II. THE WORLD TRADE ORGANIZATION

A. Introduction

This chapter outlines the work of the World Trade Organization (WTO) in 2010 and the work anticipated for 2011. 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 negotiations to expand the WTO's membership through the accession of governments to this rules-based organization.

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 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 Agreement to ensure that Americans receive the many benefits of WTO membership. The WTO Agreement also provides 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.

In 2010, WTO Members explored various negotiating formats for advancing work in the Doha Round. Building on ideas advocated by the United States, Members adopted what became known as a "cocktail approach" of meetings in various configurations to promote engagement to bridge gaps on key issues. Reenergized multilateral work was accompanied by consultations by negotiating group chairs, meetings of small groups of ambassadors to the WTO, and direct, bilateral engagement between key Members to close gaps on core issues of market access in industrial goods, agriculture, and services. The United States continued to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows and economic opportunities worldwide, and the U.S. continued to emphasize the centrality of market access contributions from advanced developing countries to achieving such an outcome. As the year ended, G-20 leaders offered strong political support for intensified work to achieve a balanced and ambitious outcome to the Doha Round.

Throughout 2010, the day-to-day work of the WTO remained instrumental in promoting transparency of WTO Member trade policies and buttressing multilateral efforts to avoid protectionist measures. Members used the WTO's Standing Committees and other bodies to shine a spotlight on individual

Members' actions. Through discussions in these fora, Members sought detailed information on these actions and collectively considered them in light of WTO rules and their impact on individual Members and the system as a whole. The Members whose actions were being considered were then better able to factor trade concerns into domestic policymaking and avoid these concerns when pursuing various initiatives.

B. 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, fisheries 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 2010, Ambassador John Gero of Canada. 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.)*

The core challenge of Doha in 2010 remained that of recent years , *i.e.*, whether negotiators could secure the meaningful new market access in agriculture, industrial goods and services necessary – particularly in terms of contributions by advanced developing countries – to fulfill the promise of the Doha Round to create new economic opportunities and contribute to global development and growth. As today's fastest growing economies, advanced developing countries such as China, Brazil, and India are in a very different position in the global economy than they were 10 years ago. They enjoy a new level of influence and each needs to take on an increased level of responsibility; each must make the trade liberalizing decisions and contributions that 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.

2010 witnessed a growing appreciation among WTO Members of the importance (both to the United States and to a successful Doha Round outcome) of an agreement that provides meaningful new market opening, particularly from advanced developing countries. During the July 2010 G-20 Summit in Toronto, President Obama reinforced the message that the market opening currently outlined in draft negotiating texts was not acceptable and that more access to key markets, such as China, Brazil, and India was necessary to ensure new market opportunities not just for the United States, but also for the poorest countries. In pursuit of this goal, the United States in 2010 continued to press for new approaches to bridging the significant gaps on core market access issues, approaches that go beyond the failed attempts of recent years to resolve differences through meetings of small groups of ministers. Here as well, WTO Members increasingly came to appreciate the need for negotiators in Geneva to engage with each other in a variety of formats, rather than relying on high profile events or artificial deadlines. 2010 was thus marked by experimentation with a number of negotiating processes.

Following the March meeting of the TNC, for example, Members pursued an approach of work in the negotiating groups, consultations by the Director General and Chairs, and direct engagement between Members, including direct, bilateral engagement between key Members. The United States advocated such bilateral engagement, in particular with advanced developing countries, as essential to a Doha Round success, and throughout the year undertook a series of intensive meetings with China, Brazil, and India directed at securing greater market access contributions from these Members. From July through November 2010, Members also sought to engage through small group meetings of their ambassadors to the WTO on each area of the negotiations, in order to pursue political-level brainstorming and identification of possible ways forward. Throughout the year, various negotiating groups met in a variety of formats to advance work on technical and substantive issues.

Outside of Geneva, Leaders and Ministers sought to provide political impetus to the work taking place on the ground in Geneva. The United States worked to utilize these opportunities to change the emphasis of ongoing work to substantive give-and-take negotiations, rather than continued discussion of the format or process of the negotiations. At a meeting in Yokohama, Japan in November, APEC Ministers emphasized in their statement "the importance of translating our political commitment into concrete actions" and agreed "to take steps to direct and empower representatives in Geneva and Senior Officials with the necessary flexibilities to further engage in active and substantive negotiations." The G-20 Leaders, meeting in Toronto, Canada in June and in Seoul, Korea in November, likewise reaffirmed their commitment to a successful Doha Round outcome. The Leaders in Seoul reiterated their "strong commitment to direct our negotiators to engage in across-the-board negotiations to promptly bring the Doha Development Round to a successful, ambitious, comprehensive, and balanced conclusion." They went on to note that "2011 is a critical window of opportunity, albeit narrow, and that engagement among our representatives must intensify and expand. We now need to complete the end game. Once such an outcome is reached, we commit to seek ratification, where necessary, in our respective systems."

These political signals helped to trigger a surge of activity in Geneva, and ambitious plans are laid out for the early months of 2011, including a series of meetings of the negotiating groups to begin in January. The United States is approaching upcoming work with an emphasis on engaging in the substantive give-and-take negotiations required to conclude the Doha Round. Speaking at the TNC meeting on November 30, Ambassador Michael Punke emphasized that it would be key "to intensify our engagement in a variety of formats – with the emphasis on the word 'engagement' rather than the word 'format'… [It is] essential to pivot to true negotiating mode." He went on to note, "In the final analysis, substance trumps process. We need a readiness, without preconditions, to explore options for closing gaps. We need an ambitious and balanced outcome that opens markets, providing new opportunities for growth and development."

Prospects for 2011

As the negotiations under the DDA continue in 2011, the linchpin to Doha Round success will remain securing meaningful market access commitments in agriculture, industrial goods, and services, particularly from key advanced developing countries that continue to be 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, including bilateral negotiations with advanced developing countries, in pursuit of a

successful conclusion to the Doha Round that opens new markets and creates new trade flows. The challenge in 2011 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 Ministerial.

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 2010

Throughout 2010, 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, the Chair of the Agriculture Negotiations, chaired meetings throughout 2010 in various formal and informal settings seeking to advance work on technical and substantive issues. Ambassador Walker organized his efforts along 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 2010. Throughout the year, U.S. negotiators also undertook a series of bilateral meetings with key agricultural trading partners, including advanced developing countries, focused particularly on securing ambitious market access results for U.S. agricultural exporters.

Prospects for 2011

As the work on scheduling templates and outstanding modality issues continues in 2011, 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 challenge in 2011 will continue to be ensuring that any Doha outcome will achieve ambitious and balanced results in agriculture and other areas of the negotiations.

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 more than 20 sectors and issues of interest. The United States joined in co-sponsoring requests in the following areas: accounting, 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 2010

The Council was relatively inactive during 2010, as the lack of general progress under the Doha Development Agenda affected the level of engagement on services. Members continued to work on the development of a draft waiver from the most-favored-nation obligation that would benefit least-developed countries.

Overall, progress to date in the negotiations has been incremental, such that considerably more work will be needed 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; professional services; and financial services. In 2010, the United States and Australia proposed new initiatives in the areas of information and communications technology and logistics and supply chain services. These initiatives were designed to draw attention to the relationships between sectors and the commercial significance of the services negotiations. Despite resistance from some Members, these initiatives did promote some re-engagement and provide a basis for future work.

Prospects for 2011

Progress in 2011 will depend on how the broader effort to intensify the negotiations proceeds. The United States will continue to pursue new ideas and approaches for achieving a successful outcome to the

services negotiations with the dual goals of achieving real liberalization in major markets along with a balanced set of liberalization commitments from a critical-mass of Members in key sectors. 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

The United States government's overarching objective in the Non-Agricultural Market Access (NAMA) negotiations – which cover manufactures, mining, fuels, and fish products – is to secure new market access opportunities for U.S. businesses by negotiating the reduction and removal of tariff and non-tariff barriers to trade in key export markets. USTR negotiators continue to pursue these market access goals through all available negotiating avenues – including multilateral, plurilateral, and bilateral channels – with a particular focus on the important emerging markets, like Brazil, India, and China. Given the changing global economic landscape, namely the emergence of certain new economic powers, securing broad-based liberalization that ensures that major industrial producers and traders compete on a level playing field is crucial.

Trade in non-agricultural goods accounts for more than 90 percent of world merchandise trade[1] and more than 95 percent of total U.S. goods exports. However, many emerging economies still charge very high tariffs on imported industrial goods, with ceiling tariff rates exceeding 150 percent in some cases. Thus, a market-opening outcome in the NAMA negotiations is critical, particularly as it would provide an important opportunity to lower tariff costs on manufactured products and much-needed industrial inputs in the wake of the economic downturn.

Tariff Profiles for Selected WTO Members

Markets	% of Tariffs with WTO Ceiling	WTO Ceiling Tariff Average*	2009 Applied Tariff Average
United States	100%	3.9	3.9
European Union	100%	3.9	4
Brazil	100%	30.7	14.1
China	100%	9.2	8.7
India	69.8%	34.4	10.1

Source: WTO World Tariff Profiles 2010, U.S. International Trade Commission

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

Tariff liberalization achieved through the NAMA negotiations will have a direct and significant development impact. According to the WTO, industrial goods account for some 94 percent of developing countries' merchandise exports, of which more than 65 percent corresponds to manufactures – an increasing share of which is exported to other developing countries.[2] Given that roughly 70 percent of the tariffs on goods traded by developing countries are paid to other developing countries, improved market access conditions in the emerging markets would lower costs and confer significant economic welfare gains to poor country traders.

Major Issues in 2010

In 2010, U.S. negotiators intensified their work to advance the NAMA discussions on both tariffs and non-tariff barriers, through both bilateral engagement and the multilateral Negotiating Group.

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

[1] WTO, International Trade Statistics 2010.
[2] WTO document WT/COMTD/W/143/Rev.4.

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.

Over the course of 2010, U.S. negotiators worked to find ways to address the fundamental market access imbalances inherent in the existing draft framework for the NAMA negotiations, particularly with regard to the formula and flexibilities modalities. To this end, the United States held a number of intensive bilateral meetings with Brazil, India, and China in an attempt to build more market access and balance in contributions into the existing NAMA negotiating framework. In particular, the United States is pressing these countries to match the tariff liberalization commitments that other major economies implemented in the Uruguay Round over fifteen years ago – contributions that helped to drive their impressive economic and export growth and the expansion of global trade. Under the draft NAMA modalities[3], the United States and other developed countries would be expected to reduce all tariffs to below eight percent, while emerging economies applying the formula[4] would not only maintain much higher tariff rates, but extensive flexibilities would permit them to avoid making tariff reductions on hundreds of strategic manufactured products. Despite these imbalances, Brazil, India, and China have been reluctant to offer additional market opening commitments.

In 2010, the United States and other Members seeking a more ambitious NAMA result also continued to promote multilateral sectoral tariff elimination initiatives[5], another key market access modality included in the Doha mandate. Japan introduced a new approach for negotiating the mechanics and substance of sectoral liberalization based on "product baskets". Under the product basket approach, each sector would maintain comprehensive product coverage but would provide negotiators the ability to explore different tariff treatments for product groupings to better accommodate Members' interests. At various Small Group meetings in Geneva over the fall, Ambassadors agreed to empower their capital-based and Geneva experts to engage in discussions for exploring how to build sectoral modalities based on product baskets. Sector co-sponsors, including the United States, have initiated more detailed discussions on individual sectors to delve into each Member's offensive and defensive interests with a view to crafting sectoral modalities that can attract all major producers and traders within each sector. The United States led preliminary discussions on the chemicals sector in November 2010 and aims to intensify these discussions in early 2011. U.S. negotiators also plan to participate in future discussions on other important sectors, including industrial machinery, electronics, forest products, and health care.

In 2010, 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 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 sponsored NTB proposals on: automobiles and automotive products (with Canada); electronics; textiles, apparel, footwear, and travel goods labeling (with the EU, Mauritius, Sri Lanka, and Ukraine); remanufactured goods (with Japan and Switzerland); and transparency in export licensing (with Japan, Chinese Taipei, the Republic of Korea, Ukraine, Chile, and Costa Rica).

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[3] WTO document TN/MA/W/103/Rev.3

[4] 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.

[5] To date, various Members have proposed fourteen sectors that are being considered for such agreements: chemicals; electronics/electrical products; industrial machinery; forest products; health care products; fish and fish products; automobiles and related parts; bicycles and related parts; gems and jewelry; sports equipment; textiles, clothing and footwear; hand tools; raw materials; and toys.

Work throughout the year focused on priority NTB proposals agreed to by Senior Officials in June 2008 and reflected in the NAMA Chair's texts of both July and December 2008. These proposals include automobiles and automotive products, electronics, textiles labeling, remanufactured goods, the "horizontal mechanism" (an additional procedure Members could use after the Doha Round to address NTBs), and chemicals. The Negotiating Group met in February, March, May, July, September, and November 2010. Members engaged in substantive discussion, submitted detailed questions and answers on particular proposals, provided further background documents to support positions, and tabled revised texts. The United States also sponsored a workshop for NAMA delegates with academic experts in the field of remanufacturing. In July, the United States submitted a revised proposal on remanufacturing, which included detailed themes for the proposed work program. Also, in July, the United States and Canada tabled a revised, joint proposal on automobiles and automotive products. In November, the United States and co-sponsors tabled a revised proposal on textiles labeling and on electronics. The EU tabled updates to its proposals on automobiles and electronics, both of which diverge from the U.S. texts in the same sectors. The EU and Argentina/Brazil/India tabled separate new proposals to address chemical NTBs. Throughout the year, 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.

Prospects for 2011

In 2011, U.S. negotiators will continue to seek meaningful new market access for U.S. manufactured goods – both in terms of reduced foreign tariffs and non-tariff barriers. The United States will continue to push for more ambition on two tracks. On the bilateral track, U.S. negotiators will continue to engage with Brazil, India, and China in an effort to facilitate real give-and-take negotiations that can ultimately lead to a successful outcome in NAMA. On the multilateral track, the United States will continue efforts to advance sectoral initiatives as well as a robust outcome on non-tariff barriers that result in real disciplines and paths forward to resolve NTBs across broad areas of U.S. production and exports.

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 directed that the negotiations take into account the needs of developing and least-developed country Members. The Doha Round mandate also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: (1) the antidumping remedy, often including procedural and domestic industry injury issues potentially applicable to the countervailing duty remedy; (2) subsidies and the countervailing duty remedy, including fisheries subsidies; and (3) regional trade agreements. In November 2007, the Chairman of the Rules Group issued draft consolidated texts on the antidumping remedy, subsidies and the countervailing duty remedy, and fisheries subsidies.

In December 2008, the Chairman issued revised texts on antidumping, subsidies, and the countervailing duty remedy, as well as a roadmap for fisheries subsidies that identified key questions that need to be addressed in order to advance the negotiations towards a new fisheries text. In keeping with his earlier pronouncements, the draft texts on antidumping and subsidies/countervailing duties reflected a "bottom up" approach, identifying the most contentious issues contained in brackets with no legal text provided. Discussions during 2009 focused on the questions contained in the Chairman's "roadmap," geared off of elements of the draft text issued by the Chairman in November 2007. In July 2010, the Rules Group formally elected a new Chair, Ambassador Dennis Francis of Trinidad and Tobago, who replaced Ambassador Guillermo Valles of Uruguay.

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 92 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 2010

Antidumping

In March 2010, the Rules group held its first plenary session of the year on antidumping. The group addressed the most controversial issues of zeroing, sunset, lesser duty rule, and public interest test. The end of the March meeting marked the conclusion of the first review of all topics related to the Chair's 2008 draft text, including bracketed issues (*i.e.,* controversial), unbracketed issues (indicating some degree of consensus among Members), and those issues not reflected in the text. In May 2010, the Rules group convened for the final meeting chaired by Ambassador Valles of Uruguay. There were no substantive discussions on antidumping issues during this meeting; rather, the Chairman made a statement summarizing the work of the group on antidumping (as well as subsidies/countervailing duties and fisheries subsidies) during his tenure since 2004. Due to a delay in finding a chair acceptable to all Members, the group did not meet again until July 2010, under the chairmanship of Ambassador Francis of Trinidad and Tobago. In November and December 2010, Chairman Francis held two plurilateral sessions followed by informal plenary sessions to report to the full membership on the discussions held in the plurilateral sessions. 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 offsets for non-dumped comparisons (or "zeroing"), injury causation, anticircumvention, new shipper reviews, facts available, and the definition of domestic industry for perishable, seasonal agricultural 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 issues in subsidies/countervailing duties (CVD) have been categorized as bracketed, unbracketed, and those proposals not reflected in the 2008 draft text. The important bracketed issues included low cost financing (*i.e.,* state-owned bank 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. In 2010, the Rules Group considered new textual proposals by China and India covering various aspects of countervailing duty investigations, including the use of "facts available." As a general matter, the United States continued to express concern throughout the year that the 2008 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 2010, the Rules Group also continued the process of considering whether certain provisions in the current 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 – completed in 2009 – 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. In 2010, the Rules Group finished its initial discussion of whether the "unbracketed" text in the draft antidumping text was appropriate for transposition/harmonization, although, as with the first phase, no definitive conclusions were reached.

Fisheries Subsidies

In 2010, the United States and the Friends of Fish (Australia, Argentina, Chile, Ecuador, New Zealand, Norway, and Peru) continued to push for a strong level of ambition, including a broad prohibition on subsidies, while Japan, Korea, Chinese Taipei, and the European Union continued to call into question the scope of the prohibition, stressing that not all subsidies contribute to overcapacity and overfishing. Developing countries also stressed the need to focus on special and differential treatment (SDT) exceptions.

The most significant text proposals in 2010 were from: the United States, seeking to clarify the Chair's text in certain areas through further defining technical and legal terms, as well as emphasizing areas of convergence; Korea, advocating a significantly weakened prohibition and greater reliance on an adverse effects test to address "harm;" and China, Brazil, India, and Mexico on SDT, requesting extremely broad carve outs for developing country fleets without regard to a developing country's level of development and existing capacity. This issue of appropriate and effective SDT for developing countries continued to be an important focus of the negotiations overall and remained a difficult discussion topic. The potential to create large carve outs, for both developed and developing countries, that could undermine the objective of the negotiations to curb subsidies promoting overcapacity and overfishing remained prevalent.

Procedurally, the new Chair launched an additional process for the fisheries subsidies negotiations, which supplemented the current Rules Group with sessions in plurilateral formation to discuss proposals and concepts in more technical detail among a smaller group of Members. It is expected that these smaller formations will continue in 2011.

Regional Trade Agreements

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all regional trade agreements (WT/L/671), which was agreed upon in the Negotiating Group on Rules and implemented in 2007. In December 2010, the United States and other Members agreed to launch a review of the provisional transparency mechanism for RTAs with a view to making it permanent. Otherwise, there were no substantive discussions on regional trade agreements in the Rules Group in 2010.

Prospects for 2011

In 2011, 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 trade remedy rules; improving transparency and due process in trade remedy proceedings; and strengthening existing subsidies rules. 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. As in other areas of the Doha Round, new texts in antidumping, subsidies/CVD, and fisheries subsidies are anticipated at the end of the first quarter of 2011.

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, will begin with the identification of 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 2010

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2010 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. There continued to be 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 2010 was characterized by intensive, Member-driven, text-based negotiations. The group met in February, May, July, October, and November to refine the draft consolidated negotiating text. Significantly, the text is 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, the NGTF's work requires continued engagement of Members with each other to resolve differences. During 2010, that engagement occurred in various formats, both formal and informal, as proponents of various sections of the text stepped forward to lead efforts to close gaps.

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 Uganda-U.S. proposal to eliminate consularization requirements. Likewise the draft consolidated negotiating text includes proposals on transit procedures and customs cooperation. In February 2010, the United States introduced a new proposal providing for disciplines on customs penalties.

During 2010, 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 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 WTO's training efforts in 2010 also included regional workshops for senior customs and trade officials of developing country Members to help them gain a deeper understanding of proposed measures and of issues relating to future implementation. U.S. Customs and Border Protection hosted one such regional workshop for English-speaking Caribbean states in San Juan, Puerto Rico in November 2010.

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 2011

In 2011, the NGTF will intensify its efforts to refine 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 2010

In 2010, the CTESS met informally, and the Chair, Ambassador Teehankee of the Philippines held several small group consultations, which focused on DDA subparagraphs 31(i) and 31(iii) of the negotiating mandate. Specifically, the CTESS continued to work according to the Chair's work program, 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 subparagraph 31(iii), which is underway, and which is aimed at identifying a "universe of environmental goods" of interest, as well as crosscutting issues of interest, such as technical assistance and capacity building. The Chair's work program also calls for text-based negotiations to begin under sub-paragraphs 31(i) and 31(ii) based on Members' proposals.

The Chair reported progress in the negotiations to the TNC in March 2010 (TN/TE/19), and his report is publically available on the WTO website. The Chair's report includes the product proposals submitted as of March 2010. 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 subparagraph 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 subparagraph 31(i). These same Members have opposed outcomes that would go beyond the subparagraph 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).

In 2010, Switzerland made a new proposal for a result in the 31(i) negotiations focused on environmental expertise in disputes. However, as noted above, there appears to be little opportunity for convergence around proposals relating to dispute settlement. The majority of delegations continue to believe that the CTESS should focus on reflecting national coordination and experience sharing, specific trade obligations discussed in the Committee, and technical assistance and capacity building in an outcome.

Regarding subparagraph 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 subparagraph 31(iii), there continues to be, even at this advanced stage of the negotiations, 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.

In advancing the Chair's work program, several Members have come forward with new papers in 2010 and have identified goods for liberalization, including the following: Saudi Arabia identified over 200 goods for liberalization in the clean energy sector; Japan identified energy efficient products; the Philippines identified several goods in the renewable energy area; Qatar identified goods in the clean energy sector; Singapore identified products in the areas of waste management, air pollution control, wastewater management, and renewable energy; Argentina and Brazil proposed a set of "guidelines" for special and differential treatment; and Brazil separately proposed biofuels for liberalization.

Prospects for 2011

In 2011, 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 subparagraph 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 STOs contained in MEAs, and maintains that these national experiences should form the basis for an outcome in the negotiations.

Discussions under subparagraph 31(ii) are likely to move to text in conjunction with subparagraph 31(i). Several Members have also noted their interest in exploring linkages between subparagraphs 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 crosscutting issues. The CTESS is also expected to engage in more detailed discussions of the products and other proposals put forward. 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 the United States proposed in November 2007 in an effort to open markets for environmental goods and advance Members' environmental and development policies. In addition, the United States will continue to 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. The United States believes that such action could make an important contribution to both the DDA and the global climate negotiations, which will continue in 2011.

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 2010

The DSB-SS met five times during 2010 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 2010, Members continued their discussions in light of the Chair's text. In particular, the Chair started a more intensive process, in which delegations engaged on the basis of the comments received in the previous phase.

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

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

Prospects for 2011

In 2011, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2011.

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

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 timeframe for the conclusion of the Doha negotiations. This matter is the only one before the Special Session of the TRIPS Council.

Major Issues in 2010

The TRIPS Council Special Session held three formal meetings in 2010, 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 2010, the Register discussions centered on two sub-questions posed by the Chair, with a view to providing Members a better understanding of how Members would implement the various proposals. In December of 2010, the Chairman of the TRIPS Council Special Session made another attempt to reach consensus and provided ideas for future work in the negotiations in 2011.

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 cosponsors 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 right holder, including a prior right holder. 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 preexisting 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 and 2010 this proposal was not discussed as extensively as the others.

Prospects for 2011

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 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. 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 Articles 10.2 and 10.3 of the Agreement on Sanitary and Phytosanitary Measures and Article 3.5 of the Agreement on Import Licensing.

Major Issues in 2010

The Special Session held five formal meetings in March, May, July, November, and December 2010, as well as a large number of informal plurilateral consultations. Work focused on language in the Agreement-specific proposals and on a Chair's text for a Monitoring Mechanism for special and differential treatment.

The Hong Kong Declaration directs the CTD-SS to "resume work on all other outstanding issues, including the crosscutting 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 2011

In 2011, work will continue on the remaining S&D proposals and on the underlying issues inherent in them. As in 2010, much of the practical work on S&D in 2011 is likely to take place in the other Negotiating Groups, such as 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 crosscutting issues.

C. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt, and Finance

Status

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

Major Issues in 2010

The WGTDF held two formal meetings in 2010. The first meeting was held on June 4, 2010. During this meeting, Members raised issues for discussion relating to a WTO Secretariat report, which was based on an earlier Secretariat report on the WTO-hosted Expert Group on Trade Finance that met on May 18, 2010 and other information gathered by G-20 experts on trade finance in preparation for the Toronto G-20 Summit.

The second meeting was held on November 8, 2010. During this meeting, Members discussed issues relating to a WTO Secretariat report based on the WTO-hosted Expert Group on Trade Finance that met on October 22, 2010. In addition, during the second meeting, a representative from the International Chamber of Commerce (ICC) briefed the Working Group on the ICC's efforts to deliver market intelligence, policy advocacy (particularly with respect to regulatory issues), and loss default information on trade finance to support the case of trade finance.

Prospects for 2011

In 2011, the WGTDF will continue to be a forum for discussing trade finance issues. Additionally, 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 2010, 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 2010

In the period since the 2001 Doha Ministerial, the WGTTT has considered submissions from the Secretariat, WTO Members, other WTO bodies, and intergovernmental organizations. During the 2010 period, there was no discussion of the 2003 proposals submitted by a group of Members led by India and Pakistan. Those proposals, based on the assertion that the WTO agreements, particularly provisions relating to intellectual property protection, hinder technology transfer, drew strong opposition from the United States and other Members. Instead, Members focused on a subsequent 2008 submission made by India, Pakistan, and the Philippines, which included a proposal 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 more constructive approach to the work of the WGTTT and has requested more information, particularly on the changes proposed for the WTO web site.

During 2010, 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 on a report by the Food and Agriculture Organization 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 United States 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. The working group also considered a presentation by UNCTAD on their "Technology and Innovation Report 2010: Enhancing Food Security in Africa through Science, Technology, and Innovation." Members welcomed the information provided and some of the highlighted areas of focus, such as the need for building innovation capabilities and the recommendations for strengthening policymaking capacity and building national, regional, and international linkages.

Prospects for 2011

No WGTTT meetings have been scheduled yet for 2011. 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. The group will also welcome additional presentations by outside organizations and 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, at the 2009 Ministerial Conference, Ministers issued a decision to reinvigorate the Work Program by 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. Ministers also instructed the General Council to hold periodic reviews of the progress on the Work Program in its sessions in July 2010 and December 2010. The General Council reviewed the results of the informal Work Program meeting in December 2010, but no such review took place in July 2010. It is expected that additional reviews will occur in 2011.

Major Issues in 2010

No formal work has yet taken place. However, an informal session of the Work Program was held in November 2010 to consult with Members on their interests. Some Members, including the United States, signaled that they would prepare submissions to the Work Program in early 2011.

Prospects for 2011

The United States continues to support examining issues under the Work Program, 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. The United States will continue to work with other Members to advance important trade-related issues associated with electronic commerce.

D. 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 the DDA, and this report reviews these groups' work in subsections of Section C 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 2010, the Chairman of the General Council, together with the Director General, conducted 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 2010, the main focus of work in the DDA negotiations was in the individual negotiating groups and smaller Ambassador-led groups. Reports on those groups are set out in other sections of this chapter.

Major Issues in 2010

Ambassador John Gero of Canada served as Chairman of the General Council in 2010. In addition to work on the DDA, activities of the General Council in 2010 included:

Accessions and Observerships: New chairmen were appointed to the Working Parties established to examine the accession requests of Belarus and Ethiopia. The General Council in 2010 agreed to initiate accession negotiations with Syria. Gabon, on behalf of the Informal Group of Developing Countries, continued to request that Members 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. Zambia, on behalf of the LDC Group, presented general comments on the LDC accession process and highlighted some specific elements of each of the 2010 LDC priority countries of Vanuatu, Yemen, and Samoa. The Director-General of the WTO Secretariat submitted annual reports on WTO Accessions in January 2010 and in December 2010. In April 2010, the Palestine Liberation Organization submitted a revised application for permanent observer status to the General Council. The Council has not yet acted upon that request. There were no other requests for observer status during 2010.

Waivers of Obligations: The General Council adopted a waiver for the Harmonized System 1996 changes to WTO schedules of tariff concessions for Argentina. The General Council also reviewed a number of previously agreed waivers, including U.S. waivers pertaining to the Former Territory of the Pacific Islands, the Caribbean Basic Economic Recovery Act, the African Growth and Opportunity Act, and the Andean Trade Preference Act. Annex II of this report contains a detailed list of Article IX waivers currently in force.

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. This monitoring and reporting continued throughout 2010. The General Council in 2010 agreed to hold a symposium covering the possible trade effects of measures taken by Members in response to the financial crisis, in both the goods and services areas, under the auspices of the TPRB, while avoiding any overlap with the work already conducted by the Committee on Trade in Financial Services.

Eighth Ministerial Conference: The General Council agreed that the Eighth Ministerial Conference would be scheduled for December 15-17, 2011 in Geneva, Switzerland.

Prospects for 2011

The General Council is expected to be increasingly active in 2011 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.

E. Council for Trade in Goods

Status

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

Major Issues in 2010

In 2010, the CTG held four formal meetings, in March, May, July, and November. 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 complaints regarding actions that individual Members had taken with respect to the operation of goods-related WTO Agreements. In addition, two major issues were debated extensively in the CTG in 2010:

Waivers: The CTG approved several requests for waivers related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules. The CTG also considered, but has not acted upon, a request by the EU for a waiver on additional autonomous preferences granted by the EU to Pakistan. The issue will revert to the CTG in 2011 following consultations between the EU and those Members who have expressed concerns.

Market Access Complaints: The CTG also served as a forum for airing complaints regarding actions that individual Members had taken with respect to the operation of goods-related WTO Agreements. Concerns discussed by Members included: those related to the Feed-in Tariff (FIT) Program of the Province of Ontario, Canada; changes in Ecuador's tariff system; import licensing measures and procedures by Argentina; and measures by Argentina affecting imports of food products.

Prospects for 2011

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Waiver requests and goods-specific market access complaints are likely to continue to 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 the agricultural trade commitments undertaken by Members in the Uruguay Round. Under the Agriculture Agreement, Members agreed to provide annual notifications of progress in meeting their commitments in agriculture, and the 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 certain 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 2010

The Committee held three formal meetings in March, September, and November 2010 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, 193 notifications were subject to review during 2010. 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 raised points with respect to EU25 and EU27 export subsidy commitment levels, Canada's trade restrictive measures on dairy products, and Thailand's requirement to export rice stocks. In addition, the United States used the review process to raise concerns about Costa Rica's, Israel's, and Norway's excess of their bound Aggregate Measurement of Support (AMS) limit. The United States also raised concerns regarding low fill rates based on Korea's tariff-rate quota allocation system for certain dairy products such as skim milk powder, whole milk powder, and other milk and cream products. The United States also used the review process to raise concerns regarding the transparency and predictability of Ukrainian export prohibitions and restrictions on grain.

The United States also raised questions regarding elements of domestic support programs used by Albania, Brazil, Chile, Czech Republic, China, Costa Rica, Dominican Republic, Ecuador, European

Union, Israel, Namibia, Norway, Romania, and Lithuania. In addition, the United States encouraged Brazil, China, and other important agricultural producing Members to bring their notification obligations on domestic support up to date.

During 2010, 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 nondiscriminatory 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.

Throughout the year, the Committee worked to improve the timeliness and completeness of notifications. As a cornerstone of these efforts, the Secretariat hosted specialized Workshops on Agriculture Notifications in September and November 2010 that were attended by most Member countries. These covered notification procedures and obligations in detail through lectures, practical exercises, and case studies on the five areas covered by the transparency provisions of the Agreement on Agriculture. A Handbook on Notification Requirements under the Agreement on Agriculture was circulated to all WTO delegations in the official WTO language of their choice. Electronic versions in all three official languages are now downloadable from the public WTO website. In addition, a new self-teaching e-learning module on notification requirements was made available on the public WTO website. The Secretariat also confirmed that the development of the electronic archiving system for the Review Process and the online notification system were approved and included in the IT Strategic Plan for 2011.

Prospects for 2011

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.

2. Committee on Market Access

Status

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

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

Major Issues in 2010

The MA Committee held two formal meetings, in April and October 2010, and three informal dedicated sessions, to discuss the following topics: (1) the ongoing multilateral review of WTO Members' schedules of tariff concessions to reflect 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) the procedures for Member notifications of quantitative restrictions.

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 World Customs Organization has amended the International Convention on the Harmonized Commodity Description and Coding System (HS), relating to tariff nomenclature in 1996, 2002, and 2007, with a future amendment to be implemented in 2012. Using agreed examination procedures, WTO Members have the right to object to modifications in another Member's tariff schedule that result from changes in the HS nomenclature if such modifications affect the Member's bound tariff commitments. Members may pursue unresolved objections under Article XXVIII of GATT 1994. The majority of Members have completed the process of implementing HS 1996 changes, however, Panama continues to require a waiver, and additional information is needed from Venezuela in order to finalize certification of its HS 1996 documentation. A longstanding issue with Argentina's HS 1996 documentation was resolved in 2010.

The MA Committee continued its work concerning the introduction and verification of HS 2002 changes to Members' WTO tariff schedules. Completing the HS 2002 verification is essential to laying the technical groundwork for analyzing the implications of the DDA negotiations on tariffs. Throughout the year, the United States worked closely with other Members and the WTO Secretariat to ensure all Members' bound tariff commitments are properly reflected in their updated schedule. The Committee approved the U.S. HS 2002 schedule at the end of 2009, and final certification procedures were launched in 2010. The U.S. HS 2002 schedule is on track to be formally certified in February 2011.

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 2011.

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. In 2010, the United States continued 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, with Cambodia, Central African Republic, Chad, Guinea Bissau, and Vietnam making their first database submissions. As of October 2010, only the Democratic Republic of Congo had yet to submit tariff and trade information for any year to the IDB. The WTO Secretariat compiled a document providing public website addresses containing Members' national tariff information, which can be found in WTO document G/MA/TAR/13/Rev.14.

Consolidated Tariff Schedules (CTS) database: 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 amendments 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. In 2010, the MA Committee approved revised database formats for the CTS database concerning tariff commitments and specific commitments in agriculture in HS 2002 nomenclature.

Notification Procedures for Quantitative Restrictions (QRs): On December 1, 1995, the Council for Trade in Goods adopted a Decision on Notification Procedures for Quantitative Restrictions, which provides that WTO Members should make complete notifications of the quantitative restrictions (QRs) which they maintain at two-year intervals thereafter, and shall notify changes to their QRs as and when these changes occur. In an effort to improve Member timeliness and completeness of QR notifications, and to reduce duplication of notifications made to other WTO Committees, the Chair proposed updating the 1995 QR Decision at an informal Committee session in December 2010. The proposed changes include updating the format for Member notifications, changing the notification requirement from every two to every four years, and including Member notifications in a new searchable database accessible to all Members (under the current practice, Members' QR notifications are available upon request). Committee Members are reviewing the proposed changes to the 1995 decision, which will be discussed at an informal dedicated session in early 2011.

Prospects for 2011

The ongoing work program of the MA Committee, while highly technical, aims to 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 amendments. The Committee will also reassess the work plan for conducting the conversion of Members' tariff schedules to HS 2007. In addition, the MA Committee will continue to consider the Chair's proposal for updating the notification procedures for quantitative restrictions.

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 safety, the Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (OIE); and for plant health, the International Plant Protection Convention (IPPC).

The SPS Committee also discusses 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 Alimentarius Commission; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA); and the World Bank.

Major Issues in 2010

In 2010, the SPS Committee held meetings in March, June, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions with respect to 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 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 2010, the United States raised a number of concerns with measures imposed by other Members, including restrictions imposed by the EU's warning label requirements for certain food colors, India's avian influenza restrictions, Turkey's restrictions on agricultural biotechnology, 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 USDA's Food Safety Inspection Services' Public Health Information System.

In 2010, the Committee completed 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 Committee highlighted a number of accomplishments during the Third Review, including recommendations on transparency, special and differential treatment, and regionalization. The Committee also continued work on the issuance of guidance regarding *ad hoc* consultations under Article 12.2 of the Agreement, as well as the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC. In October 2010, the WTO SPS Committee discussed several proposals to improve coordination between the WTO SPS Committee and its three science standard setting bodies. Chair asked member to submit comments on the proposals in advance of March 2011 meeting.

Other important issues before the SPS Committee included:

Private and Commercial Standards: In 2010, a working group of the Committee continued to discuss a number of possible actions related to the issue of private and commercial standards to refer to the Committee for consideration. The possible actions discussed were provided by individual members of this working group. In October 2010, the working group agreed to send the full Committee a list of possible actions for consideration, including supporting the work of the three international standard setting bodies referenced in the SPS Agreement (OIE, IPPC, and Codex), various avenues to promote information exchange, and defining private and commercial standards. In 2011, the full Committee will discuss whether it should take up any of the possible actions. The Committee has agreed that action would only be taken if there was consensus among all Members to do so.

The United States continues to monitor this issue closely and remains quite concerned about whether this is an appropriate issue to which the SPS Committee should be devoting resources and continues to work with the Committee and other Members to address that concern.

Notifications: Because it is critical for trading partners to know and understand each other's laws and regulations, the SPS notification process, with the Committee's consistent encouragement, is becoming an increasingly important mechanism in the facilitation of international trade. The process also provides a means for Members to report on determinations of equivalence and special and differential treatment. The United States made 156 SPS notifications to the WTO Secretariat in 2010 and submitted comments on 230 SPS measures notified by other Members.

Prospects for 2011

The SPS Committee will hold three meetings in 2011 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 Bovine spongiform encephalopathy (BSE), avian influenza, food safety measures, and technical assistance.

In 2011, the Committee will work on priorities identified during the Third Review of the Operation and Implementation of the SPS Agreement. The United States anticipates that the SPS Committee will continue discussions on the issuance of guidelines regarding *ad hoc* consultations under Article 12.2 of the Agreement, as well as on how to improve cooperation and coordination with Codex, OIE, and IPPC. In addition, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by those three bodies. Finally, the Committee will undertake its ninth and final review of China's implementation of its WTO obligations as provided for in China's WTO Accession Protocol.

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 2010

The TRIMS Committee held one formal meeting during 2010, in October, during which the United States and the EU filed a joint submission with the Committee on "Certain Indonesian Laws and Draft Implementing Regulations on Mineral and Coal Mining." See, G/TRIMS/W/70 (October 9, 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 sectors. In particular, the submission raised concerns regarding the consistency of these measures with the local content requirements of the TRIMS Agreement and GATT 1994. Indonesia's responses are contained in WTO Document G/TRIMS/W/74 (August 6, 2010). In the October meeting, the United States continued to express concern with respect to Indonesia's descriptions of provisions of its law that appear to prioritize the use of domestic goods and services.

Japan posed questions to Indonesia concerning potential TRIMS in the telecommunications sector in a document entitled "Questions from Japan on Indonesia's Regulations on Communication and Information regarding the Supply of the Universal Telecommunication Service Obligation and the Guidelines for Evaluation of the Achievement of Domestic Component Level in Telecommunication Operations." See, G/TRIMS/W/71 (December 17, 2009). Indonesia's answers to Japan's questions are contained in WTO document G/TRIMS/W/75 (August 6, 2010). At the October meeting, Japan, the European Union, and the United States all expressed ongoing concerns about Indonesian domestic law provisions that appear to favor local content in the telecommunications sector.

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 meeting.

Prospects for 2011

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

5. Committee on Subsidies and Countervailing Measures

Status

The 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 2010

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two regular meetings and two special meetings in 2010, in May and October, as well as an informal meeting in 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. Other items addressed in the course of the year included: the "export competitiveness" of India's textile and apparel sector; examination of ways to improve the timeliness and completeness of subsidy notifications; review and approval of specific export subsidy program extension requests for certain small economy developing country Members; election of Mr. Akio Shimizu 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 2010, 93 WTO Members (counting the 27 member states of the European Union as a single Member) have notified their CVD legislation or lack thereof; 32 Members have so far failed to make a legislative notification. In 2010, the Committee reviewed notifications of new or amended CVD laws and regulations from Brazil, Cambodia, Costa Rica, Japan, Norway, Croatia, Guyana, and Bahrain.[8]

As for CVD measures, nine Members notified CVD actions they took during the latter half of 2009, and eleven Members notified actions they took in the first half of 2010. Specifically, the SCM Committee reviewed actions taken by several Members, including Australia, Brazil, Canada, China, Costa Rica, the EU, India, Mexico, New Zealand, Peru, South Africa, Turkey, the United States, and Venezuela.

In 2010, the Committee examined new and full subsidy notifications: 27 from 2009 and three from 2007. Unfortunately, numerous Members have yet to make even an initial subsidy notification to the WTO, although many of them are least-developed country Members.

Notification Improvements: In 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. The new format has resulted in helpful new information being provided in 2010, such as the names of programs determined to be countervailable in all CVD proceedings. 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 the continuation of this initiative in 2010 in light of Members' poor record in meeting their subsidy

[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.

notification obligations. The United States took the initiative under this agenda item to review the subsidy notification record of several large exporters in failing to provide complete and timely subsidy notifications and other information requested regarding specific incentive programs. Of primary concern in this regard was China. 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 only subsidy notification to date and lay the groundwork for the further pursuit of issues in the context of the Committee's work. At the October meeting of the Committee, China reiterated that it was very close to submitting its next subsidy notification, which would cover 2005-2008. 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 issue, the United States will have to consider alternative approaches to address this ongoing problem, such as notifying the Committee under Article 25.10 of the Subsidies Agreement.

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

In February 2010, the United States formally requested the Secretariat, pursuant to Article 27.6 of the SCM Agreement, to compute the export competitiveness of India's textile and apparel sector. The Secretariat submitted its results to the Committee in March 2010. The calculations appear to support the conclusion that India has reached export competitiveness in the textile and apparel sector. In light of the Secretariat's calculations, the United States requested that India identify the current export subsidy programs that benefit the textile and apparel sector and commit to a phase-out schedule to end all such programs to the extent they benefit the textile and apparel sector. In response, India has raised certain technical questions as to the appropriate definition of "product" and the precise starting point of the phase-out period under Articles 27.5 and 27.6. The United States will continue to pursue this issue.

Extension of the transition period for the phase out of export subsidies: Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. To address the concerns of certain small economies, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the 2001 Doha Ministerial Conference to provide for facilitated annual extensions of the time available to eliminate certain notified export subsidies.[9] In 2007, the General Council, acting on an SCM Committee recommendation, decided to extend the application of the special procedure. An important outcome of these negotiations, 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.

Pursuant to the General Council's decision, beneficiary Members are obligated to meet certain transparency and standstill requirements each year. In 2010, these Members were also required to submit an action plan describing how the subsidy programs at issue were to be phased out. At its October 2010

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[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.

meeting, the SCM Committee conducted a review of the transparency and standstill requirements in the General Council's decision, as well as the action plans submitted by Members, and agreed to continue the requested extensions of the transition period for calendar year 2011.

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). Dr. Chang-fo Lo's term ended in Spring 2010, and the Committee elected Mr. Akio Shimizu (Japan) 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 "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, *inter alia*, led to the adoption of an approach to calculate the $1,000 threshold in constant 1990 dollars and to require that a Member be above this threshold for three consecutive years before graduation. The WTO Secretariat updated these calculations in 2010.[11]

Prospects for 2011

In 2011, the United States will continue to press China for its long overdue subsidy notification and will focus on those programs not notified, particularly those that may be prohibited under the SCM Agreement and those administered at the provincial and local levels. The United States may also bring to the attention of the Committee unreported subsidies, at both the central and subcentral levels of government. The Committee's ninth and final review of China's implementation of its WTO obligations will provide another opportunity to highlight China's subsidy notification obligation. Furthermore, the United States will press India to commit to a phase out of its export subsidy programs to the extent that they benefit the textile and apparel sector. More generally, the Committee will continue to work in 2011 to improve the timeliness and completeness of Members' subsidy notifications. Among the proposals that will be

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[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, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

[11] See G/SCM/110/Add.7.

discussed further are three 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; the significant lack of notification of subcentral subsidy programs across the membership; and the submission of patently deficient subsidy notifications by large exporters. Finally, the United States must submit its own subsidy notification in 2011, covering fiscal years 2008 and 2009.

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 2010

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2010. 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 2010.

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.

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 November 2010, 85 Members had notified their national legislation on customs valuation (this figure does not include the 27 individual EU Members); 41 Members have not yet notified their national legislation on customs valuation. At the Committee's May and November 2010 meetings, the Committee undertook its examination of the custom valuation legislations of Bahrain, Belize, Cambodia, 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 2011, with the exception of Norway, whose examination was concluded at the November 2010 meeting.

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 China, Cambodia, Indonesia, and Thailand.

The Customs Valuation Committee's work throughout 2010 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 2011

The Customs Valuation Committee's work in 2011 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 Transitional Review of China, in accordance with the Protocol of Accession of the People's Republic of China to the WTO, will also be taken up in 2011. 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 2010 and will continue into 2011.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2010 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 2010

As of February 2010, 80 Members have 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.

One hundred fourteen 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 March and October 2010 formal meetings, the ROO Committee conducted informal consultations related to the HWP negotiations. The Committee's work in 2010 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 ROO for agricultural and industrial goods and the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential ROO.

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

Because of the impasse among Members on: (i) the product-specific rules related to the 94 core policy issues; (ii) the absence of a common understanding of the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential ROO; 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. In 2007, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the aforementioned issues. 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 and report periodically to the General Council on its efforts in this regard.

In the two 2010 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. A new Chair (Singapore) was elected, and Members engaged in work on developing a status update of the HWP negotiations. A workshop on the HWP (covering its historical development and machinery) was also held on the margins of the October 2010 meeting.

Prospects for 2011

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues," reaching a consensus on the scope of the prospective obligation to apply equally for all purposes of 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 Committee will also start to engage in work on how a transposition of the current HWP work should be conducted. 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 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 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 can be contacted via email at: ncsci@nist.gov or notifyus@nist.gov; or via the internet at: http://www.nist.gov/ncsci or http://www.nist.gov/notifyus.) 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,

[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), the International Telecommunications Union (ITU), the Southern African Development Community (SADC), and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis.

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 contact the U.S. inquiry point, as discussed 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 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

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

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 2010

The TBT Committee met three times in 2010, March (G/TBT/M/50), June (G/TBT/M/51), and November (minutes forthcoming). 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 was 29 in 2010 (down from 37 in 2009). 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. Other measures garnering significant Committee attention included Canada's new tobacco law, Korea's requirements for organic products, Brazil's medical device registration and inspection requirements, Thailand's proposed alcohol labeling requirements, and India's testing and certification requirements for telecommunications products.

In 2010, 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 March 2010 meeting, the TBT Committee adopted the Fifteenth Annual Review of the Implementation and Operation of the TBT Agreement under Article 15.3 (G/TBT/26). 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.14 and G/TBT/CS/2/Rev.16).

At its June 2010 meeting, the Committee granted *ad hoc* observer status to the International Telecommunications Union (ITU). Also, the Committee held the Sixth Special Meeting on Procedures for Information Exchange on June 22, 2010. This meeting addressed issues relating to: good practices in notification, electronic databases, operation of enquiry points, and transparency in standard setting. A summary report of the meeting is contained in Annex 1 of G/TBT/M/51.

At its November 2010 meeting, the Committee granted *ad hoc* observer status to the Southern African Development Community (SADC).

During the 2010 meetings of the TBT Committee, representatives of observers to the Committee, including Codex, IEC, ISO, ITC, OECD, UNECE, and ITU updated the Committee on their activities relevant to its work, including on technical assistance.

Prospects for 2011

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The number of new specific trade concerns raised in the Committee appears to be increasing. However, the total number of issues being raised in the Committee meetings has fallen, which indicates that many of these issues are being resolved. Aside from the specific trade concerns, the Committee will continue work on the items identified in the Fifth Triennial Review of the Operation and Implementation of the

TBT Agreement, including holding a workshop on regulatory cooperation in March 2011 at which U.S. officials will make presentations on U.S.-EU cooperation and the APEC toy safety work. Discussion of new issues will be driven by Member statements and submissions. In 2011, U.S. priorities are likely to continue to focus on the use of good regulatory practice, transparency, encouraging Members to notify more frequently, encouraging Members' use of the TBT Committee Decision on Principles for the Development of International Standards and discussing the Committee Decision's development dimension, 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 the following five antidumping topics: (1) the period of data collection for antidumping investigations; (2) the timing of notifications under Article 5.5; (3) contents of preliminary determinations; (4) the time period to be considered in making a determination of negligible imports for purposes of Article 5.8; and (5) an indicative list of elements relevant to a decision on a request for extension of time to provide information pursuant to Articles 6.1 and 6.1.1.

The Working Group has drawn a high level of participation by Members, 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 2010

In 2010, the Antidumping Committee held meetings on April 28 and October 26-27. 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 2010.

Notification and Review of Antidumping Legislation: To date, 74 Members have notified that they currently have antidumping legislation in place, and 31 Members have notified that they maintain no such legislation. In 2010, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Brazil, Cambodia, Colombia, Croatia, Guyana, Japan, Norway, Tonga, and Vietnam. The Committee also continued its review of previously reviewed legislative notifications submitted by Bahrain. 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 2010, 26 Members notified that they had taken antidumping actions during the latter half of 2009, whereas 32 Members did so with respect to the first half of 2010. (By comparison, 20 Members notified that they had not taken any antidumping actions during the latter half of 2009, and 18 Members notified that they had taken no actions in the first half of 2010). Members identified these actions, as well as outstanding antidumping measures currently maintained by Members, in semi-annual reports submitted for the Antidumping Committee's review and discussion. The semi-annual reports for the second half of 2009 were issued in document series "G/ADP/N/195/…," and the semi-annual reports for the first half of 2010 were issued in document series "G/ADP/N/202/…" At its April and October 2010 meetings, the Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

Working Group on Implementation: The Working Group held meetings in April and October 2010. Beginning in 2003, the Working Group has held discussions on several agreed topics, including: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; (4) judicial, arbitral, or administrative reviews under Article 13; and (5) price undercutting by dumped imports. In 2009, the Working Group agreed to include the following additional topics for discussion: (1) constructed export prices; (2) other known causes of injury; (3) threat of material injury; (4) accuracy and adequacy of evidence to justify the initiation of an investigation; and (5) the determination of the likelihood of continuation or recurrence of dumping and injury in sunset review. The discussions in the Working Group on all of these topics have focused on submissions by Members describing their own practices, including past submissions by the United States on some of these topics. In 2010, Egypt presented three papers for discussion on constructed export price, the accuracy and adequacy of evidence to justify initiation, and sunset reviews. Korea also submitted a paper on sunset reviews. Several Members, including the United States, posed questions to Egypt and Korea on the issues presented in their papers.

Informal Group on Anticircumvention: In 2010, the Informal Group held meetings in April and October. There were no new papers submitted for discussion in 2010. 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 2011

Work will proceed in 2011 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 2011. 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 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 2011, 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; (3) conduct of verifications under Article 6.7; (4) judicial, arbitral, or administrative reviews under Article 13; and (5) the determination of significant price undercutting by dumped imports. In addition, the Group will also continue to discuss the following recently added 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 2011, 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 2011.

10. Committee on Import Licensing

Status

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with the mutually agreed rules for the application of these widely used measures. The Import Licensing Committee normally meets twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations set out in the 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. Pursuant to China's Protocol of Accession there was no 2010 review, and the last such review will be conducted in 2011.

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 permissions 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 2010

At its meetings in April and October 2010, the Import Licensing Committee reviewed 60 new submissions from 48 Members,[14] including initial or revised notifications, completed questionnaires on

[14]The Members submitting notifications or questions or responses during 2009 were: Albania; Argentina; Barbados; Brazil; Burkina Faso; Canada; Cape Verde; Chile; China; Colombia; Costa Rica; Croatia; Ecuador; European

procedures, and questions and replies to questions. This count was down substantially from 2009, an exceptionally active year for the Committee. One additional Member, Cape Verde, notified its licensing system to the Committee for review at the October meeting, reducing to 20 (out of 153) the Members that have never submitted a notification to the Committee, *i.e.*, about 13 percent.[15] In addition, for the first time, Nicaragua, Saint Kitts and Nevis, and Suriname submitted responses to the questionnaire describing their import licensing systems. Nevertheless, the Chairperson and some Committee Members continued to express concern that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement (*e.g.* nine Members that had notified in 2009 did not do so in 2010). The Committee Chairperson 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. She encouraged Members to renew their efforts towards full and complete compliance with notification obligations and to consult the WTO Secretariat if assistance was required.

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 2010 included its response to the Questionnaire (G/LIC/N/3/USA/7) and copies of the legislation authorizing U.S. licensing systems (G/LIC/N/1/USA/6). The U.S. representative focused her presentations at both meetings on the deteriorating situation caused by Argentina's import licensing policies and procedures, as well as continuing to press Members on other issues and where requested information had not yet been provided adequately. Further questions were submitted in writing to Argentina and Turkey, following up on their responses.

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 these measures to the Committee, nor explained the reasons for their application. An excessive delay (up to nearly 120 days) in processing applications for licenses was causing particular concern, along with reports that license approvals were made contingent upon balancing imports with a similar value of exports. In addition, selected import categories had been routinely denied necessary permits for circulation in the domestic market without due process or any explanation. The United States sought information on the legal basis for these measures, on the probable duration of the measures (described as "provisional"), on their justification under WTO provisions, and on what remedies Argentina could provide in these situations. Peru, Canada, China, the European Union, Japan, and Mexico supported the U.S. presentation with similar interventions. Argentina denied that there were any delays in providing licenses beyond what the WTO Agreement permitted. Argentina also maintained that the measures were imposed only to "monitor" trade but did not explain why non-automatic licensing was necessary for such surveillance, and it did not explain further what necessary measure the requirements were designed to implement. When pressed, Argentina made reference to technical regulations and to the impact of the economic crisis on trade. Argentina continued

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Communities; Grenada; Haiti; Honduras; Hong Kong, China; India; Indonesia; Japan; Korea; Macao, China; Mexico; Former Yugoslav Republic of Macedonia; Madagascar; Malawi; Malaysia; Mauritius; Namibia; Nicaragua; Nigeria; Norway; Paraguay; Peru; the Philippines; Qatar; St. Kitts and Nevis; Suriname; Switzerland; Chinese Taipei; Thailand; Trinidad and Tobago; Turkey; Ukraine; the United States; Venezuela; and Zimbabwe.

[15] The Members that have never submitted a notification to this Committee are Angola, Belize, Botswana, Cambodia, 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. Cambodia and the Central African Republic submitted notifications before the end of 2010 but too late to be examined by the Committee this year.

to deny that its measures were restrictive and gave no indication of when the requirements might be removed.

Informal Meeting of the Committee on the Status of Notifications

At the April meeting of the Committee, the Chairperson held additional informal discussions on improving the timeliness and completeness of notifications by Members. Several Members, including the United States, discussed the specific suggestions made in 2009 for improvements in this area. These included: development of a simplified notification for import licensing systems that had not changed since the previous annual submission; defined formats for the various notifications to help delegations assemble the necessary information; more emphasis on the use of electronic media to provide legislation and other required submissions; and intensified use of timely messages from the Chairperson and of the Trade Policy Review process to remind Members of missing notifications. After the October meeting, the WTO Secretariat circulated suggested revised formats for the required notifications to encourage further discussion.

Prospects for 2011

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 TRQs and the application of safeguard measures, technical regulations, and sanitary and phytosanitary requirements applied to imports as well. The proliferation of automatic licensing requirements (or non-automatic measures labeled as "automatic") 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.

In light of these factors, efforts to revise the current notification system to make it more effective as well as timely will continue in 2011. 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 simplification and standardization of the formats for notifications and questionnaires and on securing initial submissions by the 20 Members that have never provided notifications.

Finally, despite the rising tide of Members' complaints to the Import Licensing Committee, Argentina continued to deny that its import licensing measures were nontransparent or that its officials delayed or refused to provide licenses or other permits for imports once requested. Argentina rebuffed U.S. efforts to resolve the issue bilaterally. At the end of 2010, the United States and other affected WTO Members raised the issue in the Council on Trade in Goods, with a view to escalating the level of attention paid to this issue within the WTO. This issue will continue to be addressed in 2011, both in the Committee and in other WTO fora.

11. Committee on Safeguards

Status

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

The Safeguards Agreement incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). Among its key provisions, the Safeguards Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions of the criteria for 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 2010

During its two regular meetings in April and October 2010, 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 Bahrain, Burkina Faso, Cambodia, Dominican Republic, Guyana, Honduras, Japan, Norway, Panama, Thailand, Vietnam, and Zambia.

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: Dominican Republic on certain sport and dress socks, polypropylene bags and tubular fabric, and toilet paper; European Communities on wireless wide area networking modems; Ecuador on windshields; Indonesia on cotton yarn other than sewing thread, woven fabrics of cotton, stranded wire, ropes and cables excluding locked coil, flattened strands and non-grating wire ropes, aluminum foil food container/aluminum tray and plain lid, stranded wire, ropes and cables for locked coil, flattened strands, and non-rotating wire ropes, wire of iron/non-alloy steel; Jordan on clinker; Mexico on welded steel tubes; Morocco on machine made carpets; the Philippines on testliner board; Ukraine on refrigerating equipment, ferroalloys, and mineral fertilizers.

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: Croatia on semi-hard cheese and cheese substitutes; Dominican Republic on certain sport and dress socks, polypropylene bags, and tubular fabric; India on sodium hydroxide (caustic soda) and unwrought aluminum/aluminum waste/scraps; Indonesia on wire nails, wire of iron/non-alloy steel, not plated; Jordan on ceramic tiles; Kyrgyz Republic on wheat flour; the Philippines on testliner board; Turkey on matches; and Ukraine on matches.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply or extend a safeguard measure from the following Members: Brazil on desiccated coconut; Croatia on semi-hard cheese and cheese substitutes; Dominican Republic on polypropylene bags and tubular fabric; India on sodium hydroxide (caustic soda); Indonesia on wire nails, wire of iron/non-alloy steel, not plated; Jordan on ceramic tiles; Kyrgyz Republic on wheat flour; the Philippines on figured glass, float glass, and ceramic tiles; Turkey on matches, footwear, motorcycles, steam smoothing irons, and vacuum cleaners; and Ukraine on matches.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: Chile on powdered milk, liquid milk, and gouda cheese; Croatia on semi-hard cheese and cheese substitutes; Dominican Republic on certain sport and dress socks, polypropylene bags, and tubular fabric; India on acrylic paper, sodium hydroxide (caustic soda), unwrought aluminum/aluminum waste/scraps, and coated paper and paper board; the Philippines on testliner board; and Ukraine on sheet glass.

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; Chile on powdered milk, liquid milk, and gouda cheese; Dominican Republic on glass receptacles and toilet paper; India on acrylic fiber, coated paper/paper board, hot-rolled coils/sheets/strips, linear alkyl benzene, oxo alcohols, plain particle board, uncoated paper/copy paper, and unwrought aluminum/aluminum waste/aluminum scraps; Indonesia on aluminum foil food container; Jordan on clinker and cross-country ski footwear/snowboard boots; Morocco on polyvinyl chloride and ceramic tiles; Peru on cotton yarn; the Philippines on glass mirrors; Ukraine on liquid chlorine; and Vietnam on float glass.

Prospects for 2011

The Safeguards Committee's work in 2011 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 than 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 2010

The WP-STE held one informal meeting on April 29, 2010 and two formal meetings on June 16 and October 19, 2010. Member compliance with the notification obligation was discussed at the April informal meeting and the June formal meeting. Discussion at these meetings focused on ways to improve the timeliness and completeness of compliance with notification obligations. Based on these discussions, the Secretariat produced a table recording all notifications made to the Working Party since 1995 to clarify which notifications remained outstanding. The discussions also resulted in a WP-STE workshop on October 18, 2010 to hear from Members on the problems they were experiencing in complying with their notification obligation. The workshop included a presentation by the Secretariat on STEs generally and the notification obligation, and two presentations by Members (Australia and Chile) on their experiences in completing STE notifications.

The October 19, 2010 formal meeting reviewed Member STE notifications from: Albania, Australia, Canada, Chile, Colombia, Ecuador, El Salvador, the European Union, Grenada, Honduras, Hong Kong China, India, Jamaica, Korea, Macao China, Malaysia, Namibia, Nigeria, Norway, Qatar, Singapore, Switzerland, Chinese Taipei, Trinidad and Tobago, Turkey, the Ukraine, and the United States. The U.S. notification included updated information on the Commodity Credit Corporation, Isotopes Production and Distribution Program, Power Administrations, and Strategic Petroleum Reserve. During the meeting, Australia posed written questions relating to India's notifications and requested that India and Norway inform the Working Party of when they expected to submit outstanding notifications.

Prospects for 2011

The WP-STE is scheduled to meet in October 2011. 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.

F. 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 with respect to copyright piracy and trademark counterfeiting, in criminal actions.

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

Developed 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 2010

In 2010, 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 2010 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. In addition, the TRIPS Council considered issues related to the Anti-Counterfeiting Trade Agreement (ACTA).

Review of Developing Country Members' TRIPS Implementation: During 2010, 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.

During 2010, the TRIPS Council did not undertake any new reviews of implementing legislation, but did receive additional information from Grenada regarding Grenada's legislation.

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 2010, a total of 32 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 2010 meeting, the TRIPS Council spent a full day reviewing implementation of the August 30, 2003 solution. 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. The United States is working with China on its implementation of the DSB recommendations and rulings in this dispute (DS362).

During 2010, 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.

In 2010, 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 dialogue 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 exclude 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.

In 2010, 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/550/Add.5). Three LDC Members (Bangladesh, Tanzania, and Rwanda) submitted information on their priority needs with regard to technical cooperation related to their implementation of the TRIPS Agreement in 2010, and these reports 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 2010, the United States provided an updated report on specific U.S. Government institutions and incentives, as required (see IP/C/W/551/Add.5.).

Prospects for 2011

In 2011, 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 2011 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 enforcement and other provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

G. 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 2010

The CTS met in February, April, June, September, and November 2010. The CTS elected the Ambassador from Norway as its new Chairperson in April.

The CTS received a number of notifications pursuant to GATS Article III:3 (transparency); GATS Article V:7 (economic integration), and GATS Article VII:4 (recognition). Albania, Australia, Barbados, Chile, China, India, New Zealand, Nicaragua, Paraguay, Peru, Switzerland, and the United States made notifications under GATS Article III.3. Notifications pursuant to GATS Article V:7 were made by Peru and China; El Salvador, Honduras, and the Separate Customs Territory of Taiwan; Penghu, Kinmen and Matsu; Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, New Zealand, Philippines, Singapore, Thailand and Vietnam; China and Pakistan; the EU; the Republic of Korea; Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam; Colombia and Mexico; and India and Korea. Notifications made under GATS Article VII:4 were made by Australia and the United States.

During 2010, the CTS took up 13 of the Secretariat's updated Background Notes, including audiovisual services, energy services, financial services, education services, Mode 3, maritime transport services, logistics services, accountancy services, legal services, postal and courier services, environmental services, road transport services, and distribution services. These Background Notes on services sectors and modes of supply were originally produced in 1998 for informational reference by Members. The Secretariat began updating these notes in 2008 at the request of the CTS. At its April 2010 meeting, the CTS agreed to start the third review of GATS Article II (MFN) exemptions during the year. The Council held organizational discussions with Members during the June meeting, and the first dedicated review session took place in November 2010, where Members discussed MFN exemptions related to all sectors (horizontal exemptions); business services; communication services; construction and related engineering services; and distribution services.

Australia continued to raise 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 delegate explained that the EC Council required each individual Member State to ratify the relevant agreements. Entry into force of the EC-25 schedule is now dependent on the outcome of those proceedings. At the time of the November meeting, 16 EU Member States had ratified the agreement according to their national procedures.

Prospects for 2011

The CTS will continue discussions related to its 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 2010

The CTFS met in February, April, June, September, and November 2010. During the April 2010 meeting, the Committee elected the delegate from Australia 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, but none reported any progress.

In June, the CTFS held a seminar on trade in non-life insurance services as proposed by the United States. The seminar included a wide variety of speakers from governments, regulatory agencies, and the private sector, and addressed economic and commercial trends in the non-life insurance sector, regulatory aspects, national experiences with the liberalization of non-life insurance services, and challenges raised by the supply of non-life insurance in foreign markets.

The CTFS also provided a forum for discussion of other topics, including a dedicated discussion on the financial crisis and trade in financial services based on a proposal from Argentina, Ecuador, India, and South Africa, as well as a dedicated discussion on the impact of technological developments on regulatory and compliance aspects of banking and other financial services under the GATS, as proposed by Pakistan. In the September and November meetings, the Committee also considered a communication from China to have the Committee examine trade in financial services and development.

Prospects for 2011

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, such as further consideration of China's communication on trade in financial services and development.

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.

Major Issues in 2010

The WPDR met in February, April, June, September, and November of 2010. In April 2010, the WPDR elected the delegate from Pakistan as its new chairperson. During 2010, the WPDR based its discussions on a March 2010 annotated version of the draft chairman's text (referred to as the chairman's "informal note") from 2009. The new annotated version highlighted Members' divergent views on issues. It also reflected proposed changes by a group of Members, made in January 2010, that attempt to streamline some of the disciplines and eliminate some redundancy in the March 2009 informal note.

Members welcomed the March 2010 annotated text as a basis for future negotiations, although it is clear that Members continue to have concerns about the basic threshold issues, and there continue to be significant divergences on substantive issues. Thus far, none of the proposed new disciplines have been agreed to by Members. During the course of 2010, the Chair focused discussions at the formal meetings on a thematic basis in an attempt to forge further consensus on the various themes. Views, however, remain quite wide on a number of key issues, including the insertion of a "necessity test" in the disciplines, which may in the view of a number of delegations undermine Members' right to regulate.

The United States continues to take the view that any horizontal disciplines must respect the right of WTO Members to regulate, as recognized by the GATS, in a manner which meets the legitimate policy objectives of national and sub-national 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 2010 continued to be horizontal disciplines for regulatory transparency. 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. Finally, the United States supported efforts by WTO members to streamline and eliminate redundancy in the March 2009 informal note.

Prospects for 2011

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 2010 annotated text, and possible future revisions, as well as the new proposal from a group of Members seeking to streamline certain provisions in the March 2009 informal note.

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 2010

The WPGR held formal meetings in February, April, June, September and November 2010. The WPGR resumed ongoing discussions of emergency safeguard measures, government procurement, and subsidies. During its April meeting, the WPGR also elected the delegate from Poland as its new Chairperson.

Regarding emergency safeguard measures (ESM), 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. During 2010, there was very little discussion on this issue within the Working Party. To the extent there was a substantive issue raised, the United States and other Members continue to question the desirability and feasibility of any such measures. The Philippines proposed that the Secretariat provide Members with a briefing on the collection of services statistics and services trade data, which may assist Members in analyzing the ESM issue.

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. The EU proposed a series of dedicated discussions on the topic and with the Secretariat organized to have a Government Procurement expert provide a presentation to the Working Party at the November 2010 meeting.

With respect to subsidies, Members agreed to a work plan to exchange information on subsidies in services. As of the November 2010 meeting, 18 Members (counting the EU as one), including the United States, submitted information pursuant to Article XV. These submissions served as the basis for the first dedicated discussion on the issue of subsidies in services. As an additional part of the work plan on the exchange of information, the United States submitted a Communication for the June 2010 meeting. This communication was a list of questions to Members in order to enhance Members' understanding of the kinds of practical problems that proponents of new disciplines are facing, as well as the impact of those problems on international trade. As of December 2010, no Member had provided any examples of practical trade problems in response to the United States' questions. The Working Party will revert to the work program on information exchange at its next meeting in 2011 for further discussions.

Prospects for 2011

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 (including a possible discussion on ESM-relevant data); proposals by Members concerning government procurement of services (including further presentations in a dedicated discussion format); and further discussion of how to facilitate a productive information exchange on subsidies (including more dedicated discussions to review submissions from Members as well as an examination of any particular problems identified).

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 2010

The CSC held meetings in February, April, July, September, and November 2010. 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 Barbados as its new Chairperson.

Classification: Members supported the Chair's initiative to hold informal discussions on classification issues stemming from the updated background notes. The Secretariat has prepared a compilation of these issues to facilitate Members discussions.

Scheduling issues: The Committee did not discuss any issues under this item, though some Members wanted to examine issues related to the scheduling of Economic Needs Tests. The Chair encouraged written contributions in order to examine scheduling issues.

Relationship between old and new commitments: Members continue to have divergent views as to how to ensure the legal standing of existing commitments. Discussions continued on the relationship between existing schedules and new commitments resulting from the current negotiations, guided by four different proposals. Additional topics included methods and instruments for incorporating new commitments and the process for verifying final schedules of commitments.

Prospects for 2011

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.

H. Dispute Settlement Understanding

Status

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

The DSU is administered by the 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 2010

The DSB met 13 times in 2010 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 2010, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

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

Rules of Conduct for the DSU: The DSB completed work on a code of ethical conduct for WTO dispute settlement and, on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2010.

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 were Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Mr. Claus-Dieter Ehlermann of Germany, Mr. Said El-Naggar of Egypt, Mr. Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Mr. Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano, and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. At its meeting held on October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Mr. El-Naggar and Mr. Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Mr. Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 11, 2001. On November 7, 2003, the DSB agreed to appoint Ms. Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Mr. Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006. At its meeting held on November 19 and 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista of the Philippines and Ms. Jennifer Hillman of the United States as members of the Appellate Body for four years commencing on December 11, 2007, and to appoint Mr. Shotaro Oshima of Japan and Ms. Yuejiao Zhang of China as members of the Appellate Body for four years commencing on June 1, 2008. On November 12, 2008, Mr. Baptista notified the DSB that he was resigning for health reasons, effective in 90 days. On December 22, 2008, the DSB decided to deem the term of the position to which Mr. Baptista was appointed to expire on June 30, 1999, and to fill the position previously held by Mr. Baptista for a four-year term. On June 19, 2009, the DSB agreed to appoint Mr. Ricardo Ramírez Hernández of Mexico as a member of the Appellate Body for four years commencing on July 1, 2009, to appoint Mr. Peter Van den Bossche of Belgium as a member of the Appellate Body for four years commencing on December 12, 2009, and to reappoint Mr. Unterhalter for a final term of four years commencing on December 12, 2009. *(The names and biographical data for the Appellate Body members during 2010 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 served as Chairperson from December 18, 2008 to December 16, 2010; and Ms. Bautista is Chairperson from December 17, 2010 to December 10, 2011.

In 2010, the Appellate Body issued one report, on New Zealand's challenge to certain Australian measures with respect to apples. The United States participated in the case as a third party.

Dispute Settlement Activity in 2010: During the DSB's first fifteen years in operation, WTO Members filed 416 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, 14 in 2007, 19 in 2008, 14 in 2009, and 17 in 2010). During that period, the United States filed 97 complaints against other Members' measures and received 116 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints (four U.S. complaints against others and 27 complaints against the United States). A number of disputes commenced in earlier years remained active in 2010. 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 2011

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 2011, 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 2011.

a. Disputes Brought by the United States

In 2010, 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 2010 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 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 and 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. The United States is working with China on its implementation of the DSB recommendations and rulings in this dispute.

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 audiovisual home entertainment products and sound recordings over the Internet are inconsistent with China's obligations under the GATS. Third, the panel also found that China's treatment of imported publications is inconsistent with the national treatment obligation in Article III:4 of the GATT 1994.

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

China–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 restraints including export licensing restrictions, minimum export price requirements, and requirements to pay certain charges before certain products can be exported. The United States also challenges China's failure to publish relevant measures, including those pertaining to the administration of its export quotas. 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 July 30 and September 1-2, 2009, but 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. On March 29, 2010, the Director-General composed the panel as follows: Mr. Elbio Rosselli, Chair; Ms. Dell Higgie and Mr. Nugroho Wisnumurti, Members. The panel met with the parties and third parties on August 31-September 2, 2010 and met again with the parties on November 22-23. The panel's final report is scheduled to be circulated to Members in spring 2011.

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

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

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

China's antidumping and subsidy determinations in the GOES investigations appear to violate numerous WTO requirements. Specifically, the United States is concerned that China initiated both investigations without sufficient evidence; failed to objectively examine the evidence; failed to disclose "essential facts" underlying its conclusions; failed to provide an adequate explanation of its calculations and legal conclusions; improperly used investigative procedures; failed to provide non-confidential summaries of Chinese submissions; and included U.S. federal and state programs that were not identified in the notice of initiation of the CVD investigation.

The United States and China held consultations on November 1, 2010.

China – Certain Measures Affecting Electronic Payment Services (DS413)

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

China undertook both market access and national treatment commitments with respect to electronic payment services, as set out in its Schedule of Specific Commitments on Services. Despite those commitments, China appears to impose market access restrictions and requirements on services suppliers of other Members seeking to supply EPS in China. It appears that China UnionPay (CUP), a Chinese entity, is the only entity that China permits to supply EPS for payment card transactions denominated and paid in renminbi (RMB) in China. In addition, China also requires all payment card processing devices at merchant locations to be compatible with CUP's system, and that all payment cards, including "dual

currency" cards, issued in China for transactions denominated and paid in RMB, bear the CUP logo. These and other requirements and restrictions maintained by China appear to be inconsistent with China's market access commitments and to accord less favorable treatment to EPS suppliers of other WTO Members than to Chinese suppliers of these services.

The United States and China held consultations on October 27 and 28, 2010.

China–Subsidies on Wind Power Equipment (DS 419)

On December 22, 2010, the United States requested consultations with China concerning a program known as the Wind Power Equipment Fund. Under this program, China appears to provide subsidies that are prohibited under WTO rules because the grants awarded under the program seem to be contingent on Chinese wind power equipment manufacturers using parts and components made in China rather than foreign-made parts and components. The United States also included in its consultations request transparency-related claims, which address China's failure to comply with its obligation to notify the subsidies at issue under the WTO's Agreement on Subsidies and Countervailing Measures and China's failure to translate the measure into one or more of the official languages of the WTO under China's Protocol of Accession. On December 31, 2010, China accepted the request for consultations.

This case arises out of an investigation initiated in response to a petition filed by the United Steelworkers (USW) under section 301 of the Trade Act of 1974, as amended. *(For further information on the Section 301 investigation, see Chapter V.B.1.)*

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.

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

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

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

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

On October 17, 2005, the Deputy Director-General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair; and Mr. John Adank and Mr. Thinus Jacobsz, Members. The panel met with the parties on March 20-21 and July 25-26, 2007, and met with the parties and third parties on July 24, 2007. The panel granted the parties' request to hold part of its meetings with the parties in public session. This portion of the panel's meetings was videotaped, and reviewed by the parties to ensure that business confidential information had not been disclosed, before being shown in public on March 22 and July 27, 2007.

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

- Every instance of "launch aid" provided to Airbus was a subsidy because in each case, the terms charged for this unique low-interest, success-dependent financing were more favorable than were available in the market.

- Some of the launch aid provided for the A380, Airbus's newest and largest aircraft, was contingent on exports and, therefore, a prohibited subsidy.

- Several instances in which German and French government entities created infrastructure for Airbus were subsidies because the infrastructure was not general, and the price charged to Airbus for use resulted in less than adequate remuneration to the government.

- Several government equity infusions into the Airbus companies were subsidies because they were on more favorable terms than available in the market.

- Several EU and Member State research programs provided grants to Airbus to develop technologies used in its aircraft.

- These subsidies caused adverse effects to the interests of the United States in the form of lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Chinese Taipei, Korea, Mexico, and Singapore.

The EU filed a notice of appeal on July 21, 2010. The WTO Appellate Body conducted an initial hearing on August 3, 2010 to discuss procedural issues related to the need to protect business confidential information and highly sensitive business information and issued additional working procedures to that end on August 10, 2010. The Appellate Body held two hearings on the issues raised in the EU's appeal of the Panel's findings of WTO-inconsistent subsidization of Airbus. The first hearing, held November 11-17, 2010, addressed issues associated with the main subsidy to Airbus, launch aid, and the other subsidies challenged by the United States. The second hearing, held December 9-14, 2010, focused on the Panel's findings that the European subsidies caused serious prejudice to the interests of the United States in the form of lost sales and declining market share in the EU and other third country markets.

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

On June 29, 2007, the United States requested the establishment of a panel under Article 21.5 of the DSU to review whether the EU had failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request related to the EU's apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador,

Guatemala, Honduras, Mexico, and the United States. That proceeding had resulted in findings that the EU's banana regime discriminated against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999. The EU committed to shift to a tariff-only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EU on January 1, 2006 included a zero-duty tariff-rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas did not have access to this duty-free tariff rate quota and were subject to a 176 euro per ton duty. The United States brought challenges under GATT Articles I:1 and XIII.

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

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

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

On August 28, 2008, the EU filed a notice of appeal. The Appellate Body granted a joint request by the parties to open its hearing to the public, and the public was able to observe the hearing via a closed-circuit television broadcast. The Appellate Body issued its report on November 26, 2008. The Appellate Body found that the EU had failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EU's procedural arguments alleging the United States was barred from bringing the compliance proceeding and agreed with the panel that the EU's duty-free tariff rate quota reserved only for some countries was inconsistent with Article XIII of the GATT 1994. The panel in this dispute had also found that the EU's banana import regime was in violation of GATT Article I. The EU did not appeal that finding. The DSB adopted the Appellate Body report on December 22, 2008.

On December 15, 2009, the United States and the EU initialed an agreement designed to lead to settlement of the dispute. In the agreement, the EU undertakes not to reintroduce measures that discriminate among bananas distributors based on the ownership or control of the distributor or the source of the bananas, and to maintain a 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. The GATB was signed on May 31, 2010, and the U.S.-EU agreement was signed on June 8, 2010. The agreements will enter into force following completion of certain domestic procedures. Upon entry into force, the EU will need to request formal WTO certification of its new tariffs on bananas. The GATB provides that once the certification process is concluded, the EU and the Latin American signatories to the GATB will settle their disputes and claims. Once that has occurred, the United States will also settle its dispute with the EU.

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 was 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 appeared 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 appeared to be inconsistent with the EU'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.

The panel issued its report on August 16, 2010. The panel agreed with the United States with respect to all three products at issue, finding that the EU measures result in the imposition of duties on products that are entitled to duty-free treatment under the EU's schedule of concessions and are inconsistent with GATT Article II:1(a) and (b). In addition, the Panel agreed with the United States that the EU's failure to promptly publish its Explanatory Note on set top boxes and its enforcement of an April 2007 set top box measure before its official publication were inconsistent with GATT Article X:1 and X:2, respectively.

The report was adopted at the meeting of the DSB on September 21, 2010. On October 13, 2010, the EU informed the Chairman of the DSB that it intended to implement the recommendations and rulings of the DSB and would need a reasonable period of time to do so. On December 20, 2010, the United States and the EU notified the DSB that they had agreed on a nine month and nine day period of time for implementation, to end on June 30, 2011.

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.

Philippines – Taxes on Distilled Spirits (DS403):

On January 14, 2010, the United States requested consultations regarding Philippine excise taxes on distilled spirits. The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxes distilled spirits made from certain materials that are typically produced in the Philippines, such as sugar and palm, at a low rate (e.g. 13.59 pesos per proof liter in 2009). Other distilled spirits are taxed at significantly higher rates (from approximately ten to forty times higher) than the low rate applied to domestic products. The Philippine taxes on distilled spirits appear not to tax similarly those distilled spirits that are imported compared to directly competitive or substitutable domestic distilled spirits, and the taxes appear to be applied in a way that affords protection to the domestic products. In addition, the taxes appear to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. Accordingly, the tax treatment of distilled spirits appears inconsistent with Article III:2 of the GATT 1994. Consultations were held on February 23, 2010, but these consultations failed to resolve the dispute. On March 26, 2010, the United States requested the establishment of a panel. At its meeting on April 20, 2010, the DSB established a panel and agreed that, as provided in Article 9.1 of the DSU in respect of multiple complainants, the panel established on January 19, 2010 to examine the complaint by the European Union (DS396) on the same measures, would also examine the U.S. complaint. The Director-General composed the panel on July 5, 2010.

The United States and the European Union filed their respective first written submissions on September 2, 2010. The first meeting of the panel took place on November 17-18, 2010. The second meeting of the panel is scheduled for February 9-10, 2011.

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.

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 2010 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 was $1.1 million per year. On January 7, 2002, the EU sought authorization from the DSB to suspend its obligations vis-à-vis the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration.

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

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

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

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the consistency of Section 211 with the TRIPS Agreement and requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU, the WTO Director-General composed the panel on October 26, 2000. The Director-General composed the panel as follows: Mr. Wade Armstrong, Chair, 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, the U.S. Department of 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 U.S. President George W. Bush 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. Since that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

Since 2007, only the EU and Japan have maintained retaliatory measures against the United States in connection with this dispute. 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 April 22, 2010, the EU announced that it would add 19 tariff items to the list of products subject to its 15 percent retaliatory measure. 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. On August 25, 2010, Japan notified the WTO that it would maintain its retaliatory duties on the same two products but at a reduced rate of 4.1 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 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, 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 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.

On April 6, 2010, the United States and Brazil reached agreement on certain steps to help make progress in the dispute. Pursuant to this agreement, on April 20, 2010, the United States and Brazil signed a Memorandum of Understanding (MOU) establishing a fund of approximately $147.3 million per year on a pro rata basis to provide technical assistance and capacity building. The fund is scheduled to continue until the next Farm Bill or a mutually agreed solution to the Cotton dispute is reached. The MOU also provides that the United States may end the fund if Brazil imposes countermeasures.

With the conclusion of the MOU, Brazil announced that countermeasures would not be imposed for at least 60 days from signature of the MOU. During this period, the United States and Brazil negotiated a framework regarding the Cotton dispute. On June 17, 2010, Brazil approved the framework that the governments had negotiated, and on June 21, it announced that it would not impose countermeasures as long as the framework remained in effect. The framework includes elements on cotton support, the GSM-102 program, and further discussion between the United States and Brazil.

Brazil and the United States met for discussions under the framework on October 20, 2010.

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 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. Antigua and the United States have 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.

On January 29, 2010, the EU filed its request for authorization from the DSB to suspend the application of concessions or other obligations under the covered agreements pursuant to Article 22.2 of the DSU. On February 12, 2010, the United States filed its objection to the level of suspension of concessions or other obligations proposed by the EU. The U.S. objection also claimed that the EU's proposal does not follow the principles and procedures set forth in the DSU. The U.S. objection automatically resulted in the matter being referred to this arbitration. The Arbitrator met with the Parties on May 20-21, 2010. This meeting was open to observation by all Members and the public. The Parties filed their last submission on July 20, 2010.

On September 7, 2010, the United States and EU jointly requested the suspension of the arbitration. On September 8, 2010, the Arbitrator granted the joint request to suspend its work.

The Commerce Department has taken the initial step to comply with WTO findings against zeroing in antidumping administrative reviews. Commerce's proposed solution was published in the *Federal Register* on December 28, 2010. The proposal is to be implemented under Section 123 of the Uruguay Round Agreement Act, which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented.

United States–Subsidies on large civil aircraft (DS317):

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

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

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

United States–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 EU'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 48), 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 December 24, 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.

On April 23, 2010, Japan filed its request to resume the arbitration under Article 22.6 of the DSU. That proceeding is currently pending. In response to a joint request of the United States and Japan, on December 13, 2010, the Arbitrator issued a communication stating that it had decided to suspend its work. The communication of the Arbitrator was circulated to the DSB as document WT/DS322/38.

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. On September 7, 2010, Mexico requested the establishment of a compliance panel, and a panel was established on September 21, 2010.

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 four 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 involve business confidential information and the panel's meeting with third parties were closed to the public.

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.

The panel circulated its report on October 22, 2010. The panel found in favor of the United States in several respects, including that the concurrent application of antidumping duties calculated using a non-market economy (NME) methodology and countervailing duties to imports from China resulting from the investigations at issue was not inconsistent with the WTO obligations of the United States. The panel also made several other findings related to claims China advanced against countervailing duty determinations made by Commerce, including that Chinese state-owned enterprises (SOEs) and state-owned commercial banks (SOCBs) can be "public bodies" capable of providing financial contributions, that the United States did not act inconsistently with its WTO obligations by finding that the SOEs and SOCBs in question were "public bodies" in the investigations under review, and that Commerce correctly determined to use external benchmarks, rather than private prices in China, to measure the benefit of goods, loans, and land-use rights provided by the government. On the other hand, it found that: Commerce's calculation of the benefit of government-provided rubber and preferential lending was not consistent with U.S. WTO obligations, that, with respect to loans, Commerce's use of an *annual* average lending rate as a benchmark was impermissible, and on specificity, that the evidence on the record of the investigation did not support Commerce's determination that the government provision of land-use rights was specific to companies within a particular industrial zone. Finally, the panel found that Commerce did not properly rely on facts available when making its subsidy determinations in two investigations. Consequently, the panel recommended that the United States bring the measures into conformity with the WTO agreements.

On December 1, 2010, China filed a notice of appeal of certain of the panel's findings. China contended that: 1) the panel erred in its interpretation and application of the term "public body" in Article 1 of the SCM Agreement; 2) the panel erred in its interpretation and application of Article 2 of the SCM Agreement regarding Commerce's specificity determinations; 3) the panel erred in its interpretation and application of Article 14(d) of the SCM Agreement and its finding that Commerce's determination to reject in-country private prices as benchmarks for measuring the benefit of government-provided hot-rolled steel was not inconsistent with that provision was erroneous; 4) the panel erred in its interpretation and application of Article 14(b) of the SCM Agreement and its finding that the benchmark Commerce used to measure the benefit of government-provided loans was not inconsistent with that provision was erroneous; and 5) the panel erred in concluding that the concurrent application to imports from China of countervailing duties and antidumping duties calculated using an NME methodology was not inconsistent with the WTO obligations of the United States. The Appellate Body conducted an oral hearing on these issues on January 13 – 14, 2011. The Appellate Body is expected to circulate its report in March 2011.

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. Following the death of Mr. Tiwari on July 26, 2010, the United States and Mexico agreed on a new panel member on August 12, 2010, Mary Elizabeth Chelliah. Mexico submitted its first and second written submissions on February 26, 2010 and December 1, 2010 respectively, and the United States submitted its first and second written submission on April 12, 2010 and December 1, 2010 respectively. Panel meetings were held October 18-20, 2010 and December 16-17, 2010. The final panel report is scheduled to be circulated to Members on May 25, 2011.

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 complained that DOC used "zeroing" in the first 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."

Brazil claims that the alleged use of "zeroing" in the investigation and first and second administrative reviews and "continued use of the U.S. 'zeroing procedures' in successive anti-dumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil" are inconsistent with Articles II:1(a), II:1(b), VI:1, and VI:2 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Articles 2.1, 2.4, 2.4.2, and 9.3 of the *Agreement on Implementation of Article VI of the GATT 1994*, and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization.

On August 20, 2009, Brazil requested the establishment of a panel. The DSB established the panel on September 25, 2009. On May 10, 2010, the Deputy Director-General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair; and Mr. Pierre Pettigrew and Mr. Reuben Pessah, members. The panel met with the parties on July 15-16, 2010, and October 12, 2010, and met with the parties and third parties on July 16, 2010. The panel's final report is scheduled to be circulated to Members in early 2011.

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.

The panel circulated its final report on January 22, 2010. The panel made one finding against the United States. The panel found that the United States acted inconsistently with Article 2.4.2, first sentence, of the Anti-Dumping Agreement by using "zeroing" in the retail carrier bags investigation to determine the dumping margins for individually investigated Thai exporters whose margins of dumping were not based on total facts available.

On February 18, 2010, the DSB adopted the recommendations and rulings in this dispute. At the following DSB meeting, on March 19, 2010, 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 Thailand agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on August 18, 2010. The Department of Commerce completed a Section 129 determination, recalculating the margins of dumping without "zeroing", and implemented the determination effective July 28, 2010. At the DSB meeting on August 31, 2010, the United States informed the DSB that it had complied with the recommendations and rulings.

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). On May 10, 2010, the Director-General composed the panel as follows: Mr. Christian Häberli, Chair; Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members. The panel held the first

substantive meeting with the parties on September 14-15, 2010 and with the parties and third parties on September 15, 2010. The panel held the second substantive meeting with the parties on December 1-2, 2010 and with the parties and third parties on December 2, 2010.

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). On May 10, 2010, the Director-General composed the panel as follows: Mr. Christian Haberli, Chair; Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members. The panel held the first substantive meeting with the parties on September 14-15, 2010 and with the parties and third parties on September 15, 2010. The panel held the second substantive meeting with the parties on December 1-2, 2010 and with the parties and third parties on December 2, 2010.

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 ("Section 727") 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 alleged 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 March 9-10, 2010, and met with the parties and third parties on December 16, 2009.

The panel circulated its report on September 29, 2010. The panel found that China's SPS claims were within the panel's terms of reference and found Section 727 of the FY2009 Omnibus Appropriations Act inconsistent with Articles 2.2, 2.3, 5.1, 5.2, and 8 of the SPS Agreement. The panel also found that Section 727 was inconsistent with Article I:1 and Article X:1 of the GATT 1994. The panel then found that Section 727 was not justified under Article XX(b) of the GATT 1994 because it was found inconsistent with Articles 2.2, 2.3, 5.1, 5.2, and 5.5 of the SPS Agreement. The panel declined to rule on China's claim that Section 727 was inconsistent with Article 5.6 of the SPS Agreement and Article 4.2 of the Agreement on Agriculture. Because Section 727 has expired, the panel did not recommend that the DSB request the United States to bring the measure into conformity with its obligations under the SPS Agreement or the GATT 1994.

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. On January 19, 2010, the DSB established a panel at China's request. On March 12, 2010, the Director-General composed the panel as follows: Prof. Celso Lafer, chairman; Prof. Donald M. McRae and Mr. Luis M. Catibayan, panelists. The Panel met with the parties on June 1-2, 2010 and July 20-21, 2010. The Panel circulated its report on December 13, 2010. The Panel found that, in imposing the additional duties, the United States had not failed to comply with its obligations under section 16 of the Protocol and Articles I:1 and II:1 of the GATT 1994.

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 U.S. 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 U.S. Department of Commerce's "use of the practice of zeroing" in those investigations is inconsistent with the obligations of the United States under Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

On April 8, 2010, Korea requested the establishment of a panel. The DSB established the panel on May 18, 2010. On July 8, 2010, the parties agreed to compose the panel as follows: Mr. Alberto Dumont, Chair; and Ms. Enie Neri de Ross and Mr. Ernesto Fernandez, members. The Panel met with the parties on October 5, 2010 and met with the parties and third parties on October 5, 2010. The panel's final report was circulated to Members on January 18, 2011. The panel found that the United States acted

inconsistently with its WTO obligations when it applied the zeroing methodology in the challenged investigations.

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

On February 1, 2010, the United States received from Vietnam a request for consultations pertaining to antidumping duties imposed by the United States pursuant to the final results issued by the U.S. Department of Commerce (DOC) in several administrative reviews of the antidumping duty order on imports of certain frozen and canned warm water shrimp from Vietnam. Vietnam claimed that certain actions by DOC and U.S. Customs and Border Protection with respect to several administrative reviews and with respect to any ongoing or future administrative review or sunset review concerning this antidumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles I, II, VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 2.4.2, 6.8, 6.10, 9.1, 9.3, 9.4, 11.2, 11.3, 18.1 and 18.4 and Annex II of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement), Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization, and Vietnam's Protocol of Accession. Specifically, Vietnam complained that DOC used "zeroing" in the administrative reviews of the antidumping duty order on imports of shrimp, DOC failed to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and DOC required companies to demonstrate their independence from government control and applied an adverse facts available rate to companies that failed to do so in all reviews.

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

The panel held meetings with the parties on October 20-21 and December 14-15, 2010 and met with the parties and third parties on October 21, 2010.

United States – Measures Affecting the Production and Sale of Clove Cigarettes (DS406)

On April 7, 2010, the United States received a request for consultations from Indonesia regarding Section 907 of the 2009 *Family Smoking Prevention and Tobacco Control Act*, which prohibits the production or sale in the United States of cigarettes with a characterizing flavour other than tobacco or menthol. Indonesia contends that the measure is inconsistent with the United States' WTO obligations in that it bans clove cigarettes. Specifically, Indonesia contends that the measure is inconsistent with Article III:4 of the GATT 1994, as well as Articles 2.1, 2.2, 2.5, 2.8, 2.9, 2.10, 2.12 and 12.3 of the TBT Agreement.

Indonesia and the United States held consultations on May 13, 2010. On June 9, 2010, Indonesia requested the establishment of a panel. The DSB established the Panel on July 20, 2010 and the Parties agreed to the composition of the Panel on September 9, 2010, as follows: Mr. Ronald Saborío Soto, Chair; Mr. Ichiro Araki and Mr. Hugo Cayrús, Members.

The Panel met with the parties on December 13, 2010, and met with the parties and third parties on December 14, 2010.

I. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB) is the subsidiary body of the General Council, created by the Marrakesh Agreement Establishing the WTO, to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines domestic trade policies of each Member on a schedule designed to review the policies of the full WTO Membership on a timetable determined by trade volume. The express purpose of the review process is to strengthen Members' 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."

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

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

Major Issues in 2010

During 2010, the TPRB reviewed the trade regimes of Malaysia, El Salvador, Croatia, Armenia, Albania, People's Republic of China, Malawi, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Gambia, Honduras, the United States, Benin, Burkina Faso, Mali, Sri Lanka, Belize, Papua New Guinea, Democratic Republic of the Congo, and Hong Kong, China. The 2010 TPRB reviews of the trade policies and practices of Croatia, Armenia, Albania, and Democratic Republic of the Congo were the first for these countries. In September 2010, the latest trade policy review of the United States, which occurs every two years, took place.

Since its formation in 1998 to the end of 2010, the TPRB has conducted 324 reviews. The reviews have covered 140 of 153 Members, representing some 89 percent of world trade and 97 percent of the trade of WTO Members. Of the 32 LDC Members of the WTO, the TPRB had reviewed 28 by the end of 2010.

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 2010. 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 trade remedy 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 2011

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 2011, the proposed program of reviews is the European Union, Japan, Australia, Canada, India, the Kingdom of Saudi Arabia, Thailand, Cambodia, Ecuador, Egypt, Guinea Conakry, Jamaica, Kuwait, Mauritania, Nepal, Nigeria, Paraguay, the Philippines, and Zimbabwe.

J. 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.B.6.)*

Major Issues in 2010

In 2010, the CTE met four times under the Chairmanship of Ambassador Bozkurt Aran (Turkey) until February 2010, and Ambassador Eduardo Muñoz Gómez (Colombia) from February 2010 onwards. Formal meetings were held on February 17, 2010, September 29, 2010, and November 9, 2010, in addition to several informal meetings.

As noted above, the work of the CTE was organized in accordance with the mandate established in the Doha Ministerial Declaration, Paragraphs 32, 33 and 51. Under Doha Paragraph 32, work was conducted on environmental requirements and market access issues (Paragraph 32(i)) and labeling requirements for environmental purposes (Paragraph 32(iii)). Most of the discussion focused on carbon foot-printing, greenhouse gas (GHG) accounting methodologies, and related activities and labeling schemes. Several delegations shared their experiences developing GHG accounting methodologies, and/or complying with such methodologies and related schemes. Saudi Arabia presented a proposal for exploring barriers associated with disseminating clean technologies. Under Paragraph 33, several statements were made on technical assistance and capacity building. No discussion took place under Paragraph 32(ii) (relevant provisions of the TRIPS Agreement) and Paragraph 51 (developmental and environmental aspects of the negotiations). As in the past, the CTE received information on the current developments in Multilateral Environmental Agreements (MEAs), including updates from the United Nations Framework Convention on Climate Change (UNFCCC).

Prospects for 2011

It is expected that in 2011 the CTE's discussions will continue to focus on carbon foot-printing and GHG accounting methodologies, with additional delegations expected to share experiences related to such activities. The Committee may wish to explore clean technology dissemination issues further as well. The CTE will continue to serve as a forum for information exchange with MEA Secretariats.

2. Committee on Trade and Development

Status

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

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

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

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

Major Issues in 2010

The CTD in Regular Session held three formal sessions in March, June, and October 2010. Activities of the CTD and its subsidiary bodies in 2010 included:

- *Technical Cooperation and Training:* The CTD took note of the Annual Report on Technical Assistance and Training, January 1 to December 31, 2009 (WT/COMTD/W/173), and of the Technical Cooperation Audit Report for 2009 (WT/COMTD/W/169 and Rev.1).

- *Notifications Regarding Market Access for Developing and Least-Developed Countries:* The CTD reviewed notifications concerning Regional Trade Agreements (RTAs) under the Enabling Clause for the India-MERCOSUR Agreement (WT/COMTD/N/31), the India-Afghanistan Agreement (WT/COMTD/N/32), the Association of Southeast Asian Nations (ASEAN)-Korea Agreement (WT/COMTD/N/33), the India-Nepal Agreement (WT/COMTD/N/34), the ASEAN-India Agreement

(WT/COMTD/N/35), and the India-Korea Agreement (WT/COMTD/N/36). Members also considered issues relating to the notification status of the Gulf Cooperation Council (GCC) Customs Union.

- *Dedicated Session on Regional Trade Agreements:* A formal session of the CTD Dedicated Session on RTAs was held in June 2010 to review the Preferential Trade Agreement between Chile and India (Goods).

- *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) presented a revised version of their proposal in 2010. The Committee agreed to this version of the proposal, which was subsequently circulated in document WT/COMTD/71 and forwarded to the General Council for adoption.

- *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. During Committee meetings in 2010, Brazil confirmed its intention to implement a DFQF scheme for LDCs, the coverage of which would be expanded in successive installments until 100 percent of tariff lines were covered. China indicated that, as of July 1, 2010, it would grant zero tariff treatment on 4,762 tariff lines for products imported from the 33 LDCs that had completed the exchange of letters required by China for that purpose. India provided updates on the implementation of its Duty Free Tariff Preference (DFTP) Scheme for LDCs. The European Union outlined its approach for rules of origin in its preferential arrangements.

- *Dedicated Session on Small Economies:* The Dedicated Session on Small Economies held one meeting in December 2010, in which the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role (WT/COMTD/SE/W/22/Rev.5). Members took note of this paper.

- *Aid for Trade:* The CTD held five sessions on Aid for Trade in 2010, in February, April, June, October, and November. Work focused on the Director-General's proposed Aid-for-Trade Roadmap (WT/COMTD/AFT/W/11), joint OECD/WTO discussions on monitoring and evaluation of Aid for Trade projects and programs, and follow-up to the 2009 Second Global Review of Aid for Trade and initial preparations for the Third Global Review in July 2011. Presentations were made by the regional development banks, the OECD, and UNIDO related to Aid for Trade. The CTD sessions included workshops intended to explore the connection between Aid for Trade and specific development sectors or topics, including agriculture and food security, small businesses, and monitoring and evaluation. 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 three meetings in 2010, focusing mainly 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; accession of LDCs to the WTO; and the Fourth United Nations Conference on LDCs, to be held in 2011.

- *Other CTD Issues:* In order to assist the Committee with its requirement to review the developmental aspects of the Doha Round negotiations, the Secretariat prepared a paper on the Developmental Aspects of the Doha Round of Negotiations (WT/COMTD/W/143/Rev.4), which was reviewed by Members. Additionally, the Joint Advisory Group (JAG) on the International Trade Centre, UNCTAD, and the WTO provided a report to the CTD on its 43rd Session (ITC/AG/(XLIII)/232).

Prospects for 2011

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. 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 2011.

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 balance-of-payments purposes must consult regularly with the Committee on Balance-of-Payments Restrictions to determine whether the use of such restrictions is necessary or desirable to address a Member's balance-of-payments difficulties. The Committee on Balance-of-Payments Restrictions works closely with the International Monetary Fund 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 2010

The Committee on Balance-of-Payments Restrictions met on March 22, May 28, June 8 and July 28, 2010 to hear reports from Ecuador on its phasing out of all surcharges introduced as balance-of-payments measures. Ecuador had introduced a plan to the Committee to cut its surcharges by specific percentages on March 23 and May 23, 2010 and to eliminate the surcharges on July 23, 2010 (WT/BOP/N/75). On July 28, 2010, Ecuador informed the Committee that all measures taken for balance-of-payments purposes had been removed on July 23, 2010.

Prospects for 2011

Should a Member resort to new balance-of-payments measures, WTO rules require a thorough program of consultation with the Committee on Balance-of-Payments Restrictions. The Committee is expected to continue to ensure that balance-of-payments 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 revised 2011 budget, the U.S. assessed contribution is 12.422 percent of the total budget assessment, or Swiss Francs (CHF) 24,135,946 (about $25.5 million). (*Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2011 are provided in Annex II.)*

Major Issues in 2010

Activities of the Committee in 2010 included:

- *WTO Budget:* The Revision of the Biennium Budget 2010/2011 for the year 2011 resulted in an overall reduction of CHF 2.2 million or 1.11 percent . The budget adopted for 2011 amounted to CHF 196 million, including CHF 190 million for the WTO Secretariat and CHF 6 million for the Appellate Body and its Secretariat.

- *WTO Facilities:* The construction of the new South Courtyard Conference Center was progressing well at the end of 2010. The renovation project of the Centre William Rappard was also on track, with the biggest relocation of staff ever from the North Wing into the renovated South Wing foreseen for January 2011. With respect to the intra-muros project, the building permit has been issued and the financial resources voted on by the Swiss authorities. The Swiss National Council approved a loan of CHF 40 million for the new buildings as well as a grant of CHF 10 million for the underground garage in December 2010, allowing the work on the extra-muros project to begin in early 2011. The funds for the external security perimeter had also been approved by the Swiss authorities. Overall, this will result in four construction projects on the WTO site in 2011.

- *Diversification of the WTO Secretariat:* In response to a 2009 proposal by several Members on the need to improve the diversification of the WTO Secretariat, the Secretariat prepared and presented its first annual report on diversity early in 2010. The report recalled that the WTO Staff Regulations were based on the principles of merit and equal opportunity for all, with merit being the principal selection criterion. When candidates were equal in terms of merit, diversity considerations were taken into account. In order to increase the awareness of diversity, the Secretariat had adopted several measures such as the implementation of diversity training in the Secretariat, the increase in outreach and communication, and the addition of a short text in vacancy notices on the WTO's commitment to merit and diversity.

Prospects for 2011

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 2010

As of November 1, 2010, 375 RTAs have been notified to the GATT or WTO, of which 197 are in force (117 covering goods only, 1 covering services only and 79 covering both goods and services).

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs. The main features of the mechanism, agreed upon in the Negotiating Group on Rules, include: the early announcement of any RTA; guidelines regarding the notification of RTAs; the preparation by the WTO Secretariat, on its own responsibility and in full consultation with the parties, of a factual presentation 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 Articles V and Vbis 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 dealt with trade in goods and 21 with trade in services. Since the implementation of the transparency mechanism in 2007, 92 agreements have been examined (23 in 2010). Of these agreements, 88 have been reviewed in the CRTA and four in the CTD. A total of 95 RTAs remain to be reviewed, comprising 91 RTAs for which the factual presentation is under preparation and four 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. In December 2010, the United States and other Members agreed in the Rules Negotiating Group to launch a review of the provisional transparency mechanism for RTAs with a view to making it permanent.

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 is accessible at http://rtais.wto.org.

In 2010, the Committee discussed two proposals regarding possible work on the systemic implications of RTAs and their effect on the multilateral system. These proposals, including one from the United States, will be discussed further in 2011.

Prospects for 2011

Four sessions of the Committee on Regional Trade Agreements are foreseen in 2011. The 2011 WTO Annual Report, to be released in July, will focus on RTAs.

6. Accessions to the World Trade Organization

Status

A number of accession applicants intensified efforts in 2010 to complete their accession negotiations with WTO Members. Samoa, Vanuatu, and Yemen remain the countries closest to completing their accessions, having made substantial progress in both bilateral and multilateral negotiations during 2010. Russia and Kazakhstan resumed negotiations for their individual WTO memberships, while continuing work on perfecting the customs union they had established with Belarus on January 1, 2010. Work on these two accessions is well advanced and both Russia and Kazakhstan are working to complete the accession process in 2011. In addition, Syria's long-standing application was accepted, bringing the number of applicants for accession to thirty.[1]

During 2010, formal or informal Working Party (WP) meetings were convened in Geneva for Azerbaijan, Bahamas, Bosnia and Herzegovina, Laos, Samoa, Serbia, Seychelles, Tajikistan, and Yemen. Additionally, Chair's consultations, similar to informal WP meetings, were convened for Samoa, Russia, and Vanuatu. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings and consultations. Afghanistan, The Bahamas, and the Seychelles circulated their responses to written questions submitted by WTO Members on the descriptions of their respective trade regimes, *i.e.*, the Memorandum on the Foreign Trade Regime (MFTR), that each had circulated in 2009. The Bahamas and Seychelles had initial WP meetings based on the respective MFTR and responses to questions, and Afghanistan's first WP meeting is scheduled for January 2011. Members submitted questions and comments on Iran's MFTR, which was circulated in late 2009.

Six of the thirty current applicants for WTO accession (Comoros, Equatorial Guinea, Liberia, Libya, Sao Tome and Principe, and Syria) have not yet submitted their MFTRs, the action necessary to actually begin accession negotiations. The Working Parties for four other applicants – Andorra, Belarus, Sudan, and Uzbekistan – remained dormant in 2010. Belarus' WP Chairman, however, convened two informal consultations to explore with Members the resumption of more formal meetings. The accessions of Algeria and Bhutan also remained inactive during 2010. The Working Parties on the accessions of Ethiopia, Iraq, Kazakhstan, Lebanon and Montenegro did not meet in 2010, but in these cases, bilateral work and technical assistance continued or the applicant governments focused on efforts to enact legislation to implement WTO provisions. In particular, Montenegro has only one bilateral negotiation to complete prior to finalization of its accession process. The chart included in Annex II reports the current status of each accession negotiation.

Palestine, which requested permanent observer status in the General Council in 2009, submitted a revised request in 2010. No action has yet been taken on the application. There were no other requests for observer status in 2010.

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.[16]

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.[17] These terms, *i.e.*, 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 goods and services, and agriculture schedules that include commitments on export subsidies and domestic supports. After General Council or Ministerial Conference approval, accession applicants submit the package to their domestic authorities for acceptance (ratification). 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 facilitating the accession processes 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 countries in response to the WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508) established the at the end of 2002. These guidelines ask WTO Members to exercise restraint in seeking market access concessions and to allow the LDC applicants transition periods for the implementation of WTO Agreements. The accession process thus becomes a tool for economic development, incorporating the applicant's own development program and schedule for receiving technical assistance in 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.

[16] For example, 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.

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

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 accession process.

Current accession applicants to which the United States provided a resident expert or other long-term assistance for the accession process during 2010 include: Afghanistan, Azerbaijan, Iraq, Laos, Lebanon, Liberia, and Yemen. In addition, a U.S.-funded WTO expert resident in Bishkek provided resident WTO accession assistance to Kazakhstan and Tajikistan, as well as post-accession assistance to the Kyrgyz Republic. Among current accession applicants, Algeria, Belarus, Bosnia and Herzegovina, Ethiopia, Montenegro, Russia, Serbia, and Uzbekistan also received U.S. technical assistance earlier in their accession processes.

Major Issues in 2010

The accession process is resource-intensive, and progress in the negotiations requires attention and active engagement over a long period from both applicants and WTO Members. Applicants that demonstrate a strong interest in actually using WTO provisions as the basis for their trade regimes and in working to complete the process (*e.g.*, by submitting usable documentation, market access offers, and legislation for WP review on a timely basis), usually get more attention from Members in the process, while work on other applicants' accession processes tends to be less intense. Thus, the pace of the accession process generally depends on the applicant.

Russia:

After the announcement on June 9, 2009 that Russia, Kazakhstan, and Belarus would form a customs union, Russia suspended work on its WTO accession. A common external tariff (CXT) among the three Customs Union (CU) parties went into effect on January 1, 2010, and common customs regulations, practices, and procedures were implemented on July 1, 2010 when the CU Customs Code came into effect. At the end of 2009, Russia announced its intent to continue its efforts to join the WTO as a single country. In June 2010, Presidents Obama and Medvedev jointly pledged to resolve outstanding bilateral issues in Russia's WTO accession. Additional documentation describing Russia's participation in the CU and its obligations under CU Agreements was made available to WTO Members. Informal consultations in September, October, and December 2010 in Geneva reviewed (a) revised sections of Russia's draft WP report text; (b) a draft consolidated schedule of commitments and concessions on trade in services; and (c) updated data on Russia's agricultural supports. These informal consultations, called by Russia's WP

Chairman, also received status reports from the WTO Secretariat on the continuing efforts to complete the consolidation of Russia's bilateral market access agreements on goods, and then express those commitments in the harmonized tariff system nomenclature currently used in Russia's applied tariff schedule, *i.e.*, the CU CXT.

By the end of 2010, Russia's WTO accession process seemed to be back on track. Along with the EU and the WTO Secretariat, the United States is working with Russia to resolve remaining multilateral issues and to address any new issues that emerge from the Russia's membership in the CU with the goal of completing Russia's WTO accession negotiations as soon as possible.

Kazakhstan:

During 2010, Kazakhstan continued its efforts to complete bilateral negotiations on market access for goods and services, concluding goods negotiations with the United States, El Salvador and the EU, and making good progress towards reaching agreement on services commitments. In a series of bilateral meetings and video conferences in March, April, August and September, the United States and Kazakhstan recorded significant progress on goods tariffs and on other issues affecting market access (*e.g.*, sanitary and phytosanitary measures and protection of intellectual property rights). Bilateral discussions in September concluded work on goods market access, including the negotiation of agreed veterinary certificates necessary to export meat and dairy products from the United States to Kazakhstan. Further progress to complete negotiations for services market access is expected after Kazakhstan provides a new revised offer. Discussions on other outstanding issues, *e.g.*, local content requirements in investment contracts and purchases by state-owned enterprises, the provision of trading rights, import licensing procedures for goods with encryption, and the operation of state-owned and state-controlled enterprises will continue. Kazakhstan is working on responses to questions received from the WTO Members after its last WP meeting and revising its draft Working Party report to reflect changes that have occurred in its trade regime and practices with its participation in the CU with Russia and Belarus. The next meeting of its WP is planned for spring 2011.

Serbia:

In 2010, Serbia made substantial progress in both market access negotiations and multilateral review of its trade regime. By the end of 2010, Serbia had signed bilateral market access agreements with Japan, Norway and Honduras, and had concluded negotiations with Korea and Canada. As of the end of 2010, it was still negotiating bilaterally with China, Ecuador, El Salvador, Panama, Switzerland, Ukraine and the United States. The 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 Members. While WP Members also reviewed some new legislation in 2010, Serbia needs to adopt laws and regulations to implement WTO provisions and to provide Members an opportunity to comment on those measures prior to adoption. Serbia, for example needs to modify its highly problematic law banning trade in any products containing genetically modified organisms in order to bring it into line with WTO rules.

LDC Accessions

During 2010, LDC accession applicants actively negotiating with Members included Afghanistan, Ethiopia, Vanuatu, Laos, Samoa, and Yemen, the last three of which had at least one formal or informal WP meeting in 2010. Negotiations with Samoa, Yemen, and Vanuatu are each well advanced. Afghanistan, which circulated its MFTR in 2009, responded to written questions and provided other documentation necessary for a first WP meeting, as well as continuing its efforts, with U.S. technical assistance, to develop the legislation and institutions necessary for the implementation of WTO provisions. Ethiopia is expected to have a meeting of its Working Party in 2011.

Yemen:

Yemen made significant progress in its WTO accession negotiations in 2010, enacting trade-related legislation and concluding bilateral market access negotiations with all but one Member. As of December 2010, Yemen had concluded bilateral market access negotiations with Australia, Canada, China, the EU, El Salvador, Korea, Honduras, Japan, and the United States. Yemen's Parliament also passed amendments to the Customs Law and Commercial Registration Law, and enacted new legislation on trademarks and geographical indications, as well as adopting an Industrial Design Law. The Patent Law, Copyright Law, and Plant Quarantine and Phytosanitary Law, as well as amendments to other legislation, were under active discussion in the Parliament, and the Trade Minister committed to providing all enacted legislation to the WP prior to Yemen's accession. Yemen had two formal and two informal WP meetings in 2010, and engaged in bilateral negotiations with the United States in Washington, D.C. in April 2010 and in Geneva in September and December 2010. At the December 2010 informal WP meeting, the Chair urged Members to submit drafting suggestions for the draft WP report, noting that the Secretariat would endeavor to circulate a revised report in the beginning of 2011.

Samoa:

Samoa continued to make progress during 2010, but, still reeling from the impact of the September 2009 Tsunami, was unable to fully resolve remaining nontariff barrier issues or fully address requests from WP Members to review legislative drafts prior to completion of the accession process. Samoa's WP met twice informally. Two 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 further revision of the draft WP report. Samoa also completed its goods bilateral market access negotiations with the United States, Ukraine, and the EU, and nearly completed work on trade in services. Samoa's next informal WP meeting is scheduled for February 2011.

Vanuatu:

Vanuatu originally completed negotiations with WTO Members in 2001, but decided at that time not to submit the accession package and terms of accession to the Ministerial Conference for approval. Since late 2008, Vanuatu has worked with interested WTO Members to update its 2001 accession package and to revise its offer on trade in services. This updated package was circulated in September 2010, and will be reviewed by Vanuatu's WP in an informal meeting, now scheduled for late January 2011.

Other Developments:

During 2010, WTO Members and the Secretariat endeavored to respond to the concerns of developing country and LDC Members and accession applicants about the current accession process, in particular in the area of transparency and the application of the 2002 General Council Decision on LDC Accessions. Discussions on these issues continued in various WTO fora throughout the year, including at three of the six sessions of the General Council and at one meeting of the Subcommittee for LDCs under the Committee on Trade and Development. The WTO Work Program for LDCs, adopted by Members in 2002 and overseen by the LDC Subcommittee, also includes a focus on the accession of LDCs to the WTO. The LDC Subcommittee discussed LDC Accessions during its June 2010 meeting, where the Chairman provided an oral report on the May 2010 informal dialogue meeting between acceding LDCs and WTO Members. In addition, the Director General of the WTO Secretariat began issuing annual reports on the status of WTO accessions, the first two issued in January and in December 2010, with a focus on the progress of LDC accessions.

The United States and other developed country WTO Members have strongly supported the 2002 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 2011

The pace of work on WTO accessions is expected to accelerate throughout 2011, reflecting the number of acceding countries close to completing their negotiations. The Bahamas, the Seychelles, and Afghanistan only activated (or reactivated) their negotiations last year and expect to move forward in 2011. Montenegro remains extremely close to completing its accession process. The prospects for completing negotiations in 2011 remain good for a number of applicants, including Samoa, Yemen, Vanuatu, Russia, and Kazakhstan. Serbia's negotiations are also well advanced, though a number of pieces of key legislation still need to be reviewed by the Working Party. Additional WP sessions during 2011 also are planned or very likely for Bosnia and Herzegovina, Ethiopia, Iraq, and Laos. Belarus has requested resumption of its accession process based on updated information provided during 2010. Additional WP meetings with Azerbaijan, Lebanon, and Tajikistan are possible, but will depend on the timing and the quality of requested revised market access offers, as well as on tangible progress on legislation. Efforts in recent years to advance the accessions of LDCs appear to be succeeding, and there will be special focus on completing negotiations with Yemen, Samoa and Vanuatu. There will be additional efforts to intensify work with LDCs currently not negotiating, *i.e.*, Comoros, Equatorial Guinea, Bhutan, Liberia, and Sao Tome and Principe, as well as stepped-up monitoring of the application of the Decision on LDC Accessions in ongoing negotiations.

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 2010

Work on Aid for Trade during 2010 focused on further design and implementation of the monitoring framework envisioned in the task force report and preparation for the third Global Review of Aid for

Trade in 2011. Discussions on best practices for evaluating Aid for Trade projects and programs began and continued through 2010.

The WTO Secretariat held a number of thematic sessions to explore the relation between Aid for Trade and topics like agriculture, food security, evaluation, and small businesses. Several regional partners held regional workshops on aid for trade and the priorities of the countries in those regions.

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 in both monitoring and evaluation.

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 began by mid-year.

Prospects for 2011

Based on the Committee on Trade and Development's Aid for Trade Roadmap: 2010-11, work in 2011 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, including with the benefit of case stories submitted by WTO Members and aid for trade partner organizations;

- Preparation for the third Global Review of Aid for Trade in July 2011, including preparatory technical and regional events;

- Support for regional integration; and

- Highlighting effective aid for trade strategies.

K. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of two WTO plurilateral agreements (along with the Agreement on Government Procurement) that are in force only for those WTO Members that have accepted it.[18]

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

[18] 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.

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, Canada, the EU[19] (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; Saudi Arabia; Singapore; Sri Lanka; Trinidad and Tobago; Tunisia; Turkey; and Ukraine. 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 2010

The Aircraft Committee held one regular meeting on November 23, 2010. At this meeting, the Committee elected Ms. Sylvie Larose of Canada as its new Chair and discussed the draft Protocol Amending the Product Coverage Annex to the Trade in Civil Aircraft Agreement, together with the draft revised Product Coverage Annex (circulated to Signatories by fax of September 13, 2010).

Prospects for 2011

The Aircraft Committee agreed to meet at least once, in the fall of 2011. 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,

[19] 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.

Norway, Singapore, Switzerland, Taiwan (Chinese Taipei), and the United States (collectively the GPA Parties).

As of the end of 2010, eight Members were in the process of acceding to the GPA: Albania; 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.

Armenia submitted its application for accession and initial coverage offer on September 4, 2009. The WTO Committee on Government Procurement (Committee) approved Armenia's accession to the GPA on December 7, 2010. Armenia will become a GPA Party when the Committee confirms that Armenia has brought its legislation implementing the GPA into force and Armenia deposits its instrument of accession.

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 in May 2008. In accordance with a commitment that China made at the United States-China Strategic and Economic Dialogue in July 2009, China submitted a report to the Committee on its plans for submission of a revised offer and the difficulties it has encountered in revising its offer. At the JCCT meeting in October 2009, China committed to table a revised offer in 2010. China submitted its first Revised Offer on July 9, 2010. The United States submitted its Second Request for improvements in China's Revised Offer on September 28, 2010. China also submitted its responses to the Checklist of Lists for Provision of Information Relating to Accession in September 2008. On April 13, 2010, the United States submitted questions to China on its responses to the Checklist of Lists. China replied to U.S. questions on October 11, 2010. At the JCCT meeting in December 2010, China committed to table a second revised offer in 2011.

Jordan submitted its initial offer of coverage in 2002. It has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Jordan's accession continued to move forward in 2010. The Kyrgyz Republic's accession to the GPA, which had been inactive since 2003, moved forward in 2009 when it submitted updated responses to the checklist of issues, but it did not make any further progress in 2010. Moldova, which had commenced its accession in November 2008, requested in May 2009 that further active consideration of its accession be deferred until its government completed a reorganization.

India became an observer in the GPA Committee in February 2010. 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; India; 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. In 2010, the Committee

completed verification of the linguistic consistency of the English, French, and Spanish texts of the revision of the GPA, and approved public release of the verified text. The Committee also narrowed the outstanding issues that remain on the Final Provisions in Article XXII and related texts. It also advanced work on the indicative criteria, but more work remains on the draft decisions on arbitration procedures and indicative criteria.

Major Issues in 2010

Armenia's accession to the GPA was approved by the Committee on December 7, 2010.

During 2010, the GPA Committee held five meetings (in February, April, July, October, and December) during which Parties reinforced efforts to conclude the negotiations on both coverage and text-related issues. With respect to the revision of the GPA text, the Committee completed verification of the linguistic consistency of the English, French, and Spanish texts of the revision of the GPA and approved public release of the verified text. It also made progress on the Final Provisions of the revised GPA. The Committee also advanced work on the accessions of China and Jordan.

With respect to the negotiations under GPA Article XXIV:7 that are aimed at expanding procurement covered by the Agreement, significant progress was made during 2010. Liechtenstein submitted an initial offer, leaving Hong Kong China as the only Party that had not submitted an initial offer. New revised offers were submitted by the United States, Canada, Israel, Japan, Liechtenstein, Korea, Norway, and Singapore. The only Parties that did not submit new offers before or at the last meeting of the Committee for 2010 were the European Union, Iceland, the Netherlands with respect to Aruba, and Switzerland.

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

Prospects for 2011

The GPA Committee has tentatively scheduled three meetings for the first half of 2011, with the first scheduled for the beginning of March, where it is expected to continue work on revision of the GPA, and the accessions of China and Jordan. The Committee intends to complete the revision of the GPA during 2011. China is expected to submit a second revised accession offer, including market access coverage of sub-central entities, no later than the final session of 2011.

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

Status

The WTO Ministerial Declaration on Trade in Information Technology Products – known as the Information Technology Agreement (ITA) – was concluded at the WTO's First Ministerial Conference in 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. The Committee of Participants on the Expansion of Trade in Information Technology Products ("the ITA Committee") was established to carry out the provisions of the Ministerial Declaration (WT/MIN(96)/16), including reviewing product coverage, examining classification divergences, consulting on non-tariff barriers, and expanding Member participation. The Committee thus serves as the forum for meetings required under its procedures and collective consultations among the participants.

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. On September 13, 2010, Kuwait became the 46th participant (covering 73 Members and States or separate customs territories in the process of acceding to the WTO) in the ITA, which now represents approximately 97 percent of world trade in information technology products.[20]

Major Issues in 2010

The ITA Committee held two formal meetings in 2010, on July 8 and November 11.[21] At these meetings, ITA participants continued their discussion of classification divergences on certain ITA products, which is aimed at eliminating differences in the way participants classify ITA products in their national tariff schedules. The Committee also informally discussed the EU's September 2008 proposal to review and update the ITA.[22] Several countries, including the United States, continued to raise significant questions and concerns about the EU proposal, including that aspects of the proposal appeared premised on the view that the existing legal structure of the ITA is inadequate to address new developments in technology. The Chair reported to the Committee that participants were open to continue the discussions on the review process and that this issue would be included on the agenda for the first meeting in 2011.

In August 2010, a WTO dispute settlement panel report was issued in the dispute brought by the United States, Japan, and Chinese Taipei regarding the European Union's tariff treatment of certain information technology products. In its report, the Panel upheld the complainants' position as to all three products at issue in the dispute and rejected the EU's assertion that ITA obligations are limited to so-called Attachment A commitments and that products are no longer covered by the ITA and can be subjected to duties when they incorporate new technologies or features. *(For additional information, see Chapter II.H.)*

Prospects for 2011

While a date for the next meeting of the ITA Committee has not yet been determined, likely agenda items will include potential expansion of product coverage and further discussion of classification divergences.

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[20] 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; Kuwait; 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.
[21] The minutes of these both Committee meetings are contained in WTO documents G/IT/M/51 and G/IT/M/52.
[22] WTO Document, G/IT/W/28.