Economic Environment". The Ministerial Conference served as a low-key forum to allow Members to reflect on the role of the WTO and to review its ongoing work, including the Doha negotiations. The meeting featured a Plenary Session that lasted the entire session, along with two parallel Working Sessions. The Working Sessions focused on two broad sub-themes: Review of WTO activities, including the Doha Work Program; and the WTO's contribution to recovery, growth and development. Ministers agreed that the next Ministerial Conference will be held in 2011.

B. The WTO at 15 and American Interests

2010 marks 15 years since the United States became an original member of the World Trade Organization. In that time, the WTO has proven its worth as the bedrock of an open, rules-based global trading system. Through the rules and institutions that are already in place, the WTO has served to advance the interests of America's farmers, ranchers, manufacturers and service providers by providing them with certainty, transparency and stability in their efforts to compete for the business of the 95 percent of consumers who live outside the United States. Through its ongoing committee work and dispute settlement procedures, the WTO has provided a vehicle to address unfair foreign trade practices to ensure that the United States receives the benefits of WTO rules. And as a forum to pursue further multilateral trade liberalization in the Doha Round, the WTO provides Americans and people throughout the globe with the opportunity to pursue new economic opportunities for growth and development.

Created in 1995 as part of the results of the Uruguay Round of multilateral negotiations, in 2009 the WTO and its Members were called upon to fulfill a core role for which the organization and its predecessor General Agreement on Tariffs and Trade (GATT) were created – ensuring stable, open markets in the face of financial and economic crisis. Through the rules and monitoring efforts of the WTO, the world took a very different path in 2009 from that in the 1930s, when market-closing protectionist actions and reactions served to deepen and lengthen the Great Depression. Determined to avoid this dynamic, and to strengthen global security and peace through economic opportunity and growth in living standards, 20 founders created the GATT in 1947. That number reached 119 when the WTO was established in 1995, and now stands at 153, as the economic benefits of participation in the rules-based, multilateral trading system embodied in the WTO continue to attract new Members.

While the multilateral trading system has proven its worth by helping to maintain open markets in a time of economic crisis, its principal contribution since the signing of the GATT has been to expand open markets and create economic opportunity. The positive negotiating agenda of the GATT and WTO has been the expansion of economic opportunities through sustained reductions in global barriers to international commerce and enhanced trade and economic prosperity, in the context of a rules-based global trading system. The Uruguay Round (1986-1993) was the eighth such round since GATT was signed to pursue this objective, and brought new areas such as services, intellectual property rights (IPR) and agriculture fully into the global trading system. As described further below, the United States is pursuing further market-opening benefits through the achievement of an ambitious and balanced outcome to the Doha Round negotiations.

Multilateral trade negotiations under the GATT were central to post-War trade liberalization, and broader post-War institution-building aimed at enhancing global stability and security. The creation of the WTO was a central element of the success of six decades of negotiating efforts under the GATT. The creation of the WTO was a major step in the building of an open, rules-based global trading system that has greatly benefitted Americans. According to the 2005 findings of the Peterson Institute for International Economics, which considered a number of studies, cross-border trade and investment liberalization added roughly $1 trillion to Americans' annual income by 2003. The range of various estimates reported was between "$2,800 to $5,000 additional income for the average person and between $7,100 and $12,900 for the average household."[1]

A recent investigation by the U.S. International Trade Commission, reporting on U.S. trade policy since 1934, reviewed formal academic studies of the income gain to the United States from the Uruguay Round

[1] The United States and the World Economy, C. Fred Bergsten and the Institute for International Economics, January 2005, Washington, DC, page 68.

alone. The income gains to Americans from the Uruguay Round in the 5 studies reviewed ranged from 0.1 percent and 0.9 percent of GDP[2], which, in terms of 2008 GDP is between $14 billion and $130 billion.

Organizationally, the WTO continues to stand out within the world of international organizations by continuing to maintain a 'lean' approach to secretariat staffing, avoiding the growth of any bloated bureaucracy. With the United States leading the way at various points, the WTO has taken steps to increase the transparency of its operation across the board, from document availability to public outreach. Work continues on new and creative ways to bring further improvements in openness. WTO Members continue to set the course for the organization, and the Members themselves remain responsible for compliance with rules. U.S. leadership within the WTO will continue to be critical to advancing U.S. interests in the global trading system, to help restore global economic recovery and growth and to expand economic opportunity and the rule of law.

1994-2008: Performance of the U.S. Economy

Since the establishment of the WTO in1995, the overall performance of the U.S. economy has been consistent with the view that the WTO has served the interests of America and the American people. In 2009, U.S. participation in the WTO continued to serve American interests, in particular through its contribution to preventing protectionist responses to the financial and economic crisis that could have deepened that crisis. Because this contribution is not fully reflected in the broad economic trends since 1994, and to highlight the critical importance of the WTO in 2009, the following discussions first focus on the period 1994-2008 and then on 2009.

From 1994 to 2008 real gross domestic product (GDP) of the United States increased by 50 percent (2.9 percent annual average), with an average per capita real income increase by 30 percent (1.9 percent annual average).

Within the GDP, real manufacturing output increased by 50 percent between 1994 and 2008, apace with the overall growth of the economy. This increase was led by a better than 1,500 percent increase in U.S. output of computer and electronic equipment.

Non-farm employment in the United States increased by nearly 20 percent, or by 22.8 million, between 1994 and 2008. The rate of unemployment averaged a little less than 5.1 percent over the period. Real hourly work compensation rose by 21 percent for employees of non-farm U.S. business between 1994 and 2008.

Despite substantial growth in manufacturing output and overall employment, employment in manufacturing has shrunk considerably, by 21 percent, or by nearly 3.6 million jobs. In 1994, manufacturing accounted for 1-in-7 U.S. jobs, a figure that had fallen to 1-in-10 jobs in 2008.

The decline in manufacturing employment reflects in part, much more rapid increases in output per hour worked (productivity) in the U.S. manufacturing sector than in the economy as a whole. Between 1994 and 2008, output per hour worked in manufacturing increased by 70 percent, much more rapidly than the still strong 40 percent increase in output per hour in the entire U.S. non-farm economy.

[2] The Economic Effects of Significant U.S. Import Restraints, Sixth Update 2009, United States International Trade Commission, Publication 4094, August 2009, Washington, DC, page 103.

Productivity growth is among the most important factors influencing how rapidly real incomes grow and living standards rise. Among the expected benefits of trade liberalization is to shift economic resources toward more productive uses and to encourage investment in competitive industries. WTO rules, dispute settlement procedures and the predictability they provide, along with Uruguay Round trade liberalization, have likely played a positive role in some of the favorable developments in the U.S. economy for much of the period since 1994.

Further reductions in trade barriers since 1994, many of which stem from the phase-in of Uruguay Round commitments, have helped increase the value of trade relative to the U.S. economy. U.S. trade in goods and services (exports plus imports) has risen from 22 percent of U.S. GDP to 30 percent in 2008. Real exports over the period increased rapidly, by 112 percent, while real imports increased more rapidly still, at 143 percent.

Exports and Jobs. In 2010 and beyond, increased exports are one of our most promising avenues to support additional jobs for Americans. The President has committed to doubling exports in the next five years, an increase that will support two million jobs in America. With a return of the U.S. economy to positive growth, exports contributed 1.9 percentage points to the annualized growth rate of 4.0 percent in the second half of 2009.

The U.S. trade deficit in current dollars rose from $93 billion in 1994 (1.3 percent of GDP) to a peak of $769 billion in 2006 (5.7 percent of GDP), before falling back to $708 billion (4.9 percent of GDP) in 2008. The rise of the aggregate trade imbalance reflects many, largely macroeconomic factors, such as differential growth rates, different rates of saving and investment, international capital flows and monetary policy.

Market-opening trade policy in general should be assessed in areas where it does have effect: in expanding opportunities for trade, contributing to higher productivity and earnings, lowering prices and increase choice for household consumers and business purchasers alike, encouraging beneficial investment, and helping to enhance domestic living standards and rates of economic growth. Against these measures, U.S. economic performance in 1994-2008 is consistent with a country drawing advantage from more open markets, freer trade and a more predictable international trading system, manifested by not only the Uruguay Round outcome but in particular the WTO.

2009: Performance of the U.S. Economy

In 2009, the world economy slipped into deep recession and major counter-recessionary economic policy actions were taken by governments around the globe. Among these actions were repeated commitments by Leaders to resist the increase in barriers to international trade. In the 1930s, government policy actions had not been able to avert the worst of a major global depression. Among the more notable policy mistakes of the 1930s was the widespread reversion to highly restrictive trade policies, as countries sought to restore economic activity and jobs at home by driving out imports. There was no WTO then to restrain these trade restrictive actions. As many resorted to such trade restrictive actions, individual countries and the global economy suffered all the more, contributing to overall international instability during the years leading up to World War II.

The lessons of the 1930s were not lost in the last two years, in part because of 60 years of bipartisan U.S. leadership and broad-based multilateral efforts to build an open, rules-based global trading system through the GATT and then the WTO. The WTO and U.S. participation in that organization have proved extremely valuable to U.S. efforts to contain the recession, by avoiding the resort to protectionism in global markets.

Looking ahead, the Administration has underscored that exports promise to play an important role in U.S. economic recovery. Exports contributed 1.9 percentage points to the annualized real GDP growth rate of

4.0 percent in the second half of 2009. Pronouncements by Leaders at G-20 summits in 2009 made clear that, for the sake of stable and growing prosperity, major economies must work together to rebalance the world economy, in part by moderating the size of global deficits and surpluses in trade. For the United States this may mean less rapid growth of current consumption for a period as the country saves, invests, produces and exports more. Counterpart measures in large surplus countries include raising domestic consumption and increasing imports.

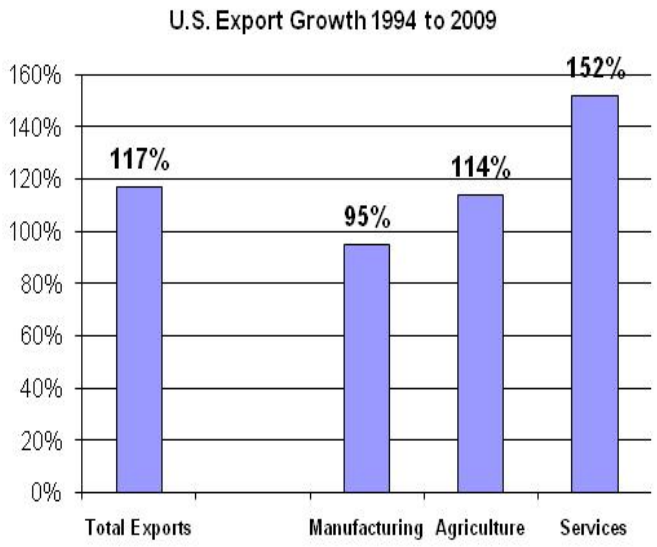
The rules-based trading system under the helm of the WTO is at the core of U.S. efforts to ensure that all countries respect their commitments and play by the rules. For the United States, which is likely to experience considerable export growth, the rules-based trading system assuring foreign market access is a necessity. Competitive global markets, a rebalanced world economy and sound economic policies can help assure future prosperity at home. The WTO is among the institutions which work in favor of such an outcome for the United States.

1994 to 2009: Changes in Trade Flows

Reflecting severely recessionary conditions, the volume of global trade fell sharply over the last year, down roughly 12 percent in 2009, according to estimates of the International Monetary Fund. The world recession similarly affected the volume of U.S. goods and services trade, down 15 percent in 2009 (annualized based on the first 3 quarters) as well as the nominal value of U.S. goods and services trade, down by 22 percent in 2009 (annualized based on the first 11 months on 2009). Despite this downturn in 2009, nominal U.S. trade in goods and services has increased during the 15-year timeframe of the existence of the WTO, up 126 percent between 1994 and 2009, with U.S. exports of goods and services up 117 percent and U.S. imports of goods and services up 135 percent. U.S. goods exports, accounting for nearly 70 percent of U.S. goods and services exports, are up 103 percent while U.S. services exports are up 152 percent. U.S. goods imports, accounting for 80 percent of U.S. goods and services imports, are up 127 percent while U.S. services imports are up 177 percent.

For U.S. goods exports, both U.S. manufacturing exports and U.S. agricultural exports grew strongly between 1994 and 2009, up 95 percent and 114 percent, respectively, despite each suffering nearly 20 percent declines in 2009 (see Annex 1, Table 1). Manufacturing exports accounted for over 80 percent of the $1 trillion in U.S. goods exports in 2009 (under Census definitions), while agricultural exports accounted for 10 percent and mineral fuels and mining products accounted for 9 percent. U.S. exports of high technology products grew by 98 percent during the past 15 years and accounted for 23 percent of total goods exports. Non-automotive capital goods, the largest U.S. end-use export category accounting for 37 percent of total goods exports in 2009, grew by 88 percent between 1994 and 2009. Industrial supplies, the second largest U.S. end-use export category accounting for 28 percent of U.S. goods exports in 2009, grew by 135 percent during the past 15 years.

Regionally, U.S. goods exports to developing countries grew by 141 percent between 1994 and 2009, significantly higher than the 70 percent growth to industrial countries (as defined by the International Monetary Fund) (see Annex 1, Table 2). Due to this rapid growth in exports to developing countries, the majority of U.S. exports (51 percent) are to developing countries. Among major countries and regions, exports to China exhibited the fastest growth, nearly 612 percent over the past 15 years to an estimated $66 billion in 2009. During this period, U.S. exports to Mexico more than doubled, while exports to Canada and the EU grew by 74 percent and 98 percent, respectively. However, weak economic conditions in Japan were a factor toward limiting the growth in that country, with U.S. exports falling by 7 percent between 1994 and 2009.



All of the major services export categories have grown between 1994 and 2009 (see Annex 1, Table 5). Export growth has been led by the statistical "private services category consisting of: education services, financial services, insurance, telecommunications, business, professional and technical services; and other unaffiliated services (up 277 percent), and the royalties and licensing fees category (up 210 percent). Of the nearly $304 billion increase in U.S. services exports between 1994 and 2009, the other private services category accounted for 55 percent of the increase and the royalties and licensing fees category accounted for 19 percent.

Since 1994, the United States continued to be a strong catalyst for global growth for most of these years, reflecting the strong growth of the U.S economy (up an overall 45 percent between 1994 and 2009 despite a 3.3 percent decline in 2009). U.S. goods imports more than doubled between 1994 and 2009, with U.S. manufacturing imports up 108 percent, U.S. agricultural imports up 175 percent, and high technology imports up 199 percent (see Annex 1, Table 3). U.S. imports increased substantially in all of the major end-use categories with the strongest growth exhibited in consumer goods (up 189 percent) and industrial supplies (up 170 percent). These two sectors combined accounted for 57 percent of the total level of U.S. goods imports. Within U.S. industrial supplies, petroleum imports increased 362 percent, from 8 percent of total goods imports in 1994 to 16 percent in 2009.

Regionally, U.S. import growth in 1994 to 2009 was more than three times as strong from developing countries as from industrial countries (220 percent to 60 percent) (see Annex 1, Table 4). Due to this growth, the total level of U.S. goods imports from developing countries was greater than industrial countries in 2009 (60 percent to 40 percent), reversing what the situation was in 1994 (43 percent to 57 percent). As with exports, the strongest import growth was from China, up 655 percent, and from Mexico, up 245 percent. U.S. imports from Japan, however, declined by 22 percent between 1994 and 2009.

The growth in services imports, up $236 billion between 1994 and 2009, was driven by the other private services category (accounting for 52 percent of the increase) (see Annex 1, Table 6). U.S. imports from this category were up 386 percent between 1994 and 2009. All of the other major services categories also grew since 1994, with categories such as the royalties and licensing fees category up 312 percent and direct defense expenditures category up 248 percent.

C. The Doha Development Agenda under the Trade Negotiations Committee

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. In addition, the mandate gives further direction on the WTO's existing work program and implementation of the WTO Agreement. The goal of the DDA is to reduce trade barriers in order to expand global economic growth, development, and opportunity. The main focus of the negotiations under the DDA is in the following areas: agriculture; industrial goods market access; services; trade

facilitation; WTO rules (i.e., trade remedies, fish subsidies, and regional trade agreements); and development.

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, oversees the agenda and negotiations in cooperation with the WTO General Council. The WTO Director General serves as Chairman of the TNC and worked closely with the Chairman of the General Council for 2009, Ambassador Mario Matus of Chile. Through formal and informal processes, the Chairman of the General Council, along with the WTO Director General, plays a central role in steering efforts toward progress on the DDA. (Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council.)

Discussions under the DDA in 2009 occurred against the backdrop of global efforts to address the international financial crisis, underscoring the importance of an ambitious Doha result that would result in new trade opportunities and thereby contribute to global economic recovery and growth.

As 2009 began, WTO Members were coming off the third successive year of unsuccessful efforts by small groups of Ministers to move the negotiations into the final stage by reaching a comprehensive agreement on modalities – the framework of variables that would define the depth of tariff cutting and other commitments and the extent of flexibilities in agriculture and non-agricultural market access (NAMA). Going into 2009, the core challenge of Doha remained unresolved, i.e., whether negotiators could secure the meaningful new market access in agriculture, NAMA and services necessary—particularly in terms of contributions by advanced developing countries—to fulfill the promise of Doha to create new economic opportunities and contribute to global development and growth. The recent emergence of China, Brazil, and India as recognized "majors" within the WTO represented an important step forward, moving the overall negotiating dynamic to more closely reflect the dynamic economic reality of today's trading system. As today's fastest growing economies, China, Brazil and India have enjoyed a new level of influence and each will be expected to take-on an increased level of responsibility to make the trade liberalizing decisions and contributions that would benefit not only its own economic interests, but also promote global economic growth and development to the benefit of all developing countries – as well as ensuring that the global trading system operates consistent with global economic realities.

Faced with previous failed attempts to move the Doha negotiations forward, the United States led efforts throughout 2009 to reorient the negotiating process onto a path to success, by pursuing new approaches to address significant gaps on core market access issues. The goal, as encapsulated by President Obama in a mid-November speech in Japan, is to work towards "an ambitious and balanced Doha agreement—not any agreement, but an agreement that will open up markets and increase exports around the world." The United States concluded that the most effective means of reaching this goal is to supplement multilateral negotiating efforts with sustained, direct, bilateral engagement between key players, including advanced emerging economies such as China, Brazil, and India. Working with other Members in Geneva and elsewhere, the United States developed this approach over the course of the year and undertook efforts to begin this process of engagement.

In a May visit to Geneva, Ambassador Ron Kirk urged exploration of ways to put the negotiations on a path to success, emphasizing the ultimate objective of delivering meaningful new market access, and not simply preserving the status quo. Ambassador Ron Kirk continued to press for a more positive direction in the Doha negotiations on the margins of Ministerial meetings of the Cairns Group in early June, the OECD in late June, APEC in late July and the AGOA Forum in early August, as well as in early September, when India hosted an informal meeting of over 35 Ministers in Delhi.

From July 8-10, the Leaders of the G-8 and G-5 meeting in L'Aquila, Italy expressed their commitment to a Doha success, in 2010. Recognizing the need for new approaches to the negotiations, Leaders instructed Ministers to explore immediately all possible avenues for direct engagement within the WTO, ahead of the September G-20 Leaders meeting in Pittsburgh. APEC Ministers echoed these sentiments in a July 22 statement following meetings in Singapore. On September 25, the G-20 Leaders also expressed their determination to seek a 2010 conclusion to the Doha Round, and again emphasized the need for direct engagement, stating, "We understand the need for countries to directly engage with each other, within the WTO bearing in mind the centrality of the multilateral process, in order to evaluate and close the remaining gaps."

In Geneva, various negotiating groups gradually reenergized their work over the course of the year, meeting in various formal and informal settings to advance work on technical and substantive issues. In particular, the fall witnessed numerous meetings of several groups including the Agriculture, NAMA, Services, Rules and Trade Facilitation negotiating groups. Much of this work proceeded according to work plans developed by the Chairs of these groups, and included monthly meetings in Geneva by Senior Officials.

The Seventh WTO Ministerial Conference took place in Geneva from November 30 to December 2, 2009, with the theme "The WTO, the Multilateral Trading System, and the Current Global Economic Environment". The Ministerial Conference was not intended to be a Doha negotiating session, but instead operated as a low-key forum to allow Members to reflect on the role of the WTO and to review its ongoing work, including the Doha negotiations. Ministers spent substantial time in their statements commenting on the importance of the Doha Round and expressing their views on various aspects of the negotiations. In his summary of Member discussions at the meeting, the Chair of the Ministerial Conference, Chilean Trade Minister Andrés Velasco, noted that Ministers reaffirmed the aim to conclude the Round in 2010 and for a stock-taking exercise to take place in the first quarter of 2010.

Prospects for 2010

As the negotiations under the DDA continue in 2010, the linchpin to Doha Round success will remain securing meaningful market access commitments in agriculture, NAMA and services, particularly from key advanced developing countries that have been the fastest growing economies and are increasingly key players in the global economy. To generate the kind of economic growth, development, and poverty alleviation that WTO Members committed to when they launched the Doha Round in 2001, key emerging markets must take on the additional responsibilities that come with their increased influence in the global economy and make commitments that result in meaningful new trade flows.

The United States will continue to play a leadership role and work with other WTO Members in various configurations in pursuit of a successful conclusion to the Doha Round that opens new markets and creates new trade flows. The challenge in 2010 will continue to be how to translate the expressions of political will, into concrete and specific details that will enable WTO Members to complete the work begun with the launch of negotiations at the Doha meeting.

1. Committee on Agriculture, Special Session

Status

Negotiations in the Special Session of the Committee on Agriculture are conducted under the mandate agreed upon at the Fourth WTO Ministerial Conference in Doha, Qatar that calls 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, calling 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 2009

Throughout 2009, the United States continued to lead the effort to move the DDA agriculture negotiations forward toward a successful final agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows.

Ambassador David Walker assumed the Chair of the Agriculture Negotiations in the spring of 2009 and chaired meetings through the remainder of the year in various formal and informal settings seeking to advance work on technical and substantive issues.

Ambassador Walker organized his efforts into two separate tracks: the "template" work on formats for schedules, and efforts to resolve the outstanding issues in the draft agriculture text. The template exercise focuses on identifying the precise data sets and specifying the common formats Members will use to prepare the schedules of commitments on domestic supports, export subsidies and market access. This activity occurred in the broad-based multilateral forum. Ambassador Walker also initiated Senior Official discussions on certain outstanding issues in the December 2008 draft text, specifically on the bracketed elements, or elements that the previous Chair explicitly identified as unresolved. Work on both tracks continued though the end of 2009.

Prospects for 2010

As the work on scheduling templates and outstanding modality issues continues in 2010, the linchpin to Doha Round success will remain securing meaningful market access commitments in agriculture and other areas, particularly from key advanced developing countries that have been the fastest growing economies and are increasingly key players in the global economy.

The U.S. objectives for agriculture reform will continue to focus on the principles of greater harmonization across WTO Members, substantial overall reforms, and specific commitments of interest in key developed and developing country Member markets. The United States seeks balanced, ambitious results for each of the three pillars. An ambitious outcome is the best way to fulfill the promise of the Doha Round.

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 non-agricultural goods. A strong and ambitious result in services is essential for a successful outcome of the Doha Round.

The 2005 Hong Kong Ministerial Declaration called for the negotiations to proceed to conclusion with a view to promoting the economic growth of all trading partners, with due respect for the right of Members to regulate in their domestic markets. The Hong Kong Declaration provided a framework for intensifying the negotiations, with the goal of encouraging Members to improve their commitments by removing significant limitations and covering a broader range of service sectors and supply channels (i.e., cross-border supply, consumption abroad, commercial presence, and presence of natural persons). To complement the existing bilateral request-offer process, the Hong Kong Declaration also encouraged negotiations to proceed on a plurilateral basis. Members subsequently developed a "plurilateral request process," through which like-minded Members joined together to develop collective market access requests for 21 sectors and issues of interest. The United States joined in co-sponsoring requests in the following 13 areas: architectural, engineering and integrated engineering services; audiovisual services; computer and related services; construction and related engineering services; distribution services; private education services; energy services; environmental services; financial services; legal services; Mode 3 (commercial presence); postal/courier services including express delivery; and telecommunication services.

Major Issues in 2009

The Council was relatively inactive during 2009, as several advanced developing country Members such as Brazil and China continued to resist advancing the services negotiations until there were breakthroughs in the NAMA and agriculture negotiations. Efforts to re-energize the services negotiations in the fall of 2009 succeeded in bringing negotiators together for two series (so-called "clusters") of services meetings in October and November. However, the tenor of those meetings was subdued. The topic of rules for the special treatment of least-developed country Members received additional attention toward the end of 2009 as more Members became involved in the development of a draft waiver from the most-favored-nation obligation.

Overall, progress to date in the negotiations has been incremental, such that considerably more work will be necessary to achieve the extent of services liberalization necessary for a positive outcome of the negotiations. The United States continues to press for a high level of ambition for services liberalization, particularly from the major emerging markets, in such key areas as computer and telecommunication services; distribution and express delivery; energy and environmental services; and financial services. Efforts by the United States in the CTS-SS to promote new ideas for propelling the negotiations forward have thus far met with resistance from other Members.

Prospects for 2010

Progress in 2010 will depend in large part on the willingness of other Members to move forward on services, which in turn will be influenced by the work in other areas of the single undertaking. The United States will continue to pursue new ideas and approaches for achieving a successful outcome to the services negotiations. In addition, work is likely to continue on the draft waiver for least-developed countries.

3. Negotiating Group on Non-Agricultural Market Access (NAMA)

Status

In the negotiations on Non-Agricultural Market Access (NAMA), which cover industrial goods, fish, and fish products, the United States continues to seek significant new competitive opportunities for U.S.

businesses through cuts in applied tariff rates, and the reduction of non-tariff barriers. USTR negotiators are pursuing these market access goals through multilateral, plurilateral, and bilateral channels.

Trade in industrial goods accounts for over 90 percent of world merchandise trade[3] and more than 90 percent of total U.S. goods exports. An ambitious outcome in the NAMA negotiations is thus critical, as it would provide an important opportunity to lower tariffs on manufactured products in key emerging markets like Brazil, India, and China, which are among the fastest growing economies in the world. Many emerging economies still retain prohibitive tariffs on manufactured goods, with ceiling tariff rates exceeding 150 percent in some cases. And because roughly 70 percent of the tariffs on goods traded by developing countries are paid to other developing countries, tariff liberalization under the Doha Round will have a direct and significant development impact.

Tariff Profiles for Selected WTO Members

Markets	% of Tariffs with WTO Ceiling	WTO Ceiling Tariff Average*	2008 Applied Tariff Average
United States	100%	3.9	3.9
European Union	100%	3.9	4
Argentina	100%	31.8	11.9
Brazil	100%	30.8	14.1
China	100%	9.1	8.7
Egypt	99.2%	27.7	9.2
India	69.8%	34.7	10.1
Philippines	61.8%	23.4	5.7
South Africa	96.1%	15.7	7.6

Source: WTO World Tariff Profiles 2009, U.S. International Trade Commission

* This calculation excludes products with no legal WTO ceiling rate.

Major Issues in 2009

In 2009, the Negotiating Group on NAMA focused primarily on advancing the agenda on non-tariff barriers (NTBs), which are an integral and equally important component of the NAMA negotiations. In line with the 2005 Hong Kong Ministerial Declaration, WTO Members continued to consider how NTBs could be addressed horizontally across all sectors, vertically within a single sector, and through a bilateral request/offer process. The United States sponsors NTB proposals on autos and automotive products; electronics; textiles, apparel, footwear, and travel goods labeling (with the EU, Mauritius, and Sri Lanka); remanufactured goods (with Japan and Switzerland); and transparency in export licensing (with Japan, Chinese Taipei, and the Republic of Korea).

Work throughout the year focused on priority NTB proposals agreed by Senior Officials in June 2008 and reflected in the NAMA Chair's draft texts of both July and December 2008. These proposals include autos and automotive products, electronics, textiles labeling, remanufactured goods, the "horizontal mechanism" (an additional procedure Members could use after the Round to address NTBs), and chemicals. Early in 2009, as a way to promote substantive discussion, the Chair invited Members to submit detailed questions on the priority proposals. In July 2009, the Chair set out a robust agenda for the fall, with negotiating weeks in September, November, and December. In addition to continuing the question and answer process, proponents were encouraged to submit revised negotiating texts. In September, the U.S. submitted revised texts on each of its sponsored proposals. The EU submitted proposals on automotive products and electronics, both of which diverge from the U.S. texts on the same sectors. Throughout the fall, Members engaged in detailed technical discussions – both within the negotiating group and domestically with experts and industries – to gain a better understanding on the substance of the proposals and to work towards consensus on them. The United States continues to engage fully in these discussions and remains a major proponent of eliminating or reducing NTBs in the DDA.

[3] WTO, International Trade Statistics 2009

On tariffs, there are several negotiating elements under discussion that will determine the market opening outcome in NAMA: (1) the tariff-cutting formula and specifics on the level of ambition to be achieved by developed and developing country Members; (2) the scope of exceptions available to developing countries applying the tariff-cutting formula; (3) flexibilities to be provided for least-developed country (LDC) Members and other developing country Members; and (4) a sectoral tariff component.

The Chair's text from December 2008 proposed a choice between three coefficients[4] (20, 22 and 25 depending on the level of flexibilities taken) for the approximately thirty self-designated developing countries[5] that are expected to apply the tariff cutting Swiss formula, and a coefficient of 8 for developed countries. This package presents a fundamental imbalance, whereby the United States and other developed countries would reduce all tariffs to below eight percent, while emerging economies would not only maintain much higher tariff rates, but extensive exclusions from the general tariff cutting rules would permit them to avoid making tariff reductions on hundreds, and sometimes thousands of important manufactured products. In order to correct this imbalance and effectively achieve the market access objectives laid out in the Doha mandate, the United States has continued to promote multilateral sectoral tariff elimination initiatives. To date, Members have proposed fourteen sectors that are being considered for such agreements. U.S. negotiators have also reached out to key emerging markets – namely China, Brazil, and India – to engage in direct bilateral discussions on how these countries can make a more economically meaningful market-opening contribution that will benefit U.S. exporters.

Work continues on the following sectoral tariff initiatives, proposed by various Members:

- chemicals;
- electronics/electrical products;
- industrial machinery;
- forest products;
- healthcare products (pharmaceuticals and medical equipment);
- fish and fish products;
- autos and related parts;
- bicycles and related parts;
- gems and jewelry;
- sports equipment;
- textiles, clothing and footwear;
- hand tools;
- raw materials; and
- toys

Throughout 2009, the United States and like-minded Members continued efforts to build momentum for sectoral initiatives by focusing on the technical aspects of individual sectors. Sector co-sponsors have provided Members with detailed trade and tariff information on each sector, as well as global trade and investment trends, to allow major traders and producers to evaluate the significant commercial benefits that could be realized through meaningful and broad-based sectoral liberalization. This technical information will be the basis for further discussions aimed towards crafting sectoral modalities that can work for all potential participants and ultimately yield ambitious and meaningful outcomes that will benefit the entire WTO Membership.

[4] A Swiss formula is a progressive non-linear formula under which high tariffs are cut more than low tariffs. The Swiss coefficient sets a ceiling that tariffs approach but never reach, thus determining the overall level of ambition of the formula. The lower the number, the more aggressive the tariff cuts. Members are negotiating the coefficients to be used in the Swiss formula to determine the depth of tariff cuts for developed country Members and the depth of the tariff cuts for developing country Members.

[5] Argentina; Bahrain; Brazil; Chile; China; Chinese Taipei; Colombia; Costa Rica; Croatia; Egypt; Hong Kong China; India; Indonesia; Israel; Korea; Kuwait; Malaysia; Mexico; Morocco; Oman; Pakistan; Peru; Philippines; Qatar; Singapore; South Africa; Thailand; Tunisia; Turkey; Venezuela; and UAE. There is some discussion on the development status of Chinese Taipei, Korea, and Croatia for the purposes of these negotiations.

Prospects for 2010

In 2010, U.S. negotiators will continue to press for economically meaningful new market access for U.S. manufactured goods – both in terms of reduced foreign tariffs and non-tariff barriers – and will engage with key advanced developing trading partners both bilaterally and multilaterally to achieve that objective. The United States remains committed to the view that true development gains can best be achieved through further real market liberalization by both developed and developing Members.

4. Negotiating Group on Rules

Status

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 also 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 similar issues relating to the countervailing duty remedy; (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, numerous papers and proposals have been submitted and have been subject to focused discussions in various settings. In 2005, the Chair also established a Technical Group as part of the Rules Group's work to examine in detail certain technical issues relating to antidumping.

The Rules Group received further direction at the Hong Kong Ministerial Conference in December 2005. On fisheries subsidies, Ministers acknowledged broad agreement on stronger rules, including a prohibition of the most harmful subsidies contributing to overcapacity and overfishing, and appropriate effective special and differential treatment for developing country Members. Ministers also directed the Rules Chairman to prepare consolidated texts of the Antidumping and SCM Agreements, taking account of progress in other areas of the negotiations. In November 2007, the Chairman of the Rules Group issued draft consolidated texts on antidumping, on subsidies and countervailing measures ("horizontal subsidies", *i.e.* subsidies that apply across all sectors of the economy), and on fisheries subsidies.

Prior to the meeting of Ministers in July 2008, the Chairman of the Rules Group issued a report to the Trade Negotiating Committee. In this report, the Chairman stated his intention to circulate revised texts on antidumping and horizontal subsidies as soon as possible after modalities in agriculture and NAMA were achieved, even though Members' positions on key issues remained far apart. The Chairman stated that these texts would reflect a bottom-up approach and would include draft legal language in areas of consensus and other areas where he believed convergence could potentially be achieved. The Chairman cautioned, however, that the new texts would not offer any "magic solutions" in the many areas where Members' positions differ dramatically. Regarding fisheries subsidies, the Chairman stated that further input from Members was necessary before he could issue a revised text. The Chairman noted that, to facilitate the process, he would issue a specific "road map" for moving forward, at the same time as he intended to issue a revised text on antidumping and horizontal subsidies. This road map would identify key questions that need to be addressed in order to advance the negotiations towards a new fisheries text. Although modalities were not achieved in agriculture and NAMA, on December 18, 2008, the Chairman

issued revised texts on antidumping and horizontal subsidies and a roadmap for fisheries subsidies. In keeping with his earlier pronouncements, the draft texts of December 18, 2008 reflect a "bottom-up" approach, with the most contentious issues contained in brackets with no legal text provided.

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing Regional Trade Agreements (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 33 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 2009

Antidumping

In February 2009, the Chair called a plenary session of the Rules Group, in which Members provided their initial overall reactions to the Chair's latest text. Nearly all Members expressed general support for the Chair's bottom-up approach and indicated that the revised text provided an adequate basis for future discussion. The United States expressed conditional support for the revised text but reminded Members that additional time would be needed for the new Administration to review the revised text. The United States therefore reserved the right to provide additional comments and proposals at a later point. The United States also noted that it continues to maintain the position that any final agreement on antidumping must address issues where the Appellate Body has overreached, such as the critical issue of zeroing.

Five additional plenary sessions on antidumping were held in 2009. The Chair established a three-pillared approach to these sessions, with particular topics for discussion drawn from (1) the bracketed items in the text, which the Chair perceived to be the most contentious or politically sensitive issues; (2) the un-bracketed items in the text, which the Chair considered to be issues on which there is some degree of consensus; and (3) Member proposals that were not reflected in the text. The Rules Group nearly completed its review of the antidumping text, though the most contentious and politically sensitive issues, such as zeroing and sunset, remain to be discussed in 2010. For the most part, Members were constructively engaged in the process, though Members took few new positions. Some progress has been made on technical issues, but there has been no sign of significant convergence on the most contentious issues.

A group calling itself the Friends of Antidumping (or FANs[6]), has been very active in the antidumping area since the beginning of the negotiations, and has generally sought to impose limitations on the use of antidumping remedies. The FANs group has submitted proposals on a variety of issues, some of which are reflected in the Chair's text and others that are not. Those that are not reflected in the text include: increasing the standing threshold from 25 percent to 50 percent of domestic production; increasing the *de minimis* dumping margin standard from two percent to five percent; increasing the negligible imports threshold for injury purposes by calculating import volumes as a percentage of total domestic consumption rather than import share; including a public interest test; including a mandatory lesser duty rule; and requiring authorities to "separate and distinguish" the effects of dumped imports versus other

[6] The FANs group is comprised of Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey.

factors (such as non-dumped imports) for causation of injury purposes. The United States is strongly opposed to each of these proposals.

The United States has continued working to build support among Members for proposals it had previously submitted, including those on issues such as injury causation, anticircumvention, new shipper reviews, facts available, and seasonal and perishable products, as well as a number of proposals aimed at improving transparency and due process in antidumping proceedings.

Subsidies/CVD

As in the antidumping negotiations, the Chair generally followed his "three pillars" approach in horizontal subsidies, covering a selection of bracketed and unbracketed issues and proposals not reflected in the draft text in each of the meetings held in 2009. The important bracketed issues included: low-cost financing (*i.e.,* state-owned banking practices), export credit rules, and a proposed redefinition of export competitiveness. The major unbracketed issues included: dual/regulated pricing, subsidy pass-through rules, and subsidy calculation methodologies. By the end of the year, the Rules Group finished its first review of the Chair's draft text on horizontal subsidies, although there was little movement towards consensus on any of the major issues. As a general matter, the United States continued to express concern throughout the year that the Chair's draft text would result in little, if any, strengthening of the current general subsidy disciplines, despite the Doha Rules negotiating mandate to clarify and improve the rules and address trade-distorting practices.

In September 2009, the Rules Group began the process of considering whether certain provisions in the Antidumping Agreement and the Chair's draft antidumping text should be "transposed" into or "harmonized" with the SCM Agreement. The initial phase of this exercise examined whether existing differences between the Antidumping and SCM Agreements are justified by inherent distinctions between the antidumping and countervailing duty remedies and if not, whether the differences are appropriate topics for possible transposition/harmonization. By the end of the year, the Rules Group finished its initial review of all the differences between the two existing agreements, but as a range of views was expressed, no definitive conclusions were reached.

Fisheries Subsidies

Discussions in 2009 focused on the questions contained in the Chair's "roadmap," which were drawn from elements of the draft text issued by the Chair in November 2007. That text sets out a broad range of prohibited subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries, as well as a prohibition of subsidies that affect fishing on "unequivocally overfished" stocks. The text also provides for a limited list of general exceptions available to all Members and additional exceptions for developing countries. Subsidies under both sets of exceptions would remain actionable under the existing SCM Agreement. In addition, the text requires Members not to cause depletion of or harm to, or create overcapacity with respect to, the fisheries resources of another Member. Finally, the text contains provisions concerning fisheries management systems, peer review through the UN Food and Agricultural Organization (FAO), notification and surveillance of Members' fisheries subsidies, dispute settlement, and transition arrangements.

The roadmap discussions were completed at the December 2009 meeting. The discussions were generally constructive, and some progress was made on technical issues (for example, clarifying the core elements of a fisheries management system that must be in place as a condition for granting most subsidies). However, the discussions produced little movement in fundamental positions. The United States and other Friends of Fish (including Australia, Argentina, Chile, Ecuador, Mexico, New Zealand, and Peru)

coordinated on a joint statement supporting the high level of ambition in the Chair's text, including a broad prohibition on subsidies. Japan, Korea, Chinese Taipei, and the European Union continued to object to the scope of the Chair's prohibition, particularly with respect to subsidies to cover operating costs such as fuel.

The issue of appropriate and effective treatment for developing countries was an important focus of the roadmap discussions, as of the negotiations overall, and continued to prove very difficult. The Chair's text provided considerable flexibility for subsistence level and small-scale developing country fishing, while limiting exceptions for developing countries to fishing activities within each country's Exclusive Economic Zone. Brazil, with support from China, Ecuador, and Mexico, argued that developing country flexibilities must be extended to include fishing activities on the high seas; India pressed for greater flexibilities for its large poor population engaged in fishing. Given the prominence of developing countries in the global fishing industry, these positions among the major developing country players have the potential to create large carve outs that could undermine the objective of the negotiations to curb subsidies promoting overcapacity and overfishing.

Regional Trade Agreements

There were no substantive discussions on regional trade agreements in the Rules Group in 2009. At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs (WT/L/671), which was agreed upon in the Negotiating Group on Rules and implemented in 2007. At the time of the adoption of the transparency mechanism, the Chairman of the General Council had noted that Members intended to conduct an initial review of the mechanism within one year. However, in December 2009, the United States and other Members acknowledged that there was not yet enough experience, particularly with regard to RTAs falling under the Enabling Clause, for the review to take place.

Prospects for 2010

In 2010, the United States will continue to pursue an aggressive affirmative agenda building upon the U.S. proposals submitted thus far with respect to, *inter alia*, preserving the effectiveness of the trade remedy rules; improving transparency and due process in trade remedy proceedings; and strengthening the existing subsidies rules. With respect to the transposition/harmonization exercise, the Rules Group will discuss unbracketed language that currently appears in the Chair's draft antidumping text that may also be relevant to countervailing duty proceedings. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work with others to further improve and refine many of the provisions included in the Chair's draft 2007 text. The Chair has indicated that he will issue a revised text on fisheries subsidies when he deems that the time is appropriate.

On RTAs, the transparency mechanism will continue to be applied in the consideration of additional RTAs. The initial substantive review of the mechanism, as foreseen by the Chair of the General Council, may take place subject to Members' views on whether there is enough experience under the mechanism to provide a basis for identifying areas where the mechanism may be improved. The United States will continue to advocate increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system.

5. Negotiating Group on Trade Facilitation

Status

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched under the August 1, 2004 Decision by the General Council on the Doha Work Program. The inclusion of negotiations on Trade Facilitation has greatly enhanced the market access aspect of the Doha Round negotiating agenda. Opaque border procedures and unwarranted delays faced at the borders of key export markets can add costs that are the equivalent of a significant tariff and are the non-tariff barriers that are most frequently cited by U.S. exporters.

The agreed negotiating mandate includes the specific objective of "further expediting the movement, release, and clearance of goods, including goods in transit," while also providing a path toward ambitious results in the form of modernized and strengthened WTO commitments governing how border transactions are conducted.

Major Issues in 2009

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2009 broad-based and constructive participation by Members of all levels of development—a positive negotiating environment that is seen as offering "win-win" opportunities for all. Of particular note was continued active leadership within the NGTF from Members representing significant emerging markets, including India, Brazil, the Philippines, and China which, by working closely with the United States and other Members, has helped to steer the negotiations forward in a practical, problem-solving manner. The "Colorado Group", consisting of the United States, Australia, Canada, Chile, Colombia, Costa Rica, the EU, Hong Kong China, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland, also continued to play a valuable role in the negotiations.

As recent Free Trade Agreements (FTAs) undertaken by the United States have been implemented, there has been a positive synergy with the WTO negotiations on Trade Facilitation. With partners as diverse as Chile, Singapore, Australia, Morocco, Bahrain, South Korea, Peru, Panama, Costa Rica, and Colombia, each FTA negotiated by the United States has included a separate, stand-alone chapter that contains significant commitments on customs administration, most of which are reflected in proposals at the NGTF. Each of the United States' current and future FTA partners has become an important partner and champion in Geneva for moving the negotiations ahead and toward a rules-based approach to trade facilitation.

For many developing country Members, results from the negotiations that bring improved transparency and an enhanced rules-based approach to border regimes 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 such an outcome would squarely address one of the factors holding back increased regional integration and south-south trade. Most Members see the negotiations as bringing particular benefits to the ability of small and medium-sized businesses to participate in the global trading system.
The modalities for conducting the trade facilitation negotiations, set forth as part of the August 1, 2004 General Council decision launching the negotiations, include the following: "Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII, and X of the GATT 1994 with a view to further expediting the movement, release, and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues."

The modalities also include references that underscore the importance of addressing implementation issues such as costs, potential implications with regard to infrastructure, capacity building, the status of LDC Members, and the work of other international organizations.

The work of the NGTF during 2009 was characterized by intensive, Member-driven, text-based negotiations. The group met in February, April and June to review individual Member proposals, then switched its focus in October and November to assembly of a draft consolidated negotiating text. Work proceeded quickly, and a complete draft text was issued in December. Significantly, the text was not a "Chair's text", based on the Chair's perception of Members' desired outcomes. Rather, the text includes all proposals on the table and modifications to those proposals that Members have suggested. Consistent with the Member-driven, bottom-up approach that has characterized the NGTF from the outset, future work will require continued engagement of Members with each other to resolve differences.

The proposals reflected in the draft negotiating text cover each of the areas provided for in the NGTF modalities. There are a number of proposals to promote transparent rules and procedures, including publication requirements such as a U.S. proposal on internet publication, proposals to promote appeal procedures and enquiry points, and a U.S. proposal on advance administrative rulings. There are also several proposals to expedite release and clearance of goods, including through pre-arrival processing, separation of release and clearance, and expedited shipment procedures (the latter a U.S. proposal), and to simplify and eliminate fees and formalities, such as through the Ugandan-U.S. proposal to eliminate consularization requirements. Likewise the draft consolidated negotiating text includes proposals on transit procedures and customs cooperation.

During 2009, the NGTF also continued its work on addressing the challenge of implementing the results of the negotiations that will face many developing country Members. The draft consolidated negotiating text includes new textual proposals from the United States and other Members on transition provisions for developing and least-developed country Members, intended to provide these Members with the flexibility necessary for them to fully implement the negotiating outcome, as well as the assurance that they will have the time and assistance to do so. In this connection, as part of the substantial assistance already being provided in this area, the WTO and assistance organizations, including the U.S. Agency for International Development, continued training programs with developing country Members to help them undertake assessments of their individual situations regarding capacity and make progress in implementing the proposals submitted. The Member assessments have made it apparent that many of the developing country Members have implemented—or are taking steps to do so—a number of the concrete measures proposed as new WTO commitments. At the same time, it is also clear that a number of developing country Members openly recognize that they have an "offensive" interest in seeking implementation by their neighbors of any future new commitments in this area. This realization has led to broad developed and developing country Member alliances on some of the proposals, such as the U.S. joint proposal with Uganda calling for elimination of consularization formalities and fees.

The proposals by Members for specific new and strengthened WTO commitments submitted thus far to the NGTF generally reflect measures that would capture forward-looking practices that would bring improved efficiency, transparency, and certainty to border regimes, while diminishing opportunities for corruption.

Prospects for 2010

In 2010, the NGTF will begin reviewing and refining the draft consolidated negotiating text in a continuation of the Member-driven, bottom-up process aimed at achieving a timely conclusion of the negotiations. As negotiations toward new and strengthened disciplines move forward, it will remain

important that work proceeds in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations—including with regard to the issues of special and differential treatment and technical assistance.

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 (STOs) 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 2009

In 2009, the CTESS met informally, and the Chair, Ambassador Manuel Teehankee (Philippines) held several small group consultations, most of which focused on DDA sub-paragraph 31(iii) of the negotiating mandate. In addition, the WTO Secretariat sponsored a workshop in September on environmental goods and services, with presentations from public and private sector speakers from the renewable energy, wastewater management and air pollution control sectors. The workshop also covered cross-cutting areas of interest, such as technology transfer and non-tariff barriers. Presentations from the workshop are available on the WTO website at http://www.wto.org/english/tratop_e/envir_e/wksp_goods_sept09_e/wksp_goods_sept09_e.htm.

In October, Senior Officials endorsed the CTESS Chair's work program for the Committee, as originally outlined in the Chair's report to the TNC in July 2008 (TN/TE/18). The work program provides for a detailed work plan under sub-paragraph 31(iii), which is underway, and which is aimed at identifying a "universe of environmental goods" of interest, as well as cross-cutting issues, by February 2010. The Chair's work program also calls for text-based negotiations to begin under sub-paragraphs 31(i) and 31(ii) in February 2010 based on Members' proposals.

While Members have voiced strong support for the Chair's work program, there have been relatively few new proposals, particularly in terms of identifying environmental goods of interest. The United States has led the way in terms of identifying goods of interest and environmental relevance and looks forward to having more detailed discussions on these and other identified goods.

Multilateral Environmental Agreements (MEAs)

Regarding sub-paragraph 31(i) on the relationship between MEAs and WTO rules, a large majority of Members, including the United States, Australia, and Argentina, have underscored the value of experience-sharing to enhance the mutually supportive relationship of trade and environment, as well as the importance of national coordination between trade and environment experts, and believe that these elements should form an integral part of any outcome under sub-paragraph 31(i). These same Members have opposed outcomes that would go beyond the sub-paragraph 31(i) and paragraph 32 mandates by altering Members' WTO rights and obligations (e.g., a proposal from the EU would reduce the independence of WTO panels when deciding disputes involving environmental matters).

Regarding sub-paragraph 31(ii), discussions have progressed significantly; however, there remain a few outstanding issues that will require further consultations (e.g., a proposal from the EU for automatic observer status to be granted to a number of MEA Secretariats that have participated in the CTESS' work).

Environmental Goods

Regarding sub-paragraph 31(iii), there continues to be, at this stage, a divergence of views among Members as to which goods would ultimately fall within the mandate. Moreover, there is still no agreement among delegations at this stage on the particular modalities for cutting tariffs. The Chair's work program is without prejudice to the proposals currently on the table.

Members made several new submissions during 2009: an expansive list of environmental goods in the clean energy category by Saudi Arabia; a nonpaper by Brazil outlining a process for a request-offer negotiation; a proposal by Argentina (TN/TE/W/74) calling for tariffs to be reduced or eliminated on goods used in projects under the Kyoto Protocol's Clean Development Mechanism (CDM); and a paper from Japan (TN/TE/W/75) on energy efficient goods.

Prospects for 2010

In 2010, the CTESS is expected to continue to move toward fulfillment of all aspects of the mandate under Paragraph 31 of the Doha Declaration, according to the Chairman's work program agreed among Senior Officials, and taking into account the progress made in related negotiating groups.

Under sub-paragraph 31(i), Members are expected to rely on previous discussions of their real world experiences in the negotiation and implementation of STOs set out in MEAs to draw conclusions for any text-based negotiations. The United States continues to view this experience-based exchange as the best way to explore the relationship between WTO rules and specific trade obligations contained in MEAs and maintains that these national experiences should form the basis for an outcome in the negotiations.

Discussions under sub-paragraph 31(ii) are likely to move to text in conjunction with sub-paragraph 31(i). Several Members have also noted their interest in exploring linkages between sub-paragraphs 31(i) and (ii), in light of the view that enhanced cooperation between the WTO and MEA secretariats could contribute to improving both international and national coordination, and could further contribute to a mutually supportive relationship between trade and environment regimes.
Finally, the CTESS is expected to continue to identify environmental goods of interest and related cross-cutting issues. The United States will continue to show leadership in advancing a robust outcome in the negotiations, including further development of an environmental goods and services agreement (EGSA), which we proposed in November 2007 in an effort to open markets for environmental goods and advance Members' environmental and development policies. In addition, as highlighted by Ambassador Ron Kirk

and several other trade ministers at the WTO Ministerial Meeting in December, we will work with other like-minded and ambitious Members to explore approaches to fast-track the elimination of tariffs on goods directly relevant to addressing climate change, such as solar panels and stoves, and wind and hydraulic turbines. We believe that such action could make an important contribution to both the DDA and the global climate negotiations, which will continue in 2010.

7. Dispute Settlement Body, Special Session

Status

Following the Doha Ministerial Conference in 2001, the Trade Negotiations Committee established the Special Session of the Dispute Settlement Body (DSB) 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 Special Session of the DSB (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.

Major Issues in 2009

The DSB-SS met five times during 2009 in an effort to implement the Doha mandate. 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 2009, Members continued their discussions in light of the chair's text.

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 non-parties 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 three particular areas where important questions have arisen in the course of various disputes.

Prospects for 2010

In 2010, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2010.

8. Council for Trade-Related Aspects of Intellectual Property Rights, Special Session Status

With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) on the implementation of Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ministers agreed at the 2001 Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. At the 2005 Hong Kong Ministerial Conference, Ministers agreed to intensify their work in order to complete these negotiations within the overall time-frame for the conclusion of the Doha negotiations. This matter is the only one before the Special Session of the TRIPS Council.

Major Issues in 2009

The TRIPS Council Special Session held three formal meetings in 2009, as well as several informal consultations. During that time, there was no significant shift in WTO Members' positions, nor any movement towards bridging sharp differences between competing proposals. Key positions are reflected in a 2005 WTO Secretariat document (TN/IP/W/12), which contains a side-by-side presentation of the three proposals before the Special Session. The Secretariat expanded this document in May 2007, with an addendum that describes the various arguments, and that presents questions raised by proponents of the proposals (TN/IP/W/12/Add. 1). In a July 2008 report to the Trade Negotiations Committee (TN/IP/18), the Chair of the TRIPS Council Special Session highlighted, in particular, ongoing divergences with respect to participation in the multilateral register system (i.e., whether the system would apply to all Members or only to those opting to participate in it) and to the nature of the legal obligations provided for in the system (i.e., the extent to which legal effects at the domestic level determine the effect of registration of a GI for a wine or spirit in the system). In 2009, the Chairman of the TRIPS Council Special Session delivered a report on the status of the negotiations and proposed ideas for future work.

The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Nicaragua, Paraguay, and Chinese Taipei continued to support the Joint Proposal under which Members would notify their GIs for wines and spirits for incorporation into a register on the WTO website. During 2008, the Republic of Korea and the Republic of South Africa formally associated themselves as co-sponsors of the Joint Proposal. Several Joint Proposal co-sponsors have submitted a Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits to the Special Session to set out clearly in draft legal form, a means by which Members could implement the mandate from paragraph 18 of the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement. Members choosing to use the system would agree to consult the system when making any decisions under their domestic laws related to GIs or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations—with regard to GIs—on Members that chose not to participate, nor would it place undue burdens on the WTO Secretariat.

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 wines and spirits. The current EU position on geographical indications combines two proposals: the multilateral GI register for wines and spirits, and an amendment to the TRIPS Agreement to extend Article 23-level GI protection to products other than wines and spirits. 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 protection as a GI in other WTO Member countries. In addition, the notified GI would be presumed valid against a competing rightholder, including a prior rightholder. Essentially, the system proposed by the EU could, as a practical matter, enable one Member to mandate GI protection in another Member simply by notifying that GI to the system. Such a proposal would negatively affect pre-existing trademark rights, as well as investments in generic food terms, and would directly contradict the principle of territoriality with respect to intellectual property in favor of a system based upon the unilateral and extraterritorial application of domestic law and national intellectual property regimes. While the EU has informally indicated possible modifications to its proposals, it has not presented these formally in the negotiations.

A third proposal, from Hong Kong China, remains on the table, although during 2009, this proposal was not discussed as extensively as the others.

Prospects for 2010

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, and will seek a more flexible and pragmatic approach on the part of the EU, so that the negotiations can be completed.

9. Committee on Trade and Development, Special Session

Status

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 special and differential treatment (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 the WTO Agreement. 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 have submitted 88 proposals to augment existing S&D provisions in the WTO agreement. Following intensive negotiations in 2002 and 2003, the CTD-SS agreed *ad referendum* on nearly a third of those proposals for consideration at the Fifth Ministerial Conference in Cancun, Mexico in 2003. Due to the breakdown of the DDA negotiations, these proposals were not adopted at Cancun. Since Cancun, WTO Members have taken no action to adopt them, and in November 2005, the Africa Group submitted a paper to the CTD-SS repudiating the agreed texts of these proposals. In 2004 and early 2005, the focus of the CTD-SS shifted to discussions on new approaches to address the mandate more effectively, and reflected a desire to find a more productive approach than that associated with the specific proposals that individual Members or groups tabled. Despite extensive discussions, Members were unable to reach agreement on an alternative framework for approaching the mandate of the CTD-SS.

Leading up to the 2005 Hong Kong Ministerial, Members focused in the CTD-SS on five S&D proposals put forth by the LDC Members. These included proposals on: 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. At the Hong Kong Ministerial Conference, Members reached agreement in these five areas. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration.

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough "accounting" of the remaining agreement-specific proposals. Though the number of proposals had been reduced considerably since their introduction in 2002 and 2003, divergences among Members' positions on the remaining proposals were quite wide. The Chair of the CTD-SS continues to work 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 report that there has been very little development on these proposals. However, some of the Chairs of the negotiating bodies indicate 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.

With respect to the remaining proposals still under consideration in the CTD-SS, Members have continued to focus their text-based discussions on six of the 16 remaining Agreement-specific proposals. These proposals cover issues relating to Article 10.2 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), Article 10.3 of the SPS Agreement, and Article 3.5 of the Agreement on Import Licensing.

Major Issues in 2009

The Special Session held four formal meetings in March, July, October, and December 2009 and a large number of informal plurilateral consultations. As Members were still in disagreement with respect to language in the Agreement-specific proposals, work in the Special Session focused primarily on the Monitoring Mechanism in 2009.

The Hong Kong Declaration directs the CTD-SS to "resume work on all other outstanding issues, including the cross-cutting issues, the Monitoring Mechanism and the architecture of WTO rules." The possible elements of a Monitoring Mechanism continued to be discussed during formal and informal meetings, where Members continued to emphasize the need for the mechanism to be simple, practical, and forward looking. There continues to be disagreement as to whether other negotiating groups and Committees with technical expertise should be involved in the monitoring of Agreement-specific S&D provisions and whether the scope of the mechanism should be broadened beyond monitoring S&D implementation.

Prospects for 2010

In 2010, work will continue on the remaining S&D proposals and on the underlying issues inherent in them. As in 2009, much of the practical work on S&D in 2010 is likely to take place in the other Negotiating Groups, for example the Negotiating Groups on Agriculture, Non-Agricultural Market Access, Services, and Trade Facilitation. However, it is also likely that discussions will continue in the CTD-SS toward a mechanism to monitor implementation of S&D provisions and other cross-cutting issues.

D. 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 2009

The WGTDF held two formal meetings in 2009. The first meeting was held on March 31, 2009. During this meeting, Members raised issues for discussion relating to a WTO Secretariat report that was based on an earlier Secretariat report on the WTO-hosted Expert Group on Trade Finance that met on March 18th, 2009 and other information gathered at the preparatory meeting of G-20 experts on trade finance, held in Washington, DC, on March 25, 2009. The Members also discussed general issues related to the current market conditions and trade finance.

The second meeting was held on September 22, 2009. During this meeting, Members discussed issues relating to trade finance, and the WTO Secretariat debriefed the Working Group on the outcome of the meeting of the Expert Group on Trade Finance convened by the WTO on September 15, 2009.

Prospects for 2010

In 2010, the WGTDF will continue to be a forum for discussing trade finance issues. In addition, the WGTDF will examine the relationship between trade, debt, and finance, and may make recommendations on possible steps that might be taken within its mandate and the 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 LDC Members.

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. During the 2005 Hong Kong Ministerial Conference, WTO Ministers recognized "the relevance of the relationship between trade and transfer of technology" and further agreed that, "building on the work carried out to date, this work shall continue on the basis of the mandate

contained in paragraph 37 of the Doha Ministerial Declaration." The WGTTT met four times in 2009, continuing its work under the Doha Ministerial mandate to examine the relationship between trade and the transfer of technology. Members have not reached consensus on any recommendations.

Major Issues in 2009

In the period since the Doha Ministerial, the WGTTT has considered submissions from the Secretariat, WTO Members, other WTO bodies, and other inter-governmental organizations.

In 2003, a group of developing country Members, led by India and Pakistan, circulated a paper entitled "Possible Recommendations on Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries." The United States and several other Members have objected to much of the analysis in this paper, which suggested that some WTO agreements were hindering the transfer of technology. In particular, the United States and other Members expressed the strong view that effective intellectual property rights protections promote the transfer of technology by private firms; that market-based trade and investment are the most efficient means of promoting technology transfer; and that governments should generally not mandate the transfer of technology. The United States has also argued that the contribution of commerce to technology transfer reinforces the case for continued trade and investment liberalization.

In 2008, India, Pakistan and the Philippines revised an earlier set of proposals, and these proposals continued to be the focus of discussion in 2009. One proposal under discussion is to improve the WTO website to allow Members to search more easily for submissions relating to technology transfer, and to establish a forum for governments and the private sector to exchange information about technological needs and offers. The United States has welcomed this constructive approach to the work of the WGTTT, and has requested more information on the changes proposed for the WTO web site.

During 2009, the working group also continued its discussion of presentations by Members and outside bodies on their experience and research regarding technology transfer. The working group continued the discussion begun last year of the World Bank's 2008 Global Economic Prospects Report as it related to technology transfer. The working group also considered a presentation by the Food and Agriculture Organization of a report on "The Linkage between Technology Transfer and Productivity Gains in Agriculture." This report focused on the improved productivity brought about through new technologies and methods in agriculture. In response, the U.S. noted the importance of this subject and the need for tools beyond technology transfer mechanisms to manage growing demand, such as post-harvest techniques, private sector growth, support for small and woman-owned farming, increasing trade flows, and good governance.

Prospects for 2010

No WGTTT meetings have been scheduled yet for 2010. It is expected that, in response to a request from the Chairman of the Group, developing country Members will make presentations on their national experience with technology transfer, and that the group will continue its examination of issues raised in the 2008 India/Pakistan/Philippines paper.

3. Work Program on Electronic Commerce

Status

Pursuant to the Hong Kong Ministerial Declaration, Members continue to explore ways to advance the Work Program on Electronic Commerce. To that end, Members decided during the 2009 Ministerial to reinvigorate the Work Program addressing development-related issues and the trade treatment, *inter alia*, of electronically delivered software. In addition, Members extended the moratorium on imposing customs duties on electronic transmission, first agreed to in 1998, until the next Ministerial Conference, scheduled for 2011.

Since 2001, the Work Program on Electronic Commerce has held several dedicated discussions under the auspices of the General Council. These informal discussions examined cross-cutting issues that the various sub-bodies of the General Council identified as affecting two or more of the various WTO legal instruments. The most controversial cross-cutting issue has been whether to classify electronically-delivered products (e.g., software, music and video) as a good or a service. Resolution of that issue has not been reached, but Members may examine it more thoroughly in the coming year.

Major Issues in 2009

The Work Program on Electronic Commerce remains an item in the Doha mandate. The Seventh Dedicated Discussion under the auspices of the General Council relating to the Work Program on Electronic Commerce took place in October and November 2009. The recommendations developed during the Seventh Dedicated Discussion were adopted by the Ministerial Conference on December 2, 2009. There has been no activity in any of the other WTO bodies charged with carrying out work under the Work Program.

Prospects for 2010

At the 2009 Ministerial Conference, Members decided that a reinvigorated Work Program should include development-related issues, basic WTO principles including among others non-discrimination, predictability and transparency, and discussions on the trade treatment, *inter alia*, of electronically delivered software. The United States will support these efforts, examining ways to make the moratorium permanent and binding, and ensuring that trade rules relevant to electronic commerce help maintain a liberal trade environment for electronically traded goods and services, including for electronically-delivered products. At the Ministerial Conference, Members agreed to have periodic reviews based on written reports of this Work Program in the General Council meetings of July 2010, December 2010 and July 2011.

E. General Council Activities

Status

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 Agreements 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 (TNC). 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 which have been given 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 DDA, and this report reviews these groups' work in sub-sections of Section D entitled *Working Group on Trade, Debt, and Finance* and *Working Group on Trade and Transfer of Technology*.

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 2009, the Chairman of the General Council, together with the Director General, conducted extensive informal consultations with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view towards making progress on the core issues in the DDA, as well as towards resolving outstanding issues on the General Council's agenda. In 2009, the main focus of work in the DDA negotiations was in the individual negotiating groups. Reports on those groups are set out in other sections of this chapter.

Major Issues in 2009

Ambassador Mario Matus served as Chairman of the General Council in 2009. In addition to work on the DDA, activities of the General Council in 2009 included:

Accessions and Observerships: New chairmen were appointed to the Working Parties established to examine the accession requests of Afghanistan, Iraq, Lao PDR, Samoa, Bahamas, and Seychelles. There were no new requests submitted to the General Council in 2009 to initiate accession negotiations. Gabon, on behalf of the Informal Group of Developing Countries, submitted a proposal to start a process of considering improvements to the existing institutional mechanism of accession and that progress reports be sent to the General Council. No formal action was taken by the General Council on this proposal. The Palestinian Authority, an observer at both the Sixth (Hong Kong) and Seventh (Geneva) WTO Ministerial Conferences, submitted an application for permanent observer status in the General Council. The Council has not yet acted upon that request. There were no other requests for observer status during 2009.

China Transitional Review Mechanism (TRM): In December, the General Council concluded its eighth annual review of China's implementation of its commitments. The United States and some other Members commented on China's progress as a WTO Member, while noting that China's transition to a market economy continues to fall short in a number of areas. The United States raised concerns about China's use of export restraints on raw materials, VAT rebates, export subsidies, and use of national versus international standards; bans on telecommunications services; restrictions in the postal express

market; the implementation of "Buy China" policies; and the lack of enforcement of intellectual property rights. The United States also expressed concerns about China's unpredictable agricultural policies, particularly with respect to arbitrary customs procedures and quarantine rules. The United States urged China to make further progress toward the institutionalization of market mechanisms, fairness, transparency, and predictability in its trade regime.

Other Members also expressed concerns about China's policy of imposing export taxes on raw material minerals exports and noted that China's participation in the TRM process had been lacking in that China failed to provide written responses to questions in advance of committee meetings and failed to provide any response to many questions. As a result, some Members concluded that the TRM process had fallen short of its full potential.

Bananas: The EU and Latin American banana supplying countries initialed the Geneva Agreement on Trade in Bananas (GATB) on December 15, 2009, which is designed to lead to settlement of the longstanding bananas dispute. Under the agreement, the EU will reduce tariffs on banana imports in eight stages until reaching 114 Euros per ton by 2017, thereby bringing itself into compliance with its WTO obligations. Separately, the United States and the EU initialed an agreement also designed to lead to settlement of their banana dispute. In that agreement, the EU undertakes not to reintroduce measures that discriminate among bananas distributors based on ownership or control of the distributor or the source of bananas, and to maintain a non-discriminatory tariff-only regime for the importation of bananas. Once the various parties conclude their domestic ratification procedures, the agreements will be signed and then enter into force. Upon entry into force, the EU will need to request formal WTO certification of its new banana tariffs. The GATB provides that once the certification process is concluded, the EU and the Latin American countries will settle their disputes and claims. Once that has occurred, the United States will also settle its dispute with the EU.

Waivers of Obligations: The General Council approved the following waivers: (1) the extension of a waiver from the provisions of paragraph 1 of Article I of GATT 1994, to allow developing country Members to provide preferential tariff treatment to products of least developed countries until June 30, 2019; (2) a request by the United States for a waiver from the provisions of paragraph 1 of Article I and paragraphs 1 and 2 of Article XIII of GATT 1994, until September 30, 2015, for the African Growth and Opportunity Act; (3) requests by the United States for the renewal of waivers from the provisions of paragraph 1 of Article I and paragraphs 1 and 2 of Article XIII of the GATT 1994, until December 31, 2014, for the Andean Trade Preference Act and the Caribbean Basin Economic Recovery Act; and (4) a request by Cape Verde for a waiver on the implementation of scheduled concessions and commitments until January 1, 2010. The General Council also adopted waivers for the Harmonized System 1996 changes to WTO schedules of tariff concessions for Argentina and Panama and waivers for the procedures leading to the verification and certification of Harmonized System 1996 changes to WTO schedules of tariff concessions for 64 other WTO Members. Annex II of this report contains a detailed list of Article IX waivers currently in force.

Review of the Exemption Provided Under Paragraph 3 of GATT 1994 (Jones Act): The General Council completed its sixth biennial review of the U.S. exemption under Paragraph 3 of GATT 1994 for the Jones Act. This exemption is reviewed every two years to determine whether the conditions creating the need for the exemption still prevail. The United States noted that it had provided its statistical reports and held informal consultations with interested Members. The next review will occur in 2011.

Global Financial Crisis: The General Council, through the TPRB, established mechanisms to monitor measures adopted by Members in response to the global economic and financial crisis and to report on such measures to the Members.

Prospects for 2010

The General Council is expected to be more active in 2010 as Members endeavor to bring the DDA negotiation to its concluding phase. In addition to its management of the WTO and oversight of implementation of the WTO Agreements, the General Council will continue to closely monitor work on all aspects of the DDA negotiations.

F. 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 Procedures, 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 (TRIMS)) and the Working Party on State Trading Enterprises.

The CTG is the forum for discussing issues and decisions which 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. The use of the GATT 1994 Article IX waiver provisions, for example, is considered in the CTG and the CTG gave initial approval to waivers for trade preferences granted to ACP countries and the Caribbean Basin Initiative (CBI) countries by the EU and the United States, respectively.

Major Issues in 2009

In 2009, the CTG held five formal meetings, in March, May, June, and two in October. As the central oversight body in the WTO for all agreements related to trade in goods, 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 airing initial complaints regarding actions that individual Members had taken with respect to the operation of goods-related WTO Agreements. Many of these complaints were resolved through consultation. In addition, three major issues were debated extensively in the CTG in 2009:

Waivers: The CTG approved several requests for waivers, including those related to the United States' request concerning the African Growth and Opportunity Act (AGOA), Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Promotion Act (ATPA), the request by Brazil, China, India and Korea for an extension of the waiver for preferential tariff treatment for least developed countries, Cape Verde's request for a waiver concerning the implementation of duty rate reductions, and the implementation of the Harmonized Tariff System and renegotiation of tariff schedules.

China Transitional Review: On October 30, the CTG conducted the eighth annual Transitional Review Mechanism (TRM) review of China, as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information and answered questions that Members posed, and the CTG reviewed the TRM reports of CTG subsidiary bodies. *(For a more detailed discussion of China's implementation of WTO commitments, see Chapter III.B.4.)*

Textiles: The CTG met several times to review a proposal by small exporting Members, including Turkey, to find ways to assist them with post-Agreement on Textiles and Clothing (ATC) adjustment

problems. These Members argued that the elimination of quotas resulted in a disastrous loss of market share from small suppliers to the large exporters such as China and India. They asked that the CTG study this adjustment issue with a view to adopting proposals to ease the transition. These proposals were blocked by the large exporting Members, such as China and India. They argued that 40 years of textile restraints were long enough and it was necessary for this sector to return to normal trade rules. China and India contended that any attempt to ease the transition to a quota-free environment would perpetuate the distortions which had characterized this sector for so long.

Prospects for 2010

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Post-ATC adjustment and the outstanding waiver requests will be prominent issues on the agenda.

1. Committee on Agriculture

Status

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

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

Under the watchful eye of the Committee, Members have, for the most part, complied with the agricultural commitments that they undertook as WTO Members. However, there have been important exceptions where other Members' agricultural policies have adversely affected U.S. agricultural trade interests. In these situations, the Committee has frequently served as an indispensable tool for resolving conflicts before they became formal WTO disputes.

Major Issues in 2009

The Committee held four formal meetings in March, July, September, and November 2009 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, 213 notifications were subject to review during 2009. 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 used the review process to raise concerns about Taiwan's administration of its tariff-rate quota (TRQ) system and tendering schedule for rice. The United States also raised concerns regarding the transparency and predictability of Thailand's TRQ allocation system for soybeans,

potatoes, corn, and other agricultural products. In addition, the United States used the review process to state its support for Argentina's requests to the European Union proposing multilateral negotiations to establish the bound Aggregate Measurement of Support (AMS) level corresponding to the actual number of EU Member States since its enlargement. The United States also used the review process to request that the EU notify food assistance provided by Member States, and to address other issues associated with EU enlargement.

The United States also raised questions concerning elements of domestic support programs used by Costa Rica, the European Communities, Jordan, Malaysia, Malta, Oman, the Philippines, South Africa, Switzerland, Taiwan, and Trinidad and Tobago.

During 2009, the Committee addressed a number of other issues related to the implementation of the Agriculture Agreement, such as: (1) development of internationally-agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (2) review of Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision[7] regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner; (3) annual monitoring of the follow-up to the Marrakesh NFIDC Decision on food aid of April 15, 1994; and (4) annual consultations, under Article 18.5 of the Agriculture Agreement, concerning Members' participation in the normal growth of world trade in agricultural products within the framework of commitments on export subsidies.

During 2009, the Committee conducted the eighth annual Transitional Review Mechanism for China, as required under China's Protocol of Accession to the WTO. The United States asked questions relating to China's domestic support for its pork industry, export VAT rebates, and the Chinese government's role in the agricultural sector, among other topics.

Also during 2009, the Committee conducted Korea's 5-year multilateral review of its implementation of the WTO Minimum Market Access Agreement to extend special treatment for rice imports, in accordance with the 2004 Rice Agreement in which the Special Treatment provisions (Annex 5 of the Agriculture Agreement) for rice were extended for an additional 10 years, i.e. until 2014.

Throughout the year, the Committee worked to improve the timeliness and completeness of notifications. As a cornerstone of these efforts, the Secretariat hosted a workshop in September on notification preparation, which was attended by most Member countries.

Prospects for 2010

The United States will continue to make full use of the Committee to ensure transparency through timely notification by Members and to enhance enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, or trade-distorting practices by WTO Members. The United States will continue to work closely with the Committee Chair and Secretariat to find ways to improve the timeliness and completeness of notifications and to increase the effectiveness of the Committee overall. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on LDCs and NFIDCs in accordance with the Agriculture Agreement.

[7] WT/L/384 General Council - Implementation-Related Issues and Concerns - Decision of 15 December 2000.

2. Committee on Market Access

Status

In January 1995, WTO Members established the Committee on Market Access (MA Committee), consolidating the work under the GATT system of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures. The MA Committee supervises the implementation of concessions on tariffs and non-tariff measures where not explicitly covered by another WTO body, and is responsible for verification of new concessions on market access in the goods area. The Committee reports to the Council on Trade in Goods.

Major Issues in 2009

The MA Committee held three formal meetings in April, July, and October 2009 to discuss the following topics: (1) the ongoing multilateral review of WTO schedules of Members' tariff concessions to accommodate updates to the Harmonized System (HS) 2002 tariff nomenclature and any other tariff modifications; (2) the WTO Integrated Data Base (IDB) and Consolidated Tariff Schedules (CTS) database; and (3) finalizing consolidated schedules of WTO tariff concessions in HS 2002 and 2007 nomenclature. The Committee also conducted its eighth annual Transitional Review of China's implementation of its WTO accession commitments.

Updates to the HS nomenclature: The MA Committee examines issues related to the transposition and renegotiation of the schedules of certain Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the HS nomenclature has been modified by the World Customs Organization in 1996, 2002, and 2007. Using agreed examination procedures, WTO Members have the right to object to any proposed nomenclature change that affects the level of another Member's tariff rates on bound items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of Members have completed the process of implementing HS 1996 changes, but Argentina and Panama continue to require waivers, and additional information is needed from Venezuela in order to finalize certification of its HS1996 documentation.

In 2005, the MA Committee agreed to new procedures using the CTS database and assistance from the Secretariat for the introduction into Members' schedules and verification of the 373 amendments to HS nomenclature that took effect on January 1, 2002 (HS 2002). Work on this conversion to HS 2002, which is essential to laying the technical groundwork for analyzing the tariff implications of the DDA negotiations, continued throughout 2009. At the October 2 meeting, the MA Committee verified the HS 2002 bound schedule from the United States. The next step will be for the WTO Secretariat to circulate the file for multilateral review for 90 days, after which, if no comments or questions are raised by the Membership, the U.S. bound schedule in HS 2002 will be formally certified.

In January 2007, the HS 2007 documentation was circulated to the WTO Membership, including the procedures and layout for the transposition from tariff schedules in HS 2002 to HS 2007. However, because DDA schedules (to be submitted in the HS 2002 nomenclature) will also need to be transposed into the HS 2007 nomenclature, the Committee decided that the current HS 2007 transposition exercise would be redundant of this effort and decided to postpone the current exercise and to review the situation at its next meeting in 2010.

Integrated Data Base (IDB): The MA Committee addressed issues concerning the IDB, which is updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. The United States continues to take an active role in pressing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members. As a result, participation has continued to improve, although several major economies have yet to report tariff and trade data for 2007 and 2008. For instance, China has yet to submit import data past 2003. In addition, as of September 2009, the following Members had not yet submitted tariff and trade information for any year to the IDB: Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Guinea Bissau, and Vietnam.

Consolidated Schedule of Tariff Concessions: The MA Committee continued work on implementing an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflect Uruguay Round tariff concessions; HS 1996 and 2002 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables. The CTS has been linked to the IDB and serves as the vehicle for conducting the DDA negotiations in agriculture and non-agricultural market access.

At the formal Committee meeting on July 13, the Committee adopted a decision (G/MA/238) to allow public access to the IDB and CTS databases as of January 2010 (with certain access conditions). The WTO Secretariat is preparing a public version of the internet analysis facility.

China Transitional Review: In October 2009, the MA Committee conducted its eighth annual review of China's implementation of its WTO commitments on market access. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation in the areas of export restraints on raw material inputs and value-added tax exemptions.

Prospects for 2010

The ongoing work program of the MA Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will continue to explore technical assistance needs related to data submissions and to finalize Members' amended schedules based on the HS 2002 revision. In addition, the Committee will reassess the work plan for conducting the conversion of Members' schedules to HS 2007.

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 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, 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 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 special and differential treatment; and regionalization.

Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments engaged in negotiating their 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); the 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 2009

In 2009, the SPS Committee held meetings in March, June, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions regarding transparency, equivalence, and regionalization, including their efforts to declare areas of their country free from specified pests and diseases.

The United States views these exchanges as positive developments as they demonstrate a growing familiarity with the provisions of the SPS Agreement and increased recognition of the value of the SPS Committee as a forum for the 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 2009, the United States raised a number of concerns with measures imposed by other Members, including restrictions imposed on U.S. live swine, pork, and pork products due to the outbreak of the human H1N1 virus, India's avian influenza restrictions, and bans imposed by several members on the use of the growth additive, ractopamine, in swine. Further, the United States, with a view to transparency, informed the SPS Committee of various U.S. measures, both new and proposed, such as the U.S. Food and Drug Administration's proposed Food Registry.

Other important issues before the SPS Committee include:

China's Transitional Review Mechanism: The United States and the EU submitted questions for the SPS Committee's eighth review of China's implementation of its WTO obligations as provided for in China's WTO Accession Protocol. The United States asked questions regarding China's BSE restrictions, requested information on the status of revision to China's sampling plans and microbiological criteria for food-born pathogens, H1N1 ban on live swine, pork and poultry, and expressed concerns regarding the science underlying China ractopamine-related import restriction. The United States also raised its concern that China's import bans related to low pathogenic avian influenza, which adversely affect the states of Arkansas and Virginia, do not appear to comply with OIE guidelines. China responded orally to questions and concerns raised by Members during the review and restated its commitment to implement fully the provisions of the SPS Agreement.

Notifications: Because it is critical for trading partners to know and understand each other's laws, 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 special and differential treatment. The United

States made 111 SPS notifications to the WTO Secretariat in 2008 and submitted comments on 144 SPS measures notified by other Members.

Private and Commercial Standards: In October, the Committee agreed to review and consider several recommendations on how best to proceed on the issue of private standards and their potential impact on trade. These recommendations were provided by individual members of the Committee's smaller working group and some of the proposed actions are likely to be considered by the full Committee in March 2010. The Committee has also agreed that action would only be taken if there was consensus among Members to do so.

The United States is monitoring the issue closely through its active participation in the working group. This group began its work a year ago by collecting specific examples of where private SPS-related standards may have had an impact on a country's ability to export products. The Secretariat distributed a questionnaire in February 2009 to solicit specific examples for the working group's review with responses that were compiled for discussion at the June Committee meeting. The United States remains quite concerned about whether this is an appropriate issue for the SPS Committee to be devoting resources to and continues to work with the Committee and other Members to address that concern.

Prospects for 2010

The SPS Committee will hold three meetings in 2010 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, including exchanges on BSE, AI, unjustified H1N1 restrictions, food safety measures, and technical assistance.

In 2010, the Committee will complete the Third Review of the Operation and Implementation of the SPS Agreement consistent with the Doha Declaration commitment to undertake such reviews at least every four years. The United States anticipates that the SPS Committee will focus on furthering priorities identified in the second review, including the issuance of guidance regarding *ad hoc* consultations under Article 12.2 of the Agreement, and the provision of technical assistance and special and differential treatment. Finally, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC.

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 incorporation of local inputs in manufacturing processes ("local content requirements") or measures that restrict a firm's imports to an amount related to the quantity of its exports or of its 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 CTG and in the Committee on Trade-Related Investment Measures (the 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 TRIMS by Members.

Major Issues in 2009

The TRIMS Committee held two formal meeting during 2009, in May and October.

In May 2009 the United States and the European Communities filed a joint submission with the Committee on "Certain New and Proposed Measures by Indonesia Addressing Local Content in Investment in the Telecommunications Sector." G/TRIMS/W/61(8 May 2009). This document posed factual questions to Indonesia about certain new and proposed measures applicable to investment in Indonesia's telecommunications sector, and in particular whether these measures are in conformity with provisions applicable to requirements for minimum local content under the TRIMS Agreement and GATT 1994. Indonesia responded to those question in a document dated September 17, 2009. G/TRIMS/W/63 (17 September 2009).

In October 2009 the United States and the European Communities filed a joint submission with the Committee on "Certain Indonesian Laws and Draft Implementing Regulations on Mineral and Coal Mining." G/TRIMS/W/70 (9 October 2009). This document posed factual questions to Indonesia about its existing law, and its draft implementing regulations, applicable to investment activities in the mineral and coal mining sector. In particular, the submission raised questions about whether these measures are in conformity with provisions applicable to requirements for minimum local content under the TRIMS Agreement and GATT 1994. As of the date of this report, Indonesia has not responded to these questions.

As part of the review of special and differential treatment provisions, the TRIMS Committee continued to consider several TRIMS-related proposals submitted by a group of Members from Africa. Although these proposals remain on the agenda of the TRIMS Committee, there has been little movement toward consensus on these issues. There was no substantive discussion of these proposals during the formal meetings.

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its seventh annual review in 2009 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main objectives in this review were to obtain information and clarification regarding China's WTO compliance efforts. During the October meeting of the TRIMS Committee, China addressed such issues of interest to the United States as its automobile and steel policies, as well as its guidance for foreign investment. U.S. agencies are analyzing China's policies in an effort to decide whether and how to pursue these issues in the future.

Prospects for 2010

The United States will engage other Members in efforts to promote compliance with the TRIMS Agreement and avoid weakening the disciplines of that Agreement.

5. Committee on Subsidies and Countervailing Measures

Status

The Agreement on Subsidies and Countervailing Measures (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 (CVD) action – to address subsidized trade that causes harmful commercial effects. Subsidies contingent upon export performance and subsidies contingent upon the use of domestic over imported goods are prohibited. All other subsidies are permitted, but are actionable (through CVD 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 2009

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two formal meetings in 2009, in May and October, and held informal meetings in March, July and October. The 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 Committee. Importantly, the Committee adopted modifications to its reporting formats in order to improve the timeliness and completeness of notifications. During the October meeting, the Committee held its eighth review of China's implementation of the SCM Agreement, pursuant to the Transitional Review Mechanism provided by China's protocol of WTO accession. Other items addressed in the course of the year included: examination and approval of specific export subsidy program extension requests for certain small economy developing country Members; election of Mr. Gerard Depayre to 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 CVD legislation and regulations; (2) CVD investigations initiated and decisions taken; and (3) Members' subsidy programs. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the SCM Committee at its May and October meetings.

In reviewing notified CVD 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 the end of 2009, 90 WTO Members (counting the 27 member states of the European Union as a single Member) have notified their CVD legislation or lack thereof; 35 Members have so far failed to make a legislative notification. In 2009, the Committee reviewed notifications of new or amended CVD laws and regulations from Argentina, Brazil, Ukraine, and the United States, among others.[8]

As for CVD measures, nine Members notified CVD actions they took during the latter half of 2008, and eleven Members notified actions they took in the first half of 2009. Specifically, the SCM Committee reviewed actions taken by several Members, including Australia, Brazil, Canada, the EU, and the United States.

[8] In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and CVD actions by a Member generally took place in the Antidumping Committee.

In 2009, the Committee examined four 2009 and eleven 2007 new and full subsidy notifications. Unfortunately, numerous Members have yet to make even an initial subsidy notification to the WTO, although many of them are least developed country Members. In May 2009, the United States submitted its 2007 new and full subsidies notification, detailing over 50 federal programs and over 500 state programs.

Notification Improvements: During 2009, the SCM Committee adopted several changes to the standard format for semi-annual reports of countervailing measures and the minimum information to be provided in connection with the notification of preliminary or final countervailing measures, as required under Article 25.11 of the SCM Agreement. In October 2009, the Committee adopted changes analogous to those made in the Antidumping Committee, as well as certain proposals made by the United States. The new notification format streamlines and improves the information available in notifications of preliminary and final countervailing actions. The new format will also result in helpful new information being provided, such as the names of programs determined to be countervailable in all CVD proceedings. Members are also now encouraged to submit electronically to the WTO Secretariat copies of the public determinations of countervailing duty actions – even if in a non-WTO language – as attachments to the *ad hoc* notifications of preliminary and final determinations. Overall, the additional information provided will increase transparency as to countervailing duty actions taken and help Members to identify trade-distorting subsidy practices.

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 this initiative throughout the year and developed proposals that would encourage Members to be more transparent in their industrial subsidy policies. Discussions took place throughout 2009, and consequently, the Committee agreed that a new annex should be included in the Committee's annual report that will provide greater detail regarding the extent to which each Member has or has not met its subsidy notification obligations. Additionally, a new "one-time" notification format was created for Members – largely least developed country Members – that have not established a legal framework and competent authorities to conduct CVD investigations. Lastly, Committee Members agreed to provide all notifications electronically to the Secretariat, which will facilitate and expedite circulation and posting on the WTO website.

China Transitional Review: At the October meeting, the SCM Committee held its eighth review of the implementation of the commitments relating to subsidies, countervailing duties and pricing policies, pursuant to the People's Republic of China Protocol of Accession Transitional Review Mechanism. During the Transitional Review in 2009, the United States reiterated its concerns as to the lack of provincial and local programs in China's subsidy notification and raised several other issues, including export-contingent subsidies, industrial subsidy policy administration, government assistance in the textile and civil aerospace sectors, price controls on fuels, and land administration.

As a result of pressure from the United States and other WTO Members, China submitted its first subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification covered over 70 subsidy programs, it omitted numerous programs and failed to include any subsidies provided by provincial and local government authorities. The United States has devoted significant time and resources to researching, monitoring and analyzing China's subsidy practices, which helped to identify the very significant omissions in China's subsidy notification and lay the groundwork for the further pursuit of issues in the context of the Committee's work or WTO dispute settlement *(see, for example, the Dispute Settlement Understanding section below)*. During the Transitional Review, China

stated it is in the final stages of its internal review with respect to its next subsidy notification. Unfortunately, however, China also stated that this next notification will not include information on provincial and local programs. In light of the importance of this information, the United States will have to consider alternative approaches to address this continuing 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.[9] The General Council, in 2007, acting on an SCM Committee recommendation, extended the application of the special procedure. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, 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.

During 2009, the SCM Committee reviewed and approved over 40 export subsidy program extension requests under the special procedure. The reviews focused on satisfaction of the detailed standstill and transparency requirements set out in the special procedure. Some of the beneficiary Members used the opportunity of the review to highlight steps they are undertaking to prepare for the elimination of the export subsidies on schedule in 2015.

Permanent Group of Experts: Article 24 of the SCM Agreement directs the Committee to establish a Permanent Group of Experts (PGE) "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The SCM Agreement articulates three possible roles for the PGE: (i) 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; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) 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. Article 24 of the SCM Agreement further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

At the beginning of 2009, the Permanent Group of Experts had five members: Mr. Asger Petersen (Denmark), Dr. Chang-fa Lo (Chinese Taipei); Dr. Manzoor Ahmad (Pakistan); Mr. Zhang Yuqing (China); and Mr. Jeffrey A. May (United States). Mr. Peterson's term ended in Spring 2009 and the Committee elected Mr. Gerard Depayre (European Union) to replace him.

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 Agreement, a per capita GNP under $1,000 per annum and are specifically listed in Annex VII(b).[10] A country automatically

[9] 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.

[10] 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,

"graduates" from Annex VII (b) status when its per capita GNP rises above the $1,000 threshold. At the Fourth Ministerial Conference, decisions were made which led to the adoption of an approach to calculate the $1,000 threshold in constant 1990 dollars. The WTO Secretariat updated these calculations in 2009.[11]

Prospects for 2010

In 2010, the United States will continue to focus on China's subsidy programs, particularly those programs not notified and those programs administered at the provincial and local levels that may be prohibited under the SCM Agreement. Assuming China submits a new subsidy notification, the United States will closely scrutinize it and may bring to the notice of the Committee unreported subsidies, particularly subsidies at the provincial or local level that appear to be prohibited. The Committee will continue to work in 2010 to improve upon Members' notification obligations. Among the proposals that may be addressed further are two issues raised by the United States; namely, the failure of Members to respond to subsidy program questions submitted pursuant to Article 25.8 of the SCM Agreement and the significant lack of notification of sub-central subsidy programs across the Membership. Finally, given the various stimulus packages Members have implemented in response to the financial crisis, it is expected that the Committee will remain a forum to discuss the consistency of such programs with Members' obligations under the SCM Agreement.

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 duties.

Major Issues in 2009

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2009. The Agreement 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 also held two meetings in 2009.

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.

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 AnnexVII(b) on January 20, 2001.

[11] See G/SCM/110/Add.6.

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement, continues to diminish as more developing country Members undertake full implementation of the Agreement. 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 products - that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the Agreement.

Achieving universal adherence to the Valuation Agreement in the Uruguay Round was an important objective of the United States. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the 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 Agreement also often represents the first concrete and meaningful steps taken by developing country Members toward reforming their customs administrations and 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 implementing legislation. As of October 2009, 80 Members had notified their national legislation on customs valuation (this figure does not include the 27 individual EU Members); 46 Members have not yet notified their national legislation on customs valuation. During 2009, the Committee concluded the review of legislation of Tanzania. At the Committee's May and October 2009 meetings, the Committee undertook its examination of the custom valuation legislations of Albania, Bahrain, Belize, China, Egypt, Nigeria, Norway, St. Vincent and the Grenadines, Thailand, Tunisia and Ukraine. The Committee's examination of these Members' customs valuation legislation will continue in 2010.

Working with information provided by U.S. exporters, the United States played a leadership role in these examinations, submitting in some cases a series of detailed questions as well as suggestions toward improved implementation, particularly with regard to customs valuation practices of Bahrain, China, Egypt, Indonesia, Thailand, and Ukraine.

In 2009, the Customs Valuation Committee concluded China's Eighth Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During 2009, the United States again voiced concerns about China's customs-related regulatory measures and legislation. The United States has been concerned about the implementation of these measures by China's customs personnel. At the 2008 Customs Valuation Committee meeting, China provided oral answers to the United States questions. China's written responses were not circulated until days before October 2009 meeting. The written answers are under review and will be taken up in 2010.

The Customs Valuation Committee's work throughout 2009 continued to reflect a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post-implementation needs of developing country Members.

Prospects for 2010

The Customs Valuation Committee's work in 2010 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 all Members that have implemented the Valuation Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues 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 non-preferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders 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 leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work Programme (HWP) is more complex than initially envisioned under the Agreement, which originally provided for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2009 and will continue into 2010.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2009, and held informal consultations throughout the year. The Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The ROO Agreement also established a Technical Committee on Rules of Origin with the World Customs Organization to assist in the HWP.

Major Issues in 2009

As of the end of 2009, 80 Members notified the WTO concerning non-preferential rules of origin. In these notifications, 38 Members notified that they had non-preferential rules of origin and 42 Members notified that they did not have a non-preferential rule of origin regime. Forty-six Members have not notified non-preferential rules of origin.

Eighty-six Members have notified the WTO concerning preferential rules of origin, of which 82 notified their preferential rules of origin and four notified that they did not have preferential rules of origin. Thirty-six Members have notified preferential rules of origin to other WTO bodies.

Virtually all issues and problems 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. Substantial attention has been given to the implementation of the ROO Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices."

Many of the ROO Agreement's obligations, such as issuing binding rulings upon request of traders in advance of trade, have frequently been cited as a model for more broad-based commitments that could emerge from future WTO work on Trade Facilitation.

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

Agreement's implementation. The ongoing HWP leading to the multilateral harmonization of non-preferential product-specific rules of origin has attracted a great deal of attention and resources. Progress has been made toward completion of this effort, despite the large volume and magnitude of complex issues which must be addressed for hundreds of specific products.

The ROO Committee continued to focus on the work program to achieve multilateral harmonization of non-preferential rules of origin. U.S. proposals for the HWP have been developed under the auspices of a Section 332 study, which was conducted by the U.S. International Trade Commission 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 at the ROO Committee. Representatives from several U.S. Government agencies continue to be involved in the HWP, including USTR, Customs and Border Protection (formerly the U.S. Customs Service), Commerce, and Agriculture.

In addition to the June and October 2009 formal meetings, the ROO Committee conducted informal consultations related to the HWP negotiations. The Committee's work in 2009 proceeded in response to the July 28, 2006 General Council extension of the deadline for completion of work on the 94 core policy issues. The General Council then 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 non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues including many product-specific rules of origin for agricultural and industrial goods, and the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin.

This issue and the remaining "core policy issues" are among the most difficult and sensitive matters for the Members and continued commitment and flexibility from all Members will be required to conclude the work program and implement the non-preferential rules of origin.

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 scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin; and (iii) the growing concern among Members that the final result of the HWP negotiations would not produce a result 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. At the July 2007 General Council meeting, 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 above-mentioned issues. The General Council also agreed with the recommendation of the Chair of the ROO Committee that the Committee would continue its work with a view to resolving all technical issues as soon as possible and report periodically to the General Council on its efforts in this regard. The Chair reported to the Council for Trade in Goods in October 2009 that the ROO Committee had continued work on technical issues as directed by the General Council in 2007.

In the two 2009 ROO Committee meetings, the Members focused on the technical issues, including the technical aspects of the overall architecture that would be used for applying the rules of origin. The Members also began a discussion of the architecture for Chapters 84-90 of the Harmonized Tariff System. Both architectures contain a hierarchy for applying the different rules for determining origin.

Prospects for 2010

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues", to reaching a consensus on the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and achieving a result that is consistent with the objectives set forth in Article 9 of the Agreement on Rules of Origin. In accordance with the decision taken by the General Council in July 2007 and subject to further guidance from the General Council in the future, 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 technical issues.

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 standards or regulations. One of the main objectives of the TBT Agreement is to prevent the use of technical requirements 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 sanitary and phytosanitary (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 non-discriminatory treatment with respect to the application of standards, technical regulations, and conformity assessment procedures and requires that standards, technical regulations, and conformity assessment procedures be no more trade-restrictive than necessary to meet a legitimate objective and based on relevant international standards and guidelines, except where such standards and guidelines would be ineffective or inappropriate to meet a legitimate objective.

The Committee on Technical Barriers to Trade (the TBT Committee)[12] serves as a forum for consultation on issues associated with the implementation and administration of the TBT Agreement. The TBT Committee is composed of representatives of each WTO Member and provides an opportunity for

[12] Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed on by the General Council. Representatives of a number of organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA), and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis.

Members to discuss concerns about specific standards, technical regulations, and conformity assessment procedures proposed or maintained by a Member, as well as more systemic issues affecting implementation of the TBT Agreement, and to exchange of information on Members' practices related to implementation of the TBT Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: A key benefit to the public resulting from the TBT Agreement is the ability to obtain information on proposed technical regulations and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Each Member is required 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 National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point for purposes of the TBT Agreement. NIST maintains a reference collection of standards, specifications, test methods, codes, and recommended practices. This reference material includes U.S. Government agencies' technical regulations and standards of non-governmental standardizing bodies. 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 non-governmental 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 refers requests for information concerning standards, conformity assessment procedures, and technical regulations for agricultural products, including SPS measures, to the U.S. Department of Agriculture, which is the U.S. inquiry point pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: http://www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/...". Notifications by Members of proposed technical regulations and conformity assessment procedures that are available for comment are issued as: *G/TBT/N* (the "N" stands for "notification")/*USA* (which in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/*X* (where "x" will indicate the numerical sequence for that Member).[13] Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the TBT Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (*e.g.*, statements, informational documents, proposals, etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). Decisions and recommendations adopted by the TBT Committee are contained in G/TBT/1/Rev.9. As a general rule, written information that the United States provides to the TBT Committee is submitted on an "unrestricted" basis and is available to the public on the WTO website. The WTO Secretariat has expanded the information it provides on its "technical barriers to trade" website that is available to the public, including summaries of meetings, agendas, workshops, technical assistance, and key documents.

With the implementation of the Marrakesh Agreement establishing the WTO, *all* Members assumed responsibility for compliance with the TBT Agreement. Although a predecessor to the TBT Agreement existed as a result of the Tokyo Round, known as the Standards Code, the expansion of its applicability to all Members as a result of the Uruguay Round negotiations was significant, and resulted in new obligations for many Members. For example, the TBT Agreement provides an opportunity for interested

[13] Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: "G/TBT/Notif./..." (followed by a number).

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 drafts and submit them through the U.S. inquiry point. Among other things, this opportunity 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 occurs as part of the triennial review process *(see below)*. Disciplines and obligations such as the prohibition on discrimination and the requirement that measures are not 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. Five such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13, G/TBT/19, and G/TBT/26). 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, and international standards.

Major Issues in 2009

The TBT Committee met three times in 2009, March (G/TBT/M/47), June (G/TBT/M/48), and November (G/TBT/M/49). At some of 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 or conformity assessment procedures proposed or adopted by other Members. The number of new specific trade concerns with regard to Members' implementation and administration of the TBT Agreement that were brought to the attention of the TBT Committee set a record in 2009 with 37 (up from 33 in 2008). EU measures, such as REACH (Registration, Evaluation, Authorization and Restriction of Chemicals), the classification of borates, nickel carbonates, and nickel compounds under the Dangerous Substances Directive, and the recast of the Restrictions on Hazardous Substances (RoHS) regulation continue to draw significant attention in the Committee, as do China's proposed measures in the information technology realm.

In 2009, the Committee continued its exchange of experiences on good regulatory practice, conformity assessment procedures, transparency, technical assistance, international standards, and special and differential treatment. At its November 2009 meeting, the Committee adopted the Fifth Triennial Review of the Operation and Implementation of the TBT Agreement. The report contains useful recommendations regarding, *inter alia*, good regulatory practice, internal coordination between trade and regulatory officials on TBT matters, regulatory cooperation, information exchange on conformity assessment procedures, and the TBT Committee Decision on Principles for the Development of International Standards.

At its March 2009 meeting, the TBT Committee adopted the Fourteenth Annual Review of the Implementation and Operation of the TBT Agreement under Article 15.3 (G/TBT/25). The WTO Secretariat also updated the relevant lists of standardizing bodies that have accepted the Code of Good

Practice for the Preparation, Adoption, and Application of Standards set out in Annex 3 of the Agreement (G/TBT/CS/1/Add.13 and G/TBT/CS/2/Rev.15).

At the November 2009 meeting, the TBT Committee also completed the Eighth Annual Transitional Review mandated in the Protocol of Accession of the People's Republic of China. The United States (G/TBT/W/324), Japan (G/TBT/W/325), and the EU (G/TBT/W/326) submitted written comments and questions. China's submission is contained in G/TBT/W/327. The Committee's report on the Review is contained in G/TBT/27.

During the 2009 meetings of the TBT Committee, representatives of Codex, IEC, ISO, ITC, OECD, OIML, UNECE, and UNIDO (observers to the Committee) updated the Committee on their activities relevant to its work, including on technical assistance.

Prospects for 2010

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The number of specific trade concerns raised in the Committee appears to be increasing. Aside from the specific trade concerns, the Committee will begin work on the work items identified in the Fifth Triennial Review, including holding a workshop on regulatory cooperation. Discussion of new issues will be driven by Member statements and submissions. In 2010, U.S. priorities are likely to continue to focus on the use of good regulatory practice, transparency, encouraging the use of the TBT Committee Decision on Principles for the Development of International Standards, and the need to consider available scientific and technical information and the intended end uses of products when regulating.

9. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (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 (formerly the Ad Hoc Group on Implementation), and the Informal Group on Anticircumvention.

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 on Implementation (the Working Group) is an active body which focuses on practical issues and concerns relating to implementation. Based on papers submitted by Members on specific topics for discussion, the activities of the Working Group permit Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the provisions of the Antidumping Agreement. 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 five antidumping topics.

The Working Group has drawn a high level of participation by Members and, in particular, by capital-based experts and officials of antidumping administering authorities, many of whom are eager to obtain insight and information from their peers. 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 on Anticircumvention (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 2009

In 2009, the Antidumping Committee held meetings on May 8 and October 21. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The 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 2009:

Notification and Review of Antidumping Legislation: To date, 72 Members have notified that they currently have antidumping legislation in place and 29 Members have notified that they maintain no such legislation. In 2009, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Angola, Argentina, Bahrain, Belize, Brazil, Dominican Republic, Honduras, Kenya, Norway, Panama, Peru, Surinam, Saudi Arabia, and the United States. The Committee also continued its review of previously-reviewed legislative notifications submitted by El Salvador, Panama, and Ukraine. Several Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Antidumping Committee meetings.

Notification and Review of Antidumping Actions: In 2009, 24 Members notified that they had taken antidumping actions during the latter half of 2008, whereas 23 Members did so with respect to the first half of 2009. (By comparison, 24 Members notified that they had not taken any antidumping actions during the latter half of 2008, and 21 Members notified that they had taken no actions in the first half of 2009). These actions, as well as outstanding antidumping measures currently maintained by Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion. The semi-annual reports for the second half of 2008 were issued in document series "G/ADP/N/180/…," and the semi-annual reports for the first half of 2009 were issued in document series "G/ADP/N/188/…". At its May and October 2009 meetings, the Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

China Transitional Review: At the October 2009 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its eighth annual Transitional Review with respect to China's implementation of the Antidumping Agreement. The United States and Japan presented written questions to China with respect to China's antidumping laws and

practices. China orally provided information in response to the questions posed by the United States and Japan.

Improved Timeliness and Completeness of Notifications: In response to a request from the Chair of the Trade Policy Review Body (TPRB), the Chair of the Antidumping Practices Committee held discussions with Members on ways to improve the timeliness and completeness of notifications and other information flows on trade measures. These discussions focused on problematic notification areas such as how to encourage longstanding nonnotifiers to submit notifications, how to enhance the quality of the submitted data, how to streamline the reporting process, and what decisions should be adopted by the Committee to achieve such goals. At its May 2009 regular meeting, the Committee agreed that subsequent to each request setting the deadline for semi-annual reports, the Secretariat should circulate a document reminding Members of the deadline. It was also agreed that the Chair should send letters, as needed, to those Members whose reports were not received by such deadlines. At its October 2009 meeting, the Committee adopted three decisions to enhance transparency and streamline the reporting process. The first was the adoption of a "one-time notification format" for notifications under Articles 16.4 and 16.5 of the Agreement to assist those Members that have not established investigating authorities and accordingly have never taken any antidumping actions to fulfill their notification obligations. The second was the adoption of the electronic submission of all notifications submitted to the Committee. The third was the introduction of an additional paragraph to the minimum information format encouraging Members to attach, in an electronic form and in their original language, publicly available documents containing the relevant decisions made by the competent authorities. The Committee had also agreed to report back to the Chair of the TPRB on the decisions adopted by the Committee to enhance transparency and improve timeliness and completeness of notifications.

Working Group on Implementation: The Working Group held meetings in May and October 2009. Beginning in 2003, the Working Group has held discussions on several agreed topics: (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. The discussions in the Working Group on these topics have focused on submissions by Members describing their own practices, including past submissions by the United States on all four topics. In 2009, Egypt presented two papers for discussion on export prices to third countries versus constructed normal value and the determination of significant price undercutting. Several Members, including the United States, posed questions to Egypt on the issues presented in its papers. Egypt and Korea also proposed new topics for discussion in future meetings of the Group, including: (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.

Informal Group on Anticircumvention: In 2009, the Informal Group held meetings in May and October. There were no new papers submitted for discussion in 2009. Members did not actively engage in discussions on what constitutes circumvention, what is being done by Members confronted with what they consider to be circumvention, or to what extent circumvention can be dealt with under the relevant WTO rules. Nevertheless, it was agreed that the Informal Group should continue to meet in the future to provide a forum to discuss such topics, as Members deem appropriate.

Prospects for 2010

Work will proceed in 2010 on the areas that the Antidumping Committee, the Working Group and the Informal Group addressed this past year. 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 that 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 2010. The semi-annual reports are accessible to the general public from the WTO website, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This transparency promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation 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 clarifying the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. 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 2010, the Working Group will continue its discussion of topics that it has been discussing for several years: (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.; and (3) the determination of significant price undercutting by dumped imports. In addition, the Group will also undertake discussion of the following newly proposed topics: (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 work of the Informal Group on Anticircumvention will also continue in 2010, according to the framework for discussion on which Members agreed. However, given the focus on anticircumvention issues in the WTO Rules negotiations under the Doha Development Agenda, it is possible that there may be relatively little activity on these issues in the Informal Group in 2010.

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 set out in the Agreement. 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 Agreement. The Committee also receives questions from Members on the licensing regimes of other Members, whether or not these 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.

Since the accession of China to the WTO in December 2001, the Committee also has conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism (TRM) provided for in China's Protocol of Accession. China's 2009 review concerning its import licensing procedures was conducted at the October meeting of the Committee and the report transmitted to the December 2009 General Council as part of China's overall Eighth Transitional Review.

Background: The Import Licensing Agreement sets out rules for all Members that use import licensing systems to regulate their trade, and includes guidelines for what constitutes a fair and non-discriminatory application of such procedures. Its provisions are intended to set a standard for Members' import licensing regimes that offer protection from unreasonable requirements or delays associated with its application. These obligations are intended to ensure that the use of import licensing procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Import Licensing Agreement's provisions discipline licensing *procedures*). The Agreement does not directly address the WTO consistency of the underlying measures, and Members are required to have WTO justification for any licensing requirements established. The notification requirements and the system of regular Committee reviews established by the Agreement seek to increase the transparency and predictability of Members' licensing regimes.

The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems, under which certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions such as quotas and tariff-rate quotas (TRQs), or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Import Licensing Agreement.

Major Issues in 2009

At its meetings in April and October 2009, the Import Licensing Committee reviewed 110 new submissions from 46 Members,[14] including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This count exceeded the number of notifications, questions, and replies to questions submitted to the Committee meetings for review during 2008 by nearly 40 percent due to a large number of questions and replies, as well as a large number of annual replies to the Licensing Procedures Questionnaire. No additional Members made notifications to the Committee for review at either of the two meetings, however, so the same 21 of 153 Committee Members have never submitted a notification to the Committee, *i.e.*, just under 14 percent.[15] The Chairman and some

[14]The Members submitting notifications during 2009 were: Albania; Argentina; Brazil; Cameroon; Canada; Chile; China, Colombia; Costa Rica; Croatia; Cuba; Dominican Republic; Ecuador; European Communities; Ghana; Grenada; Honduras; Hong Kong, China; Indonesia; Japan; Korea; Macao, China; Former Yugoslav Republic of Macedonia; Madagascar; Mauritius; Morocco; Nicaragua; Nigeria; Norway; Oman; the Philippines; Qatar; Senegal; Singapore; Suriname; Chinese Taipei; Thailand; Trinidad and Tobago; Turkey; Ukraine; the United States; and Uruguay.

[15] The Members that have never submitted a notification to this Committee are Angola, Belize, Botswana, Cambodia, Cape Verde, Central African Republic, Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Mauritania, Mozambique, Myanmar, Nepal, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, Tanzania, Tonga, and Vietnam.

Committee Members continued to express concern that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement. The Committee Chairman also reminded Members that notifications were required, even if only to report that no import licensing system existed, and that the WTO Secretariat was prepared to assist Members in developing their submissions. He noted that he had addressed letters to each one of the Members of the Committee, requesting a special effort to submit responses to the Import Licensing Questionnaire as required by Article 7.3 of the Agreement. Only 39 Members had responded to this request. He encouraged Members to renew their efforts towards full and complete compliance with notification obligations.

The United States remained one of the most active members of the Import Licensing Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. U.S. submissions to the Committee in 2009 included its response to the Questionnaire (G/LIC/N/3/USA/6), earlier notification of changes to U.S. import licensing systems (G/LIC/N/2/USA/2/Add.1), and copies of the legislation authorizing U.S. licensing systems (G/LIC/N/1/USA/5). The U.S. representative brought a number of new issues to the Committee's attention as well as continuing to press Committee Members on issues where satisfactory information has not yet been provided. In addition to presentations made by the United States at the Committee meetings, U.S. questions were submitted in writing to Argentina, India, Indonesia, and Turkey.

Argentina: The United States again expressed concern about Argentina's progressive expansion of restrictive licensing requirements on imports and the trade distortive effects these measures were having on U.S. exports. Argentina had neither adequately notified nor explained the reasons for these measures. In particular, the excessive delay (up to nearly 120 days) in processing the licensing applications was causing great concern. The United States questioned the specific underlying measure Argentina was implementing through this non-automatic import licensing regime, and sought information on what remedies Argentina could provide in these situations. Argentina was urged to promptly respond to the written questions submitted on these issues previously, and at this meeting of the Committee. Peru, in extensive interventions, noted that this "temporary" licensing mechanism was now in place over two years and had been expanded to a number of new products. When would it be removed? Peru also noted that Argentina's claim that the processing of licenses took less than 60 days was not consistent with the experience of its exporters and greatly exceeded the timeframe laid down in the WTO Agreement on Import Licensing Measures for such measures. The concerns expressed by the United States and Peru were echoed and elaborated upon by Canada, China, the European Union, Japan, Mexico, and Thailand. Argentina's responses indicate that it applies the requirements to monitor sensitive imports, protect domestic industries during the global economic crisis, and verify compliance with technical regulations. Argentina denied that the time for processing applications exceeded that established by the WTO Agreement, notwithstanding the statements by several delegations that it did, and gave no indication of when the requirements might be removed.

Indonesia: The United States continued questioning Indonesia on the application of import registration and licensing requirements on a growing number of imported goods, currently covering up to $2 billion in trade. Indonesia responded that these requirements, contained in Regulation (Decree) 56 – 2008, were not import licensing requirements, but acknowledged that the applications for permission to import had, on at least 200 occasions, been rejected. Canada, the European Union, and Thailand (another ASEAN member) made similar interventions, and referred to written questions that required response. The United States again sought submission of the text of Decree 56 for the Committee's review and clarification of the reasons for overlapping separate licensing requirements applied to textile products also covered by Decree 56. The United States also expanded its earlier request for information from Indonesia on its licensing requirements for imports of textiles, iron and steel products, and sugar. In the latter case, imports of sugar were permitted only if the importer could demonstrate a sufficient purchase of domestic

Indonesian sugar. In an extensive response, Indonesia indicated that the requirements contained in Decree 56 were necessary to prevent smuggling and fraud and to ensure conformity with technical regulations. The registration was good for two years, and created a list of designated importers whose imports were directed to five specific Indonesian ports. Indonesia confirmed that written responses to any U.S. questions submitted would be prepared.

India: The United States renewed its questions to India concerning special import licensing regime for non-insecticidal boric acid that enforces requirements applied to imports and that are not in place for domestic producers of non-insecticidal boric acid, i.e., only importers were required to obtain an activity license for trade in boric acid for insecticide production, whether or not this was the designated end use. India claimed the license was automatic, but also reported that discretion was exercised in granting the quantity that could be imported based upon the government's recommendation as well as on the quantity imported by the applicant during the preceding five years. India was urged to improve and clarify its notification of these measures, with product-specific information and a clear indication of how the requirements were applied automatically. The United States also recalled concerns expressed in earlier Committee meetings concerning burdensome licensing restrictions on imports of refurbished computer parts and other remanufactured goods.

Brazil: The United States noted its continuing concern about Brazil's system of quotas and non-automatic licensing for imports of certain lithium compounds, *i.e.*, lithium carbonate and lithium hydroxide. Rejecting Brazil's contention that the restrictions were necessary for regulation of nuclear materials, the United States reiterated that these were common compounds, used in ordinary manufacturing, and that Brazil's restrictions were burdensome and unjustified, and had not been notified to the Committee. Brazil responded that licenses for importation of lithium compounds were available through its automated customs system. The most recent responses to U.S. questions were not changed from previous replies.

Both the United States and China again noted that the licensing requirements on toys appeared to be administered in a manner inconsistent with the Agreement, and causing severe delays in customs clearance. Brazil offered no additional information on the licensing requirements it applied to toy imports, but promised written responses to any follow-up questions.

Vietnam: The United States noted that Vietnam had not notified its import licensing systems since providing a draft notification during its accession process. Noting the Circular issued at the end of 2008 establishing automatic import licensing requirements for a broad range of products, the United States urged Vietnam to notify these and other import licensing measures, and to update its earlier responses to the Annual Questionnaire on Import Licensing. Vietnam took note of these concerns, but made no promises about notification.

Informal Meeting of the Committee on the Status of Notifications

In March, the Committee met in informal session to discuss ways to improve the timeliness and completeness of notifications by Committee Members. Several delegations, including the United States, made specific suggestions for improvement in this area, which were circulated to attendees. The United States, supported by Australia, asked the Committee Chairperson for an update on the results of these discussions and what further steps might be taken to discuss the issue further. The Committee Chairperson, noting the continuing interest of Members as expressed at each Committee meeting, indicated willingness to continue the discussion in the Committee on ways and means to improve the timeliness and completeness of notifications and other information flows, in an informal mode or under an item in the agenda of the next formal meeting.

Eighth Transitional Review of the Accession of the People's Republic of China

At its October meeting, the Committee conducted its eighth annual Transitional Review of China's implementation of its WTO accession commitments in the area of import licensing procedures. This year, the United States and other delegations did not raise any questions when the Committee conducted the review. As has become customary, China provided the data required for the Transitional Review to the Secretariat the day before the Committee met, and it was not circulated to Members in time for review at this meeting.

Prospects for 2010

The administration of import licensing continues to be a significant topic of discussion in the context of the DDA, as well as in the day-to-day implementation of current obligations. The use of such measures to monitor and to regulate imports clearly has increased as a result of the global economic crisis. Under these circumstances, it becomes more critical that Members increase their efforts to provide transparency, use import licensing procedures properly, and ensure that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the administration of tariff rate quotas (TRQs) and the application of safeguard measures, technical regulations, and sanitary/phytosanitary requirements applied to imports as well. The proliferation of automatic licensing requirements raises additional concerns, as many such requirements appear to be administered in a manner that restricts trade. The Import Licensing Committee will continue to be the point of first multilateral contact in the WTO for Members with complaints or questions on the licensing regimes of other Members and as a forum for discussion and review.

The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Import Licensing Agreement, with renewed focus on securing timely revisions of notifications and questionnaires, and timely responses to written questions, as required by the Agreement.

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 safeguards rules are important to the viability and integrity of the multilateral trading system. The availability of a safeguards 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 safeguard rules 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 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 mid-term 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 2009

During its two regular meetings in May and October 2009, 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 Committee reviewed the national legislation of Albania, Argentina, Brazil, Chinese Taipei, Dominican Republic, El Salvador, Honduras, Israel, Panama, Norway, Saudi Arabia, Thailand, and Ukraine.

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: Brazil on desiccated coconut; Chile on powdered milk and gouda cheese; Croatia on semi-hard cheese and cheese substitutes; Dominican Republic on glass containers; India on acrylic fiber, coated paper/paperboard, dimethoate technical, hot-rolled coils/sheets/strips, linear alkyl benzene, oxo alcohols, plain particle board, phthalic anhydride, sodium hydroxide, uncoated paper/copy paper, and unwrought aluminum/aluminum waste/scraps; Indonesia on wire nails; Israel on steel rebars; Jordan on white cement and ceramic tiles; Kyrgyz Republic on wheat flour and white sugar; Morocco on ceramic tiles and polyvinyl chloride; Peru on cotton yarn; the Philippines on figured glass, float glass, and steel angle bars; Turkey on footwear, matches, motorcycles, salt, steam smoothing irons, and vacuum cleaners; Ukraine on liquid chlorine, matches, and sheet glass; and Vietnam on float glass.

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: Argentina on compact discs-recordables; India on dimethoate technical, plain particle board, phthalic anhydride, and unwrought aluminum, aluminum waste and scraps; Indonesia on dextrose monohydrate; Jordan on ceramic tiles; Kyrgyz Republic on wheat flour; Morocco on ceramic tiles; Panama on PVC films; and the Philippines on steel angle bars.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply or extend a safeguard measure from the following Members: Argentina on compact discs-recordables; India on dimethoate technical and phthalic anhydride; Indonesia on dextrose monohydrate and ceramic tableware; Jordan on ceramic tiles; Morocco on ceramic tiles; Panama on PVC films; and the Philippines on steel angle bars, ceramic floor and wall tiles, and float glass.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: Croatia on semi-hard cheese and cheese substitutes; India on acrylic fiber, coated paper paperboard, hot-rolled coils/sheets/strips, plain particle board, phthalic anhydride, dimethoate technical, and unwrought aluminum/aluminum waste/scraps; Israel on steel rebars; Kyrgyz Republic on wheat flour; the Philippines on steel angle bars; and Turkey on footwear, matches motorcycles, salt, steam smoothing irons, and vacuum cleaners.

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: Brazil on compact discs-recordables and DVD recordables; Croatia on cheese substitutes (the measure on semi-hard cheese remains in place); India on coated paper/paper board, hot-rolled coils/sheets/strips, linear alkyl benzene, oxo alcohols, plain particle board, uncoated paper/copy paper, and unwrought aluminum; and Jordan on white cement.

China Transitional Review: At the October 2009 meeting, the Safeguards Committee undertook its eighth annual Transitional Review with respect to China's implementation of the Safeguards Agreement. China reported no new safeguard legislation, and confirmed that it had taken no safeguard actions during the past year.

Improved Content and Timeliness of Notifications: In response to a request from the Chair of the Trade Policy Review Body (TPRB), the Chair of the Committee on Safeguards held discussions and several informal consultations with Members throughout 2009 on ways to improve the content and timeliness of notifications to the WTO Secretariat of safeguard actions by Members. Discussions focused on how to encourage Members to improve the quality and timeliness of the information submitted in their notifications so as to permit affected Members and their industries to represent effectively their interests in such proceedings. At the same time, it was recognized that any new reporting formats must not create an unreasonable reporting burden on the Member taking a safeguard action.

At its October 2009 meeting, the Committee adopted revised formats for the notification of the initiation of an investigation relating to serious injury or threat thereof and the reasons for it, notification upon making a finding of serious injury or threat thereof caused by increased imports, notification upon taking a decision to apply or extend a safeguard measure, and notification before taking a provisional safeguard measure. The Committee also adopted two entirely new formats: one identifying the information to be provided upon the initiation of a review regarding the extension of a safeguard measure, and the other identifying the information to be provided upon cessation of a safeguard measure. The Committee also adopted a proposal to recommend that the decisions taken by authorities underlying the notifications be provided electronically to the Secretariat to facilitate access to the information by Members. The Committee had agreed to report back to the Chair of the TPRB on the decisions adopted by the Committee to enhance transparency and improve the content and timeliness of notifications.

Prospects for 2010

The Safeguards Committee's work in 2010 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards legislation.

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 principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding) defines a state trading enterprise more narrowly for the purposes of providing a notification that is required under the Understanding. Members must notify the Working Party of enterprises in their respective territories that meet this definition, whether or not such

enterprises have imported or exported goods. Members are required to submit new and full notifications to the Working Party for review every two years.

The Working Party on State Trading Enterprises (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 2009

The WP-STE held one formal meeting in October, 2009, at which STE notifications were reviewed from: Colombia, Croatia, the European Communities, Honduras, Croatia, Indonesia, Japan, the Republic of Korea, Liechtenstein, Mozambique, New Zealand, Saudi Arabia, Suriname, and Chinese Taipei. During the meeting, Australia and Turkey posed questions relating to Indonesia's notifications, as well as Korea's notifications. Australia also questioned Japan concerning its notification. The United States asked questions on the notifications of Indonesia, Japan, Korea and New Zealand. Additionally, Australia requested that India and Norway inform the Working Party of when they expected to submit outstanding notifications in order to allow Members to review their state trading enterprises.

The WP-STE also focused its attention on Member compliance with the notification obligation. The Working Party held informal consultations in April on ways to improve the timeliness and completeness of notification obligations. Members agreed to building on current practices in the Working Party to seek to improve Members' performance in meeting the notification obligations. The agreed actions included: preparation by the Secretariat of a table recording all notifications made to the Working Party since 1995 (to be updated on a regular basis, the most recent of which is attached as an Annex to this report); transmittal of reminders to Members once the notification deadline has passed (in addition to reminders currently being sent prior to the deadline), offers of support from the Secretariat to provide assistance in completing the notifications and reminders that a nil notification should also be submitted; circulation of a list of Members that have submitted notifications in the calendar year; offers of technical assistance around the time of the regular meeting of the Working Party to coincide with possible Capital-based attendance (in addition to assistance being available from the Secretariat at any time); and transmittal of reminders to delegations on a regular basis to submit questions on notifications well before the regular meeting.

Prospects for 2010

The WP-STE is scheduled to meet in October, 2010. 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.

G. Council on Trade Related Aspects of Intellectual Property Rights

Status

The WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (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 (IPRs) through civil actions for infringement, actions at the border and, at least in regard 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 country 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. Least developed country (LDC) Members have had their deadline for full implementation of the TRIPS Agreement extended to July 1, 2013, as part of a package that also requires them to provide information on their priority needs for technical assistance in order to facilitate TRIPS Agreement implementation. This action is without prejudice to the existing extension, based on a proposal made by the United States at the Doha Ministerial Conference, of the transition period for LDC Members to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, until January 1, 2016. In 2002, the WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for LDC Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product patent protection for pharmaceutical inventions.

Major Issues in 2009

In 2009, the TRIPS Council held three formal meetings. In addition to its continued work reviewing the implementation of the Agreement, the TRIPS Council's activities in 2009 focused on the relationship of the TRIPS Agreement to the Convention on Biological Diversity, and on ongoing consideration of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health. Some Members, including the United States, also sought to have the TRIPS Council continue to examine issues related to the enforcement provisions of the TRIPS Agreement.

Review of Developing Country Members' TRIPS Implementation: During 2009, the TRIPS Council continued to review 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 Member's implementation of the Agreement's obligations, particularly with regard to China's efforts.

The Transitional Review Mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China has been an important means to raise concerns about China's implementation of the TRIPS Agreement. This process has been instrumental in helping to understand the levels of protection of IPRs in China and provides a forum for addressing the concerns of U.S. interests. The United States has been active in seeking answers to questions on a wide range of intellectual property matters and in raising concerns about enforcement of IPRs.

During 2009, the TRIPS Council undertook a review of the implementing legislation of Ukraine and Tonga, in addition to the above-referenced review of China.

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. At the end of 2009, a total of 26 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. At its October 2009 meeting, the TRIPS Council reviewed implementation of the August 30, 2003 solution. Several Members commented on the importance of the solution, and the Council agreed to hold an informal consultation to share experiences on implementing the amendment. Pursuant to a December 2009 Decision of the WTO General Council, the period in which Members may accept the amendment remains open until December 31, 2011.

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 IPRs by requesting consultations with China. On September 25, 2007, the WTO Dispute Settlement Body (DSB) established a panel to consider the dispute.

The panel circulated its report on January 26, 2009. The panel found that China's denial of copyright protection to works that do not meet China's content review standards is 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. On April 15, 2009, China notified the DSB that China intends to implement the recommendations and rulings of the DSB in this dispute, and stated it would need a reasonable period of time for implementation. On June 29, 2009, the United States and China notified the DSB that they had agreed on a one-year period of time for implementation, to end on March 20, 2010.

During 2009, the United States continued to monitor EU compliance with a 2005 ruling of the WTO Dispute Settlement Body that the EU's regulation on food-related GIs is 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 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.

Geographical Indications: The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of the level of protection provided under Article 23 of the TRIPS Agreement to GIs for products other than wines and spirits, and to report to the Trade Negotiations Committee (TNC) by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chairperson should report to the TNC on the issues related to the extension of Article 23-level protection to GIs for products other than wines and spirits, and in light of the strong divergence of positions on the way forward on GIs and other implementation issues, the TNC Chairperson closed the discussion by saying he would consult further with Members. At the December 2005 Hong Kong Ministerial Conference, the Ministers directed the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of Article 23-level protection to GIs for products other than wines and spirits.

Throughout 2009, and consistent with this mandate, the Director-General held a number of such consultations with Members on the issue of extension. During these consultations, the United States and many like-minded Members maintained the position that the *demandeurs* had not established that the protection provided GIs for products other than wines and spirits was inadequate, and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have a longstanding statutory regime for the protection of GIs, that the benefits accruing to those few Members that have longstanding statutory regimes for the protection of GIs would represent a windfall, and that other Members with few or no GIs would receive no counterbalancing benefits. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23-level protection to products other than wines and spirits. The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations.

Review of Article 27.3(b), Relationship Between the TRIPS Agreement and the Convention on Biological Diversity, and Protection of Traditional Knowledge and Folklore: As called for in the TRIPS Agreement, the TRIPS Council initiated a review of Article 27.3(b) of the TRIPS Agreement (permitting Members to except from patentability plants and animals and biological processes used for the production of plants and animals). The Doha Declaration directs the TRIPS Council, in pursuing its work program under the review of Article 27.3(b), to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. Consideration of this set of issues also continues to be guided by the direction of Ministers in the Hong Kong Declaration, that all implementation issues (including the relationship of the TRIPS Agreement and the CBD) should be the subject of consultations facilitated by the WTO Director-General. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

A number of developing country Members continue to advocate for amending the patent provisions of the TRIPS Agreement to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In 2006, a group of developing country Members submitted draft text for such an amendment to the TRIPS Agreement. There is, however, no consensus in the TRIPS Council that an amendment should be pursued.

Throughout 2009, the Director-General held a number of consultations with Members on this issue. The United States, with support from other Members, continues to maintain that there is no conflict between the TRIPS Agreement and the CBD, that an amendment to the TRIPS Agreement is neither necessary nor

appropriate, and that shared objectives with respect to genetic resources and traditional knowledge (such as prior informed consent and effective access and benefit-sharing arrangements) can best be achieved through mechanisms outside of the patent system. The United States has also advocated for a discussion in the TRIPS Council that is fact-based and focused on national experiences in areas such as access and benefit-sharing and prior informed consent.

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 (see IP/C/W/517/Add.3). While no LDC Members submitted information on their priority needs with regard to technical cooperation related to their implementation of the TRIPS Agreement in 2009, the reports of technical cooperation and capacity building activities 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 least-developed country 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 2009, the United States provided an updated report on specific U.S. government institutions and incentives, as required.

Prospects for 2010

In 2010, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in the Doha Declaration, including issues related to the extension of Article 23-level protection for GIs for products other than wines and spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as other relevant new developments.

U.S. objectives for 2010 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 regarding the technical assistance and capacity-related needs of developing countries in connection with TRIPS Agreement implementation;
- continue to encourage a fact-based discussion within the TRIPS Council on the enforcement provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

H. Council for Trade in Services

Status

The General Agreement for Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade in services, and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely supplied across national borders

or that discriminate against locally established services firms with foreign ownership. The GATS provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in Member schedules, similar to the Member schedules for tariffs.

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical review of GATS Article XX.2 provisions; 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; the MFN review; and notifications made to the General Council pursuant to GATS Articles III.3, V.5, V.7, and VII.4.
The ongoing market access negotiations take place in the CTS Special Session, described earlier in this chapter. Other bodies that report to the CTS include: 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. The following section discusses work in the CTS regular session.

Major Issues in 2009

The CTS met in April, June and November 2009. The CTS elected the delegate from Nigeria as its new Chairperson in April.

Following a request from certain delegations during informal consultations held at the beginning of 2009, the Chair held discussions on the issue of Members' compliance with GATS notification requirements during the April and June meetings of the CTS. These discussions were guided by a Secretariat Note (JOB(09)/10/Rev.1) that provided an accounting of notifications under GATS articles III.3, V, and VII. Members also commented on a communication from Switzerland entitled, "Compliance with notification requirements under the GATS."

The CTS requested that the Secretariat update its Background Notes on services sectors and modes of supply, which were produced in 1998 for informational reference by Members. The CTS has thus far taken up eight of the Secretariat's updated Background Notes, including tourism services, telecommunication services, computer and related services, architectural services, construction and related engineering services, Modes 1 and 2, Mode 3, and Mode 4.

During the April meeting of the CTS, Australia raised its ongoing concerns related to the entry into force of the EC-25 schedule of commitments pursuant to GATS Article XXI and the procedures outlined in S/L/80 and S/L/84. The EU explained that the EC Council required each individual Member State to ratify the relevant agreements and called for a consultation by the European Parliament. Entry into force of the EC-25 schedule is now dependent on the outcome of those proceedings. At the time of the meeting, fourteen EU Member States had ratified the agreement according to their national procedures.

As part of China's Transitional Review Mechanism, the CTS held its eighth annual review of China's implementation of its services commitments in November 2009. The United States and other Members used the opportunity to raise questions and express concerns with regard to China's implementation of certain commitments.

The CTS received a number of notifications pursuant to GATS Article III.3 (transparency and GATS Article VII (recognition). Albania, Brazil, China, India, New Zealand, Paraguay, Switzerland and

Thailand made notifications under Article III.3. Notifications pursuant to GATS Article VII were made by Australia and Chile; China and Hong Kong, China; and China and Macao, China; China and New Zealand; China and Singapore; Costa Rica and Panama; Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and the United States; Colombia and Panama; Japan and Switzerland; Japan and Vietnam; Nicaragua and Taiwan; Panama and Taiwan; Peru and Canada; Peru and Singapore; Peru and the United States; and the United States and Oman.

Prospects for 2010

The CTS will continue discussions pursuant to the Annex on Air Transport Services review and other mandated reviews, and various notifications related to GATS implementation.

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 or regulatory issues, including implementation of existing trade commitments.

Major Issues in 2009

The CTFS met in March, June and November 2009. During the March 2009 meeting, the Committee elected the delegate from South Africa as the new Chairperson.

Members continued to urge Brazil, Jamaica, and the Philippines, to take the necessary steps to accept the Fifth Protocol to the GATS. In accepting the protocol, financial services commitments made in 1994 would be replaced by those agreed during the 1995-97 extended negotiations on financial services. All other Members have accepted the protocol. The Chair invited these Members to provide information on the status of their domestic ratification efforts. Brazil and the Philippines provided updates to the Committee, although neither reported meaningful progress.

A workshop to commemorate the entry into force of the Fifth Protocol was held at the March meeting. Speakers at the workshop included financial regulators, as well as representatives from academia and the private sector.

In November 2009, as part of China's Transitional Review Mechanism, the CTFS carried out its seventh annual review of China's implementation of its WTO financial services commitments. The United States and other Members used that opportunity to raise questions and express concerns with China's implementation of certain commitments concerning insurance, banking and related services, securities, pensions, and financial information services.

The CTFS also provided a forum for discussion of other topics, including technical issues and recent developments in financial services trade. Topics introduced in 2009 included a proposal from the United States to exchange information related to the liberalization of trade in non-life insurance services, and a suggestion from Pakistan to discuss issues related to the development of e-banking.

Prospects for 2010

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.

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. The texts are available at http://www.wto.org.

In May 1999, the CTS established a new Working Party on Domestic Regulation (WPDR) which took on the work of the predecessor WPPS and its existing mandate. 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.

Thereafter, the pace of negotiations increased dramatically. In April 2007, the WPDR Chair issued an informal note on possible new disciplines for domestic regulation. This informal note was revised in January 2008. The informal note was an attempt to consolidate elements of Members' proposals with a view to moving Members closer to a consensus on basic threshold issues, such as the appropriate level of ambition for disciplines applied to all services sectors, whether or not to submit any new disciplines to an operational "necessity test," how to balance the goal of diminishing regulatory trade barriers with the fundamental right to regulate, and how to address different levels of development.

Major Issues in 2009

The WPDR met in April, June, October, and November of 2009. In April 2009, the WPDR elected the delegate from Japan as its new chairperson. During 2009 the WPDR based its discussions on a March 2009 revision to the informal note, which made minor revisions to the January 2008 draft. Those minor revisions reflected the few areas in which the prior Chair had identified areas of convergence during meetings in 2008, and were largely uncontroversial.

Members welcomed the March 2009 text as a basis for future negotiations, although it is clear that Members continue to have concerns about the basic threshold issues. Thus far, none of the proposed new disciplines have been agreed to by Members. To try to bridge some of the differences among Members, in September 2009 the Chair began a series of meetings to discuss the informal text section by section. During these meetings, Members presented new textual proposals designed to build consensus on substantive issues and address drafting concerns with the informal note.

The United States continued to negotiate on the basis of its June 2006 position paper on the WPDR. The United States considers that the horizontal or sector-specific application of any new disciplines should depend on the nature of the proposed disciplines, and the legitimate policy considerations of national and

subnational regulatory authorities. Because of the wide variety of services sectors, there will be significant legal and practical constraints on the feasibility of disciplines which apply on a horizontal basis. For that reason, the United States' priority in 2009 continued to be horizontal disciplines for regulatory transparency. Such disciplines are appropriate for horizontal implementation because they involve universal principles that promote governmental accountability, rule of law, and good governance. The United States also joined many other Members in voicing strong caution about submitting domestic regulations to an operational "necessity test" or its equivalent based on concerns that this could be overly intrusive on Members' rights to regulate.

Prospects for 2010

As the United States and other Members have made clear on numerous occasions, future work in the WPDR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPDR may continue to work in informal and *ad hoc* meetings on the basis of the March 2009 informal note, and proposals advanced by Members.

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 rule-making under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies).

Major Issues in 2009

The WPGR held formal meetings in April, June, October and November 2009. The WPGR resumed ongoing discussions of emergency safeguard measures, government procurement, and subsidies. During its April meeting, the WPGR also elected the delegate from Chile as its new Chairperson.

Regarding emergency safeguard measures, Members continued discussions on the basis of an informal communication from a group of ASEAN Members that proposed legal language establishing rules for the use of emergency safeguard measures in services. Issues raised during these largely informal discussions included the relationship of an emergency safeguard measure to market access commitments, modal application, conditions of application, how to establish a causal link, and special and differential treatment. In October 2009, the Secretariat issued an informal note on the treatment of the concept of "domestic industry" under the anti-dumping, subsidies and safeguard agreements; during the November meeting, Members discussed whether this concept would be relevant for an emergency safeguard measure in services. Members continue to express divergent views on the various aspects raised in relation to emergency safeguard measures, and the United States and other Members continue to question the desirability and feasibility of any such measures.

On government procurement of services, delegations continued their discussion of a proposal by the EU regarding a legal text for an Annex to the GATS. Members exchanged views on this proposal, and raised issues relating to possible benefits of opening procurement markets, procedural rules, special and differential treatment, the relationship to the plurilateral Government Procurement Agreement, and MFN application. The United States continues to engage on this issue, but has questioned the need for a

government procurement annex to the GATS in light of the fact that the Agreement on Government Procurement already covers services.

With respect to subsidies, Members continued to discuss an informal communication from Hong Kong, China and Mexico and a follow-up document from Hong Kong, China on non-actionable subsidies. In September 2009 the Chair issued an informal note recalling for Members a proposal for a provisional definition of subsidies in services, submitted by Chile, Hong Kong, Mexico, Peru, and Switzerland in 2005. Members discussed whether this definition could facilitate an information exchange on subsidies; many Members, including the United States, had questions about the proposed provisional definition. The United States continues to engage on this issue, but has insisted that a clear definition of subsidies is needed before any reporting requirement can be fulfilled.

Prospects for 2010

Future work in the WPGR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPGR may continue focused discussions in all three areas, including technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services; proposals by Members concerning government procurement of services; and further discussion of how to facilitate a productive information exchange on subsidies.

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 body, which is currently the case for all sectors except financial services. The CSC also works to improve the classification of services, so that scheduled commitments reflect the service activity, particularly with regard to new or evolving services.

Major Issues in 2009

The CSC held meetings in April, June, and November 2009. The CSC resumed previous discussion of classification and scheduling issues, and the relationship between old and new commitments. During the April meeting, the CSC also elected the delegate from France as its new Chairperson. The CSC hosted scheduling workshops in April and November 2009, which enabled Members to discuss common questions that arise in the drafting of commitments.

Classification: Members considered whether sectoral work undertaken by the Secretariat could lead to future work within the committee on classification matters, and the Chair was to pursue consultations to that effect.

Scheduling issues: The Committee engaged in some discussion on issues related to economic needs tests, including whether to ask the Secretariat to update a 2001 background note (S/CSS/W/118).

Relationship between old and new commitments: Discussions continued on the relationship between existing schedules and the new commitments resulting from the current negotiations**.** Topics included methods and instruments for incorporating new commitments and the process for verifying final

schedules of commitments. Members tended to agree that the replacement method is the most appropriate means of incorporating the results of the current negotiations into the GATS. Some Members, however, continued to suggest that old commitments should be given some legal standing beyond a source of interpretation, and one Member put forward a text proposal to that effect.

Prospects for 2010

Work will continue on technical issues and other issues that Members raise. The CSC will likely continue to examine classification and scheduling issues; and increase its focus on language proposals for the protocol incorporating new commitments as well as the verification process to be applied following the submission of final schedules.

I. 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 Dispute Settlement Body (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.

Major Issues in 2009

The DSB met 16 times in 2009 to oversee disputes, and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and non-governmental 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 non-governmental 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 2009, the DSB approved by consensus a number of additional names for the roster, including an updating of the names nominated by the United States. 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 2009.

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 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; (4) the Chair of the Textile Monitoring Body ("TMB") and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings, or observations under the Agreement on Textiles and Clothing; and (5) 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: The DSU requires the DSB to appoint 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. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor 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 11 December 1997. 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 Dr. El-Naggar and Professor 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 Professor 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 19, 2001. On November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of

four years commencing on December 11, 2003, to reappoint Professor 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. On November 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 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. The names and biographical data for the Appellate Body members during 2009 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 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 began serving as Chairperson on December 18, 2008, and his current term expires on December 11, 2010.

In 2009, the Appellate Body issued 4 reports, all of which involved the United States as a party and are discussed in detail below.

On January 14, 2009, the United States submitted a proposal to the Dispute Settlement Body entitled "Improvements for the Appellate Body." The proposal has three main elements: formally giving Appellate Body members full-time status; providing each Appellate Body member with a law clerk devoted to that member; and establishing a more formal mechanism of WTO Members to ensure that Appellate Body members have access to ongoing professional development.

Dispute Settlement Activity in 2009: During the DSB's first fifteen years in operation, WTO Members filed 402 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, and 14 in 2009). During that period, the United States filed 82 complaints against other Members' measures and received 116 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints (4 U.S. complaints against others and 27 complaints against the United States). A number of disputes commenced in earlier years remained active in 2009. 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 2010

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 2010, we expect 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 2010.

a. Disputes Brought by the United States

In 2009, 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 2009 where the United States was a complainant. 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.

China–Measures Affecting Imports of Automobile Parts (DS340):

On March 30, 2006, the United States requested consultations with China regarding China's treatment of motor vehicle parts, components, and accessories ("automotive parts") imported from the United States. Although China's WTO commitments limit its tariffs on imported automotive parts to rates that are significantly below China's tariffs on finished vehicles, China implemented regulations that imposed an internal charge on imported automotive parts equal to the tariff on complete automobiles if the final assembled vehicle in which the parts were incorporated failed to meet certain local content requirements. The United States was concerned that these regulations imposed an internal tax on U.S. automotive parts beyond that allowed by WTO rules and resulted in discrimination against U.S. automotive parts. These regulations appeared inconsistent with several WTO provisions, including Article III of the GATT 1994 and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. The EU (WT/DS/339) and Canada (WT/DS/442) also initiated disputes regarding the same matter. The EU, Canada, and the United States requested the establishment of a panel on September 28, 2006, and a single panel was established on October 26, 2006 to examine the complaints. On January 29, 2007, the Director-General composed the panel as follows: Mr. Julio Lacarte-Muró, Chair; and Mr. Ujal Singh Bhatia and Mr. Wilhelm Meier, Members.

The panel circulated its report on July 18, 2008. The report upheld U.S. claims that China's regulations were inconsistent with China's WTO obligations. In particular, it found that China's regulations imposed discriminatory internal charges and administrative procedures on imported automotive parts resulting in violation of Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994, and that certain aspects of the regulations were inconsistent with specific commitments made by China in its WTO accession agreement.

On September 15, 2008, China appealed the panel findings to the WTO Appellate Body. On December 15, 2008, the Appellate Body issued its report. The Appellate Body upheld the panel's findings that the measures imposed internal charges and regulations, and that these charges and regulations breached China's obligations under Articles III:2 and III:4 of the GATT 1994. In addition, the Appellate Body interpreted the measures as not specifying the tariff treatment for certain products, and on this basis found

that the measures did not implicate the specific commitment in China's WTO accession agreement that had been considered by the Panel.

On January 12, 2009, the DSB adopted the reports of the Appellate Body and the report of the Panel (as modified by the Appellate Body report). The United States and China subsequently agreed that the reasonable period of time for China to implement the DSB recommendations and rulings would be seven months and 20 days from the date of DSB adoption, a period which expired on September 1, 2009.

Shortly before the expiration of the reasonable period of time, China informed that United States and the other complaining parties that it had complied with the DSB recommendations and rulings by withdrawing the measures in dispute.

China–Measures affecting the protection and enforcement of intellectual property rights (WT/DS362):

On April 10, 2007, the United States requested consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights in China. The United States and China held consultations on June 7-8, 2007, but the consultations did not resolve the dispute. On August 13, 2007, the United States requested the establishment of a panel, and a panel was established on September 25, 2007. On December 13, 2007, the Director-General composed the panel as follows: Mr. Adrian Macey, Chair; and Mr. Marino Porzio and Mr. Sivakant Tiwari, Members.

The panel circulated its report on January 26, 2009. The panel found that China's denial of copyright protection to works that do not meet China's content review standards is 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. On April 15, 2009, China notified the DSB that China intends to implement the recommendations and rulings of the DSB in this dispute, and stated it would need a reasonable period of time for implementation. On June 29, 2009, the United States and China notified the DSB that they had agreed on a one-year period of time for implementation, to end on March 20, 2010.

China–Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (WT/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 is concerned that certain Chinese measures: (1) restrict 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) restrict market access for, or discriminate 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 appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and *General Agreement on Trade in Services* (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 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.

China–Prohibited subsidies (WT/DS358):

On February 2 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because they are offered on the condition that enterprises purchase domestic over imported goods, or on the condition that enterprises meet certain

export performance criteria, these subsidies appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures*, Article III:4 of the *General Agreement on Tariffs and Trade 1994*, and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. Mexico also initiated a dispute regarding the same subsidies.

Because consultations did not resolve the disputes, the WTO Dispute Settlement Body, at the request of the United States and Mexico, established a single dispute settlement panel on August 31, 2007 to hear both disputes.

On December 19, 2007, the United States and China informed the DSB that they had reached an agreement with respect to this matter and circulated a copy of the agreement. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures as well as the adoption of new measures, that would eliminate by January 1, 2008 the import substitution and export subsidies challenged by the United States. The agreement also commits China not to reintroduce those subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008. Mexico reached a similar agreement with China with respect to Mexico's dispute on the same subsidies.

China–Measures affecting financial information services and foreign financial information suppliers (WT/DS373):

On March 3, 2008, the United States requested WTO dispute settlement consultations with China concerning China's treatment of foreign financial information suppliers. China's regulatory regime required foreign financial information suppliers to operate through a government-designated distributor and prohibited them from establishing local operations to provide their services. In addition, the agency designated by China to regulate these services appeared to have a conflict of interest as it was closely connected to a commercial operator in China. This regime appeared inconsistent with several WTO provisions, including Articles XVI, XVII, and XVIII of the *General Agreement on Trade in Services*, as well as specific commitments made by China in its WTO accession protocol.

The EU also requested WTO consultations with China on the same measures. The United States, the EC, and China held joint consultations on April 22-23, 2008. On June 20, 2008, Canada requested consultations with China regarding the same measures.

On December 4, 2008, the United States and China informed the DSB that they had reached an agreement with respect to this matter and provided a copy of the agreement for circulation. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures, as well as the adoption of new measures, to respond to the United States' concerns regarding the absence of an independent regulator and the imposition of unfair requirements and restrictions on U.S. financial information service suppliers operating in China. China's commitments under the agreement include the establishment, by January 31, 2009, of an independent regulator for foreign financial information service suppliers, and the implementation of new non-discriminatory and transparent regulations by June 1, 2009. The United States is continuing to monitor China's implementation of the agreement. The EU and Canada reached identical agreements with China with respect to their disputes on the same matter.

China– Grants, loans and other incentives (DS387):

On December 19, 2008, the United States requested consultations with China regarding government support tied to China's industrial policy to promote the sale of Chinese brand name and other products abroad. This support is provided in the form of cash grant rewards, preferential loans, research and

development funding, and payments to lower the cost of export credit insurance. Because these subsidies are offered on the condition that enterprises meet certain export performance criteria, they appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures* and Articles 3, 9, and 10 of the *Agreement on Agriculture*, as well as specific commitments made by China in its WTO accession agreement. In addition, to the extent that the grants, loans, and other incentives also benefit Chinese-origin products, but not imported products, the measures appear to be inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994*. Mexico and Guatemala also initiated disputes regarding the same subsidies.

Joint consultations were held in February 2009. On December 18, 2009, the parties concluded a settlement agreement in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures.

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 Agreement on the Application of Sanitary and Phytosanitary Measures (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 May 26, 2000, USTR announced that it was considering changes to that list of EU products, but did not make any changes.

On November 3, 2003, the EU notified the WTO that it had amended its hormones ban. As discussed below (DS320), 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 again 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.

Discussions between the United States and the EU resulted in the conclusion of a Memorandum of Understanding ("Beef MOU") on May 13, 2009. The Beef MOU provides for increased, duty-free access to the EU market for beef produced without certain growth promoting hormones and maintains increased duties on a reduced list of EU products. Under the terms of the Beef MOU, after three years, duty-free access to the EU market for beef produced without certain growth promoting hormones may increase and the application of all remaining increased duties imposed on EU products may be suspended. The Beef MOU also suspends further litigation in the *EU – Hormones* compliance proceeding until at least February 3, 2011.

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 Luxemburg) 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 intends to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a reasonable period of time 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.

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 has 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 relates 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 resulted in findings that the EU's banana regime discriminates 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 includes a zero-duty tariff-rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas do not have access to this duty-free tariff rate quota and are subject to a 176 euro per ton duty. The United States believes that this new regime is in violation of 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. The panel in response to the United States request 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 EC's regime was inconsistent with the EC'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 has failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EC's procedural arguments alleging the United States was barred from bringing the compliance proceeding, and agreed with the panel that the EC'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 EC'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 non-discriminatory, tariff-only regime for the importation of bananas. The U.S.-EU 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. It is intended that the two agreements will be signed at a later day and will enter into force following completion of certain domestic procedures. Upon entry in 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.

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 challenges 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.

European Communities–Tariff Treatment of Certain Information Technology Products (WT/DS375):

On May 28, 2008, the United States requested consultations with the EU and its Member States regarding the tariff treatment accorded to set-top boxes with a communication function, flat panel displays, "input or output units," and facsimile machines. The United States is concerned that certain EU measures appear to have resulted in the imposition of duties on these products. As a result of the Information Technology Agreement (ITA), the EU and its Member States, in their Schedules of Concessions to the GATT 1994, committed to provide duty-free treatment for these products.

The measures in question appear to be inconsistent with the obligations of the EU and its Member States under Articles II:1(a) and II:1(b) of the GATT 1994. In addition, certain of the actions taken by the EU with respect to set-top boxes appear to be inconsistent with the EC's obligations under GATT 1994 Articles X:1 and X:2.

Japan and Chinese Taipei (on May 28, 2008, and June 12, 2008, respectively) also filed requests for consultations with the EU and its Member States on these measures. On August 18, the United States, Japan and Chinese Taipei jointly requested the establishment of a panel. A panel was established at the meeting of the DSB on September 23, 2008. On January 22, 2009, the Director-General composed the panel as follows: Mr. Wilhelm Meier, Chair, and Mr. David Evans and Ms. Valerie Hughes, Members.

The panel met with the parties on May 12 and 14, 2009 and on July 9, 2009, and met with the parties and third parties on May 13, 2009. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third-party session, were open for public observation.

Turkey–Measures affecting the importation of rice (DS334):

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice, not permitting imports at the bound rate, and implementing a *de facto* ban on rice imports during the Turkish rice harvest, Turkey appeared to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the GATT 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations were held on December 1, 2005. The United States requested the establishment of a panel on February 6, 2006, and the DSB established a panel on March 17, 2006. On July 31, 2006, the Director-General composed the panel as follows: Ms. Marie-Gabrielle Ineichen-Fleisch, Chair, Mr. Yoichi Suzuki and Mr. Johann Frederick Kirsten, Members. The final report of the panel was circulated to WTO Members and made public on September 21, 2007. In the final report, the panel found that the system by which Turkey decided to deny, or fail to grant, certain certificates required for importing rice outside the tariff rate quota from September 2003 and at certain periods thereafter, constituted a quantitative import restriction as well as a practice of discretionary import licensing inconsistent with Turkey's obligations under Article 4.2 of the Agreement on Agriculture. The panel also found that Turkey's domestic purchase requirement for rice imports accorded less favorable treatment to imported rice than domestic rice and was therefore inconsistent with Turkey's national treatment obligations under Article III: 4 of the GATT 1994. The panel report was adopted by the DSB on October 22, 2007. Turkey informed the DSB at the end of November 2007 that it was in the process of implementing the recommendations and rulings of the DSB in this dispute and that it preserved its rights to a reasonable period of time (RPT) for such implementation.

The United States and Turkey came to an agreement that the reasonable period of time would be six months, expiring on April 22, 2008. On May 7, 2008, the United States and Turkey entered into a sequencing agreement with respect to the procedures that will apply if the United States seeks to establish a compliance panel or seeks to suspend concessions or other obligations to Turkey in connection with this dispute.

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 Agreement on Agriculture, 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.

China–Measures Relating to the Exportation of Various Raw Materials (WT/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.

Specifically, the United States is concerned that certain Chinese measures: (1) impose 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; (2) impose export duties on several raw materials; and (3) impose other export restrictions through its export procedures, including via certain charges (unrelated to any services rendered) that must be paid before certain products can be exported. The United States is also concerned that China administers its export procedures unfairly in other respects, including, for example, by not publishing relevant measures in a manner that allows them to be readily available to governments and traders. The measures at issue appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994*, as well as specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on September 1-2, 2009, but they did not resolve the dispute. The European Communities and Mexico have also requested and held consultations with China on these measures.

On November 19, 2009, the European Communities and Mexico joined the United States in requesting the establishment of a panel, and on December 21, 2009, the WTO Dispute Settlement Body established a single panel to examine all three complaints.

b. 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 2009 in which the United States was a responding party.

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, 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 is $1.1 million per year. On January 7, 2002, the EU sought authorization from the DSB to suspend obligations vis-a-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 have 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; 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 reasonable period of time 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 the preliminary and final determinations of the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (USITC) 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, Mr. Yanyong Phuangrach 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 reasonable period of time 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, 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 WTO 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 reasonable period of time 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, 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, 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, the President signed the Deficit Reduction Act into law. That Act includes 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. After 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. On April 17, 2007, the EU announced that it would renew its retaliatory measure as of May 1, 2007, adding 32 more products to the 2006 list. The EU renewed its retaliatory measure again on April 3, 2008, removing 30 products from the 2007 list. On May 1, 2009, the EU renewed its 15 percent retaliatory measure but removed fourteen tariff headings from its retaliation list. On September 1, 2007, Japan once again renewed its retaliatory duties. On August 22, 2008, Japan announced that it would renew its retaliatory duties, but those duties would cover only ball bearings and tapered roller bearings, in contrast to the list of 15 products covered in the previous year. Effective September 1, 2009, Japan maintained its retaliatory duties on the same two products from the United States, but at a reduced rate of 9.6 percent.

United States–Subsidies on upland cotton (DS267):

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1, and 30 of the SCM Agreement, Article 19 of the Antidumping Agreement, and Article 4 of the DSU. The Brazilian consultation request on U.S. support measures that benefit upland cotton claimed that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994. Consultations were held on December 3, 4, and 19, 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertained to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton" [footnote omitted]. The DSB established the panel on March 18, 2003. On May 19, 2003, the Director-General appointed as panelists: Mr. Dariusz Rosati, Chair; Mr. Daniel Moulis and Mr. Mario Matus, Members.

On September 8, 2004, the panel circulated its report to all WTO Members and the public. The panel made some findings in favor of Brazil on certain of its claims and other findings in favor of the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including: (1) domestic support measures; and (2) export credit guarantees

for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that the GSM 102, GSM 103, and SCGP export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (*i.e.*, marketing loan, countercyclical, market loss assistance, and so-called "Step 2 payments,") were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002, causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (*i.e.*, production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs per se cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the Appellate Body; Brazil then cross-appealed. The Appellate Body circulated its report on March 3, 2005. The Appellate Body upheld the panel's findings appealed by the United States.

The Appellate Body also rejected or declined to rule on most of Brazil's appeal issues. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intends to bring its measures into compliance.

On June 30, 2005, the United States announced that it would cease to issue GSM 103 export credit guarantees, and that it was instituting a new fee structure for the GSM 102 export credit guarantee program. Further, on July 5, the United States proposed legislation relating to the export credit guarantee and Step 2 programs. On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in connection with the prohibited export subsidies findings. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, the United States and Brazil agreed to suspend the arbitration. On October 1, 2005, the United States ceased to issue export credit guarantees under the SCGP. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, thereby also

referring that matter to arbitration. On November 21, 2005, the United States and Brazil agreed to suspend the arbitration.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005. That Act includes a provision repealing the Step 2 program as of August 2006.

On August 18, 2006, Brazil requested the establishment of an Article 21.5 panel. On September 28, 2006, the DSB established a panel to consider Brazil's claims. On October 25, 2006, the Director-General composed the panel as follows: Mr. Eduardo Pérez Motta, Chair; and Mr. Mario Matus and Mr. Ho-Young Ahn, Members. On December 18, 2007, the Article 21.5 panel circulated its report. The panel found, *inter alia*, that: (1) U.S. export credit guarantees issued under the modified GSM 102 program with respect to unscheduled and certain scheduled (rice, pig and poultry meat) commodities constituted prohibited export subsidies; and (2) U.S. marketing loan and countercyclical payments for upland cotton were continuing to cause serious prejudice to Brazil by significantly suppressing world upland cotton prices. The panel rejected Brazil's claim that payments under the marketing loan and countercyclical payment programs were responsible for an increase in U.S. market share in MY 2005 and thereby caused serious prejudice to Brazil's interests. The panel also found that the United States was not required to have refused to perform on export credit guarantees that were issued prior to the deadline for the implementation of the DSB's recommendations and rulings as to such guarantees (July 1, 2005) and that were still outstanding as of that date.

The United States appealed the compliance panel's adverse findings on February 12, 2008. Brazil filed its notice of other appeal on February 25, 2008. The Appellate Body issued its report on June 2, 2008.

The Appellate Body issued its report on June 2, 2008, in which it:

- upheld the compliance panel's finding that U.S. marketing loan and counter-cyclical payments cause significant price suppression in the market for upland cotton, thereby constituting present serious prejudice to Brazil;

- while agreeing with the United States that the compliance panel erred in dismissing U.S. Government budgetary data showing that U.S. export credit guarantee programs operate at a profit, nonetheless upheld the compliance panel's ultimate finding that GSM 102 export credit guarantees with respect to unscheduled products and certain scheduled products (rice, pig meat, poultry meat) were prohibited export subsidies; and

- upheld the compliance panel's finding that Brazil's claims as to marketing loan and countercyclical payments made after September 21, 2005, and Brazil's claims as to GSM 102 guarantees for exports of pig meat and poultry meat, were within the scope of the compliance proceeding.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 20, 2008.

Brazil requested resumption of the arbitration process on August 25, 2008. On October 1, 2008, the United States and Brazil agreed that the arbitration would be carried out by the following individuals: Mr. Eduardo Pérez-Motta, Chair; and Mr. Alan Matthews and Mr. Daniel Moulis, Members. The meetings with the Arbitrators were held March 2-4, 2009.

The Arbitrators issued their awards on August 31, 2009. They issued one award concerning U.S. subsidies found to cause serious prejudice to Brazil's interests (marketing loan and countercyclical

payments for cotton), and another award concerning U.S. subsidies found to be prohibited export subsidies (export credit guarantees under the GSM 102 program for a range of agricultural products, plus the repealed "Step 2" program for cotton).

The Arbitrators found that Brazil may impose countermeasures against U.S. trade:

(1) for marketing loan and countercyclical payments for cotton, in an annual fixed amount of $147.3 million; and

(2) for export credit guarantees under the GSM 102 program, in an annual amount that may change each year based on a formula.

The Arbitrators rejected Brazil's request for countermeasures for the Step 2 program.

The Arbitrators also found that, in the event that the total level of countermeasures that Brazil would be entitled to in a given year should increase to a level that would exceed a threshold based on a subset of Brazil's consumer goods imports from the United States, then Brazil would also be entitled to suspend certain obligations under the TRIPS Agreement and/or the GATS with respect to any amount of permissible countermeasures applied in excess of that figure.

On September 25, 2009, Brazil requested data from the United States for 2008 and 2009 to calculate countermeasures according to the formula in the Arbitrator's award. On November 19, the United States provided Brazil the data requested for 2008 and stated that it would provide 2009 data when they are complete.

On November 19, 2009, the WTO DSB granted Brazil authorization to suspend the application to the United States of concessions or other obligations consistent with the Arbitrators' awards.

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

On March 13, 2003, Antigua & 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 the 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 reasonable period of time 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.

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. Throughout 2009, Antigua and the United States continued in their efforts to achieve a mutually agreeable resolution to this matter.

United States–Laws, regulations and methodology for calculating dumping margins ("zeroing") (DS294):

On June 12, 2003, the EU requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EU requested further consultations on September 8, 2003. Consultations were held October 6, 2003. The EU requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair; and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members. The panel issued its report on October 31, 2005, finding that Commerce's use of "zeroing" in antidumping investigations is inconsistent with U.S. obligations under the WTO, but rejecting the EU's claims that zeroing in other phases of antidumping proceedings is also inconsistent. On January 17, 2006, the EU appealed the panel report. The Appellate Body issued its report on April 18, 2006. In its report, the Appellate Body upheld the panel's finding that the U.S. "methodology" of zeroing

in average-to-average comparisons in investigations is subject to challenge "as such," and that such methodology is inconsistent with the Antidumping Agreement. The Appellate Body also reversed the panel and found that the U.S. use of zeroing in certain assessment proceedings was also inconsistent with the Antidumping Agreement. The reasonable period of time for the United States to bring its measures into compliance expired on April 9, 2007.

On July 9, 2007, the EU requested consultations with the United States concerning its compliance with the recommendations and rulings of the DSB. The EU and the United States held consultations on July 30, 2007. On September 13, 2007, the EU requested the establishment of a compliance panel, and on September 25, 2007, the panel was established. The following individuals were named by the Director-General to serve as the panelists: Mr. Felipe Jaramillo, Chair; and Ms. Usha Dwarka-Canabady and Mr. Scott Gallacher, members. Pursuant to a request by the parties, the panel agreed to open its meeting with the parties to public observation.

The panel circulated its report on December 17, 2008. The panel found that the use of zeroing in two administrative reviews involving the orders related to measures in the original dispute amounted to a failure to comply with the DSB rulings and recommendations if the reviews were concluded after the end of the reasonable period of time, even if the reviews involved entries that occurred before the end of the reasonable period of time. The panel also found that the Section 129 determinations related to four original investigations in the original dispute violated Article 3 of the Antidumping Agreement because the ITC did not revisit its original injury determinations to account for the reduced volumes of dumped imports resulting from the exclusion of certain exporters from the orders as a result of the Section 129 determinations. Finally, the panel found that the continued application of the cash deposit rate from one of the administrative reviews in the original dispute to one company that had not requested a new administrative review amounted to a failure to comply with the DSB rulings and recommendations. However, the panel rejected the EU claims that the liquidation of entries at rates determined using zeroing before the end of the reasonable period of time amounts to a failure to comply, even if such liquidation occurs after the end of the reasonable period of time. With respect to an alleged clerical error, the panel also found that the EU was prevented from raising a claim in a compliance proceeding because it could have done so in the original dispute and did not. The panel rejected or declined to make findings with respect to the EU's other claims.

On February 13, 2009, the EU filed a notice of appeal. The United States filed a notice of other appeal on February 25, 2009. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on March 23-24, 2009, via a simultaneous closed circuit television broadcast.

The Appellate Body issued its report on May 14, 2009. The Appellate Body affirmed the panel's findings with respect to three administrative reviews and found two additional administrative reviews, as well as several sunset reviews that relied on margins calculated in proceedings found WTO-inconsistent in the original dispute, to constitute failures to comply. The Appellate Body also indicated that, as a general matter, any use of zeroing in any proceeding completed after the end of the reasonable period of time, or in calculating any cash deposit applied after the end of the reasonable period of time, with respect to any of the antidumping orders for which an "as applied" finding was made in the original dispute, would constitute a failure to comply with the DSB recommendations and rulings. With respect to the alleged clerical error, the Appellate Body reversed, concluding that the relevance of the alleged clerical error to the Section 129 determination was factual rather than jurisdictional, but it did not complete the analysis. The Appellate Body also rejected a number of the EU's claims on appeal.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 11, 2009.

In addition to the three orders covered by the original panel and Appellate Body findings that had been revoked by 2007, four additional orders were revoked due to sunset reviews, effective prior to the end of the reasonable period of time.

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 Pe□a and Mr. David Unterhalter, Members. Since that time, Ms. Ramirez and Mr. Unterhalter 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–Continued suspension of obligations in the EU–Hormones dispute (DS320):

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 EU argued that EU legislation of 2003 implementing the import ban on beef and beef products produced from animals treated with certain hormones brought the EU into compliance with its WTO obligations. Consultations were held on December 16, 2004. The EU requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director-General composed the panel as follows: Mr. Tae-yul Cho, Chair; and Ms. Claudia Orozco and Mr. William Ehlers, Members. The panel, in a communication dated August 1, 2005, granted the parties' request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel's meetings with third parties remain closed.

The panel circulated its final report on March 31, 2008. In its report, the panel found that the United States breached Articles 23.2(a) and 23.1 of the DSU by making certain statements at the meetings of the Dispute Settlement Body, and by maintaining the suspension of concessions after the EU had announced compliance. The panel also found that, because the EC's revised ban of 2003 was not consistent with the SPS Agreement and had not been brought into compliance, the United States had not breached Article 22.8 of the DSU.

The EU filed its notice of appeal in this dispute on May 29, 2008. The United States filed a notice of other appeal on June 10, 2008. The Appellate Body granted the parties' request to open the hearing to the public via closed-circuit television broadcast. The oral hearing, which took place on July 28-29, 2008, was the first Appellate Body hearing ever to be open to the public.

On October 16, 2008, the Appellate Body issued its report. The Appellate Body reversed the panel's findings that the United States had breached Articles 23.2(a) and 23.1 of the DSU. The Appellate Body also reversed several of the panel's findings relating to the SPS Agreement issues concerning the EU's amended ban of 2003. The Appellate Body found that it could not conclude whether or not the EU's amended ban is WTO-consistent. The DSB adopted the Appellate Body report on November 14, 2008.

As discussed above (DS26 and 38), 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.

United States–Measures relating to zeroing and sunset reviews (DS322):

On November 24, 2004, Japan requested consultations with respect to: (1) Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the Antidumping Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004. Japan requested the establishment of a panel on February 4, 2005, and a panel was established on February 28, 2005. On April 15, 2005, the Director-General composed the panel as follows: Mr. David Unterhalter, Chair; and Mr. Simon Farbenbloom and Mr. Jose Antonio Buencamino, Members.

The panel report was circulated on September 20, 2006. The panel found that there was one measure, "zeroing," that was applicable in all types of comparisons and all proceedings. The panel agreed with prior reports that zeroing in average-to-average comparisons in investigations is inconsistent with the Antidumping Agreement. However, the panel also found that zeroing in transaction-to-transaction comparisons is not inconsistent with the Antidumping Agreement, and, expressly rejecting the Appellate Body's reasoning in *US–Zeroing (EC),* also found that zeroing in assessment proceedings is not inconsistent with the Antidumping Agreement. Japan appealed the panel report. The United States filed a cross-appeal.

In a report circulated January 9, 2007, the Appellate Body upheld the panel's findings that the United States maintains a single "zeroing procedures" measure applicable to investigations and administrative reviews. The Appellate Body reversed the panel's findings regarding zeroing in transaction-to-transaction comparisons in investigations, and it also reversed the panel's findings concerning zeroing in assessment proceedings. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body, on January 23, 2007. On 20 February 2007, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On May 4, 2007, the United States and Japan informed the DSB that they had agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on 24 December 2007.

On January 10, 2008, Japan requested DSB authorization to suspend concessions on the grounds that the United States had failed to implement the DSB's recommendations and rulings, and, on January 18, 2008,

the United States objected to the level of suspension and accordingly requested that the matter be referred to arbitration. On March 10, 2008, the United States and Japan informed the DSB that they had reached a sequencing agreement to suspend arbitration pending the completion of compliance proceedings. Pursuant to a joint request from the United States and Japan, the arbitration under Article 22.6 of the DSU was suspended on June 9, 2008.

On April 7, 2008, Japan requested the establishment of an Article 21.5 panel, which the DSB established at its meeting on April 18, 2008. On May 23, 2008, the parties agreed to constitution of the compliance panel as follows: Mr. José Antonio Buencamino, Chair; and Mr. Simon Farbenbloom and Mr. Raúl León-Thorne, Members. The compliance panel agreed to open its meeting with the parties, as well as a portion of the meeting with the third parties, to observation by the public via closed-circuit television broadcast, and the open meeting was held on November 4-5, 2008.

On April 24, 2009, the panel circulated its final report. The panel found that the United States failed to comply with the WTO's rulings because it liquidated, or would liquidate, after the deadline for compliance antidumping duties with respect to five specific administrative reviews that used zeroing. The panel also found that the United States acted inconsistently with the Antidumping Agreement and the GATT 1994 by maintaining antidumping duties after the deadline with respect to four additional administrative reviews that were not part of the original WTO proceeding, and that the United States acted in violation of GATT Article II with respect to the collection of duties in excess of bound rates that occurred after the expiration of the reasonable period of time. The panel also found that the United States had failed to comply with the DSB's recommendations and rulings with respect to the use of "zeroing procedures" and the application of zeroing in one sunset review. Lastly, the panel found that Japan was permitted to challenge the final results of an administrative review which were not in existence at the time of Japan's panel request.

On May 20, 2009, the United States filed a notice of appeal. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on June 29-30, 2009, via a simultaneous closed circuit television broadcast.

On August 18, 2009, the Appellate Body issued its report. The Appellate Body upheld the compliance panel on all issues that were appealed. Specifically, the Appellate Body affirmed the panel's findings that the United States failed to comply with respect to five administrative reviews. The Appellate Body also upheld the panel's finding of inconsistency with respect to four additional reviews that were not part of the original proceeding. Lastly, the Appellate Body affirmed the panel's finding that Japan could challenge the final results of an administrative review which were not in existence at the time of Japan's panel request, as well as the panel's finding that the United States had acted inconsistently with GATT Article II.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on August 31, 2009.

United States–Measures Relating to Shrimp from Thailand (DS343):

On April 24, 2006, Thailand requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from Thailand. In addition, Thailand requested consultations with respect to Commerce's alleged use of "zeroing" in the antidumping investigation that resulted in the order. Thailand has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on August 1, 2006. Thailand requested the establishment of a panel on September 15, 2006, and a panel was established on October 26,

2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair; and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found the use of zeroing in the investigation of shrimp from Thailand to have breached the Antidumping Agreement, and that the additional bond requirement as applied to importers of shrimp from Thailand was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reasonable" security. It rejected or declined to make findings with respect to Thailand's claims on other provisions of the GATT 1994 and the AD Agreement.

On April 17, Thailand appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand did not constitute reasonable security. It rejected Thailand's other claims regarding the panel's interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and Thailand agreed that the reasonable period of time to implement the DSB's rulings and recommendations would be eight months, expiring on April 1, 2009.

With regard to the finding of the panel regarding the use of zeroing by the Department of Commerce in the investigation of warmwater shrimp from Thailand, the Department of Commerce completed its Section 129 determination, recalculating the margins of dumping without zeroing, and implemented the determination effective January 16, 2009. With regard to the findings of the panel regarding the enhanced bond directive, on January 12, 2009, CBP published a notice proposing to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement. After considering public comments on its proposal, CBP issued a final notice ending the designation, effective April 1, 2009. At the DSB meeting on April 20, 2009, the United States informed the DSB that it had complied with its recommendations and rulings.

United States–Final Antidumping Measures on Stainless Steel from Mexico (DS344):

On May 26, 2006, Mexico requested consultations with respect to Commerce's alleged use of "zeroing" in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994, and the WTO Agreement. Consultations were held on June 15, 2006. On October 12, 2006, Mexico filed a request for the establishment of a panel, and a panel was established on October 26, 2006. On December 20, 2006, the Director-General composed the panel as follows: Mr. Albert Dumont, Chair; and Mr. Bruce Cullen and Ms. Leora Blumberg, Members.

On December 20, 2007, the panel circulated its report. The panel found that the use by the United States of "model zeroing" in investigations, including in the particular investigation at issue in this dispute, was inconsistent with U.S. obligations under the Antidumping Agreement. The panel also found, however, that the use by the United States of "simple zeroing" in administrative reviews (including in the administrative reviews at issue in this dispute) was not inconsistent with U.S. obligations under the Antidumping Agreement.

On January 31, 2008 Mexico appealed the panel report with respect to the "as such" and "as applied" claims related to zeroing in administrative review. The Appellate Body issued its report on April 30,

2008. The Appellate Body reversed the panel's findings with respect to administrative reviews, finding that zeroing in administrative reviews is "as such" and "as applied" to the subject administrative reviews, inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the AD Agreement.

The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on May 20, 2008. At the DSB meeting held on June 2, 2008, the United States notified its intention to comply with its WTO obligations and indicated it would need a reasonable period of time to do so.

On August 11, 2008, Mexico requested that the reasonable period of time be determined through arbitration pursuant to Article 21.3(c) of the DSU. On August 29, 2008, the Director-General appointed Mr. Florentino P. Feliciano as the arbitrator. On October 31, 2008, the arbitrator issued his award, in which he decided that the reasonable period of time would be 11 months and 10 days, ending on April 30, 2009.

On May 18, 2009, the United States and Mexico entered into a sequencing agreement regarding any further proceedings in this dispute. On September 2, 2009, the United States held consultations with Mexico with respect to U.S. compliance with the recommendations and rulings of the DSB in this dispute.

United States–Customs Bond Directive for Merchandise Subject to Antidumping/Countervailing Duties (DS345):

On April 24, 2006, India requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from India. India has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on July 31, 2006. India requested the establishment of a panel on October 26, 2006, and a panel was established on November 21, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair; and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found that the additional bond requirement as applied to importers of shrimp from India was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement, and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reasonable" security. It rejected or declined to make findings with respect to India's claims on other provisions of the GATT 1994, the AD Agreement, and the SCM Agreement.

On April 17, India appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from India did not constitute reasonable security. It rejected India's other claims regarding the panel's interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and India agreed that the reasonable period of time to implement the DSB's rulings and recommendations would be eight months, expiring on April 1, 2009.

As noted above (DS343), on January 12, 2009, CBP published a notice proposing to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement, and, after considering public comments on its proposal,

issued a final notice ending the designation, effective April 1, 2009. At the DSB meeting on April 20, 2009, the United States informed the DSB that it had complied with its recommendations and rulings.

United States—Continued Existence and Application of Zeroing Methodology (Zeroing II) (DS350):

On October 2, 2006, the EU requested consultations with respect to Commerce's alleged use of "zeroing" in four antidumping investigations, 35 administrative reviews, and one sunset review involving certain products from the EU, as well as Commerce's alleged use of a "zeroing" methodology in determining the dumping margin in reviews. The EU claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994 and the WTO Agreement. Consultations were held on November 14, 2006 and February 28, 2007. On May 10, 2007, the European Communities requested the establishment of a panel. At its meeting on June 4, 2007, the DSB established a panel. On July 6, 2007, the Director-General composed the panel as follows: Mr. Faizullah Khilji, Chair; and Ms. Lilia R. Bautista and Mr. Michael Mulgrew, Members. Following the resignation on November 8, 2007, of Ms. Lilia R. Bautista as a Member of the panel, the United States and the EU agreed on November 27, 2007, that Ms. Andrea Marie Brown would replace her.

The panel met with the parties on January 29-30, 2008 and on April 22, 2008, and met with the parties and third parties on 30 January 2008. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third-party session, were open for public observation.

The panel circulated its final report on October 1, 2008. The panel agreed with the United States that the EU had improperly tried to challenge the continued application, or application, of antidumping duties in 18 cases; in addition the panel agreed that the EU had improperly tried to challenge four measures that were not final at the time of panel establishment. The panel, however, disagreed with the United States that 14 measures included in the EU's panel request, but not its consultations request, were outside the panel's terms of reference. The panel also found that the EU had not proved the use of zeroing in seven of 37 administrative reviews, and excluded those reviews from its findings. In addition, although the panel said it tended to agree with the United States and prior panel reports finding zeroing permissible in administrative reviews, and that it found that the U.S. interpretation was "permissible," the panel nevertheless concluded that the United States acted inconsistently with the Antidumping Agreement and the GATT 1994 by using zeroing in 29 administrative reviews, eight sunset reviews, and four original investigations. In doing so, the panel said it felt constrained to follow prior Appellate Body reasoning, even though it expressed doubts about that reasoning.

On November 6, 2008, the EU filed a notice of appeal. The United States filed a notice of other appeal on November 18, 2008. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on December 11-12, 2008, via a simultaneous closed circuit television broadcast.

The Appellate Body issued its report on February 4, 2009. The Appellate Body affirmed the panel's finding that the use of zeroing in 29 administrative reviews was inconsistent with the Antidumping Agreement and the GATT 1994. The Appellate Body disagreed with the panel that the interpretation of the Antidumping Agreement advanced by the United States was a permissible one. Moreover, the Appellate Body affirmed the panel's finding that the eight sunset reviews at issue were WTO-inconsistent, and also upheld the panel's ruling that 14 measures included in the EU's panel request, but not its consultations request, were properly within the panel's terms of reference. The Appellate Body reversed the panel's finding that the EU improperly challenged the application or continued application of antidumping duties in 18 broadly-defined cases. However, the Appellate Body was only able to complete the analysis as to the continued application of duties in 4 of the 18 cases. The Appellate Body reversed

the panel's finding that the EU had improperly challenged four preliminary determinations which were not final at the time of panel establishment. Nevertheless, the Appellate Body declined the EU's request to complete the analysis on these determinations and made no findings of inconsistency concerning them. Finally, the Appellate Body reversed the panel's finding that the EU had not proved the use of zeroing in seven of 37 administrative reviews. However, the Appellate Body declined to complete the analysis as to two of those seven reviews, and there are no findings concerning them. For five of the reviews, the Appellate Body found that the United States had acted inconsistently with the Antidumping Agreement and GATT 1994.

On February 19, 2009, the DSB adopted the recommendations and rulings in this dispute. At the following DSB meeting, on March 20, 2009, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and the EU agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on December 19, 2009.

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 covered 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 involves business confidential information and the panel's meeting with third parties are closed.

United States–Definitive Antidumping and Countervailing Duties on Certain Products from China (China) (WT/DS379):

On September 19, 2008, the United States received from China a request for consultations pertaining to definitive antidumping and countervailing duties imposed by the United States pursuant to final antidumping and countervailing duty determinations and orders issued by the U.S. Department of Commerce (DOC) in investigations on circular welded carbon quality steel pipe, certain pneumatic off-the-road tires, light-walled rectangular pipe and tube, and laminated woven sacks. China claimed that these measures were inconsistent with U.S. commitments and obligations under the GATT 1994, the SCM Agreement, the Antidumping Agreement, and China's Protocol of Accession.

The United States and China held consultations on November 14, 2008. On December 9, 2008, China requested that the DSB establish a panel. The DSB did so at its meeting on January 20, 2009. On March 4, 2009, the Director-General composed the panel as follows: Mr. David Walker, Chair; Ms. Andrea Marie Brown, and Mr. Thinus Jacobsz, Members. The panel held meetings with the parties on July 7-8 and November 11-12, 2009, and met with the parties and third parties on July 7, 2009.

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 challenges 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 (9th Cir. 2007). On April 20, 2009, at Mexico's request, the DSB established a WTO panel to examine these measures. Mexico alleges 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 alleges 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 *General Agreement on Tariffs and Trade 1994* and Article 2 of the *Agreement on Technical Barriers to Trade*.

On December 14, 2009, the Director General composed the panel as follows: Mr. Mario Matus, Chair; and Mr. Franz Perrez and Mr. Sivakant Tiwari, members.

United States–Antidumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil (WT/DS382):

On November 27, 2008, the United States received from Brazil a request for consultations pertaining to definitive antidumping duties imposed by the United States pursuant to the final results issued by the U.S. Department of Commerce (DOC) in the administrative review of the antidumping duty order on imports of certain orange juice from Brazil. Brazil claimed that certain actions by DOC and Customs and Border Protection with respect to this administrative review and with respect to any ongoing or future antidumping administrative reviews 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 II, VI:1, and V:2 of the General Agreement on Tariffs and Trade 1994, Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2, and 18.3 of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement), and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization. Specifically, Brazil complained that DOC used "zeroing" in the administrative review of the antidumping duty order on imports of orange juice.

On May 22, 2009, the United States received a request for consultations from Brazil pertaining to the antidumping duty investigation on certain orange juice from Brazil, the second antidumping duty administrative review on certain orange juice from Brazil, and the "continued use of the US zeroing procedures ('model' or 'simple' zeroing) in successive antidumping proceedings."

On August 20, 2009, Brazil requested the establishment of a panel. The DSB established the panel on September 25, 2009.

United States–Antidumping Measures on Polyethylene Retail Carrier Bags from Thailand (Thailand) (WT/DS383):

On November 26, 2008, the United States received from Thailand a request for consultations pertaining to the application of the so-called "practice of zeroing" in calculating overall weighted average margins of dumping in an investigation by the U.S. Department of Commerce (DOC) on polyethylene retail carrier bags from Thailand. Thailand claimed that the use of "zeroing" in the final antidumping duty determination, amended final determination, and order inflated margins of dumping artificially created margins of dumping where none would otherwise have been found, and was inconsistent with U.S. commitments and obligations under Article VI of the *General Agreement on Tariffs and Trade 1994* and Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

The United States and Thailand held consultations on January 28, 2009. At its meeting on March 20, 2009, the DSB established a panel. On August 20, 2009, the parties agreed to compose the Panel as follows: Mr. Alberto Juan Dumont, Chair; and Ms. Deborah Milstein and Mr. Norman M. Harris, Members.

United States–Certain Country of Origin Labeling (COOL) Requirements (Canada) (WT/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 U.S. Department of Agriculture ("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 the *General Agreement on Tariffs and Trade 1994*, Articles III:4, IX:2, IX:4, and X:3(a), the *Agreement on Technical Barriers to Trade*, Articles 2.1, 2.2, and 2.4, or in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Articles 2(b), 2(c), 2(e), and 2(j). 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 in the sense 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).

United States–Certain Country of Origin Labeling (COOL) Requirements (Mexico) (WT/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 U.S. Department of Agriculture ("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 U.S. measures are inconsistent with the GATT 1994, Articles III:4, IX:2, IX:4, and X:3(a), the *Agreement on Technical Barriers to Trade*, Articles 2.1, 2.2, 2.4, 12.1, and 12.3, or, in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Articles 2(b), 2(c), 2(d), and 2(e). Additionally, 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 the 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).

United States–Certain Measures Affecting Imports of Poultry from China (China) (DS392):

On April 17, 2009, China requested consultations with the United States on a provision of the Omnibus Appropriations Act of 2009 that prohibits the use of appropriated funds for fiscal year (FY) 2009 to establish or implement a rule allowing the import of poultry products from China. China alleges that the U.S. measure appears to be inconsistent with Articles I and XI of the *General Agreement on Tariffs and Trade 1994* and Article 4 of the *Agreement on Agriculture*. In addition, although China noted that it does not believe the measure at issue to be a sanitary and phytosanitary measure, China also stated that, if it were demonstrated that it is an SPS measure, China also would request consultations pursuant to Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement). China further alleged that, to the extent any measure at issue is demonstrated to be an SPS measure, China considers that the measure is in breach of Articles 2, 3, 5, and 8 of the SPS Agreement. Consultations were held on May 15, 2009. On July 20, 2009, China requested the establishment of a panel. At its meeting on July 31, 2000, the DSB established a panel. On September 23, 2009, the Director-General composed the panel as follows: Mr. Ole Lundby, Chair; and Mr. Mohammad Saeed and Mr. Felipe Lopeandia, Members. The panel met with the parties on December 15-16, 2009, and met with the parties and third parties on December 16, 2009.

United States–Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China (DS399):

On September 14, 2009, China requested consultations with respect to the imposition of additional duties on imports of certain passenger vehicle and light truck tires from China under section 421 of the Trade Act of 1974, as amended, and section 16 of the Protocol on the Accession of the People's Republic of China (Protocol of Accession). China alleges that the additional tariffs are inconsistent with the GATT 1994, the Agreement on Safeguards, and the Protocol of Accession. China alleges that various elements of USITC's determination regarding market disruption are inconsistent with the Protocol of Accession. In addition, China alleges that the level and duration of the additional tariffs are inconsistent with the Protocol of Accession. Finally, China alleges that the Section 421 definition of "significant cause" is in and of itself inconsistent with the Protocol of Accession.

The United States held consultations with China on November 9, 2009. On December 9, 2009, China filed a request for establishment of a panel. As of December 31, 2009, the panel had not been established.

United States–Use of Zeroing in Antidumping Measures Involving Products from Korea (DS402):

On November 24, 2009, the Republic of Korea (Korea) requested consultations regarding the final and amended determinations and antidumping duty order with respect to stainless steel plate in coils from Korea, the final and amended determinations and antidumping duty order with respect to stainless steel sheet and strip in coils from Korea, and the final determination and antidumping duty order with respect to diamond sawblades and parts thereof from Korea. Korea challenges what it describes as the use by the Department of Commerce of "the practice of 'zeroing' negative dumping margins in calculating overall weighted average margins of dumping" in the investigations in those cases. Korea claims that the Department of Commerce's "use of its practice of zeroing" in those investigations is inconsistent with the obligations of the United States under Article VI of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 1, 2.1, 2.4, 2.4.2, and 5.8 of the *Agreement on Implementation of Article VI of the GATT 1994*.

J. 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' observance of 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 Document Distribution Facility under the document symbol "WT/TPR."

The TPRB's Report to the Singapore Ministerial Meeting suggested that Members pay greater attention to Least Developed Countries (LDCs) in preparing the TPRB timetable. A 1999 appraisal of the TPRM's operation also drew attention to this matter.

Increasingly, TPRs of LDCs perform a technical assistance function, helping them improve their understanding of the 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 between 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 review process for an LDC now includes a two-to-three-day seminar for its officials on the WTO, in particular on the trade policy review exercise and the role of trade in economic policy. During 2009, the Secretariat conducted seminars for the review process of Benin, Burkina Faso, The Gambia, Mali, Malawi, Niger, Senegal, and Solomon Islands. In addition, similar exercises were conducted in the preparation of the reviews of other Members, including Albania, Armenia, Croatia, the Dominican Republic, Guyana, and the Southern African Customs Union (SACU) countries.

Major Issues in 2009

During 2009, the TPRB reviewed the trade regimes of Guatemala, Japan, Brazil, Fiji, EC, Mozambique, Solomon Islands, New Zealand, Morocco, Guyana, Zambia, Chile, Maldives, Niger, Senegal, Georgia, Botswana, Lesotho, Namibia, South Africa, and Swaziland. The 2009 TPRB review of the trade policies and practices of Georgia was the first for this country. The TPRB reviewed the trade regimes of the five countries (Botswana, Lesotho, Namibia, South Africa, and Swaziland) that make up the South Africa Customs Union (SACU) both as independent WTO Members and as participants in this customs union.

From its inception in 1998 to the end of 2009, the TPRM has conducted 305 reviews, covering 136 out of 153 Members and representing some 97 percent of world trade. Of the 32 LDC Members of the WTO, the TPRB had reviewed 27 by the end of 2009.

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 2009. These included:

- transparency in policy making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO Agreements;
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including the differences between applied and bound rates;
- customs valuation and clearance procedures;
- the use of contingency measures such as anti-dumping and countervailing duties;
- technical regulations, and standards and their equivalence with international norms;
- sanitary and phytosanitary measures;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- state involvement in the economy and privatization programs;
- 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 2010

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 2010, the proposed program of reviews is the United States, China, Malaysia, Chinese Taipei, Hong Kong China, Albania, Armenia, Belize, Benin, Burkina Faso, Croatia, El Salvador, Gambia, Honduras, Jamaica, Malawi, Mali, Papua New Guinea, and Sri Lanka.

K. Other General Council Bodies/Activities

1. Committee on Trade and Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council 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 sub-paragraph 32(i)); the TRIPS Agreement and the environment (Doha sub-paragraph 32(ii)); labeling for environmental purposes (Doha sub-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 those that are subject to specific negotiating mandates that are being taken up by the Committee on Trade and Environment Special Session (CTESS). *(For additional information, see Chapter II.C.6.)*

Major Issues in 2009

In 2009, the CTE met twice, on July 10 and November 20. Members were not very active, reflecting a greater degree of engagement in other WTO negotiating bodies. Much of the CTE discussion focused on trade and climate change, which reflected national governments' actions and concerns in the global negotiations to address climate change.

Trade and Climate Change:

Many Members expressed their interest in the CTE's considering a variety of trade issues stemming from efforts to address climate change, such as carbon footprint labeling schemes for products and related methodologies for counting carbon. In order to structure such future discussions, several Members suggested that the Secretariat make a presentation on its joint publication with United Nations Environment Program (UNEP), published in June 2009, "Trade and Climate Change," which examines "how trade and climate change policies interact and can be mutually supportive." The WTO Secretariat is expected to make such a presentation at the next meeting of the CTE in early 2010. The joint UNEP-WTO report is available on the WTO website at www.wto.org/english/res_e/publications_e/trade_climate_change_e.htm.

Market Access under Doha Sub-Paragraph 32(i):

Following a Secretariat-sponsored workshop on private voluntary standards in July, several developing countries expressed concerns that private environmental standards hampered market access for their exports. The workshop presentations are available on the WTO website, www.wto.org/english/tratop_e/envir_e/events_e.htm.

The *TRIPS Agreement and the Environment under Doha Sub-Paragraph 32(ii):*

There were no discussions during 2009 under this agenda item.

Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii):

Discussions under this agenda item continued to reflect a lower level of interest, with the exception of the European Communities, which continue to press for future focused work on eco-labeling in the CTE. However, we anticipate that broader interest could increase in the future, due to the aforementioned interest in carbon footprint labeling schemes.

Capacity Building and Environmental Reviews under Doha Paragraph 33:

Developing country Members continued to stress the importance of benefiting from technical assistance related to WTO negotiations on trade and environment, particularly given the complexity of some of these issues. Several Members briefed the Committee on cooperative trade and environment programs undertaken in relation to Free Trade Agreements. The Secretariat informed the CTE of its trade and environment technical assistance activities undertaken in 2009 and planned for 2010. UNEP briefed the CTE on its online training program focused on organic product trade opportunities, and UNCTAD briefed Members on its activities related to organic agriculture trade and its trade and environment report.

The CTE also received briefings by several multilateral environment agreement (MEA) secretariats regarding recent and upcoming meetings, including: the United Nations Framework Convention on Climate Change (UNFCCC); the Convention on International Trade in Endangered Species (CITES); and the Convention on Biological Diversity (CBD).

Prospects for 2010

It is expected that the CTE's discussions will become more structured and focused on climate change in 2010, including further study of carbon-related labeling schemes and related methodologies for counting carbon. It is also expected that developing country Members' interest in private, environmental standards will continue in 2010, and discussion in the CTE is likely to focus on the impact of private environmental standards on market access for developing country exports.

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 two additional sub-groups of the CTD, a Subcommittee on Least Developed Countries (LDCs) and a Dedicated Session on Small Economies.
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, rather than the implementation or operation of a specific agreement. 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 expanding trade in products of interest to developing country Members, problems associated with reliance on a narrow export base and on 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 Sub-Committee on LDCs and the Dedicated Session on Small Economies has included review of market access challenges related to exports of LDC Members and discussed options for improving export competitiveness in textiles and clothing, and the use of regional bodies to address the trade-related needs of small, vulnerable economies, including island and landlocked states.

Major Issues in 2009

The CTD in Regular Session held five formal sessions in March, May, July, October, and December 2009. Activities of the CTD and its subsidiary bodies in 2009 included:

- *Technical Cooperation and Training:* The CTD took note of the Annual Report on Technical Assistance and Training, January 1 to December 31, 2008 (WT/COMTD/W/168), and of the Technical Cooperation Audit Report for 2008 (WT/COMTD/W/169 and Rev.1). The Secretariat provided information on preparations for the implementation of the Technical Assistance and Training Plan for 2010.

- *Notifications Regarding Market Access for Developing and Least-Developed Countries:* The CTD continued its consideration of Norway's GSP notification (WT/COMTD/N/6/Add.4) on the basis of questions submitted by Brazil (WT/COMTD/65 and Add.2). The CTD also reviewed notifications concerning the GSP schemes of the European Union (WT/COMTD/N/4/Add.4), Switzerland (WT/COMTD/N/7/Add.3), and the United States (WT/COMTD/N/1/Add.6).

- *Transparency of Preferential Trading Arrangements (PTAs):* In December 2006, the General Council invited the CTD to review the transparency of GSP programs and other preferential agreements under its mandate. The proponents of a Transparency Mechanism for PTAs (Brazil, China, India, and the United States) circulated a revised draft proposal (JOB (08)/103/Rev.1) in November 2009. The Committee considered the revised proposal after proponents introduced it. Members indicated their interest in continuing their consideration of the revised proposal. It was agreed at the December CTD that the Chairman would request that the General Council grant the Committee an extension of its mandate until July 2010 to consider the matter and report back for appropriate action.

- *Duty-Free, Quota-Free Market Access for LDCs Members:* The Decision taken at the Hong Kong Ministerial Conference on duty-free and quota-free (DFQF) market access for least-developed countries (LDCs) remains a standing item on the CTD's agenda. At the 74th Session, India provided an update on the implementation of its Duty Free Tariff Preference (DFTP) Scheme for LDCs. During the December meeting, the CTD conducted its fourth annual review of the implementation of the Hong Kong Decision, as mandated in Annex F of the Hong Kong Ministerial Declaration.

- *Review of Regional Trade Agreements (RTAs) between Developing Country Members:* Formal sessions of the CTD Dedicated Session on RTAs were held in July and September 2009. The CTD

considered the Free Trade Agreement between Pakistan and Sri Lanka (Goods) and the Closer Economic Partnership Agreement between Pakistan and Malaysia (Goods). Members also considered issues relating to the requested change in the notification status of the Gulf Cooperation Council (GCC) Customs Union to the Enabling Clause (WT/REG222/N/1 and Corr.1, WT/COMTD/N/25, WT/COMTD/66 and Add.1 to Add.3). Following a decision taken by the Committee on Regional Trade Agreements (CRTA), Members agreed that RTAs notified under the Enabling Clause involving non-WTO Members would be considered using the same procedures as those being used to consider RTAs involving WTO Members only.

- *Dedicated Session on Small Economies:* In 2009, following on work of the CTD in the Dedicated Session on Small Economies to identify the unique characteristics and problems of Small Economies in the trading system, Members continued to monitor the progress of the small economies' proposals in the negotiating and other bodies. The Dedicated Session on Small Economies held meetings in July and October 2009, where the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role, and Members adopted the draft Dedicated Session's report to the General Council (WT/COMTD/SE/6).

- *Aid for Trade:* The CTD held five sessions on Aid for Trade in 2009, in February, April, June, October, and November. Work focused on the Director-General's proposed Aid-for-Trade Roadmap (WT/COMTD/AFT/W/11), work related to the joint OECD/WTO Aid-for-Trade at a Glance 2009 Report, and preparations for the 2nd Global Review of Aid for Trade. Presentations were made by the regional development banks, the OECD, and UNIDO related to Aid for Trade. The 2nd Global Review of Aid for Trade took place on July 6-7, 2009. It evaluated progress made since the 1st Global Review held in November 2007 and examined how Aid for Trade was being operationalized on the ground. In 2009, Members also worked on a draft Aid-for-Trade Work Program covering the period 2009 to 2011. The work program is focused around four main headings: resource mobilization, mainstreaming, implementation (with a particular focus on the regional dimension), and engaging the private sector.

- *LDC Subcommittee:* The Subcommittee held two meetings in 2009 where it mainly focused on the implementation of the WTO Work Program for LDCs adopted by Members in 2002. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity-building initiatives for LDCs; and accession of LDCs to the WTO.

- *Other CTD Issues:* In order to assist the Committee with its requirement to keep under continuous review the participation of developing country Members in the multilateral trading system, the Secretariat prepared a report (WT/COMTD/W/172 and Corr.1) highlighting salient features concerning the participation of developing economies in the global trading system, including recent developments during the financial and economic crisis. Additionally, the Joint Advisory Group (JAG) on the International Trade Centre, UNCTAD and the WTO provided a report to the CTD on its 42nd Session (ITC/AG/ (XLI)/225).

Prospects for 2010

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including those related to technical assistance. Interest in market access is expected to continue. In this vein, the CTD will undertake its responsibility to review steps taken by Members to provide DFQF market access to the LDC Members in line with the Hong Kong Declaration, review the participation of developing country Members in the multilateral trading system, and review market access for LDCs in the LDC Subcommittee. The CTD will also continue its work on Aid for

Trade in line with the work program for 2009-2011. In addition, the CTD's examination of RTAs between developing country Members will continue as new RTAs are notified to the WTO, including a notification concerning the Chile-India Agreement (WT/COMTD/N/30). A new transparency mechanism to facilitate the review of PTAs is also expected to be implemented, and the CTD could review the first arrangements in late 2010.

3. Committee on Balance-of-Payments Restrictions

Status

The Uruguay Round Understanding on Balance-of-Payments (BOP) substantially strengthened GATT disciplines on BOP measures. Under the WTO Agreement, any Member imposing restrictions for BOP purposes must consult regularly with the BOP Committee to determine whether the use of such restrictions are necessary or desirable to address a Member's BOP difficulties. The BOP Committee works closely with the International Monetary Fund in conducting consultations. Full consultations involve examining a Member's trade restrictions and balance-of-payments 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 balance-of-payments.

Major Issues in 2009

Following Ecuador's notification on February 18, 2009 (WTO document WT/BOP/N/65) that it had applied measures for balance-of-payments purposes, the Committee held consultations with Ecuador in April, June, September, and October 2009. Ecuador agreed to replace most of the quantitative restrictions with price-based measures no later than September 1, 2009, and to progressively modify the level and scope of the measures as its balance of payments situation improved. Ecuador also committed to remove all trade measures applied for balance of payments purposes no later than January 22, 2010, and to immediately notify the steps taken to the Committee. The Committee agreed, in the light of the commitments taken by Ecuador, that the measures applied could remain in place temporarily under the provisions of Art. XVIII:B of the GATT 1994.

Following Ukraine's notification on March 4, 2009 of the introduction of an import surcharge of 13 percent on imports of certain products for balance-of-payments purposes for a period of up to six calendar months (document WT/BOP/N/66), the Committee held consultations with Ukraine in June. The Committee concluded that the measures taken by Ukraine were not justified by its balance-of-payments situation and had not been applied in a manner consistent with the requirements set forth in Article XII of GATT 1994 and the Understanding. The Committee noted Ukraine's commitments to eliminate the measures no later than September 7, 2009, as set out by the legislation, to firmly endeavor to eliminate them by mid July, and to immediately notify to the Committee the action taken. On September 8, 2009, Ukraine notified the Committee that the measures applied for balance-of-payments purposes had been discontinued as of September 7, 2009.

The Committee met in October to hold its eighth annual review under China's Transitional Review Mechanism according to paragraph 18 of China's Protocol of Accession. In light of China's balance-of-payments position, there was little discussion.

Prospects for 2010

Should a Member resort to new BOP measures, WTO rules require a thorough program of consultation with the Committee. We expect the BOP 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 2010 budget, the U.S. assessed contribution is 12.962 percent of the total budget assessment, or Swiss Francs (CHF) 24,550,028 (about $23.7 million). (*Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2009 and 2010 are provided in Annex II.)*

Major Issues in 2009

Activities of the Committee in 2009 included:

- *WTO Budget:* The Committee recommended a budget for the WTO of CHF 194 million (about $187.8 million) for 2010 and CHF 198 million (about $191.7 million) for 2011, which represent annual increases of 2.5 percent and 2.17 percent respectively.

- *WTO Facilities:* The work on the first renovated area in the South Wing of the Centre William Rappard building was completed on October 7, 2009. The work in the next area was started and is expected to be completed in June 2010. The construction permit for the intra-muros project was adapted following meetings with local authorities and is expected to be granted before the end of March 2010. The project was presented to the two federal chambers in Bern at the end of December in order to obtain a loan of CHF 20 million (about $19.4 million) at the beginning of 2010, which is an interest-free loan to be repaid by the WTO over 50 years. A CHF 27 million grant (approximately $26.1 million) was approved by the local Swiss authorities for the construction of a 400-space parking garage, fulfilling the last requirement for the WTO to become owner of the Centre William Rappard.

- *Change in Normal Retirement Age and Pension Contribution:* A change in the normal retirement age from 62 to 65 was adopted and becomes effective as of January 1, 2010. An increase in the contribution rate to the WTO Pension Plan from 22.5 percent to 23.7 percent was also adopted and becomes effective as of January 1, 2010. The purpose of these changes was to address a projected actuarial deficit in the WTO's Pension Fund.

- *Diversification of the WTO Secretariat:* In response to a proposal by several Members on the need to improve the diversification of the WTO Secretariat, the Secretariat prepared and presented the "Report on Diversity of the WTO Secretariat" (WT/BFA/W/191 and CPR(09)29), which explains that the WTO is required by its own regulations to ensure diversity in its hiring practices and that the Director-General is committed to the principle of equal opportunity for all, regardless of nationality or gender. The Secretariat intends to present a full report on staff diversification to the Committee at its first meeting in 2010.

Prospects for 2010

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis. The Budget Committee will actively work with the Director-General on the progress and any and all financial requirements incurred for the planned new facility renovation and relocation for the WTO. It will also be regularly consulted and kept informed of all aspects concerning the finalization and implementation of security enhancements.

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 General Agreement on Trade in Services (GATS), which govern services and labor markets economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment, if certain requirements are met. With respect to goods, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. In addition, duties and commercial measures applied to third countries upon the formation of an FTA or CU must not be higher or more restrictive than was the case before the agreement. If, in forming a CU, a Member exceeds its WTO bound rates, it must so notify the WTO in order to negotiate, with other Members, compensation in the form of market access concessions. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs should exceed ten years only in exceptional cases.

With respect to trade in services, the CU or FTA must have "substantial sectoral coverage" and prohibit or eliminate substantially all discrimination; in addition, the FTA or CU may not exclude *a priori* any mode of supply from the agreement. As with agreements on goods, barriers or restrictions to trade in services applicable to third parties upon formation of the FTA or CU may not be higher than was the case previously. Finally, a compensation requirement analogous to that in goods agreements exists for services agreements.

Major Issues in 2009

As of October 15, 2009, 457 RTAs have been notified to the GATT or WTO.[16] Of the notified agreements, 266 are currently in force. These figures correspond to 364 integrated RTAs (goods and services together), of which 186 are in force. Of the RTAs in force, 162 are notified as GATT Article XXIV agreements; 27 are notified as Enabling Clause agreements;[17] and 77 are notified as GATS Article V agreements.

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs which was implemented in 2007. 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 of RTAs to assist Members in their consideration of a notified RTA; timeframes associated with the consideration of RTAs; provisions regarding subsequent notification and reporting of notified RTAs; technical support for developing countries; and the distribution 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, entrusted to do the same for RTAs falling under the Enabling Clause.

In the years prior to the adoption of the transparency mechanism, the CRTA had completed the examination of a total of 67 agreements, of which 46 were in the area of trade in goods and 21 in trade in services. Since the adoption of the transparency mechanism three years ago, 67 agreements have been examined (23 in 2009). Of these agreements, 64 have been reviewed in the CRTA and three in the CTD. A total of 95 RTAs remain to be reviewed, comprising 92 RTAs for which the factual presentation is under preparation and three RTAs for which the factual presentation is on hold because commitments in the agreements are still being negotiated by the parties.

At the time of the adoption of the Decision on the Transparency Mechanism for Regional Trade Agreements in December 2006, the Chair of the General Council had noted that Members intended to conduct an initial review of the Mechanism within one year. However, in December 2009 the United States and other Members acknowledged that that there was not yet enough experience, particularly with regard to RTAs falling under the Enabling Clause, for the review to take place.

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.

[16] This figure counts the goods and services portions of some RTAs as separate agreements.

[17] Consistent with past practice, RTAs notified under the Enabling Clause continue to be reviewed in the Committee on Trade and Development (CTD).

Prospects for 2010

Four sessions of the Committee on Regional Trade Agreements are foreseen in 2010. The United States-Bahrain Free Trade Agreement, the United States-Peru Free Trade Agreement, and Dominican Republic-Central America-United States Free Trade Agreement are among those RTAs that are likely to be reviewed under the Transparency Mechanism in 2010.

6. Accessions to the World Trade Organization

Status

Work on accessions in 2009 slowed perceptibly from the previous year. Both the number of active accessions and the frequency of Working Party (WP) meetings dropped sharply from 2008. There were no new applications for accession nor did any accession applicant become a WTO Member in 2009. The number of countries in accession negotiations remained at twenty-nine.[18] Montenegro had substantially completed its multilateral negotiations in 2008. At the end of 2009, however, bilateral market access negotiations were still going on with one Member. Samoa's excellent progress in the first half of 2009 slowed markedly after a devastating tsunami hit the Pacific island country in September. Through early June, bilateral and multilateral work with Russia and Kazakhstan gained momentum; however, on June 9th, Russia, Kazakhstan, and Belarus suspended their WTO accession processes and announced they were forming a customs union with a common external tariff (CXT) that would enter into force on January 1, 2010. They indicated they intended to reformulate their accession and join as a customs union. Based on reactions from Members to this proposal, the three governments are reconsidering how they will approach the WTO accession process.

During 2009, WP meetings and/or bilateral market access negotiations were held in Geneva with Azerbaijan, Bosnia and Herzegovina, Laos, Lebanon, Serbia, Tajikistan, and Yemen. Additionally, Chair's consultations, similar to informal WP meetings, were convened for Samoa and Russia. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings. Two informal consultations also were held to receive information from Russia, Kazakhstan, and Belarus on their plans for a customs union and harmonized tariffs and the impact on their WTO accessions. Afghanistan, The Bahamas, and Iran circulated their initial documentation, the Memorandum on the Foreign Trade Regime (MFTR), the action necessary to activate their Working Parties and begin negotiations. For Afghanistan and The Bahamas, Members developed initial questions and comments on the respective document for written response by these applicants. Responses had not been received as of the beginning of 2010. Members will similarly submit questions and comments on Iran's MFTR at the beginning of 2010. Vanuatu and the Seychelles resumed negotiations for accession after a break of 8 years and 11 years respectively.

Five of the twenty-nine current applicants for WTO accession (Comoros, Equatorial Guinea, Liberia, Libya, and Sao Tome and Principe) have not yet submitted initial descriptions of their trade regimes. The Working Parties on the accessions of four other applicants – Andorra, Belarus, Sudan, and Uzbekistan – remained dormant, and the accessions of Algeria and Bhutan also were inactive during 2009. The Working Parties on the accessions of Ethiopia, Iraq, Kazakhstan, and Montenegro, did not meet in 2009, but bilateral work continued on each of these accessions and each government engaged in domestic

[18] Accession Working Parties have been established for Afghanistan*, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan*, Bosnia and Herzegovina, Comoros*, Equatorial Guinea*, Ethiopia*, Iran, Iraq, Kazakhstan, Laos*, Lebanon, Liberia*, Libya, Montenegro, Russia, Samoa*, Sao Tome and Principe*, Serbia, Seychelles, Sudan*, Tajikistan, Uzbekistan, Vanuatu*, and Yemen* (The 12 countries marked with an asterisk are LDCs).

efforts to enact legislation to implement WTO provisions. The chart included in Annex II reports the current status of each accession negotiation.

Background:

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

In a typical accession negotiation, an application is submitted to the WTO General Council, which establishes a "Working Party" composed of all interested WTO Members to review the applicant's trade regime and to conduct the negotiations. WP meetings normally are scheduled when there is sufficient new documentation or progress in WTO implementation to justify further discussion. The number of WP meetings, as well as the length of the negotiations, largely depends on the speed with which the applicant is prepared to address the identified issues and to complete the negotiations. Accession applicants also negotiate trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services, based on requests from WP Members. Applicants also are expected to make necessary legislative changes to implement WTO institutional and regulatory requirements and to eliminate existing WTO-inconsistent measures. Almost all accession applicants take all of these actions on WTO rules prior to accession.[19]

At the conclusion of its work, the Working Party adopts the agreed results of the negotiations (the recommended "terms of accession" developed with WP Members in bilateral and multilateral negotiations) and transmits them with its recommendation for approval to the General Council or Ministerial Conference.[20] These terms, the accession "protocol package," consist of the Report of the Working Party and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and services by foreign suppliers, 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). Thirty days after the WTO receives the applicant's instrument accepting the terms of accession, the applicant becomes a WTO Member.

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 acceding Members towards full implementation of WTO obligations, and to address outstanding trade issues covered by the WTO in a multilateral context.

LDC Accessions:

WTO Members are committed to accelerating the accession process of least-developed countries (LDCs) and in 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

[19] As outlined below, negotiations with applicants designated as "least-developed" by the United Nations are subject to special procedures and guidelines, and do not, as a rule, fully implement WTO provisions prior to accession.

[20] Working Party adoption is by "consensus," or without an objection by any WP Member. While there are provisions in the WTO Agreement for the Ministerial Conference or General Council to approve accessions by a two-thirds affirmative vote, in practice, accessions are approved by consensus.

countries at the end of 2002 in the WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508). Under these guidelines, the accession process becomes a tool for economic development, incorporating the applicant's own development program and laying out an action plan for progressive implementation of WTO rules. The market access schedules and protocols of accession developed under these guidelines reflect the need to address realistically these countries' real trade capacity deficiencies and the difficulties they face in achieving normal WTO accession objectives. Using the guidelines, WTO Members pledged to exercise restraint in seeking market access concessions and to agree to transitional arrangements for implementation of WTO Agreements.

U.S. Leadership and Technical Assistance:

As a matter of longstanding policy, the United States takes a leadership role in all aspects of the accessions, including bilateral, plurilateral, and multilateral negotiations. The objective is to ensure that new Members fully implement WTO provisions and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also provides a broad range of 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. This assistance is provided through USAID, USDA, and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce.

This assistance can include short-term technical expertise focused on specific issues (e.g., customs procedures, intellectual property rights protection, or 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 since 1995 received technical assistance in their accession process from the United States, e.g., Albania, Armenia, Bulgaria, Cape Verde, Croatia, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Nepal, Ukraine, and Vietnam. Most of these countries had U.S.-provided resident experts for some portion of the process.

Current accession applicants to which the United States provided a resident expert or other long-term assistance for the accession process during 2009 include: Afghanistan, Azerbaijan, Bosnia and Herzegovina, Ethiopia, Iraq, Laos, Lebanon, Montenegro, Serbia, and Yemen. In addition, a U.S.-funded WTO expert resident in Bishkek provides resident WTO accession assistance to Kazakhstan and Tajikistan, as well as post-accession assistance to the Kyrgyz Republic. In February 2009, members of the National Assembly of Laos PDR participated in a USAID-sponsored workshop on the WTO accession process and Member obligations under the WTO Agreement. Among current accession applicants, Algeria, Belarus, Russia, and Uzbekistan also received U.S. technical assistance earlier in their accession processes.

Major Issues in 2009

All accession-related negotiations will require attention and resources from WTO delegations. Work on accessions tends to focus on those applicant countries that demonstrate a strong interest in completing the process (e.g., by submitting usable documentation on a timely basis), through progress on market access and legal changes to implement WTO provisions, or by making progress on development of the text of the report of the Working Party. Work on other applicants' accession processes moves forward as well, but more slowly. Activity was more evenly distributed in 2009, however. Negotiations with Montenegro, Samoa, Russia, and Kazakhstan, which had been advancing towards conclusion, all slowed in the second half of the year, providing an opportunity for other applicants (e.g., Serbia) to shift Members' focus towards their negotiations.

Montenegro:

Montenegro had successfully completed its market access negotiations with all Members except Ukraine at the end of 2008. Since its draft WP report is also substantially finalized, General Council approval of the terms of accession was expected early in 2009. Montenegro and Ukraine met several times during 2009 and made substantial progress towards agreement on both goods and services market access. However, these negotiations had not been completed at the end of 2009.

Serbia:

Serbia made substantial progress in both market access negotiations and multilateral review of its trade regime in 2009. In addition, legislative implementation of WTO provisions, which had been suspended by an extended political crisis, resumed in May. By the end of the year, Serbia was still negotiating bilaterally with only a few Members (including the United States, Ukraine, Korea, Ecuador, Brazil, and Norway) and in a few cases on only one or two issues. WP review of Serbia's trade regime, as reflected in the draft WP report, also moved forward based on comprehensive comments submitted by the United States and other WTO delegations after the July WP meeting. WP Members also reviewed new legislation on standards and technical regulations, sanitary and phytosanitary measures, and the new Customs Code. Less promising was Serbia's enactment in June of a new law banning trade in any products containing genetically modified organisms (GMO). The United States and other WTO Members have objected to this measure, and Serbia has agreed to modify it to bring it into line with WTO rules.

Russia:

At the end of May 2009, Russia's WTO accession process seemed to be entering its concluding phase. Russia had completed its bilateral market access negotiations on tariffs and services commitments with all interested WTO Members except for Georgia, and the Secretariat was working to merge these bilateral market access agreements into consolidated schedules. Plurilateral review of Russia's recent data on agricultural supports and export subsidies had commenced. Further plurilateral review of new draft legislation on sanitary and phytosanitary measures was planned. Notwithstanding this progress, work remained to be completed on enacting remaining WTO implementing legislation (e.g., in the areas of customs valuation, licensing, intellectual property rights, and sanitary and phytosanitary measures) as well as on a number of other substantive and technical points. In early June, Russia signaled it was ready to move forward and indicated that there would soon be a plan for resolving most of the outstanding issues.

In Moscow on June 9, however, Russia, Kazakhstan, and Belarus announced they would form a customs union, beginning with the establishment of a common external tariff (CXT) by January 1, 2010. They suspended their accession negotiations and, for a time, indicated their intent to join the WTO as a customs union. Subsequent Russian statements (as well as those of Kazakhstan and Belarus) made bilaterally to the press and in informal meetings with WTO Members in Geneva did not fully clarify the implications of this decision on their WTO accession processes or present a clear plan for moving forward. Bilateral and multilateral work on Russia's WTO accession halted. Most recently, the three customs union partners have indicated their intent to move forward in their individual accession negotiations, but to accede to the WTO "simultaneously" and "on the same terms" in areas where customs union regulations have superseded the respective national trade regimes. At the last informal consultation, in October in Geneva, WTO Members emphasized the need to receive information on the changes that customs union membership would require in their trade regimes, as well as data on changes that were contemplated in the tariff and other commitments they had already made in their accession negotiations. The customs

union partners were asked to provide WTO Members with this information in writing. At the end of 2009, Members had not received this information.

Kazakhstan:

Prior to the June 9 announcement of formation of a customs union with Russia and Belarus, Kazakhstan had intensified its efforts to complete its bilateral negotiations on market access for goods and services, concluding several more agreements. In a series of video conferences in April, the United States and Kazakhstan recorded significant progress on goods tariffs and on other issues affecting market access (e.g., on sanitary and phytosanitary measures, and on protection of intellectual property rights). Kazakhstan also continued to make necessary legislative changes to implement WTO provisions. Bilateral discussions in April helped to clarify outstanding issues for both sides on trade in services. Since the customs union does not cover services, USTR expects that Kazakhstan will provide a revised offer when negotiations restart. Other outstanding bilateral issues include completion of tariff negotiations, the provision of trading rights, import licensing procedures for electronic goods with encryption, and the operation of state-owned and state-controlled enterprises. Multilaterally, Kazakhstan is working on responses to questions received from the WTO Members after its last WP meeting. These responses will form the basis for a revised WP report text to be considered at the next meeting of its WP. As with Russia, Kazakhstan suspended bilateral and multilateral work on its accession after the June 9 announcement. In addition, Kazakhstan has indicated that it intends to renegotiate tariff commitments already agreed in its accession process in order to be able to establish harmonized tariff commitments with Russia and Belarus upon accession to the WTO. The United States and other WTO Members await a signal from Kazakhstan that it is prepared to resume work as well as the information necessary to undertake that work.

LDC Accessions

During 2009, Members continued to give priority attention to LDC accession applicants actively negotiating. These applicants are Afghanistan, Ethiopia, Laos, Samoa, Vanuatu, and Yemen, the last four of which met either bilaterally or multilaterally with Members at least once in 2009. Negotiations with Samoa and Vanuatu are well advanced. Afghanistan, whose accession process had not been activated in 2008, circulated its MFTR in April and intensified its efforts, with U.S. technical assistance, to develop the legislation and institutions necessary for the implementation of WTO provisions.

Samoa:

Samoa's WTO accession made significant progress during 2009, and many had hoped that its terms of accession would be approved by the Seventh Ministerial Conference in December. The Working Party met informally twice. Three technical assistance visits by the WTO Secretariat, additional help from Australia on legislative drafting, and comprehensive comments submitted by WP Members provided the basis for a substantial revision of the draft WP report. Samoa also completed its bilateral market access negotiations with Australia, New Zealand, and Japan and nearly completed work on trade in goods with the United States and the EU. A devastating tsunami hit Samoa's capital city in September, however, dashing hopes for completing the work in 2009. At the last informal meeting of the Working Party in October, the WP Chairman noted that Samoa needs to complete its market access negotiations with the United States, the EU, and Ukraine as soon as possible. She also called on Samoa to finalize its commitments on WTO implementation in the areas of trading rights, customs valuation, and intellectual property rights; to circulate revised draft legislation in these areas; and to work with interested delegations to replace a handful of WTO-inconsistent import bans still in place in its trade regime.

Vanuatu:

Vanuatu completed negotiations with WTO Members in 2001, but refused to have the terms of its accession submitted to the Ministerial Conference for approval. In 2004 and again in 2008, Vanuatu formally notified the WTO Secretariat that it wanted to renegotiate its accession package (specifically, certain services commitments) with a view to finally completing the process and becoming a WTO Member. Vanuatu has agreed that this will require some updating of the 2001 package in addition to its revised offer on trade in services and the re-submission of the revised terms of accession to the current WTO membership. In bilateral negotiations in November 2008, Vanuatu accepted the U.S. response to its proposal for renegotiation (i.e., new commitments in services sectors of interest to the United States in exchange for agreement to the requested changes) and has shared the new offer with other delegations that had negotiated market access in 2001. The WTO Secretariat has updated the WP report text based on material submitted by Vanuatu. At the end of 2009, Vanuatu was reviewing the revised WP report text and its 2001 Protocol and tariff schedule commitments in light of its current legislation and applied tariff rates.

Other Developments:

During 2009, developing country and LDC Members and accession applicants intensified their complaints about the current accession process and on how the WTO guidelines on LDC accessions are being implemented. Complaints focused on the length of time it may take to complete an accession, the demands made by current WTO Members in the negotiations, and in general a perceived lack of transparency and automaticity in the entire accession process. Discussions on these issues, and proposals to revise the LDC accession process to address them, continued in various WTO fora throughout the year, including at several sessions of the General Council, at the March and September meetings of the Subcommittee for LDCs under the Committee on Trade and Development, and at a special informal meeting in May labeled a "Dialogue on LDC Accessions." In addition, the issue was on the agenda of meetings of LDCs in Phnom Penh, Cambodia and in Dar-Es-Salam, Tanzania in October preparing for the WTO's Seventh Ministerial Conference in December. Specific proposals ranged from revising or interpreting the Decision on LDC Accessions (WT/L/508) to make its provisions more specific and more automatic, to encouraging additional interventions on LDC applicants' behalf by the WTO Director-General, to requiring periodic discussions on the status of LDC accessions in the General Council that better reflected LDC complaints. At the end of 2009, however, none of these proposals had been adopted, as many Members disagreed with the contention that new institutions or changes in the 2002 Decision were necessary.

The United States and other developed country WTO Members have strongly supported the General Council Decision on LDC Accessions, strictly adhering to the guidelines in formulating more flexible negotiating positions on market access and WTO implementation commitments for LDCs since its implementation in 2002. The guidelines in the Decision also have worked well in encouraging the provision of technical assistance to LDCs, thus ensuring that LDCs are better prepared for the responsibilities of WTO Membership and in general facilitating their integration into the multilateral trading system. In this way, the accession process for LDCs becomes a development tool and an opportunity to build trade capacity and to help establish a better economic environment for investment and growth.

Prospects for 2010

The pace of work on WTO accessions should accelerate in 2010. A number of applicants have just activated their negotiations and those nearing completion will press forward. Montenegro is completing

its accession process and will likely become the 154th WTO Member. It appears that Samoa's prospects for completing negotiations in early 2010 remain good, and Vanuatu's revised accession package may also be forwarded for review and approval by the General Council later in the year. Afghanistan, Iran, and The Bahamas will be eligible for initial WP meetings after they respond to Members' questions and comments on the MFTRs. Working Party meetings with Bosnia and Herzegovina, Serbia, and Yemen are planned for January and February 2010, at which time WTO Members also will continue bilateral goods and services market access negotiations. Additional WP sessions during 2010 are also likely for Ethiopia, Iraq, Laos, Seychelles, and Tajikistan. Resumption of WP deliberations with Azerbaijan and Lebanon are possible, but will depend on the timing and the quality of requested revised market access offers, as well as on tangible progress on legislative implementation. Work on the accessions of Russia and Kazakhstan should resume in 2010 after information on their new trade regimes has been circulated and reviewed by Members.

Efforts to advance the accessions of LDCs will continue, as will stepped-up monitoring of the application of the Decision on LDC Accessions in ongoing negotiations. Special focus on completing negotiations with Samoa and Vanuatu is expected, as they are already well advanced. Ethiopia, Laos, and Yemen are other LDCs in the accession process that are actively negotiating at this time.

7. Aid for Trade

Status

Aid for Trade is an effort to help developing countries in their efforts to take advantage of the opportunities of the multilateral trading system by connecting the trade priorities of developing countries with trade capacity building assistance to help those countries implement trade commitments. WTO Members have agreed on the need to improve the efficacy and efficiency of aid and capacity building efforts amongst WTO Members and other international organizations.

The Enhanced Integrated Framework (EIF) for trade-related technical assistance for least-developed countries (both WTO Members and non-Members) is the subset of Aid for Trade designed exclusively for that set of countries. The EIF is a multi-organization (including the WTO, World Bank, IMF, UNCTAD, UNDP, UNIDO, and the International Trade Centre), multi-donor program that operates as a coordination mechanism for trade-related assistance to LDCs with the overall objective of integrating trade into national development plans.

Major Issues in 2009

Work on Aid for Trade during 2009 focused on design and implementation of the monitoring framework envisioned in the task force report and preparations for the second Global Review of Aid for Trade in July 2009. The WTO Secretariat and its regional development bank partners held a number of focused regional discussions of Aid for Trade in Latin America, Africa, and Asia with participation from trade, finance, and development officials in preparation for the global review

The monitoring framework includes global monitoring of aid flows using the data resources of the OECD's Development Assistance Committee, country-level monitoring of progress in mainstreaming/integrating trade in national development plans, and case studies of best practices.

The EIF began its work in earnest, finalizing the monitoring and evaluation framework developed during 2008 and approving projects. Approval of the first projects under the second window will begin early in 2010.

Prospects for 2010

Based on the Committee on Trade and Development's Aid for Trade Roadmap: 2010-11, work in 2010 will focus on several main projects:

- The joint OECD Development Assistance Committee/Trade Committee will continue its work on efficient and effective ways to evaluate Aid for Trade activities;
- Focused events in Geneva to highlight the role of trade-related activities in development sectors like agriculture (including food security), underlining the importance of mainstreaming trade in national development plans;
- Support for regional integration; and
- Highlighting effective aid for trade strategies.

The third Global Review of Aid for Trade will take place in 2012.

L. 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 two WTO plurilateral agreements (along with the Agreement on Government Procurement) that are in force only for those WTO Members that have accepted it.[21]

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.

There are currently 31 Signatories to the Aircraft Agreement: Albania,[22] Canada, the EU[23] (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, Norway, Switzerland, Chinese Taipei and the United States. Those WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, the Republic of Korea, Mauritius, Nigeria, Oman,

[21] 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.
[22] Albania became a Signatory to the Aircraft Agreement in 2009.
[23] Currently comprising 27 Member States: Belgium, Bulgaria, 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.

Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, and Ukraine.[24] In addition, the Russian Federation is an observer. 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 2009

The Aircraft Committee held one regular meeting on October 15, 2009. At this meeting, the Committee discussed the Technical Note prepared by the Secretariat on possible revisions to the Product Coverage Annex in the light of the Harmonized Commodity and Description System that entered into force in 2007. The Committee agreed to request the Secretariat to prepare and circulate an updated Technical Note, taking into account the comments and questions received thus far, which could serve as a basis for further discussions at the next meeting of the Committee in 2010. The Committee also reconsidered the February 2009 letter from the Chair of the General Council inviting Signatories to hold consultations on ways to improve the timeliness and completeness of notifications and other information flows on trade measures falling within the scope of its areas of responsibility under the Aircraft Agreement. The Committee agreed that, at present, there was no need to discuss how to improve the information flows on trade measures falling within its scope of work. The Technical Sub-Committee of the Committee on Trade in Civil Aircraft did not meet during the period under review and neither did the Sub-Committee of the Committee on Trade in Civil Aircraft.

Prospects for 2010

The Aircraft Committee agreed to meet at least once, in the fall of 2010. The United States will continue to encourage Croatia and Oman 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

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 the Agreement. 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-one WTO Members are parties to the GPA: Canada; the EU and its 27 Member States (Austria, Belgium, Bulgaria, 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, the Republic of Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Taiwan (Chinese Taipei), and the United States (collectively the GPA Parties).

[24] Ukraine became an observer to the Aircraft Committee in 2009.

As of the end of 2009, nine Members are in the process of acceding to the GPA: Albania, Armenia, China, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, and Panama. Five additional Members have provisions in their respective Protocols of Accession to the WTO or Working Party reports regarding accession to the GPA: Croatia, the Former Yugoslav Republic of Macedonia, Mongolia, Saudi Arabia, and the Ukraine.

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 Joint Committee 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 on May 19, 2008. China also submitted its responses to the Checklist of Lists for Provision of Information relating to its GPA accession on September 15, 2008. At the U.S-China Strategic and Economic Dialogue in July 2009, China committed to submit a report to the WTO Committee on Government Procurement setting out the elements of its revised offer. At the JCCT meeting in October 2009, China committed to table a revised offer in 2010. In October, 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.

Armenia submitted its application for accession and initial coverage offer on September 4, 2009. In addition, the Kyrgyz Republic's accession to the GPA, which had been inactive since 2003, moved forward with its submission of updated responses to the checklist of issues. Moldova, which had commenced its accession in November 2008, requested in May that further active consideration of its accession be deferred until its government completed a reorganization. Jordan made little progress in its accession as it is encountering domestic difficulties.

Twenty-one WTO Members, including those in the process of acceding to the GPA, have observer status in the GPA Committee: Albania, Argentina, Armenia, Australia, Bahrain, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, New Zealand, Oman, Panama, Saudi Arabia, Sri Lanka, and Turkey. Four intergovernmental organizations (IMF, International Trade Centre, OECD, and UNCTAD) also have observer status.

Article XXIV:7(b) of the GPA calls for the Parties to undertake further negotiations to improve the Agreement and to expand the procurement that they cover under the GPA. In December 2006, the GPA Committee reached provisional agreement on a substantial revision of the text, subject to a legal check and to a mutually satisfactory outcome in the coverage negotiations. The new GPA text will be used as the basis for negotiations with countries in the process of acceding to the GPA. Most of the work on the legal check of Articles I through XXI of the revised text was completed in 2007. Issues remain on the Final Provisions in Article XXII and related texts, and significant work remains on the draft decisions on arbitration procedures and indicative criteria.

Major Issues in 2009

Chinese Taipei became a GPA Party in July 2009. With its accession, Chinese Taipei fulfilled a commitment when it joined the WTO in 2002.

During 2009, the GPA Committee held five meetings (in February, May, July, October, and December) during which Parties focused primarily on the accessions of China, Jordan, Chinese Taipei, and Armenia. It also continued negotiations on both coverage and text-related issues. With respect to the revision of the GPA text, the Committee neared completion of verification of the linguistic consistency of the English, French, and Spanish texts of the revision of the GPA.

With respect to the negotiations under GPA Article XXIV:7 that are aimed at expanding procurement covered by the Agreement, little progress was made during 2009, other than Singapore's submission of a revised offer. As of the end of 2009, 11 Parties had submitted initial offers (the United States, Canada, the EU, Iceland, Israel, Japan, Korea, Norway, Singapore, Switzerland, and Aruba), but only 7 Parties had submitted revised offers (the United States, Japan, Korea, the EU, Norway, Singapore, and Switzerland). Initial offers have not yet been submitted by Hong Kong China or Liechtenstein.

The GPA Committee held discussions at informal meetings on China, Jordan and Armenia's accessions to the GPA.

Prospects for 2010

The GPA Committee has tentatively scheduled five meetings for 2010, with the first set for the week of February 8, where it is expected to continue work on the accessions of Jordan, China, Armenia, and Moldova. The Committee also will make a renewed effort to complete the revision of the GPA during 2010.

3. Committee of Participants on the Expansion of Trade in Information Technology Products

Status

The WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. Original participants in the ITA eliminated tariffs as of January 1, 2000 on a wide range of information technology products and modified their WTO schedules of tariff concessions accordingly. In 2009, the ITA had 45 participants (covering 72 Members and States or separate customs territories in the process of acceding to the WTO) representing approximately 97 percent of world trade in information technology products.[25] The ITA covers a wide range of information technology products including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments.

Major Issues in 2009

The WTO Committee on the Expansion of Trade in Information Technology Products did not hold a formal meeting in 2009. However, the Committee did hold an informal consultation with ITA participants in March to discuss classification divergences on certain ITA products. The Committee also discussed the EU's September 2008 proposal calling for immediate negotiations to review the ITA, under the premise that the existing Agreement is inadequate to address new developments in technology. Several countries, including the United States, continued to raise significant questions and concerns about the EU proposal.

[25] ITA participants are: Albania; Australia; Bahrain; Canada; China; Costa Rica; Croatia; Dominican Republic, Egypt; El Salvador; European Communities (on behalf of 27 Member States); Georgia; Guatemala, Hong Kong, China; Honduras, Iceland; India; Indonesia; Israel; Japan; Jordan; Korea; Krygyz Republic; Macao, China; Malaysia; Mauritius; Moldova; Morocco; New Zealand; Nicaragua, Norway; Oman; Panama; Peru; Philippines; Saudi Arabia; Singapore; Switzerland (on the behalf of the customs union of Switzerland and Liechtenstein); Chinese Taipei; Thailand; Turkey; United Arab Emirates; Ukraine; Vietnam; and the United States.

On August 18, 2008, the United States, Japan, and Chinese Taipei jointly requested the establishment of a dispute settlement panel to determine whether the EU is acting consistently with its WTO obligations in its tariff treatment of certain ITA products. WTO Dispute Settlement Panel meetings were held in this dispute in 2009. *(For additional information, see Chapter II.I.)*

Prospects for 2010

The next meeting of the Committee has not yet been determined.