

# V. TRADE ENFORCEMENT ACTIVITIES

## A. Enforcing U.S. Trade Agreements

### 1. Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements to which the United States is a party and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when necessary. Vigorous investigation efforts by relevant agencies, including the Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. We seek to achieve this goal through a variety of means, including:

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

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 82 complaints at the WTO, thus far successfully concluding 55 of them by settling 27 cases favorably and prevailing in 28 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy.

### **a. Satisfactory settlements**

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

The United States has been able to achieve this preferred result in 28 cases concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value added tax; China's prohibited subsidies; China's treatment of foreign financial information suppliers; China's government support tied to promotion of Chinese brand names abroad; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

### **b. Litigation successes**

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 27 cases to date, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights, the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; India's additional and extra-additional duties on alcoholic beverages and other products; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; Mexico's discriminatory soft drink tax; and Turkey's measures affecting the importation of rice.

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

## **2. WTO Dispute Settlement**

U.S. enforcement successes in 2009 include rulings against China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products and against China's measures affecting the enforcement and protection of intellectual property rights.

The United States also favorably resolved disputes after completing, initiating, or threatening to initiate WTO dispute settlement procedures. For example, the United States had previously initiated a dispute concerning China's government support tied to China's industrial policy to promote the sale of Chinese brand names and other products abroad. In December 2009, the United States and China concluded a settlement agreement in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures. Similarly, the United States had previously obtained WTO rulings concerning certain Chinese discriminatory internal charges and administrative procedures on imported automobile parts. The United States and China subsequently agreed that the reasonable period of time for China to implement the WTO rulings would expire on September 1, 2009. Shortly before the expiration of the reasonable period of time, China informed the United States that it had withdrawn the measures in dispute.

Ongoing enforcement actions include disputes involving the EU's aircraft subsidies, the EU's tariff treatment for certain information technology products, the EU's ban on the importation and marketing of U.S. poultry, and China's export quotas and export tariffs on various raw materials.

The cases described in Chapter II of this report further demonstrate the importance of the WTO dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website: <http://www.ustr.gov/trade-topics/enforcement/overview-dispute-settlement-matters>.

## **3. Other Monitoring and Enforcement Activities**

### **a. Subsidies Enforcement**

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

Section 281 of the Uruguay Round Agreements Act of 1994 (URAA) sets out the responsibilities of USTR and the Department of Commerce (Commerce) in enforcing U.S. rights in the WTO under the Subsidies Agreement. USTR coordinates the development and implementation of overall U.S. trade policy with respect to subsidy matters; represents the United States in the WTO, including the WTO Committee on Subsidies and Countervailing Measures; and leads the interagency team on matters of policy. The role of Commerce's Import Administration (IA) is to enforce the countervailing duty law and, in accordance with responsibilities assigned by the Congress in the URAA, to spearhead the subsidies enforcement activities of the United States with respect to the disciplines embodied in the

Subsidies Agreement. The IA's Subsidies Enforcement Office (SEO) is the specific office charged with carrying out these duties.

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

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

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (<http://ia.ita.doc.gov/esel/eselframes.html>) includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, information on U.S. Antidumping and Countervailing Duty (AD/CVD) proceedings as well as AD/CVD actions with respect to U.S. exports, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. This database is frequently updated, making information on subsidy programs quickly available to the public. During 2009, IA invested in new software for the Electronic Subsidies Enforcement Library (ESEL), significantly improving the user interface and search functions, in particular for subsidy programs investigated by Commerce in its CVD proceedings.

## **b. Monitoring Foreign Antidumping, Countervailing Duty and Safeguard Actions**

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member to another. The United States actively participates in ongoing AD and CVD cases conducted by foreign countries in order to safeguard the interests of U.S. industry and to ensure that Members abide by their WTO obligations in conducting such proceedings. The United States also closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with WTO rules.

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

Further, IA tracks foreign antidumping and countervailing duty actions, as well as safeguard actions involving U.S. exporters, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of such actions involving U.S. companies. Information about foreign trade remedy actions affecting U.S. exports is accessible to the public via IA's website at <http://ia.ita.doc.gov/trcs/index.html>. The stationing of IA officers to certain overseas locations and close contacts with U.S. government officers stationed in embassies worldwide has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports.

During the past year, several trade remedy proceedings involving exports from the United States were closely monitored, such as: Brazil's investigation of butyl acrylate; Canada's investigations of copper pipe fittings and polyiso insulation board; China's investigations of automobiles, chicken products, grain-oriented electrical steel, adipic acid and polyamides; the European Union's investigation of biodiesel; India's investigations of coated paper, cold rolled stainless steel, hot rolled coil, oxo alcohols and polypropylene; Mexico's reinvestigation of apples; Pakistan's investigations of hot rolled coil and tinplate; South Africa's investigations of frozen chicken and polyvinyl chloride; and Ukraine's investigation of chicken products. IA personnel have also participated in technical exchanges with the administering authorities of the European Union, Indonesia, Thailand, and Ukraine to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

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

#### **4. Initiatives to Address Foreign Standards and SPS Barriers**

In July 2009, Ambassador Ron Kirk announced on behalf of the Obama Administration its intention to make enforcement of trade agreements a centerpiece of U.S. trade policy. Specifically, the Administration will deploy resources more effectively to identify and confront unnecessary or unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as technical regulations, standards, and conformity assessment procedures (standards-related measures) that restrict U.S. exports of safe, high quality products. SPS measures, technical regulations and standards serve a vital role in safeguarding countries and their people, including protecting health, safety, and the environment. Conformity assessment procedures are normal, legitimate day-to-day activities that contribute, *inter alia*, to increasing confidence between trading partners by ensuring that products traded internationally comply with underlying standards and technical requirements. However, it is important that SPS and standards-related measures not act as disguised or unwarranted restrictions on market access or discriminate against U.S. exports. For this reason, U.S. trade agreements provide that, although countries may adopt SPS and standards-related measures to meet legitimate objectives such as the protection of health and safety as well as the environment, the measures they adopt in pursuit of such objectives must not act as unnecessary obstacles to trade. Stepped up monitoring of trading partners' practices and increased engagement with them can help ensure that U.S. trading partners are complying with their obligations and can help facilitate trade in safe, high quality U.S. products.

As part of this intensified effort to identify such barriers, in October 2009 USTR published a *Federal Register* Notice requesting producers, growers, industry, and other members of the public to submit views on SPS and standards-related measures that act as significant barriers to U.S. exports. The Notice explained that such views would assist the U.S. Government in preparing two new reports focusing on SPS measures and standards-related measures that act as significant barriers to U.S. exports. Early in 2010, USTR will publish these reports, which will serve as tools to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. These new reports will be based on assessments from other government agencies, including from commercial, agricultural, and foreign service officers stationed abroad, and will be based as well on submissions from industry and other interested stakeholders.

These reports will also document the actions that the United States has taken to resolve the specific trade concerns identified through these efforts, as well as ongoing processes for monitoring SPS and standards-related actions that affect trade. USTR's activities in the WTO Committee on Sanitary and Phytosanitary Measures and the WTO Committee on Technical Barriers to Trade (TBT) are at the forefront of these efforts. (*For additional information, see Chapter II.F.3 and Chapter II.F.8.*) USTR also engages on these issues through, *inter alia*, mechanisms established by free trade agreements, such as NAFTA, and through other regional and multilateral organizations, such as APEC and the OECD.

## **B. U.S. Trade Laws**

### **1. Section 301**

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

#### **a. Operation of the Statute**

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

In each investigation, the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires the USTR to use the dispute settlement procedures that are available under that agreement. Section 304 of the Trade Act requires the USTR to determine whether the acts, policies, or practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the USTR must determine whether action is appropriate and, if so, what action to take.

Actions that the USTR may take under Section 301 include to: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

#### **b. Developments during 2009**

During 2009, USTR received one petition requesting the initiation of an investigation, and USTR self-initiated one investigation, which is described in part c. below. In addition, there were developments relating to the Section 301 investigation described in part d. below.

In May 2009, a petition was filed alleging, among other things, that acts, policies and practices of the government of Israel were inconsistent with the obligations of Israel under the Agreement on Trade-Related Aspects of Intellectual Property Rights. The USTR decided not to initiate an investigation in response to the petition on several grounds, including that the issues raised in the petition would be addressed more effectively through the established Special 301 process.

#### **c. Canada – Compliance with Softwood Lumber Agreement**

Under the 2006 Softwood Lumber Agreement (SLA), Canada agreed to impose export measures on Canadian exports of softwood lumber products to the United States. At the request of the United States, an arbitral tribunal established under the SLA found that Canada had not complied with certain SLA obligations, and in February 2009 the tribunal issued an award concerning the remedy to be applied.

In April 2009, the USTR: (1) initiated a Section 301 investigation of Canada's compliance with the SLA; (2) determined in the investigation that Canada is denying U.S. rights under the SLA; (3) found that expeditious action was required to enforce U.S. rights under the SLA; and (4) determined that appropriate action under Section 301 was to impose 10 percent *ad valorem* duties on imports of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. Under the determination, the duties are to remain in place until such time as the United States has collected \$54.8 million, which is the amount determined by the arbitral tribunal.

#### **d. European Commission - Measures Concerning Meat and Meat Products (Hormones)**

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

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

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

Section 307(c) of the Trade Act provides for USTR to conduct a review of a section 301 action four years after the action was taken. During 2008, the U.S. Court of International Trade held that USTR must also conduct a section 307(c) review eight years after the action was taken. Accordingly, USTR proceeded to conduct such a review.

In January 2009, USTR announced the results of the Section 307(c) review. The USTR decided to modify the action taken in July 1999 by: (1) removing some products from the list of products subject to 100 percent *ad valorem* duties since July 1999; (2) imposing 100 percent *ad valorem* duties on some new products from certain EC member States; (3) modifying the coverage with respect to particular EC member States; and (4) raising the level of duties on one of the products that was being maintained on the product list. The trade value of the products subject to the modified action continued not to exceed the \$116.8 million per year level authorized by the WTO in July 1999. The effective date of the modifications was to be March 23, 2009.

In March 2009, the USTR decided to delay the effective date of the additional duties (items 2 through 4 above) imposed under the January 2009 modifications in order to allow additional time for reaching an agreement with the EC that would provide benefits to the U.S. beef industry. The effective date of the removal of duties under the January modifications remained March 23, 2009. Accordingly, subsequent to March 23, 2009, the additional duties put in place in July 1999 remained in place on a reduced list of products.

In May 2009, the United States and the EC announced the signing of a Memorandum of Understanding (MOU) in the EC-Beef Hormones dispute. Under the first phase of the MOU, the EC is obligated to open a new beef tariff-rate quota (TRQ) for beef not produced with certain growth-promoting hormones in the amount of 20,000 metric tons at zero rate of duty. The United States in turn is obligated not to increase additional duties above those in effect as of March 23, 2009.

In August 2009, the EC opened the new beef TRQ, and USTR published a notice seeking comments on the actions necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU. The notice in particular sought comments on the continued imposition of 100 percent *ad valorem* duties throughout the remainder of the first phase of the MOU on the reduced list of products subject to such duties since March 23, 2009.

In September 2009, after consideration of the comments received in response to the August notice, the USTR took action under Section 301 necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU. In particular, the



USTR terminated the additional duties that were announced in January 2009, but which had been delayed up to that time and had never entered into force. The USTR's action left in place the additional duties that have been in effect since March 23, 2009 on a reduced list of products.

The first phase of the MOU concludes on August 3, 2012. Under a possible second phase of the MOU, the EC would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all of the additional duties imposed in connection with the EC-Beef Hormones dispute.

## **2. Special 301**

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

In addition, USTR has created a Special 301 "Priority Watch List" and "Watch List." Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List receive increased attention in bilateral discussions with the United States concerning problem areas.

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

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

### **a. 2009 Special 301 Review Announcements**

On April 30, 2009, the United States announced the results of the 2009 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in 77 countries. USTR placed 46 countries on the Priority Watch List, Watch List, or the Section 306 monitoring list.

China remained a top IPR enforcement priority in 2009 and was placed again on the Priority Watch List. USTR continued to press China to improve IPR enforcement, noting that levels of copyright piracy and trademark counterfeiting in China remained unacceptable. Russia's IPR protection and enforcement regime also continued to raise serious concerns, and likewise, Russia remained on the Priority Watch List. In particular, the Special 301 report noted that Russia still needed to make further progress towards implementing the November 2006 United States-Russia Bilateral Market Access Agreement on

Intellectual Property Rights (the IPR Bilateral Agreement) by addressing IPR protection and enforcement concerns.

In addition to China and Russia, ten countries were placed on the Priority Watch List in 2009: Algeria, Argentina, Canada, Chile, India, Indonesia, Israel, Pakistan, Thailand, and Venezuela.

Thirty-two trading partners were placed on the lower level Watch List. The Watch List countries were: Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, the Czech Republic, the Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Hungary, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, the Philippines, Poland, Romania, Saudi Arabia, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Paraguay remains under Section 306 monitoring.

Due to progress on intellectual property rights protection, Korea was removed from the Watch List in 2009. Canada, Algeria, and Indonesia were elevated from the Watch List to the Priority Watch List in 2009.

The 2009 Special 301 report also announced Out-of-Cycle Reviews for Fiji, Israel, the Philippines, Poland, and Saudi Arabia. Out-of-Cycle Reviews are conducted for countries that warrant further review before the next Special 301 report and may result in changes to a country's status on the list.

#### **b. Reorganization of the Special 301 Report**

USTR reorganized the 2009 Special 301 Report, which now has three main sections and two Annexes, in order to provide increased clarity and cohesion.

- **Section I: Developments in Intellectual Property Rights Protection and Enforcement** discusses broad global trends and issues in IPR protection and enforcement that USTR works to address on a daily basis.
- **Section II: Country Reports** includes narrative descriptions of issues of concern in particular countries.
- **Section III: Notorious Markets** listed in the Special 301 report are examples of marketplaces, including those on the Internet, that have been the subject of IPR enforcement actions, or may merit further investigation by the relevant authorities for possible IPR infringement, or both. We identify these notorious markets based upon information reviewed during the Special 301 process. Global piracy and counterfeiting continue to thrive due in part to marketplaces like these that are “notorious” for dealing in infringing goods.
- **Annex I** provides the statutory background for the Special 301 Report.
- **Annex II** provides a list of contracting parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT) (*i.e.*, the WIPO Internet Treaties).

### **3. Section 1377 Review of Telecommunications Agreements**

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

The 2009 Section 1377 Review focused on a range of concerns, including: (1) access to incumbents' network in Australia, Colombia, Germany, India, Mexico, Singapore and Sweden; (2) high rates or surcharges for calls into El Salvador, Jamaica, Japan, Peru and Tonga; (3) lack of regulatory transparency in China, Egypt, Germany, India, Israel, Mexico and South Africa; and (4) impediments to trade in telecommunications equipment in Brazil, China, India, Israel, Mexico, South Korea, and Thailand.

The review also marked progress with Oman, where negotiations prior to entry into force of the United States-Oman Free Trade Agreement secured the elimination of unreasonably high licensing fees, a key barrier to access to the Omani market

#### **4. Antidumping Actions**

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at "less than fair value") and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the 1979, 1984, and 1988 trade acts as well as by the 1994 Uruguay Round Agreements Act.

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

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

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

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

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

The United States initiated 20 antidumping investigations in 2009 and imposed 15 antidumping orders.

## **5. Countervailing Duty Actions**

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

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

The United States initiated 14 CVD investigations and imposed 6 CVD orders in 2009

## **6. Other Import Practices**

### **a. Section 337**

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

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

In cases in which the USITC finds a violation of Section 337, it must decide whether certain public interest factors nevertheless preclude the issuance of a remedial order. Such public interest considerations

include an order's effect on public health and welfare, on U.S. consumers, and on the production of similar U.S. products. If the USITC issues a remedial order, it transmits the order, determination, and supporting documentation to the President for policy review. In July 2005, President Bush assigned these policy review functions, which are set out in Section 337(j)(1)(B), Section 337(j)(2), and Section 337(j)(4) of the Tariff Act of 1930, to the USTR. The USTR conducts these reviews in consultation with other agencies. Importation of the subject goods may continue during this review process if the importer pays a bond set by the USITC. If the President (or the USTR, exercising the functions assigned by the President) does not disapprove the USITC's action within 60 days, the USITC's order becomes final. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit, with possible appeal to the U.S. Supreme Court.

The USITC is also authorized to issue temporary exclusion or cease and desist orders before it completes an investigation if it determines that there is reason to believe there has been a violation of Section 337.

In 2009, the USITC instituted thirty-one new Section 337 investigations, and three new enforcement proceedings. During the year, the USITC issued two general exclusion orders, nine limited exclusion orders, and twenty six cease and desist orders, covering imports from foreign firms, as follows: *Certain Hydraulic Excavators and Components Thereof*, No. 337-TA-582, (a general exclusion order and two cease and desist orders); *Certain Digital GPS Devices and Products Containing Same*, No. 337-TA-602, (a limited exclusion order and three cease and desist orders); *Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, No. 337-TA-604 (a limited exclusion order); *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, No. 337-TA-605, (a limited exclusion order and five cease and desist orders); *Certain Ground Fault Circuit Interrupters and Products Containing the Same*, No. 337-TA-615, (a limited exclusion order and five cease and desist orders); *Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same*, No. 337-TA-617, (a limited exclusion order and five cease and desist orders); *Certain Self-Cleaning Litter Boxes and Components Thereof*, No. 337-TA-625 (a limited exclusion order and two cease and desist orders); *Certain Silicon Microphone Packages and Products Containing The Same*, No. 337-TA-629 (a limited exclusion order); *Certain Liquid Crystal Display Devices and Products Containing the Same*, No. 337-TA-631 (a limited exclusion order and two cease and desist orders); *Certain Liquid Crystal Display Modules, Products Containing Same, and Methods for Using the Same*, No. 337-TA-634 (a limited exclusion order and two cease and desist orders); and *Certain Hair Irons and Packaging Thereof*, No. 337-TA-637 (a general exclusion order).

## **b. Section 201**

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

For an industry to obtain relief under Section 201, the USITC must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate.

The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994—the so-called “escape clause”—and the WTO Agreement on Safeguards.

As of January 1, 2010, the United States had no measures in place under section 201. The United States did not impose any section 201 measures during 2009, and did not commence any safeguard investigations.

### **c. Section 421**

The terms of China’s accession to the WTO include a unique, China-specific safeguard mechanism. The mechanism allows a WTO member to limit increasing imports from China that disrupt or threaten to disrupt its market if China does not agree to take action to remedy or prevent the disruption or threatened disruption. The mechanism applies to all industrial and agricultural goods and will be available until December 11, 2013.

Section 421 of the Trade Act of 1974, as amended by the U.S.-China Relations Act of 2000, implements this safeguard mechanism in U.S. law. For an industry to obtain relief under Section 421, the USITC must first make a determination that products of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The statute directs that, if the USITC makes an affirmative determination, the President shall provide import relief, unless the President determines that provision of relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States.

China’s terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into the first Member’s market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

Through 2005, six petitions had been filed and adjudicated under Section 421, with no remedy imposed with respect to any petition. No petitions were filed between 2006 and 2008. In April 2009, the United Steel Workers Union filed a petition with respect to certain passenger vehicle and light truck tires. On September 11, 2009, the President issued a determination imposing additional duties on such tires for a period of three years. The additional duties went into effect on September 26, 2009. The additional duty is set at 35 percent *ad valorem* for the first year, 30 percent *ad valorem* for the second year, and 25 percent *ad valorem* for the third year. On September 14, 2009, China requested consultations with the United States in the WTO with respect to the imposition of the additional duties

## **7. Trade Adjustment Assistance**

### **a. Overview and Assistance for Workers**

The Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs are authorized under Title II, Chapter 2, the Trade Act of 1974, as amended. These programs, collectively referred to as Trade Adjustment Assistance (TAA), provide assistance to workers who have been adversely affected by foreign trade (adversely affected workers).

On February 17, 2009, President Obama signed into law the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), as part of the American Recovery and Reinvestment Act of 2009. The TGAAA reauthorized TAA, expanded TAA coverage to more workers and firms, including workers and

firms in the service sector; expanded benefits to workers whose jobs have been outsourced to foreign countries; improved workers' training options; and increased the affordability of health insurance coverage. The reauthorization also expanded the scope of the TAA to better assist adversely affected workers in finding new employment. It authorized funding for employment and case management services, and encouraged the type of long-term training necessary for jobs in the 21st century economy through an extension of income support, an increase in the cap for training funding, and access to training for adversely affected incumbent workers.

The TAA program currently offers the following services to eligible individuals: training, weekly income support, out-of-area job search and relocation allowances, case management and employment services, assistance with payments for health insurance coverage through the utilization of the Health Coverage Tax Credit (HCTC), and wage insurance for some older workers through RTAA or ATAA. RTAA is the wage insurance option available to reemployed older workers authorized by the TGAAA. RTAA replaces ATAA, which provided wage insurance to reemployed older workers as a pilot project under the TAA Reform Act of 2002 for adversely affected workers covered by certifications of petitions for eligibility filed before May 18, 2009.

For a worker to be eligible to apply for TAA, the worker must be part of a group of workers that are the subject of a petition filed with the U.S. Department of Labor (DOL). Three workers of a company, a company official, a union or other duly authorized representative, or a One-Stop Career Center operator or One-Stop partner may file that petition with the DOL. In response to the filing, the DOL institutes an investigation to determine whether foreign trade was an important cause of the workers' job loss or threat of job loss. If the DOL determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the group to apply for TAA, the DOL grants the petition and issues a certification.

The DOL administers the TAA program through the Employment and Training Administration (ETA), with states acting as agents of the United States in administering TAA benefits for members of TAA-certified worker groups. Once covered by a certification, individual workers apply for benefits and services through the One-Stop delivery system. Local One-Stop Career Centers can be found on the Internet at <http://www.servicelocator.org> or by calling 1-877-US2-JOBS. Most benefits and services have specific individual eligibility criteria that must be met, such as previous work history, unemployment insurance eligibility, and individual skill levels.

#### **b. Trade Adjustment Assistance for Farmers**

On February 17, 2009, the American Recovery and Reinvestment Act (Stimulus Bill) reauthorized and modified the Trade Adjustment Assistance (TAA) for Farmers program. The program provides technical and financial assistance to producers of raw agricultural commodities and fishermen who suffered lower production or lower prices due to import competition. Annual appropriations for the TAA for Farmers program total \$90 million for each of FY2009 and FY2010, and \$22.5 million for the first three months of FY2011. A proposed rule was announced by the U.S. Department of Agriculture on August 24, 2009 seeking public comment and an interim rule which will immediately implement the program is currently undergoing review.

In FY2009, outlays under the program totaled \$25.0 million, although no technical assistance or cash payments were made to farmers or fishermen. All FY2009 outlays were administrative costs associated with running the program, particularly the establishment of the training component for the program (\$17 million) and the establishment of the software used for administering the petition, application, and payment phases of the program (\$5 million).

The previous TAA for Farmers program authorized under the Trade Act of 2002 provided approximately \$11.5 million in cash benefits to farmers and fishermen in FY 2004. In FY2005, cash benefits to farmers and fishermen totaled \$13.9 million and, in FY2006, these payments totaled approximately \$0.82 million. No petitions qualified for certification or re-certification in FY2007. The program was appropriated an additional \$9.0 million and extended through the first quarter of FY2008. No petitions qualified for certification during this extension period.

### **c. Assistance for Firms and Industries**

The Trade Adjustment Assistance for Firms Program (the “TAAF Program”) is authorized by Title II, Chapter three of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.) (the “Trade Act”). The TAAF Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment to become more competitive in the global marketplace. To be certified for the TAAF program, a firm must show that an increase in imports of like or directly competitive articles contributed to an important part of its decline in sales, production, or both, and to the separation or threat of separation of a significant portion of the firm’s workers. The Secretary of Commerce is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the Department of Commerce’s Economic Development Administration (EDA). EDA regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed via EDA’s Internet website at: <http://www.eda.gov/InvestmentsGrants/Lawsreg.xml>.

In Fiscal Year (FY) 2009, EDA awarded a total of \$13,904,051 in TAAF Program funds to its national network of 11 Trade Adjustment Assistance Centers, each of which is assigned a different geographic service area. During FY2009, EDA certified 212 petitions for eligibility and approved 172 adjustment proposals.

Additional information on the TAAF Program (including eligibility criteria and the application process) is available at <http://www.eda.gov/AboutEDA/Programs.xml>.

## **8. United States Preference Programs**

### **a. Overview**

The United States has a number of programs designed to encourage economic development in lower income countries by offering preferential duty-free U.S market access to imports from countries covered by these programs. Individual countries may be covered by more than one preferential access program with the opportunity for exporters to choose among programs when seeking preferential access to the U.S. market. The extent to which developing countries take advantage of the preferential access provided under U.S. trade law is measured by the total value of imports (for consumption) receiving preferential access under any one of the individual programs. Such U.S. imports totaled an estimated \$54 billion in 2009, down 51 percent from 2008 (\$110 billion). The 51 percent decline in imports under these five programs compares to the overall 30 percent decline for U.S. total goods imports (for consumption) from the world over the same period. These declines reflect the global recession as well as lower petroleum prices.

As a share of total U.S. goods imports for consumption, these preferential imports declined from 5.3 percent in 2008 to 3.8 percent in 2009. The programs, with each one’s share of total imports from the group, are as follows: African Growth Opportunity Act (AGOA, excluding GSP), 45 percent; GSP, 35 percent; Andean Trade Preference Act (ATPA), 16 percent; Caribbean Basin Initiative (CBI) 2 percent; and Caribbean Basin Trade and Partnership Act (CBTPA), 2 percent. The programs with the lowest



decline in usage between 2008 and 2009 were CBTPA (down 37 percent) and GSP (down 39 percent). Usage under ATPA was down 49 percent, AGOA (excluding GSP) was down 58 percent, and CBI was down 67 percent.

## **b. Generalized System of Preferences**

### *History and Purposes*

The U.S. Generalized System of Preferences (GSP) program was initially authorized under the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a ten-year period, beginning on January 1, 1976. Congress has extended the program 11 times, most recently, in December 2009. The program is currently set to expire on December 31, 2010.

The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for 4,881 products from 131 designated beneficiary countries and territories. Duty-free treatment under the GSP program is not available for products that the President determines to be import sensitive or that the statute excludes from the program. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and a key means of sustaining momentum for their economic reform and liberalization. The GSP program also ensures that U.S. companies have access to inputs from beneficiary countries on generally the same terms that are available to competitors in other developed countries that grant similar trade preferences.

### *Beneficiaries*

There are currently two types of GSP beneficiaries: those that are eligible to export approximately 3,447 products duty-free into the United States and those for which, in 1996, Congress authorized additional GSP benefits because they are “least-developed” beneficiary developing countries<sup>30</sup>. Subsequently, these countries were given the opportunity to export an additional 1,434 products to the United States duty-free.

In December 2009, changes to the list of beneficiary countries were announced. The Maldives was redesignated as a beneficiary of the GSP program. Cape Verde was removed as a Least-Developed Beneficiary Developing Country, but remained eligible for GSP benefits as a Beneficiary Developing Country. Croatia and Equatorial Guinea were notified that, as of January 1, 2010, their gross national incomes per capita exceeded statutory thresholds. They will be removed from GSP eligibility as of January 1, 2011, after a transition period. Trinidad and Tobago was removed from GSP eligibility as of January 1, 2010, after a two-year transition period. Vietnam’s request to become a GSP beneficiary continues to be under review.

Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) afford workers internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. U.S. industry has noted that a country’s participation in the GSP program nurtures conditions that benefit U.S. investors as well as the beneficiary countries. The Administration also evaluates the extent to which GSP beneficiaries have assured the United States that they will provide equitable and reasonable access to their markets.

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<sup>30</sup> In practice, those GSP beneficiaries that are on the United Nations list of least-developed countries.

### *Eligible Products*

The list of GSP-eligible products from all beneficiaries includes most non-sensitive dutiable manufactures and semi-manufactures and selected agricultural, fishery, and primary industrial products not otherwise duty-free. The statute precludes certain import-sensitive articles from receiving GSP treatment, including most non-silk textiles and apparel, watches, footwear, handbags, luggage, flat goods, work gloves, and other leather apparel. The products that receive preferential access just from least-developed beneficiaries include petroleum, certain chemicals and plastics, animal and plant products, and prepared food, beverages, spirits, and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are eligible for GSP treatment. The United States has entered into agreements providing for certification and GSP eligibility of certain handmade, folkloric products with 15 beneficiary countries: Afghanistan, Argentina, Botswana, Cambodia, Colombia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Tunisia, Turkey, and Uruguay. Such agreements provide the basis for extending duty-free treatment to exports produced by women and the poorest, often rural, residents of beneficiary countries.

### *Program Results*

*Value of Trade Entering the United States under the GSP program:* The value of U.S. imports entering under the GSP program in 2009 was approximately \$19.6 billion, a 38.2 percent decrease compared to 2008. Total U.S. imports from GSP beneficiary countries decreased by 39 percent over the same period, reflecting the global and U.S. economic downturns. It is important to note that between the second and third quarters, U.S. imports under GSP have increased by nearly 17 percent.

Top U.S. imports<sup>31</sup> under the GSP program in 2009 (through November), by trade value, were crude petroleum oils and oils from bituminous minerals, which are eligible for duty-free import only from Least-Developed Beneficiary Developing Countries (LDBDCs), silver jewelry valued at over \$18 per dozen pieces or parts, vehicle car radial tires, gold necklaces and neck chains, precious metal (other than silver) articles of jewelry, aluminum alloy, plates or sheets clad, not canned or frozen miscellaneous food preparations, cane sugar, and polyethylene terephthalate (PET) resin seamless gloves of vulcanized rubber (not surgical or medical).

In 2009 (through November), based on trade value, the top five GSP non-oil-exporting beneficiary developing country (BDC) suppliers were: (1) India; (2) Thailand; (3) Brazil; (4) Indonesia; and (5) the Philippines. Of the 30 GSP beneficiaries (not including LDBDC oil-exporting beneficiaries) whose trade under the GSP program was the largest, the World Bank classified more than half (18 of 30) as either low income or lower

#### Where Exports entering under GSP Comprise a Large Percentage of a Country's Total Exports

In February 2008, the United States recognized the government of Kosovo and a year later, Kosovo became a GSP beneficiary. No exports from Kosovo to the United States were recorded in 2008 and, of its total exports to the United States YTD 2009 (November), 83 percent entered duty-free under the GSP program. For 12 other beneficiaries not exporting petroleum under the GSP program, their GSP exports accounted for between 22 and 98 percent of their overall goods trade to the United States. This demonstrates the significant impact the GSP program has on new and developing economies, and the geographic diversity of the countries benefiting from such benefits. These beneficiaries and the share of each country's exports to the United States under the GSP program in 2009 (through November), were: Mauritania (98 percent), Armenia (86 percent), Paraguay (64 percent), Lebanon (57 percent), West Bank (63 percent), Tunisia (50 percent), Malawi (37 percent), Fiji (35 percent), Samoa (28 percent), Bolivia (26 percent), Croatia (22 percent), and Montenegro (22 percent).

<sup>31</sup> Based on tariff line (eight-digit) classification in the HTSUS.

middle income countries<sup>32</sup>. For the first time, in 2009 two LDBDCs – Malawi and Bangladesh – ranked in the top thirty non-oil-exporting suppliers of exports entering the United States under the GSP program.

In addition, exports from many low income and lower middle income beneficiaries<sup>33</sup> entering the United States under the GSP program either occurred for the first time in 2009 or increased as compared to the same period in 2008, in contrast to overall export/import trends. Low income suppliers<sup>34</sup> whose exports under the GSP program increased included: Benin, Bangladesh, Cambodia, Ghana, Malawi, Mauritania, Mozambique, Nigeria, and Sierra Leone. Lower-middle income suppliers which recorded increases included: Albania, Armenia, Azerbaijan, Belize, Bolivia, Cape Verde, Cote d'Ivoire, Swaziland, Tanzania, Tunisia, Vanuatu, and the West Bank<sup>35</sup>.

The top three LDBDC users of GSP benefits, because of large volumes of petroleum exports under the GSP program, were: (1) Angola; (2) Equatorial Guinea; and (3) Chad. Other top LDBDC users, in order of exports under the GSP program in 2009, included: (4) Democratic Republic of Congo; (5) Mauritania; (6) Malawi; and (7) Bangladesh.

*The GSP Program's Contribution to Economic Development in Developing Nations:* The GSP program helps countries diversify and expand their exports, an important developmental goal. The 2009 (through November) data on exports to the United States indicates that many beneficiaries have made progress in diversifying and expanding their exports to the United States under the GSP program, despite challenging economic conditions. For example, Sri Lanka's exports under the GSP program have grown to 253 different types of products. Exports under the GSP program from Bangladesh, Belize, Ethiopia, Samoa, Sierra Leone, and Tunisia have also diversified and expanded.

*Efforts to promote wider distribution of the use of GSP benefits among beneficiaries:* As directed by Congress, the Administration has sought to broaden the use of the GSP program's benefits among its beneficiary countries. As indicated above, two least-developed GSP beneficiaries, Malawi and Bangladesh, are among the top 30 GSP suppliers overall. In addition, 22 low income countries and LDBDCs experienced increases in exports entering the United States under the GSP program against a trend of overall decreases in all exports to the United States.

The GSP program in 2009 focused its educational outreach on beneficiary countries in or previously affected by conflict (Afghanistan, Georgia, Kosovo, Iraq, Pakistan, and Sri Lanka) and countries in North Africa, South Asia, and Latin America with high percentages of young populations (Bangladesh, Egypt, Paraguay, and Tunisia). For additional details and multiple-language GSP guides and country-specific analyses, go to "GSP-in-Use: Country-Specific Information" at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun>

There are many country-specific success stories. For example, Afghanistan's agricultural and artisanal exports to the United States have increased substantially since the United States strengthened outreach on the duty-free export opportunities available to the country's producers. In 2007, only dried apricots and a small amount of dried berries were exported to the United States under the GSP program. In the first nine

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<sup>32</sup>Based on World Bank determinations of gross national incomes per capita (Atlas method – 2008 – latest available).

<sup>33</sup>Based on World Bank determinations of gross national incomes per capita (Atlas method – 2008 – latest available).

<sup>34</sup> Not including those eligible to export petroleum to the United States under the GSP program.

<sup>35</sup> The World Bank classifies the West Bank and Gaza, together, as a lower-middle income economy. The export figure is only for the West Bank (USITC data).

months of 2009, however, gold jewelry and six additional types of agricultural products, including dried plums, prunes, figs, dried peas, and dried fruit mixtures, have begun to enter under the GSP program.

In September 2008, USTR traveled to Georgia with the Departments of State and Commerce to provide GSP information and analyses to Georgian producers and exporters. In the intervening year, exports from Georgia's agricultural and processed food sectors – which were emphasized because of their benefit to rural Georgians – have increased substantially, even as the country's overall exports to the United States under GSP have decreased. For example, there were first-time exports of sparkling wine, fruit jellies, jams, prepared vegetables, spices and certain nuts and seeds. Exports of nonalcoholic beverages, vegetable mixtures, and certain sauces and sauce preparations have each increased significantly.

Similarly, in October 2008, USTR worked with the Department of State to give a series of GSP educational seminars to industry and government in three Tunisian cities. Several exports under the GSP program that were highlighted during the seminars increased or appeared for the first time, notwithstanding that total exports from Tunisia decreased significantly in 2009. These products include sauces and condiments, dates, certain virgin olive oil, and gold necklaces.

The GSP program provides duty-free access for many items produced by small and medium-sized businesses, including in rural areas, such as wooden jewelry boxes, rattan basketwork, string instruments, and certain national flags. Exports of these flags by least-developed countries Cambodia and Haiti in 2009 (through October) grew substantially in 2009.

*Impact of Policy Changes:* Based on statutory thresholds added by Congress in December 2006, “super-competitive” exports from certain countries have been removed from GSP eligibility, providing an opening for other beneficiary countries to supply the U.S. market. This has occurred, for example, regarding U.S. imports of gold jewelry.

In June 2007, the President removed GSP eligibility of gold jewelry (except for necklaces and neck chains) from India and Thailand. A year later, the President removed GSP eligibility of the same products from Turkey and gold necklaces (other than of rope or mixed link) from India. In 2009 (through November), despite an overall decrease of nearly 30 percent in all exports into the United States of gold jewelry (not including necklaces and neck chains), exports under GSP from a number of beneficiaries increased substantially, including from least-developed beneficiaries Nepal, Mauritius, and first-time exporters Afghanistan and Zambia. Other beneficiaries experiencing substantial export increases under GSP included Lebanon, Pakistan, and Indonesia. Despite a drop of more than 37 percent in all exports into the United States of gold necklaces (not including rope or mixed link necklaces), LDBC's Afghanistan, Mauritius, Tanzania, and Yemen exported the same product under the GSP program for the first time, and necklace exports increased substantially from Nepal and Cambodia, both LDBC's. Other beneficiaries exporting increased amounts of this type of necklaces in 2009 were Lebanon, Pakistan, Indonesia, Tunisia, Colombia, Uruguay, and the Philippines.

*Benefits to the U.S. Economy:* The GSP program helps not only beneficiary developing countries, but also U.S. businesses and families. The program is a major source of imports and products for U.S. businesses, including small and medium-sized companies, and includes important partnership opportunities between U.S. workers and businesses, and workers and businesses in beneficiary developing countries. The GSP program also provides a major contribution toward reducing costs for U.S. manufacturers that utilize inputs that are not produced or available domestically. This facet of the GSP program helps to improve the competitiveness of U.S. manufacturing and avoids U.S. manufacturers paying higher duties which are then passed on to customers.

## *Annual Reviews*

An important attribute of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility. Detailed information on elements of each Annual Review is available on the GSP Program Information Page on the USTR website ([http://www.ustr.gov/webfm\\_send/1578](http://www.ustr.gov/webfm_send/1578)).

### *Conclusion of the 2008 GSP Annual Review*

Presidential Proclamation 8394, signed on June 29, 2009, announced the results of the 2008 GSP Annual Review of product petitions. Those results are available at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-reviews>.

The GSP 2008 Annual Review also involved an analysis of petitions to withdraw or limit a country's GSP benefits for not meeting certain GSP eligibility criteria. Several beneficiaries remained under active scrutiny, including: Lebanon, Russia and Uzbekistan regarding IPR protection, and Bangladesh, Niger, the Philippines and Uzbekistan regarding workers' rights. The petitions on workers' rights in Iraq and Sri Lanka received during the 2008 review remain under consideration.

### *2009 GSP Annual Review*

On June 28, 2009, a notice was published in the *Federal Register* announcing that USTR would receive petitions to modify the list of products eligible for duty-free treatment under the GSP program and to modify the GSP status of certain beneficiary developing countries because of country practices. This notice initiated the 2009 Annual Review. Information on the petitions accepted for review that seek to add or remove items from the list of GSP-eligible products or that seek the grant of waivers to statutory competitive need limitations can be found at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1>.

## **c. The African Growth and Opportunity Act**

The African Growth and Opportunity Act (AGOA) provides incentives to promote economic reform and trade expansion in eligible sub-Saharan African countries, including duty-free access to the U.S. market for over 1800 products beyond those eligible under the Generalized System of Preferences (GSP) program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. Forty sub-Saharan African countries were eligible for AGOA in 2009. Over 95 percent of U.S. imports from these countries entered the United States duty-free in 2009. Thanks in part to AGOA, the United States is sub-Saharan Africa's largest single-country market.

AGOA requires the President to monitor, review, and report to Congress annually on the progress of sub-Saharan African countries in meeting the AGOA eligibility criteria set out in the legislation – including continual progress in establishing a market-based economy, rule of law, and protection of internationally-recognized workers rights. The U.S. Trade Representative makes recommendations to the President based on an annual country eligibility review that takes into account information drawn from U.S. Government agencies, the private sector, non-governmental organizations, and prospective beneficiary governments. Following the 2009 review, on December 23, 2009 President Obama added Mauritania to the list of AGOA-eligible countries for 2010 and terminated the AGOA eligibility of three other countries, Guinea, Madagascar, and Niger, effective January 1, 2010.

AGOA and related GSP imports from AGOA-eligible countries were valued at \$29.8 billion for the first 11 months of 2009, down 53 percent from the corresponding period in 2008, largely due to the downturn in the global economy.<sup>36</sup> Petroleum products continued to account for the largest portion of AGOA imports, with a 90 percent share of overall AGOA/GSP imports. In the first 11 months of 2009, AGOA/GSP non-oil imports from AGOA beneficiary countries fell 35 percent to \$3.0 billion. Leading non-oil imports in 2009 included apparel, vehicles and parts, ferroalloys, citrus, chemicals, wine, nuts, and fruit juices.

#### **d. Andean Trade Preference Act**

The Andean Trade Preference Act (ATPA) was enacted in 1991 to promote broad-based economic development, diversify exports, and combat drug trafficking by providing sustainable economic alternatives to drug-crop production in Bolivia, Colombia, Ecuador, and Peru. In 2002, the Andean Trade Promotion and Drug Eradication Act (ATPDEA) amended the ATPA to provide duty-free treatment for a number of products previously excluded under the original ATPA program. The most significant expansion of benefits was in the apparel sector.

On April 30, 2009, pursuant to section 203(f) of the ATPA, as amended, USTR transmitted its Fourth Report to Congress on the Operation of the Andean Trade Preference Act as Amended. The report described the main features of the program, analyzed trade trends and outlined the countries' performance related to the program's eligibility criteria.

On June 30, 2009, the Obama Administration submitted to the U.S. Congress the Determinations and Report of the President Concerning the Review of Ecuador and Bolivia Under the Andean Trade Preference Act, As Amended. The report identified some concerns regarding Ecuador's performance under the criteria that the President indicated the Administration would monitor. Under the statute, products of Bolivia were to remain in the program only if the President determined that Bolivia had satisfied ATPA/ATPDEA eligibility requirements. In his June 30, 2009 report to Congress, the President did not find that Bolivia was meeting the eligibility criteria. The President directed the Administration to work with the government of Bolivia to improve cooperation with respect to our common objective of combating the production, of and trafficking in, illicit narcotics, and if cooperation improves, to work with Congress to restore benefits to Bolivia under the ATPA program. In December 2009 Congress extended the program through 2010 for Colombia, Ecuador, and Peru.

#### **e. Caribbean Basin Initiative**

During 2009, the Caribbean Basin Economic Recovery Act (CBERA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA) trade programs, collectively known as the CBI, remained a vital element in U.S. economic relations with its neighbors in Central America and the Caribbean. The CBI provides beneficiary countries and territories with duty-free access to the U.S. market. Current beneficiary countries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. When the CAFTA-DR entered into force for each of these countries, the country ceased to be designated as a CBERA and CBTPA

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<sup>36</sup> On an imports for consumption basis.

beneficiary. The CAFTA-DR entered into force for Costa Rica on January 1, 2009 and is now in force for all 7 countries.

Since its inception, the CBI has helped beneficiaries diversify their exports. In conjunction with economic reform and trade liberalization by beneficiary countries, the trade benefits of CBI have contributed to their economic growth. In December 2009, USTR submitted its biannual report to Congress on the operation of the CBERA. The report can be found on the USTR website, [www.ustr.gov](http://www.ustr.gov).

#### **f. HOPE II Act**

On October 16, 2009, the White House announced that Haiti will continue to be eligible for the benefits of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), which allows duty-free access to the U.S. market for certain Haitian-made apparel and other articles, with the goals of fostering stability and economic development in Haiti. The President has certified to Congress that Haiti has met the necessary requirements to continue the duty-free treatment provided under HOPE II. Under the 2008 legislation, to receive the benefits Haiti was required to establish an independent labor ombudsman's office and a program operated by the International Labor Organization (ILO) to assess compliance with core labor rights and Haiti's labor laws in the country's apparel factories. Haiti also had to agree to require Haitian producers that wish to be eligible for duty-free treatment under HOPE II to participate in the ILO program and to develop a system to ensure such participation.

The HOPE II Act was enacted in 2008 as a continuation and expansion of the original HOPE Act of 2006. These programs acted as extensions of the benefits provided by the Caribbean Basin Initiative trade programs. HOPE II provides for duty-free access for up to 70 million square meter equivalents (SME) of knit apparel (with some t-shirt and sweatshirt exclusions) and 70 million SMEs of woven apparel without regard to the country of origin of the fabric or components, as long as the apparel is wholly assembled or knit-to-shape in Haiti. HOPE II provides for duty-free treatment of knit or woven apparel under a "three for one" earned import allowance program: for every three SMEs of qualifying fabric (sourced from the United States or certain trade partner countries) shipped to Haiti for production of apparel, qualifying apparel producers may export duty-free from Haiti or the Dominican Republic to the United States one SME of apparel wholly-formed or knit-to-shape in Haiti regardless of the source of the fabric. HOPE II also provides for duty-free treatment for certain brassieres, luggage, headgear, and certain sleepwear. HOPE II allows these Haitian goods to enter the United States duty-free if shipped either directly from Haiti or through the Dominican Republic.

On January 12, 2010, Haiti experienced a devastating earthquake. Generating jobs through exports will be one of the keys to Haiti's recovery. Textiles and apparel have represented approximately 90 percent of Haiti's exports to the United States; thus, recovery in this sector will be critical to Haiti's long term economic prospects. On February 16, 2010, Ambassador Ron Kirk announced a new initiative called the Plus One for Haiti program, in which U.S. brands and retailers work toward sourcing one percent of their total apparel production from Haiti. In addition, USTR looks forward to working with the Senate Finance and House Ways and Means Committees in Congress as they seek to pass legislation regarding Haiti and trade.