V. TRADE ENFORCEMENT ACTIVITIES

A. Enforcing U.S. Trade Agreements

1. Overview

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

- Asserting U.S. rights through the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO bodies and committees charged with monitoring implementation and with surveillance of agreements and disciplines;

- Vigorously monitoring and enforcing bilateral agreements;

- Invoking U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance;

- Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements like the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and

- Promoting U.S. interests under FTAs through work programs, accelerated tariff reductions, and use or threat of use of dispute settlement mechanisms, including with respect to labor and environment.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 77 complaints at the WTO, thus far successfully concluding 49 of them by settling 25 cases favorably and prevailing in 24 others through litigation in WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements. Our hope in filing cases is to secure U.S. benefits (and fairer trade for both countries) rather than to engage in prolonged litigation. Therefore, whenever possible the United States has sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings.

The United States has been able to achieve this preferred result in 25 of the 53 cases concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value added tax; China's prohibited subsidies; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When our trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 24 cases to date, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high-fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; the EU's moratorium on biotechnology products; Mexico's discriminatory soft drink tax; Turkey's measures affecting the importation of rice; and the EU's non-uniform classification of LCD monitors.

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

2. WTO Dispute Settlement

Enforcement successes in 2007 include rulings against Turkey's import licensing regime and other measures affecting the importation of rice.

The United States also favorably resolved several disputes after completing, initiating or threatening to initiate WTO dispute settlement procedures. For example, China agreed to revise and repeal certain import substitution and export subsidies challenged by the United States. The agreement also committed

China not to re-introduce those subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008.

Ongoing enforcement actions involve the EU's aircraft subsidies, China's charges on auto parts, China's measures affecting the enforcement and protection of intellectual property rights, China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, and India's duties on alcoholic beverages.

The cases described in Chapter II of this report further demonstrate the importance of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website:

http://www.ustr.gov/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Section_Index.html

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

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

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

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (http://ia.ita.doc.gov/esel/index.html) includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases since 1980. This database is frequently updated, making information on subsidy programs investigated or reviewed quickly available to the public.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member to another. The United States closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, IA tracks foreign antidumping and countervailing duty actions involving U.S. exporters and gathers information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of antidumping and countervailing duty actions involving U.S. companies. Information about foreign antidumping and countervailing duty actions affecting U.S. exports is accessible to the public via IA's website at http://ia.ita.doc.gov/trcs/index.html. The stationing of IA officers to certain overseas locations, as noted above, has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports.

Based in part on this monitoring activity, the United States mounted a successful WTO challenge of Mexico's antidumping measure on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among other antidumping proceedings of U.S. goods that were closely monitored in the past year are Brazil's measure on pet resins; India's investigations of acetone, phenol and poly vinyl chloride; European Communities' investigation of persulphates; Korea's investigations of kraft linerboard and kraft paper; Mexico's review of beef and its reinvestigation of apples; and South Africa's proceeding on frozen chicken and investigation of lysine. Import Administration personnel have also participated in technical exchanges with the administering authorities of Canada, Egypt, Ghana, Mexico, India, Pakistan, and South Africa to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

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

B. U.S. Trade Laws

1. Section 301

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

a. Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government policy or practice and take appropriate action. The USTR also may self-initiate an investigation. In each investigation, the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires the USTR to use the dispute settlement procedures that are available under that agreement.

If the matter is not resolved by the conclusion of the investigation, Section 304 of the Trade Act requires the USTR to determine whether the practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If the practices are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the USTR must determine whether action is appropriate and, if so, what action to take. The time period for making these determinations varies according to the type of practices alleged. Investigations of alleged violations of trade agreements with dispute settlement procedures must be concluded within the earlier of 18 months after initiation or 30 days after the conclusion of dispute settlement proceedings, whereas investigations of alleged unreasonable, discriminatory, or unjustifiable practices (other than the failure to provide adequate and effective protection of intellectual property rights) must be decided within 12 months.

The range of actions that may be taken under Section 301 is broad and encompasses any action that is within the power of the President with respect to trade in goods or services, or with respect to any other area of pertinent relations with a foreign country. Specifically, the USTR may: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations.

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

During 2007, there were developments relating to the following Section 301 investigation, and USTR received two petitions seeking the initiation of new investigations.

b. EC - Measures Concerning Meat and Meat Products (Hormones)

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

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

Section 306(b)(2) of the Trade Act provides that the USTR is not required to revise a retaliation list if the USTR, together with the affected United States industry, agree that it is unnecessary to revise the retaliation list. Pursuant to this provision, on October 2, 2006, the USTR issued a determination agreeing with the affected U.S. industry that it was unnecessary to revise the retaliation list.

This dispute was not resolved during 2007, and the increased duties on the products included on the retaliation list remained in place.

In February 2005, a WTO panel was established to consider the EC's claims that it had brought its hormone ban into compliance with the EC's WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. The WTO panel continued its work throughout 2007 (the section of this report addressing WTO dispute settlement contains further information on this matter).

c. Petitions Filed in 2007

During 2007, USTR received two petitions seeking the initiation of new investigations under section 301.

A petition filed in May 2007 alleged that acts, policies, and practices of the government of China have resulted in a significant undervaluation of China's currency, and that the undervaluation amounts to: a prohibited export subsidy under the Agreement on Subsidies and Countervailing Measures and Articles VI and XVI of the GATT 1994; exchange action under Article XV of the GATT 1994 that frustrates the intent of articles I, II, III, VI, XI, and XVI of the GATT 1994; and subsidies that are inconsistent with China's obligations under Articles 3, 9, and 10 of the Agreement on Agriculture. The petition also alleged that these acts, policies, and practices of China violate international legal rights of the United

States under Articles IV and VIII of the Articles of Agreement of the International Monetary Fund, and that they burden or restrict U.S. commerce by, among other things, suppressing U.S. manufacturing for domestic consumption and the growth in U.S. exports. The USTR determined not to initiate an investigation because, among other reasons, an investigation would not be effective in addressing the acts, policies, and practices covered in the petition.

A petition filed in September 2007 alleged that Canadian subsidies on the filming of U.S.-produced television shows and theatrical films within Canada were inconsistent with Canada's obligations under the WTO Agreement on Subsidies and Countervailing Measures. The USTR determined not to initiate an investigation on the basis that an investigation would not be effective in addressing the acts, policies, and practices covered in the petition.

2. Special 301

During the past year, the United States continued to vigorously implement the Special 301 program, resulting in continued improvement in the global intellectual property environment. Publication of the Special 301 lists indicates those trading partners whose intellectual property protection regimes most concern the United States, and alerts firms considering trade or investment relationships with such countries that their intellectual property rights (IPR) may not be adequately protected. Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994), USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as "Priority Foreign Countries" unless those countries are entering into good faith negotiations, or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

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

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

a. 2007 Special 301 Review Announcements

On April 30, 2007, U.S. Trade Representative Susan C. Schwab announced the results of the 2007 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in 79 countries. USTR placed 43 countries on the Priority Watch List, Watch List, or the Section 306 monitoring list.

China remained a top IPR enforcement priority in 2007 and was placed again on the Priority Watch List. In conjunction with the release of the report, USTR announced the results of an unprecedented year-long review of strengths and weaknesses in IPR protection and enforcement in key Chinese provinces. USTR continued to address selected issues through WTO dispute settlement proceedings, and to pursue bilateral engagement on IPR issues through the U.S.-China Joint Commission on Commerce and Trade (JCCT) and other mechanisms. The China section of the Special 301 report recognized China's efforts to address IPR problems but concluded that levels of copyright piracy and trademark counterfeiting remained unacceptably high.

Russia also continued to be a serious concern and remained on the Priority Watch List. The Special 301 report noted that Russia had made some progress towards implementing the November 2006 U.S.-Russia Bilateral Market Access Agreement on Intellectual Property Rights ("IPR Bilateral Agreement") by addressing IPR protection and enforcement concerns. The report also announced that USTR would conduct an Out-of-Cycle Review to monitor Russia's progress on implementing the IPR Bilateral Agreement.

Countries on the Priority Watch List are the focus of increased bilateral attention concerning problem areas. In addition to China and Russia, 10 countries were placed on the Priority Watch List in 2007: Argentina, Chile, Egypt, India, Israel, Lebanon, Thailand, Turkey, Ukraine, and Venezuela.

Thirty trading partners were placed on the lower level Watch List, meriting bilateral attention to address underlying IPR problems. The Watch List countries were: Belarus, Belize, Bolivia, Brazil, Canada, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Hungary, Indonesia, Italy, Jamaica, Korea, Kuwait, Lithuania, Malaysia, Mexico, Pakistan, Peru, the Philippines, Poland, Romania, Saudi Arabia, Taiwan, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam. Paraguay remains under Section 306 monitoring.

Due to progress on intellectual property, the status of several countries in the 2007 Special 301 report improved in comparison to the 2006 report. Brazil was moved from the Priority Watch List to the Watch List, reflecting significant improvements in copyright enforcement. Belize was also removed from the Priority Watch List to the Watch List due to customs improvements in that country, including greater cooperation with rights holders. Five other trading partners – Bahamas, Bulgaria, Croatia, the European Union, and Latvia – were removed from the Special 301 list altogether in recognition of IPR improvements.

The 2007 Special 301 report also announced four Out-of-Cycle Reviews involving Brazil, the Czech Republic, Pakistan, and Russia. Out-of-Cycle Reviews are conducted on countries that warrant further review before the next Special 301 report and may result in changes to a country's listing.

b. Initiatives

The 2007 Special 301 report sets out the priorities for the coming year, such as implementing free trade agreements (FTAs) and combating Internet piracy and pharmaceutical counterfeiting. The 2007 Special 301 report detailed ongoing U.S. efforts to conclude FTAs with strong IPR chapters and to work closely with FTA partners to achieve appropriate implementation of FTA obligations in domestic law. The report reviewed USTR's examination of IPR practices in connection with its administration of trade preference programs, such as the ongoing Generalized System of Preferences (GSP) reviews of countries. In addition, USTR reported on the status of ongoing initiatives and significant developments:

- **Continuing to Advance the STOP! Initiative:** USTR reported that it is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. As part of this effort, USTR, in coordination with other agencies, is introducing new initiatives in multilateral fora to improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters.

- **Global Scope of Counterfeiting and Piracy:** USTR reported that global IPR theft and trade in fakes have grown to unprecedented levels, threatening innovative and creative economies around the world. Counterfeiting of pharmaceuticals was highlighted as a growing area of particular concern in the 2007 Special 301 report.

- **Notorious Markets:** Noting that global piracy and counterfeiting thrive in part due to large marketplaces that deal in infringing goods, USTR listed "notorious markets" in the Special 301 report. The list includes both virtual (online) markets and traditional physical markets. The listed markets are examples of marketplaces that have been the subject of IPR enforcement action, or that may merit further investigation for possible IPR infringements, or both.

- **Transshipment and In Transit Goods:** Transshipped and in transit goods pose a high risk for counterfeiting and piracy. USTR reported that transshipment or in transit goods are significant problems in Hong Kong, Paraguay, the Philippines, Thailand, and Ukraine, among others. The report noted problems in free trade zones in Belize, Chile, Paraguay, the Philippines, and the United Arab Emirates, among others.

- **Optical Media Piracy:** USTR reported that some trading partners, such as Brazil, Indonesia, Malaysia, Nigeria, Pakistan, the Philippines, and Ukraine had taken important steps toward implementing much-needed controls on optical media production in order to address and prevent future piracy. However, other countries urgently need to implement controls or to improve inadequate existing measures. Such countries included Bangladesh, India, Russia, and Thailand, which have not made sufficient progress in this regard.

- **Cracking Down on Internet Piracy:** USTR reported that, in order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. As of the end of 2007, there were 64 members of the WIPO Copyright Treaty and 62 members of the WIPO Performances and Phonograms Treaty; these numbers will rise significantly when the EU member States join.

- **Ensuring Government Use of Authorized Software:** In October 1998, the United States announced an Executive Order directing U.S. government agencies to maintain appropriate and effective procedures to ensure legitimate use of software. In addition, USTR was directed to undertake an initiative to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding government use of illegal software. USTR reported continued progress under this initiative. The report noted that in 2006, APEC economies agreed that central government agencies should use only legal software and other copyrighted materials and should implement effective policies to prevent copyright infringement on their computer systems and via the Internet.

- **Ensuring Compliance with the WTO TRIPS Agreement:** USTR reported on efforts to ensure compliance by our trading partners with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Compliance with the TRIPS Agreement is an essential first step in providing the quality of IPR protection that is fundamental for the promotion of growth and productivity.

- **Intellectual Property and Health Policy:** Noting the Administration's dedication to addressing serious health problems, such as HIV/AIDS, afflicting least-developed countries in Africa and elsewhere, USTR reported on developments following the 2001 Doha Declaration on the TRIPS Agreement and Public Health.

- **Supporting Pharmaceutical Innovation:** USTR reported on its efforts to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries and to provide for affordable health care today and support the innovation that assures improved health care tomorrow.

3. Section 1377 Review of Telecommunications Agreements

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

The 2007 Section 1377 Review focused on the policies and practices of several countries which have negatively affected the operations of U.S. companies. The report cited Egypt for its failure to license new operators or make licensing criteria publicly available; Jamaica for continuing to maintain a universal service related program funded through surcharges levied solely on incoming international calls primarily delivered by U.S. telecommunications operators; Mexico for its failure to institute procedures that would allow for the acceptance of U.S. test data regarding telecommunications equipment from U.S. testing laboratories; Thailand for its failure to submit a revised schedule of basic telecommunications services in 2006, as it had committed to do in its 1997 Schedule to the WTO General Agreement on Trade in Services; and Guatemala, for its failure to resolve an interconnection dispute between its major supplier and a U.S.-affiliated local operator that began on October 7, 2006 when the major supplier terminated 20 percent of the U.S.-affiliated operator's interconnection capacity (E- 1) circuits. Additionally, the review cited general issues of concern with respect to several countries, such as: (1) barriers to the provision of satellite capacity in China and India; (2) policies governing the provision of Voice-over-Internet-Protocol (VoIP) services; (3) restrictions that incumbent carriers in Germany, Singapore and China placed on access to, and use of, leased lines owned or controlled by the incumbents; (4) problems with regulatory independence and transparency in China, Egypt and India; and (5) excessive market entry requirements in China, Colombia and Mexico.

USTR has urged national regulators to address such problems, and some progress occurred during 2007. Colombia drastically reduced its $150 million long distance licensing fee, which had long served as a barrier to market entry, to approximately $650, plus an annual fee of 3 percent of the operators' revenues. China confirmed that it will reduce its capitalization requirements to a reasonable level, although it has yet to define that level or indicate a schedule for implementation. Mexico's competition commission is reportedly studying whether to classify the largest mobile operator as dominant, a finding which could eventually lead to lower mobile termination rates. India resolved its issues regarding the guidelines governing domestic and international long distance licensees, which allowed at least two U.S. companies to begin operating in the country. India also initiated the process of implementing regulations aimed at ensuring competitive access to submarine cable landing stations, long a concern for U.S. telecommunications operators.

4. Antidumping Actions

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

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

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a "reasonable indication" of material injury or threat of material injury to a domestic industry, or material retardation of an industry's establishment, "by reason of" the LTFV imports. If this preliminary determination by the USITC is negative, the investigation is terminated; if it is affirmative, Commerce will make preliminary and final determinations concerning the alleged LTFV sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs to suspend liquidation of entries and require importers to post a bond or cash deposit equal to the estimated weighted average dumping margin.

If Commerce's final determination of LTFV sales is negative, the investigation is terminated. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the LTFV imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the Customs deposits are released.

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

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

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 77 in 2001; 35 in 2002; 37 in 2003; 26 in 2004;

13 in 2005; 7 in 2006; and 28 in 2007. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 23 in 1995; 9 in 1996; 11 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 31 in 2001; 27 in 2002; 16 in 2003; 14 in 2004;18 in 2005; 5 in 2006; and 2 in 2007.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930, as amended effective January 1, 1995, by the Uruguay Round Agreements Act. As with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

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

The numbers of CVD investigations initiated in and since 1986 are as follows: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 10 in 1999; 7 in 2000; 18 in 2001; 4 in 2002; 5 in 2003; 3 in 2004; 2 in 2005; 3 in 2006; and 7 in 2007. The numbers of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 6 in 1999; 6 in 2000; 6 in 2001; 10 in 2002; 2 in 2003; 3 in 2004; none in 2005; 2 in 2006; and none in 2007. Under its sunset review procedures, Commerce revoked 8 and continued 22 countervailing duty orders in 2000; revoked 1 countervailing duty order and continued 5 orders in 2001; revoked no countervailing duty orders and continued no orders in 2002; revoked no countervailing duty orders and continued no orders in 2003; revoked no countervailing duty orders and continued no orders in 2004; revoked 4 and continued 12 countervailing duty orders in 2005; revoked 7 and continued 3 countervailing duty orders in 2006; and revoked 8 and continued 5 countervailing duty orders in 2007.

6. Other Import Practices

a. Section 337

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

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

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

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

In 2007, the USITC instituted 32 new Section 337 investigations. It also instituted one enforcement proceeding that related to a previously issued USITC remedial order. During the year, the USITC issued 4 general exclusion orders, 6 limited exclusion orders, and 19 cease and desist orders covering imports from foreign firms, as follows: *Certain Baseband Processor Chips and Chipsets, Transmitters and Receivers*, Inv. No. 337-TA-543 (a limited exclusion order and 1 cease and desist order); *Certain Laminated Floor Panels*, Inv. No. 337-TA-565 (a general exclusion order and 8 cease and desist orders); *Certain Laser Bar Code Scanners and Scan Engines, Components Thereof and Products Containing Same*, Inv. No. 337-TA-551 (a limited exclusion order and 1 cease and desist order); *Certain High-Brightness Light-Emitting Diodes and Products Containing Same*, Inv. No. 337-TA-556 (a limited exclusion order); *Certain Automotive Parts*, Inv. No. 337-TA-557 (a general exclusion order); *Certain Voltage Regulators, Components Thereof and Products Containing Same*, Inv. No. 337-TA-564 (a limited exclusion order); *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565 (a general exclusion order, a limited exclusion order, and 4 cease and desist orders; *Certain Lighters*, Inv. No. 337-TA-575 (a general exclusion order); *Certain Coupler Devices for Power Supply Facilities, Components Thereof, and Products Containing Same*, 337-TA-590 (a limited exclusion order and 5 cease and desist orders).

The USTR, exercising the functions assigned by President Bush, permitted all the exclusion orders and the cease and desist order submitted by the USITC for review during 2007 to become final.

b. Section 201

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

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

As of January 1, 2007, the United States had no safeguard measures in place. The United States did not impose any safeguard measures during 2007, and did not commence any safeguard investigations.

c. Section 421

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

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

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

Through 2005, six petitions had been filed and adjudicated under Section 421. No new petitions were filed during 2006 or 2007.

On February 10, 2006, the U.S. Court of Appeals for the Federal Circuit dismissed the complaint filed against President Bush by Motion Systems Corporation, the petitioner in the first Section 421 investigation. The Court of Appeals held that the President has discretion in applying Section 421 and therefore judicial review is not available. The Court of Appeals also affirmed the Court of International Trade's decision that the U.S. Trade Representative could not be sued under Section 421 because the USTR's statutory role does not constitute "final agency action" and thus cannot be challenged in court. Motion Systems Corporation filed a petition for review with the Supreme Court. The Supreme Court denied the request on October 2, 2006.

d. China Textile Safeguard

The terms for China's accession to the WTO include a special textiles safeguard, which is available to WTO members until December 31, 2008. This safeguard covers all products that were subject to the WTO Agreement on Textiles and Clothing on January 1, 1995.

Paragraph 242 of the *Report on the Working Party for the Accession of China to the World Trade Organization* ("Paragraph 242") allows WTO Members that believe imports of Chinese-origin textile or apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding such market disruption. Under Paragraph 242, the importing country must supply data which, in its view, show the "existence or threat" of market disruption and the role of Chinese-origin products in that disruption. On receipt of a request for consultations, China must impose specified limits on its exports of such products to the member country. If the consultations fail to yield a solution to the threat or existence of market disruption, the WTO Member may continue such limits on imports of Chinese-origin textile or apparel products for up to one year, unless such limits are reapplied.

As noted in last year's Annual Report, on November 8, 2005, China and the United States signed a broad agreement that addresses imports of certain textile and apparel products from 2006 through 2008 (the "Memorandum of Understanding Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products"). This agreement replaced safeguard measures that had been taken by the United States under Paragraph 242, and no new measures have been taken under this paragraph since then. At the request of USTR, the International Trade Commission issued a report in August 2006 which assessed the probable effect of a modification to the definition of baby socks on U.S. imports of the subject articles from China, on total U.S. imports of such products, and on U.S. baby sock producers.

7. Trade Adjustment Assistance

a. Overview and Assistance for Workers

The Trade Adjustment Assistance (TAA) program for workers, established under Title II, chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by foreign trade. Congress has appropriated funds for the TAA program through September 30, 2008. Available assistance includes job retraining, trade readjustment allowances (TRA), out-of-area job search assistance, relocation allowances, a health insurance tax credit, and a wage supplement for older displaced workers. The program was last amended by the Trade Adjustment Assistance Reform Act (TAA Reform Act), which was part of the Trade Act of 2002, enacted on August 6, 2002. The TAA Reform Act expanded the TAA program and superseded the North America Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) program. The TAA Reform Act also raised the statutory cap on training funds that may be allocated to the States for training from $110 million to $220 million per year.

The TAA Reform Act expanded eligibility for the TAA program. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that a significant number or proportion of the workers in a firm (or appropriate subdivision of the firm) have become totally or partially separated or threatened with such separation and: (1) increased imports contributed importantly to a decline in sales or production and to the separation or threatened separation of workers; or (2) there has been a shift in production to a country that has a free trade agreement with the United States or is a beneficiary country under the African Growth and Opportunity Act, the Andean Trade Preference Act or the Caribbean Basin Economic Recovery Act; or (3) there has been a shift in production to another country, and there has been or is likely to be an increase in imports of like or directly competitive articles; or (4) loss of business as a supplier or downstream producer for a TAA-certified firm contributed importantly to worker layoffs. The fourth basis for certification is designed to cover certain secondarily-affected workers.

The U.S. Department of Labor (DOL) administers the TAA program through the Employment and Training Administration (ETA). Workers certified as eligible to apply for adjustment assistance may apply for TAA benefits and services at the nearest local One-Stop Career Center. Local One-Stop Career Centers can be found on the Internet at www.servicelocator.org or by calling 1-877-US2-JOBS. In order to be eligible for TRA, the income support available under the program, workers must be enrolled in approved training within 8 weeks of the issuance of the DOL certification or within 16 weeks of the worker's most recent qualifying separation (whichever is later). A 45-day extension is available under extenuating circumstances. A state may waive the training requirement under six specific conditions outlined in the law.

The TAA Reform Act created the Health Coverage Tax Credit (HCTC) for certain trade-impacted workers and others. Covered individuals may be eligible to receive a tax credit equal to 65 percent of the amount they paid for qualifying health insurance coverage. The tax credit may be claimed at the end of the year, or a qualified individual may receive the credit in the form of monthly advance payments made directly to the health insurance provider.

In addition, the TAA Reform Act of 2002 created the Alternative Trade Adjustment Assistance (ATAA) for Older Workers program. This program was implemented on August 6, 2003, and provides qualified trade-impacted workers, who are over 50 years of age and find other work within 26 weeks of separation, with a wage supplement of up to half the difference between their old and new salaries, in lieu of retraining. The maximum amount payable is $10,000 over a two-year period, and workers must earn less than $50,000 per year in their new employment to qualify for the program.

Since implementation of the TAA Reform Act, DOL has implemented significant administrative reforms to improve program efficiency and the quality of services delivered to workers, including a reengineered petition process, certification of workers who produce intangible articles (*e.g.,* software), inclusion of leased or contract workers in certifications, distribution of TAA training funds by formula, institutionalization of quarterly performance reporting requirements, and integration of services with those provided under the Workforce Investment Act through the One-Stop Career Center system. The administrative reforms have led to a reduction in the average petition processing time from 96 days in Fiscal Year 2002 to 31 days in Fiscal Year 2006, increased ability of workers to access program benefits and services, and improved fiscal management.

In 2007, DOL issued 1,429 certifications for TAA, covering an estimated 146,614 workers. Around 70 percent of all TAA petitioners were certified as eligible to apply for program benefits and services. Over 90,000 workers participated in a TAA training program in 2007. In 2007, states reported that 73 percent of those who exited the program entered employment in the first quarter after leaving the program. The number of workers certified as eligible for the program increased from FY 2006 to FY 2007, but has declined since it peaked in 2002 when an estimated 235,000 workers were certified.

b. Assistance for Farmers

The Trade Act of 2002 also contained a provision for Trade Adjustment Assistance for Farmers, with an appropriation of not more than $90 million for each fiscal year between 2003 and 2007 to be administered by the U.S. Department of Agriculture. Authority for the program was extended by Congress through December 31, 2007, with an appropriation of $9 million for the three-month period beginning October 1,

2007. The Secretary of Agriculture delegated authority for this program to the Administrator of the Foreign Agricultural Service.

The regulation to implement Trade Adjustment Assistance for Farmers was published in the *Federal Register* on August 20, 2003, and is now codified at 7 C.F.R. § 1580. Primary requirements for a farmer to be eligible were that the price of the basic agricultural commodity produced by the farmer in the most recent year was less than 80 percent of the average price over the previous five years, and that imports contributed importantly to the price decline.

If a group of farmers was certified as eligible for benefits, individual producers could then apply to the Farm Service Agency for technical assistance and/or cash benefits. A producer had to receive technical assistance to become eligible for cash benefits. Cash benefits were subject to certain personal and farm income limits, and could not exceed $10,000 per year to an individual producer. The cash benefit per unit was one-half of the difference between the most recent year's price and the previous five-year average price. If the funding authorized by Congress was insufficient to pay 100 percent of all claims during the fiscal year, payments will be prorated. Cash payments disbursed over the duration of the program amounted to approximately $26.2 million.

c. Assistance for Firms and Industries

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

In Fiscal Year (FY) 2007, EDA awarded a total of $12,814,214 in TAA Program funds to its national network of 11 Trade Adjustment Assistance Centers (TAACs), each assigned a different geographic service area. During FY 2007, EDA certified 177 petitions for eligibility and approved 126 adjustment proposals.

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

8. Generalized System of Preferences

a. History

The U.S. Generalized System of Preferences (GSP) provides preferential duty-free treatment for approximately 3,400 products from 131 designated beneficiary countries and territories. The GSP was initially authorized under the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a ten-year period and was instituted on January 1, 1976.

In 1996, Congress established a new category of beneficiaries – least-developed beneficiary developing countries (LDBDCs) – that would be eligible for expanded benefits. President Bush has designated certain countries as LDBDCs pursuant to section 502(a) (2) of the Trade Act of 1974, as amended. As a result of this legislation, President Bush designated an additional 1,400 articles as eligible for duty-free treatment when supplied by LDBDCs.

Since first authorized in 1974, Congress has extended GSP nine times. The most recent renewal, in 2006, authorized GSP through December 31, 2008. This was the first time that the U.S. Congress extended the program without a lapse. The continuity in availability of GSP benefits created greater certainty for developing country producers and exporters, as well as for U.S. importers and businesses. As part of the 2006 renewal, Congress also amended the GSP statute to provide that the President should revoke any existing competitive need limitation (CNL) waiver that has been in effect for at least five years with respect to a GSP-eligible product from a specific country if that country's exports of the product to the United States exceeds certain annual trade or product market-share levels.

b. Purposes

The purpose of the GSP program is to accelerate economic growth in developing countries by promoting access to the U.S. market[33] for such countries while increasing choices for U.S. businesses and consumers. GSP duty-free treatment is not available for products determined by the President to be import-sensitive, or otherwise prohibited by statute. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and a key means of sustaining momentum for economic reform and liberalization. The GSP program also ensures that U.S. companies have access to intermediate products from beneficiary countries on generally the same terms that are available to competitors in other developed countries that grant similar trade preferences.

c. Beneficiaries

Currently, there are 131 developing country beneficiaries of the GSP program, including 43 LDBDCs. Countries recently added to the list of beneficiaries include Liberia and East Timor, which were designated LDBDCs.

U.S. industry has noted that a country's participation in the GSP program nurtures conditions that are advantageous to U.S. investors as well as to the beneficiaries. Through various mechanisms, GSP encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) afford workers internationally recognized worker rights; and (3) provide adequate and effective means to secure and enforce property rights, including intellectual property rights. The Administration also evaluates GSP beneficiaries' provision of market access to U.S. goods and services, which is a statutory eligibility criterion and an aspect in deciding whether to grant a waiver of the CNLs with respect to a GSP-eligible article (19 U.S.C. § 2463(d)(2)(A)).

d. Eligible Products

The combined lists of GSP-eligible products include most dutiable manufactures and semi-manufactures and selected agricultural, fishery and primary industrial products not otherwise duty-free. The largest groups of eligible products, by tariff line designation, are: (1) chemicals and plastics; (2) machinery, electronics and high-technology apparatus; and (3) base metals and articles of base metals. Certain articles are prohibited by law (19 U.S.C. § 2463(b)(1)) from receiving GSP treatment, including most

[33] H.R. Rep. No. 98-1090, at 2 (1984).

non-silk textiles and apparel, watches, footwear, handbags, luggage, flat goods, work gloves and other leather apparel. Least-developed beneficiaries receive additional preferential access in petroleum, chemicals and plastics; animal and plant products; and prepared food, beverages, spirits and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are eligible for GSP treatment. The United States has entered into agreements providing for certification and GSP eligibility of handmade, folkloric products with 14 countries: Afghanistan, Argentina, Botswana, Cambodia, Colombia, Egypt, Jordan, Nepal, Pakistan, Peru, Thailand, Tunisia, Turkey, and Uruguay. Algeria, Mongolia, and Sri Lanka are working to complete similar agreements. Such agreements provide the basis for extending duty-free treatment to exports produced by women and the poorest, often rural, residents of beneficiary countries.

e. Program Results

Value of Trade Entering the United States under GSP: Between December 2000 and November 2007, U.S. annual imports under the GSP program grew from $16.4 million to $28.6 million, an increase of 74 percent overall. The value of U.S. imports entering under GSP in 2007 (January through November), however, was approximately $28.6 billion, a 4.6 percent decrease as compared to the same period in 2006. This overall reduction in trade under GSP was largely due to the fact that eight products lost GSP eligibility on June 23, 2007, because trade in these products in 2006 exceeded the new statutory thresholds and led to revocation of existing CNL waivers.

Top U.S. imports under GSP in 2007, by trade value, were crude petroleum oils and oils from bituminous minerals, (comprising approximately 29 percent of all U.S. imports under GSP) and gold and platinum jewelry (about 8 percent). Other top GSP imports were aluminum alloy, silver jewelry, insulated ignition wiring sets, ferrochromium, methanol, passenger vehicle tires, ferrosilicon manganese, polyethylene terephthalate (PET), unwrought zinc, bus and truck tires, auto parts, raw cane sugar, plywood sheets, fuel oil, animal or vegetable fat substances, and monumental building stone.

Countries benefiting from the GSP Program

For fourteen beneficiaries (over 10 percent of total beneficiaries) U.S. imports under the GSP program account for at least one-quarter of their exports to the United States, demonstrating the significant impact GSP has on certain economies, and the geographic diversity of such benefits. These beneficiaries, and the share GSP comprises of their exports to the United States in 2007 (November), were:

Paraguay and Armenia (each 60 percent of all exports to U.S.), Macedonia (57.5 percent), Zimbabwe (49 percent), Malawi and Serbia (each 47 percent), Lebanon (46.5 percent), Fiji (46 percent), Rwanda (41 percent), Croatia and Montenegro (each 39 percent), West Bank (37.6 percent), Georgia (36 percent), Kazakhstan (33 percent), Tunisia (25.5 percent), and Turkey (24.4 percent).

Based on volume, the top five GSP non-oil-exporting beneficiary developing country (BDC) suppliers in 2007 were: (1) India; (2) Thailand; (3) Brazil; (4) Indonesia; and (5) the Philippines. Of the thirty GSP beneficiaries (not including LDBDC oil-exporting beneficiaries) whose 2007 trade under GSP was the largest, the World Bank classified more than half (18 of 30) as either low income or lower middle income countries[34], indicating that the program is achieving the goal of benefiting those countries which need it most. In addition, exports from many low income and lower middle income beneficiaries entering the United States under GSP increased significantly in 2007 as compared to 2006, for example: Macedonia

[34] Based on World Bank determinations of gross national incomes per capita (Atlas method – 2006)

(363 percent increase), Ukraine (120 percent), Bolivia (91 percent), Georgia (87 percent), Paraguay (62.5 percent), Peru (39 percent), Fiji (31 percent), Colombia (25 percent), and Indonesia (17 percent).

The top five LDBDC users of GSP benefits, because of large volumes of petroleum exports under GSP, were: (1) Angola; (2) Equatorial Guinea; (3) Chad; (4) Yemen; and (5) Malawi. Non-oil exporting LDBDCs whose exports to the United States under GSP grew substantially in 2007, even in the face of an overall decline or negligible growth in overall exports to the United States, included Vanuatu (109 percent growth), Nepal (24 percent growth), and Bangladesh (17 percent growth).

GSP's Contribution to Economic Development in Developing Nations: GSP has been shown, in many cases, to help countries diversify and expand their exports, an important developmental goal. For example, in the last six years, Turkey has diversified its product mix under GSP by nearly 44 percent, while its use of GSP increased by 146 percent and its share of exports to the world increased by nearly 30 percent. Similar trends are evident with respect to Argentina, Brazil, Croatia, India, Romania[35], and South Africa.

The Administration's efforts to promote wider distribution of the use of GSP benefits among beneficiaries are also showing some results: between 2006 and 2007 (November YTD), the top 30 non-oil producing beneficiaries' share of all U.S. imports under GSP dropped from 71.3 percent to 69.3 percent. Use of all GSP benefits by the top three beneficiaries (India, Thailand, and Brazil) in 2007 (YTD November) as compared to 2006 also decreased from about 42 percent to 39 percent.

The U.S. import levels of countries supplying certain products under GSP have also increased since June 2007, when President Bush revoked GSP eligibility for certain products meeting the new statutory annual thresholds for CNL waivers. For example, in June 2007, the United States removed GSP eligibility of certain gold jewelry from India and Thailand. Following this action, the United States saw significant increases in imports of such products (through November 2007) from countries such as Oman (21 percent increase), Pakistan (50.5 percent), Lebanon (16 percent), Bolivia (815 percent), Sri Lanka (36.4 percent), and Nepal (105 percent). Similarly, following elimination of GSP eligibility for Philippine insulated ignition wiring sets, U.S. imports have increased from Thailand (157 percent) and Indonesia (118 percent) over the same period last year.

Summary of Changes in Country Beneficiary and Product Status: Since 1976, the President has graduated 17 countries from the GSP program because their annual per capita gross national income exceeded the statutory limit. In addition, two Presidents have used authority under the statute to graduate GSP beneficiaries based on their overall success exporting globally and to the United States under GSP. President Reagan graduated Hong Kong, Singapore, South Korea, and Taiwan in 1989, and President Clinton graduated Malaysia in 1997.

Review of country practice petitions submitted as part of the GSP Annual Review can provide a basis for removing or limiting GSP eligibility. These reviews are based on the GSP eligibility criteria found in U.S. trade law at 19 U.S.C. § 2462(b) and (c), and include protection of worker rights and intellectual property rights. For example, in response to petitions asserting labor concerns in Swaziland and Uganda, Swaziland changed its laws to remove a limitation on the minimum number of people required to start a union. Similarly, Uganda passed legislation facilitating the organization of unions and the government, apparel sector companies, and unions reached the first-ever tripartite agreement in Uganda that allowed for collective bargaining. Improvements in the protection and enforcement of intellectual property rights have also occurred in India, Kazakhstan, and Pakistan, in response to GSP reviews.

[35] Romania graduated from GSP on January 1, 2007, when it acceded to the European Union.

Countries previously removed from the GSP program can also petition to be reinstated. In 2006, President Bush redesignated Liberia and Ukraine as GSP beneficiaries following resolution of worker rights and intellectual property concerns, respectively.

Since the inception of the GSP program, application of statutory CNLs, including the newly added thresholds for existing CNL waivers added by Congress in 2006, has resulted in the termination of GSP duty-free benefits for 245 products from beneficiary countries that have demonstrated their competitiveness in the U.S. market. For example, 68 of Brazil's products have been removed from GSP eligibility because of their competitiveness, followed by 24 for India and 13 for Thailand. Specific products involved include several organic chemicals from India, Brazil, and Turkey; plywood from Indonesia and Brazil; certain gold jewelry and carpets from India; gold jewelry and flat screen color televisions from Thailand; monumental building stone from Turkey; and certain motor engines, automotive parts and tires from Brazil. These actions underscore an important principle governing the GSP program: that trade preferences under GSP are to be a temporary form of support for developing countries as these nations make progress in exporting to the U.S. market and in taking on more reciprocal obligations of the world trading system.

GSP Outreach: Another aspect of the Administration's efforts to increase the distribution of GSP benefits is the provision of outreach to increase the use of GSP duty-free benefits, especially to lesser- and least-developed beneficiaries. These efforts lay a foundation for economic engagement and an enhanced relationship with these beneficiaries. USTR's outreach efforts include giving seminars in-country and via videoconferences; distributing export analyses; and publishing GSP guides in the Arabic, Dari, French, Khmer, Mongolian, Spanish, Turkish, and Ukrainian languages.

In addition, USTR has led an interagency effort to engage in consultations with businesses, governments, and NGOs in least-developed and lesser-developed GSP beneficiaries to promote the use of GSP as part of their economic development strategies. These countries include Afghanistan, Algeria, Cambodia, East Timor, Fiji, Iraq, Liberia, Mongolia, Palau, Papua New Guinea, Paraguay, Sri Lanka, countries of Central Asia, members of the West African Monetary and Economic Union, and other beneficiaries in the Pacific Islands, including APEC members. Among the groups consulted are: bilateral chambers of commerce (***e.g.***, Turkish-American Chamber of Commerce and Industry); federal contractors to USAID; and NGOs working on an international basis (***e.g.***, Women's Edge Coalition, Aid to Artisans, the Crafts Center, CHF International, and the Ger Project in Mongolia).

f. Overall Review of the GSP Program

The most recent GSP Overall Review began in October 2005 and concluded in fall 2006. The Administration informed Congress of the results of the review in fall 2006 during congressional consideration of legislation to reauthorize the GSP program. Based on the results of the Administration's review, Congress amended the law governing GSP to authorize the revocation of competitive need limitation waivers for products that exceed trade value and volume thresholds, thereby removing duty-free treatment under GSP from those products. As noted above, this change has resulted in increased trade opportunities for other GSP beneficiaries that have been able to increase exports to fill U.S. demand.

g. Annual Reviews

An important attribute of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility.

The Administration makes modifications to the lists of articles eligible for duty-free treatment and countries eligible to be in the GSP program by means of an annual review. The process begins with publication of a *Federal Register* notice that requests submission of petitions for modifications to the list of eligible articles and beneficiary countries. For those petitions that are accepted, public hearings are held, the U.S. International Trade Commission prepares a study of the ”probable economic impact” of granting a petition that would affect the list of articles eligible for duty-free treatment, and an interagency committee reviews the relevant material. Following completion of this interagency review, the President announces his decision on each petition.

h. Conclusion of the 2006 GSP Annual Review

In Proclamation 8157 of June 29, 2007, President Bush announced the results of the 2006 GSP Annual Review. The Review focused on several key areas, including consideration of: 1) whether to continue GSP eligibility for products from specific countries that exceeded statutory CNLs; 2) whether to terminate GSP eligibility for products that could be found to be competitive or meet other pertinent statutory criteria; and 3) petitions challenging the continued eligibility of certain beneficiary countries for the GSP program.

As a result of the 2006 Annual Review, the Administration granted petitions and one-year *de minimis* waivers of competitive need limitations to provide continued GSP duty-free benefits for 115 products from 19 beneficiary countries. The 2006 import value of these decisions was approximately $618 million. Consistent with the statutory provisions concerning product competitiveness and after extensive analysis, the Administration determined that 21 products from beneficiary countries (comprising approximately $4.8 billion in trade in 2006) could compete effectively in the U.S. market and would no longer be eligible for duty-free treatment under the GSP program. This group included 13 products that exceeded the statutory CNLs and 8 products that had been granted waivers to the CNLs at least five years ago and were subject to new statutory trade value and volume thresholds passed by Congress in December 2006. The Administration took this action to remove certain products from GSP duty-free treatment in order to preserve GSP tariff advantages for nascent sectors of other beneficiary countries.

Petitions involving the following GSP beneficiaries remain under review: Lebanon, Uzbekistan, and Russia regarding intellectual property concerns, and Niger regarding worker rights. With respect to the Russia IPR petition, the Bush Administration continued to monitor closely the Russian government’s progress in meeting the commitments it undertook in the November 2006 Bilateral Agreement with the United States on intellectual property rights and to seek further progress in the context of ongoing WTO accession discussions.

i. 2007 GSP Annual Review

On May 21, 2007, a notice appeared in the *Federal Register* announcing that USTR would receive petitions to modify the list of products eligible for duty-free treatment under the GSP program and to modify the GSP status of certain beneficiary developing countries because of country practices. This notice initiated the 2007 Annual Review. Petitions to add or remove eight products were accepted for review, involving Brazil, Egypt, India, South Africa, and Uruguay. The Administration accepted additional worker rights country practice petitions for review that concerned practices in the Philippines, Bangladesh, and Ukraine.

A *Federal Register* notice was published on October 23, 2007, informing the public of the availability of eight-month import statistics and inviting submission of petitions for CNL waivers for the 2007 Annual Review. The Administration has accepted five petitions for CNL waivers and has requested advice from the ITC on the probable economic impact of the petitions, if granted, on U.S. industry and U.S. consumers.

USTR will issue a *Federal Register* notice in late February 2008, when full-year 2007 data are available, that will identify: 1) products that will lose GSP eligibility based on statutory CNLs; 2) products that will be eligible for GSP redesignation or for *de minimis* waivers; and 3) products with CNL waivers that meet the new "super-competitive" thresholds established in the GSP renewal legislation and are thus subject to potential revocation. The President is required to announce any modifications to the list of GSP beneficiaries or countries by June 30, 2008.