II. The World Trade Organization

A. Introduction

This chapter outlines the progress in the work program of the World Trade Organization (WTO), the work ahead for 2004, and the multilateral trade negotiations launched at Doha, Qatar in November 2001. The United States remains steadfast in its support of the rules-based multilateral trading system of the WTO. As a key architect of the postwar trading system and a leader in the pursuit of successive rounds of trade liberalizations, the United States shares a common purpose with our WTO partners: to obtain the expansion of economic opportunities for the world's citizens by reducing trade barriers. A recent statement by the Bretton Woods institutions reflects the energy that the WTO can bring to the global economy: ".... collectively reducing barriers is the single most powerful tool that countries, working together, can deploy to reduce poverty and raise living standards."

The multilateral trade negotiations and the implementation of WTO Agreements remained at the forefront of U.S. trade policy in 2003. Despite the impasse at the WTO's 5th Ministerial Conference in September 2003 in advancing the Doha Development Agenda (DDA), the year closed on a more upbeat note. On December 15, General Council Chairman Perez del Castillo outlined the overall direction required to reinvigorate the negotiating process in 2004—expressing his hope that the sense of urgency evident during his post-Cancun consultations would quickly enable governments in 2004 to put the negotiations back on track. 2003 closed with all WTO Members carefully reflecting on next steps.

The objectives agreed in Doha remain a priority in U.S. liberalization efforts. The WTO's mandate to reduce barriers and to provide a stable trading system in order to raise standards of living and reduce poverty continues to be an essential element of the broader international economic landscape. Given its magnitude and scope, the potential of the DDA to transform world trade commands priority attention.

The WTO and multilateral trading system are constantly evolving. Members need to continue to take responsibility for important institutional improvements. Pursuant to the Uruguay Round Agreements Act, the United States will continue to press for increased transparency in WTO operations, in WTO negotiations and in Members' trade policies. The WTO needs to expand public access to dispute settlement proceedings, to circulate panel decisions promptly, to encourage more exchange with outside organizations and continue to encourage timely and accurate reporting by Members.

The Doha Development Agenda

The DDA covers six broad areas: agriculture, non-agricultural market access, services, the so-called "Singapore issues" (transparency in government procurement, trade facilitation, investment and competition) and rules (trade remedies), TRIPS, and development-related issues. In addition to reviewing progress in the negotiations overall, Box 1 below identifies the issues for Ministerial consideration at the WTO's 5th Ministerial Conference in Cancun Mexico.

The DDA in 2003 had an extensive negotiating agenda and deadlines, but lack of progress in agriculture early in the year determined the overall pace of the negotiating agenda. Delays by the European Union in adopting, then translating, its reform of its Common Agricultural Policy (CAP) into WTO negotiating positions led to slowed negotiations overall, and hardened disagreements in areas including the extent to which the negotiating agenda should be broadened to include the Singapore Issues, and whether there was sufficient attention to development-related

Box 1
5th Ministerial Conference, Cancun, Mexico—September 2003

Tasks for Cancun from the Doha Declaration

Ministers agreed at the launch of the Doha Round to use the 5th Ministerial Conference as a midterm review of progress in the negotiations and provide any necessary political guidance on, including:

- *Singapore issues:* Take decisions by explicit consensus on modalities of negotiations on Singapore issues (investment, competition, transparency in Government Procurement and trade facilitation).
- *Agriculture negotiations:* Members were to submit their initial offers (draft schedules no later than date of Fifth Session).
- *TRIPS:* Conclude negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.

Receive reports:

- from the Committee on Trade & Environment on issues in para. 32 with recommendations, where appropriate, for future action, including the desirability of negotiations;
- on technical assistance and capacity building in the field of trade and environment;

from General Council on:

- progress on those elements of the Work Program, which do not involve negotiations;
- the continued e-commerce work program;
- recommendations for action on small economies;
- progress in trade, debt and finance examination;
- progress in trade and technology transfer examination;

from Director General on:

- implementation and the adequacy of technical cooperation and capacity-building commitments;

issues. The EU's agricultural reforms were not agreed until late July 2003. As a result of U.S. efforts, in August of 2003 agreement was reached on the question of TRIPS/health and compulsory licensing for countries with little or insufficient manufacturing capacity—the resolution of which all hoped would provide new impetus to the Cancun meeting. Despite great efforts, Ministers arrived at Cancun with less progress than had been envisioned in the Doha Declaration.

Since the launch of the Doha Development Round in 2001, the United States has tabled seventy formal submissions to dramatically reduce barriers to trade in services, agricultural products and industrial goods, and to strengthen the rules and disciplines of the WTO system. The market access related negotiations of the DDA offer the greatest potential to create jobs, advance economic reform and development, and reduce poverty worldwide. The United States recognizes there are many important issues in the national economic strategies of our developing country WTO partners, yet believes the focus of the WTO must remain concentrated on its mandate of reducing trade barriers and providing a stable, predictable, rules-based environment for world trade. As the experience at the Cancun Ministerial clearly showed, this is work that requires the focus, flexibility and political will of all Members. The United States is prepared to meet these requirements in order

to reach an ambitious outcome in the DDA negotiations, along with contributions of other WTO Members.

Given the emphasis on development in the DDA, the United States has led the effort to provide unprecedented contributions to strengthen technical assistance and capacity building to ensure the participation of all Members in the negotiations. After detailing the DDA's progress to date, this chapter follows with a review of the implementation of existing Agreements, including the critical negotiations to expand the WTO's membership to include new members seeking to reform their economies and join the rules-based system of the WTO.

The General Council and The Trade Negotiations Committee Pursue The Doha Development Agenda Preparations for the Cancun Ministerial Meeting.

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, Qatar, oversees the agenda and negotiations in cooperation with the WTO General Council. The TNC met regularly throughout 2003 to supervise negotiations and to work with the General Council. 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 WTO Director-General serves as Chair of the TNC, and worked closely with the Chairman of the General Council, Ambassador Carlos Perez del Castillo of Uruguay. The Chairman of the General Council played a central role in preparations for Cancun.

At Doha, Ministers agreed to review progress at the mid-point of the DDA negotiations and to convene a Ministerial Conference in line with Article IV of the Marrakesh Agreement Establishing the WTO. Under Article IV, the WTO is required to hold a ministerial conference at least once every two years. Given the WTO's ongoing responsibility to supervise and assist in the implementation of commitments for the further liberalization of trade, and for the resolution of disputes, the Members believed it would be important for Ministers to meet on a regular basis in order to provide necessary direction and political oversight to the organization's work. The regular cycle of ministerial meetings was an important innovation for the WTO.

The Doha Agenda is heavily oriented towards market access issues, with agricultural reform at the heart of the negotiations. The DDA, along with the day-to-day implementation of the rules governing world trade, are an important part of the Bush Administration's overall trade strategy in ensuring global growth and economic prosperity. In addition to work on the DDA at Cancun, Trade Ministers approved the accession protocols of Nepal and Cambodia, the first least-developed countries to join the WTO since its establishment in 1995. Each government now must complete its respective domestic ratification process to complete membership.

In addition to the meetings convened in Geneva, a series of informal ministerial-level meetings were held in 2003 to engage ministers on the issues. Various regional meetings, from APEC ACP and Africa where the Doha negotiations were the focus of attention and concern. A series of developed and developing country informal "mini-ministerials" were held in Tokyo, Paris, Sharm-El-Sheik and Montreal to help shape the issues for Cancun, and obtain ministerial direction. The Doha negotiations were also a topic at various regional meetings, including APEC and the G-8 Summit.

In late July, at an informal meeting in Montreal, Canada, Ministers asked the United States and EU to try to bridge the wide divergences in positions on agriculture to help avoid an impasse at Cancun. As a result, a framework paper was presented to Members in Geneva ten days later. Brazil, leading South Africa and ultimately a large number of Latin American Members as well as India, and China, formed a coalition known as the G20 in opposition to the U.S.-EU framework. These countries feared that the framework would diminish the level of ambition for agricultural

reform, particularly the elimination of export subsidies. As a result, they questioned the extent to which developing countries should reduce barriers and open their markets to trade.

Chairman Perez del Castillo held consultations in a variety of formats to pursue progress in the negotiations. Working with inputs from the Chairs of the negotiating bodies, the Chairman in July 2003 developed a draft text for ministerial consideration. This text was the subject of intensive discussion at the level of Heads of Delegation and with the Trade Negotiations Committee. While there was not a consensus on the text in Geneva, the Chairman, as has been the case for previous ministerial meetings, sent to ministers a draft text on his responsibility. This text was the point of departure for the discussions in Cancun, Mexico as the ministerial meeting opened. At the Ministerial meeting in Cancun, the process further evolved with a proposed text from the Chairman of the Ministerial, Minister Luis-Ernesto Derbez of Mexico.

The Cancun meeting ended in impasse after it became clear that countries were not ready to seriously negotiate liberalization in the key areas of agricultural reform and market access, and substantial divergences could not be bridged on the so-called Singapore issues. Finally, although cotton was not a specific agenda point on the DDA agenda, African cotton producers focused attention on their concerns in this sector as an issue separate and apart from the agriculture negotiations.

Before concluding the Ministerial Conference in September, Ministers instructed the General Council Chair to consult with Members on moving the DDA forward, building on the progress secured at Cancun. America played a key role in launching the Doha negotiations and advanced them with our ambitious proposals, and solved the contentious access-to-medicines issue before the Cancún ministerial. After Cancún, America suggested a resumption based on the draft Cancún text, an idea that has won widespread support around the world

The progress achieved at Cancun has subsequently been the subject of discussion by negotiators in Geneva. Specifically, the General Council Chairman's consultations post-Cancun focused on four issues: agriculture, non-agricultural market access (NAMA), the Singapore issues and the treatment of cotton. Chairman Perez-del-Castilo reported to Members on December 15 that while no breakthroughs had been achieved, there appeared to be a greater readiness of all Members to find a way forward.

Prospects for 2004

Consultations will begin in January with the aim of restarting the talks early in the new year. If negotiations move forward, WTO members will provide further direction to negotiators on how to proceed on specific issues. Cancun confirmed that developing countries now play an increasingly important role in the WTO and with that increased participation comes new responsibility, particularly for the most active trading nations. Developing countries, which now comprise more than two-thirds of the WTO's membership, are at the center of the new negotiations. Key issues in 2004 will include:

- ***Agriculture:*** Following on the bold proposals tabled in 2002, the United States will continue its intensive campaign for agricultural reform addressing each of the three pillars of the negotiations: market access, export subsidies and domestic support. Progress in all three areas, to reduce and harmonize the level of trade domestic support, eliminate export subsidies and create new market access opportunities in the markets of developed and developing countries will be essential to putting the negotiations back on track.
- ***Non-Agricultural Market Access:*** The United States will continue to press partners to ensure that new market access opportunities in the manufacturing sector will keep pace with the progress on agriculture. The United States will continue to reach out to trading partners to find a means to ensure an

ambitious market access result. The United States tabled a far-reaching proposal to eliminate in two steps all duties on industrial and consumer goods by 2015, utilizing a formula-based approach, and to address non-tariff measures concurrent with the negotiations. While this goal was not shared in 2003 by others, it provides the United States an excellent platform to continue to pursue a big outcome for U.S. exporters. Past U.S. efforts have been instrumental in bringing about the Information Technology Agreement, Chemical Harmonization and a host of other initiatives aimed at eliminating barriers to trade in non-agricultural products.

- ***Services:*** An aggressive agenda for market opening in services, including audio-visual services, financial services (including insurance), express delivery services, energy services and telecommunication services, is being pursued in the negotiations. Since the United States is the world's leader in services for the 21st century economy, and services account for 80 percent of U.S. employment, our efforts in this area continue to be significant. Market opening in services is essential to the long-term growth of the U.S. economy. Services are a great economic multiplier. Currently only 40 WTO Members have tabled offers, we will work with others to expand the offers and seek their improvement.
- ***Dispute Settlement:*** The United States has led efforts to strengthen the rules governing the settlement of disputes because the system of WTO rules is only as strong as our ability to enforce our rights under these Agreements. For this reason, the United States has led the efforts to promote transparency in the operation of dispute settlement. This will continue to be an issue as Members pursue the review of the Dispute Settlement Understanding (DSU) which was extended into 2004.
- ***WTO Rules:*** Utilizing the solid mandate achieved at Doha, negotiations will focus on strengthening the system of trade rules and addressing the underlying causes of unfair trade practices. American workers need strong and effective trade rules to combat unfair trade practices, particularly as tariffs decline. While there are no major deadlines in 2004, negotiators will continue to identify, and more precisely define, issues of concern. The process envisioned in the WTO should result in strengthened trade rules in antidumping and subsidies, as well as new disciplines on harmful fisheries subsidies that contribute to over-fishing.
- ***Trade Facilitation (Customs Procedures):*** Increasingly, WTO Members are convinced that the key to developing their economies and combating corruption is in strengthening the trade rules governing customs procedures to ensure the free flow of goods and services in the new just-in-time economy. Strengthening these rules is the aim of work in the WTO. Progress is crucial, for example, to the success of our express delivery industry. In 2004, WTO Members will have to decide whether this area of work, so essential to market access, will be pursued in the negotiations.
- ***Environment:*** The United States will pursue a practical approach to the negotiations, working to enhance the process of communication and cooperation between the Secretariats of Multilateral Environmental Agreements (MEAs) and the WTO. Along with our work in market access and rules, we will continue to be vigilant to ensure that these negotiations are not used to introduce protection under the guise of safeguarding the environment. The U.S. agenda is aimed at promoting growth, trade and the environment.
- ***Competition and Investment:*** In both of these areas, decisions will need to be taken about how to proceed in light of the lack of

consensus at the Cancun Ministerial Conference. Substantial resistance to pursuing work of any kind on these issues remains, particularly from developing countries.

- ***Transparency in Government Procurement:*** Members in 2004 will need to determine whether a transparency agreement will be a contribution to the fight against corruption in government purchasing, long an issue and the subject of initiatives in other fora.
- ***Trade and Development:*** An essential ingredient in the DDA has been a more intensive program of technical assistance and capacity building to integrate developing countries into the trading system. In the coming year, the United States will pursue cooperation with the Bretton Woods institutions, and ensure the effectiveness of the approximately $18 million targeted for the Global Trust Fund in 2004 to which the United States is a major contributor.
- ***Implementation:*** The majority of so-called implementation issues have been resolved through consultations. Nonetheless, outstanding issues remain, including the treatment of rules issues, particularly trade-related investment measures and whether to expand the negotiations in the TRIPS agreement regarding geographical indications beyond wines and spirits. A consensus has not emerged on these issues to date.

1. Special Session of the Committee on Agriculture

Status

At the Fourth WTO Ministerial Conference in Doha, Qatar WTO Members agreed to an ambitious mandate for agriculture, including "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." WTO Members also established an ambitious negotiating timeline, calling for reform modalities, such as tariff and subsidy reduction formulas, to be established no later than March 31, 2003 and submission of draft schedules of specific commitments by the Fifth WTO Ministerial Conference. However, the March 2003 deadline was missed and the Cancun Ministerial concluded without an agreement.

The WTO provides multilateral disciplines on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers, because only the WTO can impose disciplines on the entire broad range of agricultural producing and consuming Members. For example, absent a WTO Agreement on Agriculture, there would be no limits on European Union subsidization nor firm commitments for access to the Japanese market. Negotiations in the WTO provide the best hope to open important markets for U.S. farm products and reduce subsidized competition.

Major Issues in 2003

In 2003, the United States continued to take the lead in calling for substantial reform of agricultural trade policies, across all Members and all products. The United States has proposed comprehensive reform by reducing high levels of allowed protection and trade-distorting support through formulas that reduce tariff and subsidy disparities across countries, as well as strengthening WTO rules on a range of trade-related measures. In addition, the United States has proposed that WTO Members agree to eliminate all trade-distorting subsidies and all tariffs by a date certain. Members with heavily-distorted agricultural sectors, such as the European Union and Japan, have resisted substantial reform and instead have called for marginal reductions in protection and trade-distorting support while also calling for new WTO provisions to legitimize

1 Current Cairns Group Members are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.

measures oriented toward addressing non-trade concerns. Developing countries, particularly within the Cairns Group[1], have traditionally looked to the agriculture negotiations as a principal means for achieving more meaningful trade participation in the global economy. A new developing country coalition formed in 2003, now referred to as the G-20, has called for substantial reform of developed countries' agricultural domestic support and export subsidy policies while proposing far less ambitious reforms in developing countries' market access policies. The G-20 coalition includes traditionally import-sensitive countries like India as well as typically export-oriented Cairns group members, such as Brazil and South Africa.

The Uruguay Round Agreement on Agriculture provided the framework for further negotiations in 2003. Negotiations on agriculture began in the year 2000 and in the first two years some 45 proposals were submitted on behalf of 121 Members. In 2002, Members focused attention on specific proposals for establishing reform modalities, consistent with the Doha mandate. The United States submitted the first comprehensive set of proposed modalities for reform, helping set the discussions in Geneva on an ambitious reform track. A number of other Members, including the Cairns Group and other developing countries, also submitted specific modality proposals oriented toward substantial reform. The European Union, Japan, and other Members with high tariff and subsidy levels did not come forward with specific or forthcoming modality proposals, instead making general proposals for marginal reform.

According to the ambitious negotiating timeline set in Doha, Members were to agree on specific reform modalities by March 31, 2003. Little progress was made toward that goal because many countries refused to move off of their original positions. The chairman of the WTO Agriculture Committee, Stuart Harbinson, attempted to meet the March 2003 deadline by drafting modalities covering all three pillars of reform and addressing issues of special and differential treatment for developing countries. Many Members disagreed with a number of the elements of the draft Harbinson text, and it did not serve to facilitate consensus on a way forward in the negotiations.

In the wake of disagreement over the Harbinson text, many WTO Members requested that the United States and the EU work together to bridge their differences. These members recognized that some common understanding on a framework for negotiations between the United States and the EU was a necessary condition for moving forward in agriculture. There was hope that steps toward CAP reform undertaken by the European Union would help them move forward with negotiations.

The United States and European Union negotiated a joint framework paper that they presented on August 13. The paper addressed key outstanding issues between the EU and U.S., and reaffirmed the objectives identified in the Doha Declaration. It identified a number of formulae for implementing reduction commitments for tariffs and subsidies, leaving the coefficients in the formulae to be the subject of future negotiations. The agreement included, among other things:

- A "blended formula" for tariff reductions that would require a harmonizing Swiss formula for a certain percentage of tariff lines, a Uruguay-round type average cut for another percentage of lines, and tariff elimination for the remainder of tariff lines;
- A harmonizing approach to reducing the most trade-distorting domestic support (amber box), with greater efforts by countries with higher trade-distorting subsidies; and
- A framework for "reductions of, with a view to phasing out," export subsidies in parallel with disciplines on export credits.

Several countries charged that the EU-U.S. framework lacked ambition. The G20, which emerged in the run-up to Cancun, were particularly vocal in advocating larger reductions in domestic support and export subsidies by devel-

oped countries, together with strong special and differential provisions that would result in minimal reform and market access commitments by developing countries.

Going into the 5th WTO Ministerial in Cancun, Mexico (September 2003), there were multiple conflicting texts. In preparation for Cancun, the General Council Chairman Perez del Castillo incorporated substantial parts of the U.S.-EU framework into a draft modalities framework. The G20 tabled its own draft modalities framework. Four West African cotton-producing countries tabled a proposal that targeted the U.S. cotton support program and called for compensation for their producers.

At Cancun, Chairman Derbez developed a draft modalities text that sought to find common ground among the divergent positions. However, after five days of negotiations, Ministers were unable to agree on how to proceed in meeting the objectives mandated in the Doha Development Agenda. The ministerial closed without a final result.

No special sessions in Agriculture were held after the Cancun Ministerial. The Derbez text remains the most recent stage of development in establishing modalities for agricultural reform.

After a period of reflection and consultations between Chairman Perez del Castillo and members, on December 15, 2003 a General Council meeting was held to take stock and find a way forward. Members expressed a willingness to reinvigorate the trade talks, and will most likely resume negotiations early in 2004.

Prospects for 2004

In 2004, negotiations will need to focus on establishing specific modalities so that members can conclude the round. As talks move forward, the United States will work to increase the level of ambition that all countries bring to all three pillars.

2. Special Session of the Council for Trade in Services

Status

In 2000, pursuant to the mandate provided in the Uruguay Round, Members embarked upon new, multi-sectoral services negotiations under Article XIX of the General Agreement on Trade in Services (GATS). The Doha Declaration recognized the work already undertaken in the services negotiations and reaffirmed the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services (CTS) in March 2001. The Doha mandate directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners. The Doha mandate also set deadlines for initial services requests and offers. The Special Session met 4 times during 2003, in March, May, July, and October.

Major Issues in 2003

The GATS negotiations entered a new phase in 2003 as WTO Members submitted initial negotiating offers consistent with the deadlines established in the Doha Declaration. The United States submitted its offer on March 31 and at the same time made the offer public. A copy of the initial U.S. GATS offer is available at: www.ustr.gov/sectors/services/2003_03-31-consolidated_offer.PDF. As of December 2003, in addition to the United States, the following 39 WTO Members had submitted initial offers: Japan, New Zealand, Australia, Korea, Uruguay, Chinese Taipei, Canada, Norway, Paraguay, Bahrain, Iceland, Liechtenstein, Panama, Argentina, Switzerland, Senegal, Israel, Hong Kong, Poland, St. Christopher & Nevis, EU, Czech Republic, Macao, China, Mexico, Fiji, Slovenia, Chile, Singapore, Slovak Republic, Turkey, Sri Lanka, Guatemala, Peru, Thailand, Bolivia, Colombia, China, Bulgaria, and India.

Discussions continued in 2003 on three provisions contained in the GATS that relate to the negotiations. The GATS calls for an "assessment

of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV, *Increasing Participation of Developing Countries*." A number of WTO Members have made written and oral presentations discussing the effects of services liberalization. The United States submitted a paper on this topic in March. The GATS also calls for establishment of two sets of procedures. The first, the Modalities for the Special Treatment for Least-Developed Country Members, was adopted by the Special Session in September. In connection with the Modalities, at the request of a number of LDCs, the United States expanded on its obligations under Article IV of the GATS by establishing more contact points in the developing world and distributed a list of those contact points to be used by private-sector businesses in developing countries, to enhance their exports of services to the United States. The second set of procedures, "The Modalities for the Treatment of Autonomous Liberalization," addresses the treatment of liberalization undertaken autonomously by Members since previous negotiations, and was adopted by consensus at the March meeting of the Special Session.

Several other issues were discussed at Special Session meetings during 2003, including Mode 4 (temporary entry), following the introduction of a paper on the subject by India and 14 co-sponsors at the July meeting, and provisions on Special and Differential Treatment of developing-country Members. At the July meeting, the Chairman of the Special Session took on board views from Members, including the United States, to seek new dates and mileposts in the Cancun text in order to heighten the momentum and move the services negotiations to the next phase.

Prospects for 2004

Sessions in Geneva will continue to include a general meeting of the Special Session, followed by bilateral meetings which allow Members the opportunity to present and discuss their initial negotiating offers, and other topics of concern. Discussions in the general meeting and in the bilateral negotiating sessions are expected to continue on the topics noted above.

3. Negotiating Group on Non-Agricultural Market Access

Status

At the fourth WTO Ministerial Conference held in Doha in 2001, Ministers agreed to launch non-agricultural market access (NAMA) negotiations to reduce or eliminate non-tariff measures and tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries. Ministers also agreed that developing countries should be permitted to provide less than full reciprocity, but that negotiations should be comprehensive and without *a priori* exclusions.

Major Issues in 2003

Negotiations on non-agricultural market access in 2003 moved into a more active phase of work and focused intensively on discussion of a wide range of developed and developing member proposals on how tariff and non-tariff barriers (NTBs) should be liberalized (the "modalities" for tariff and NTB liberalization). Proposals ranged from employing traditional request-offer approaches, to various proposals for formula reductions and to the use of sectoral initiatives such as those proposed in the Uruguay Round for zero-zero elimination of tariffs or harmonization of tariff rates to lower levels by all, or a subset of participants. Many proposals called for a mix of modalities to achieve the Doha objectives set out above. These proposals varied dramatically on their level of ambition and the degree to which bound tariffs (which exceed applied levels in many developing countries) would be reduced to below current applied tariff levels, a test of the degree to which real new market access can be achieved in the negotiations.

As a general matter, all Members support the use of a formula as at least one key component of the liberalization modalities. Developing countries generally support use of a formula that would require developed countries to reduce tariffs substantially, while permitting developing countries to reduce tariffs, but retain relatively high levels of protection. Many countries also support an ambitious sectoral component that would also help deliver on the mandate to eliminate tariffs, as appropriate. However, most developing countries do not support mandatory participation in a sectoral component, nor the use of a sectoral component as an integral part of the modalities.

In the lead up to the Cancun Ministerial, the Chairman of the Negotiating Group presented members with a proposed "framework" on modalities, which outlined a number of ideas for how the negotiations could be conducted, reflecting his views on where consensus might lie. The Chairman's text was hotly debated. While most members have indicated support for the structure of the Chairman's text, the detailed proposals contained in the text, which involved a mix of modalities, were not broadly accepted. Efforts at Cancun to bridge differences did not succeed, in part due to lack of agreement on other issues in the negotiations (agriculture and the Singapore issues). However, wide differences of view also remain between developing countries, and between developing and developed countries, on the level of ambition and the means to achieve it, including how to preserve all aspects of the Doha mandate, for example those relating to less than full reciprocity. Most developed Members and a number of developing Members, such as Hong Kong, Singapore, Chile and Costa Rica, support significant liberalization of both developed and developing country markets in order to ensure that global growth and development can advance effectively. However, many developing countries have expressed the concern that they cannot sustain significant tariff reductions due to concerns about revenue losses and that significant liberalization of developed country markets would erode existing tariff preferences they wish to retain. A number of developing countries are prepared to make concessions, but at this stage are reluctant to commit to reducing their bound rates to the level of their current applied rates.

Prospects for 2004

In 2004, it will be necessary to find ways to bridge the significant differences that exist between Members on the modalities, to develop a framework for modalities, and then finalize the details on the type of formula that will be used, and the degree to which sectoral approaches will complement the formula approach in the negotiations. The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country markets. However, the U.S. position also supports elements of additional flexibility for the least developed and most financially constrained members and those developing country members that have already contributed significantly to liberalization through the maintenance of low tariff levels and high levels of tariff bindings. In the second half of 2004, it is anticipated that Members would negotiate and agree on the specifics of modalities as well as prepare market access offers.

4. Negotiating Group on Rules

Status

In paragraph 28 of the Doha Declaration, the Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and on Subsidies and Countervailing Measures (the Subsidies Agreement), while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives. Ministers also directed that the negotiations take into account the needs of developing and least developed participants. The Doha mandate specifically calls for the development of disciplines on trade-distorting practices, which are often the underlying causes of unfair trade, and also calls for clarified and improved WTO disciplines on fisheries subsidies. In addition,

paragraph 29 of the Doha Declaration provides for negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.

Paragraph 28 provides for a two-phase process for the negotiations, in which participants would identify in the initial phase of negotiations the provisions in the Agreements that they would seek to clarify and improve in the subsequent phase, but does not specify any deadline with respect to the transition from the first phase to the second phase. WTO Members have submitted a total of 143 papers to the Rules Group thus far, with the vast majority of them identifying issues for discussion rather than making specific proposals, although several Members submitted specific proposals on particular issues in 2003.

Major Issues in 2003

The Rules Group held five formal meetings in 2003 (in February, March, May, June, and July) under the Chairmanship of Ambassador Tim Groser from New Zealand, as well as several meetings informal with respect to its consideration of issues relating to regional trade agreements. The Group based its work primarily on the written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty trade remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission the basic concepts and principles of the trade remedy rules, and identified four core principles that would guide U.S. proposals for the Rules Negotiating Group:

- First, negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system which enjoys the confidence of all Members;
- Second, trade remedy laws must operate in an open and transparent manner. This principle is fundamental to the rules-based system as a whole, and the transparency and due process obligations should be further refined as part of these negotiations;
- Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices. Work has already begun along these lines with respect to the steel sector in discussions among the major steel producing nations at the OECD, based on the general recognition that market-distorting practices have contributed to global excess capacity; and
- Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members obligations that are not contained in the Agreements.

In accordance with these principles, the United States was very active in the discussions in the Rules Group in 2003, both in identifying specific issues for consideration, and in raising questions with respect to the issues raised by other Members.

- Pursuant to the first principle, we have repeatedly emphasized that the Doha mandate to preserve the effectiveness of the trade remedy rules must be strictly adhered to in evaluating proposals for changes to the Antidumping or Subsidies Agreements, and have raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. We have also identified particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, and the need for the unique characteristics of perishable and seasonal agricultural products to be reflected in the trade remedy rules.
- Pursuant to the second principle, we have identified a number of respects in which investigatory procedures in antidumping

and countervailing duty investigations could be improved, highlighting areas in which interested parties and the public could benefit from greater openness and transparency, as well as some areas where improved procedures could reduce costs. Since U.S. exporters are a major target of foreign trade remedy proceedings, it is essential to improve transparency and due process so that U.S. exporters are treated fairly.

- Pursuant to the third principle, we have stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and have made a number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines generally and the work ongoing in the OECD addressing trade-distorting practices in the steel sector.
- Pursuant to the fourth principle, we have emphasized the importance of ensuring that WTO panels and the Appellate Body adhere to the special standard of review in the Antidumping Agreement, and the need to address several issues raised by certain past findings of the WTO Appellate Body in trade remedy cases.

Antidumping and Countervailing Duty Trade Remedies: The United States has thus far in its submissions to the Rules Group identified over 30 issues for discussion related to antidumping and countervailing duty trade remedies, in accordance with the principles listed above. A group calling itself the "Friends of Antidumping" has also presented a series of papers identifying over 30 antidumping issues for discussion by the Rules Group, following up with more detailed proposals in 2003 on six of these issues. The "Friends" group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey, although not all of its members have joined in each paper. From the issues that this group has raised thus far, and from the proposals they have submitted, it is clear that their goal is to impose additional restrictions on the use of antidumping. In addition to the submissions by this group and the United States, Argentina, Australia, Brazil, Canada, China, Egypt, the European Communities, Hong Kong China, India, Japan, Korea, Morocco, New Zealand, Venezuela, and by a group of 18 textile-exporting Members also submitted papers on antidumping issues in 2003. The United States has been actively engaged in addressing the submissions from this group and other Members, posing written questions with respect to many of them, and seeking to ensure that the Doha mandate for the Rules Group is fulfilled.

Subsidies: In 2003, the United States submitted its second subsidy-specific paper to the Rules Group, advocating a number of ways in which the existing rules should be strengthened, including the prohibition of additional types of subsidies; tougher rules on indirect subsidies and government investment in private sector companies; and changes to the rules on government pricing of natural resources. The United States also raised the issue of the different treatment under the Subsidies Agreement of indirect and direct taxes.

Additional substantive papers on subsidies issues were submitted in 2003 by India, Canada and Australia, and by Venezuela and Cuba jointly. India, in its second substantive subsidy paper, raised several issues regarding duty drawback and indirect tax programs and the definition of "export competitive" under Article 27 of the Subsidies Agreement. The Canadian and Australian papers argued for the clarification of several issues that have been subject to WTO dispute settlement proceedings. Venezuela and Cuba advocated making certain types of subsidies non-actionable, in particular certain types of subsidies provided by developing countries.

Fisheries Subsidies: The United States played a major role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2003, working closely with a broad coalition of developed and developing countries, including Australia, Chile, Ecuador, Iceland, New Zealand, Peru and the Philippines. After submitting two

papers in 2002 reviewing the problems caused by fisheries subsidies, the United States submitted a paper in April 2003 seeking to move the discussion to consideration of possible solutions, advocating stronger rules to remedy the economic and environmental damage from overfishing. Among the ideas presented in the U.S. paper were: possible expansion of the category of subsidies prohibited under WTO rules to include fisheries subsidies that directly promote overcapacity and overfishing, or have other trade-distorting effects; improvements to the quality of fisheries subsidy notifications under WTO rules; and ways to draw upon relevant expertise in other international organizations and obtain the views of non-governmental groups. The United States views improving WTO disciplines on harmful fisheries subsidies as an important objective that will provide a concrete, real world demonstration that trade liberalization benefits the environment and contributes to sustainable development.

Additional submissions in 2003 in support of strengthening disciplines on fisheries subsidies were made by the European Union and Chile, and by Argentina, Chile, New Zealand, Norway and Peru in a joint submission. However, Japan and Korea have continued to dispute that disciplines on fisheries subsidies should be strengthened, arguing that it has not been demonstrated that fisheries subsidies, rather than poor fishery management, have led to the present poor state of the world's fisheries. Additional submissions were made by China and by a group of eight small coastal state Members, advocating special and differential treatment with respect to fisheries subsidies for developing country Members.

Regional Trade Agreements: The discussion in the Rules Group on regional trade agreements (RTAs) has focused on ways in which WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved. During 2003, the discussion on RTAs was divided into "transparency" and " systemic" issues. After finding more common ground on the need for improved transparency in the discussions, the Rules Group focused on these issues with the understanding that work on systemic issues would be revisited at a future date.

The United States considers that the Group's work on transparency thus far has been of value, given the need to improve the effectiveness of the current WTO system for reviewing and analyzing trade agreements. Some of the proposals contemplated in the Rules Group would put the Secretariat to work systematically compiling information from Member submissions on each agreement. In 2003, Members focused on when, how and to what extent Members should notify the WTO of the provisions of an RTA, and how the WTO can best review these provisions. Some developing country Members, citing the GATT "Enabling Clause" decision of 1979 (GATT Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries), have opposed applying strengthened reporting and review disciplines to preferential agreements among them. Some European Members have argued for "grandfathering" preexisting RTAs so as to exempt them from some or all new disciplines on reporting and review that may emerge from the negotiations.

On substantive or "systemic" issues, previous work within the WTO Committee on Regional Trade Agreements identified many of the issues encompassed by the Doha mandate on RTAs. The WTO Secretariat also prepared a synopsis of these substantive issues. This work has informed the discussions in the Rules Group on such issues as the requirements of GATT Article XXIV that RTAs eliminate tariffs and "other restrictive regulations of commerce" on "substantially all the trade" between parties (and the analogous provisions for the GATS), the effects of particular rules of origin applied in RTAs, and the relationship between RTA rules and the application of trade remedies.

Papers on RTA issues submitted to the Rules Group by Australia, Chile, the European Union, Hong Kong China, Korea, India, New Zealand and Turkey have also contributed to the discus-

sions. The United States has been an active participant in the RTA discussions in the Group.

Special and Differential Treatment Proposals: A list of proposals by certain developing and least developed country Members for special and differential treatment on issues pertaining to antidumping, subsidies, and regional trade agreements was referred by the Chairman of the General Council to the Rules Group in 2003. The Group had very limited discussion of these proposals at its meetings in 2003, largely because the sponsors of the proposals were in most cases unable to attend the meetings and present their proposals. These proposals will remain on the agenda for the Rules Group.

Prospects for 2004

It is expected that the process of issue-identification in the Rules Group will continue in 2004, as well as consideration of specific proposals as they are submitted. The United States will continue to pursue an aggressive affirmative agenda, based on the core principles summarized above, and building upon the U.S. papers submitted in 2003 with respect to strengthening the existing subsidies rules, and improving WTO disciplines on harmful fisheries subsidies. On RTAs, a more focused discussion of possible procedural improvements within the WTO to enhance transparency is likely in 2004.

5. Special Session of the Committee on Trade and Environment

Status

Following the Fourth Ministerial Conference at Doha, the Trade Negotiations Committee (TNC) established a Special Session of the Committee on Trade and Environment (CTE) to implement the mandate in paragraph 31 of the Doha Declaration. The CTE in Regular Session has taken up other environment-related issues without a specific Doha negotiating mandate.

Major Issues in 2003

The CTE in Special Session met three times in 2003. All three formal meetings took place prior to the Fifth Ministerial in Cancun. At each of these meetings, the CTE in Special Session addressed each of the negotiating mandates set forth in the three sub-paragraphs under paragraph 31 of the Doha Declaration:

(i) the relationship between existing WTO rules and specific trade obligations set out in MEAs (with specific reference to the applicability of such existing WTO rules as among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to any MEA 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 environmental goods and services.

MEA Specific Trade Obligations and WTO Rules: During the second year of negotiations under this mandate, discussions generally settled into a phased approach, with initial focus on the specific parameters of the mandate and analysis of provisions in MEAs that are covered by it. While this did not preclude more conceptual discussions on the MEA-WTO relationship, the large majority of delegations resisted any premature consideration of potential results in the negotiations. Most delegations expressed readiness to focus attention on provisions in six MEAs that the United States had identified as containing "specific trade obligations" covered under the Doha mandate. These six MEAs are: (i) the Convention on International Trade in Endangered Species; (ii) the Montreal Protocol on Ozone Depleting Substances; (iii) the Basel Convention on Hazardous Wastes; (iv) the Cartagena Protocol on Biosafety; (v) the Rotterdam Convention on Prior Informed Consent; and (vi) the Stockholm Convention on Persistent Organic Pollutants. Additionally, there was a high degree of support for a U.S. suggestion that the CTE in Special Session afford Committee Members the opportunity to provide information on their experiences with respect to negotiation

and implementation of specific trade obligations in these MEAs in light of WTO rules.

Procedures for Information Exchange and Criteria for Observer Status: Members generally appear to be supportive of identifying additional means to enhance information exchange between MEA secretariats and WTO bodies. In this regard, delegations suggested a number of options, including formalizing a structure of regular information exchange sessions with MEAs; organizing WTO parallel events at meetings of the conferences of the parties (COPs) of MEAs; organizing joint WTO, UNEP and MEA technical assistance and capacity building projects; promoting more regular exchange of documents between secretariats; and otherwise creating additional avenues for communication and coordination between trade and environment officials. On the issue of observer status for MEA secretariats in WTO bodies, little progress was made, although Members were able to agree on a separate decision to allow certain MEA secretariats to be invited on an ad hoc basis to attend CTE Special Session meetings. With respect to a more permanent status, a number of delegations expressed the view that the issue of criteria for ownership is dependent on an outcome in ongoing General Council and TNC deliberations.

Environmental Goods and Services: Members engaged in more detailed discussions in the CTE in Special Session on the scope of products that could be included in a definition of environmental goods. While much of the focus continued to be on existing lists developed by the OECD and APEC, additional ideas were tabled, such as a proposal from Qatar to include clean energy production technologies in the definition. The United States submitted a paper on the practical considerations that affected development of the APEC list and the lessons that could be drawn from this earlier exercise. The United States followed up with a proposal on modalities for negotiations on environmental goods. This proposal suggested that there could be a flexible approach to the definition involving a core group of goods for which all Members would make tariff and non-tariff concessions and a complementary list that would not require full participation. Reactions from preliminary discussions of the U.S. paper, held just before the Cancun Ministerial, were quite positive. Delegations continued to acknowledge that market access negotiations on environmental goods and services should take place in the Non-Agriculture Market Access Negotiating Group and the Committee in Trade in Services in Special Session.

In addition to the three CTE Special Session meetings, the CTE also met in Regular Session four times during 2003, debating important trade liberalization issues including, market access under Doha Sub-paragraph 32(i), TRIPS and environment under Doha Sub-paragraph 32(ii), labeling for environmental purposes under Doha sub-paragraph 32(iii), capacity building and environmental reviews under Doha paragraph 33 and the environmental effects of negotiations under Doha paragraph 51.

Prospects for 2004

Following a resumption of Doha negotiations, the CTE in Special Session is likely to pick up where it left off. Under sub-paragraph 31(i), efforts may be limited to obtaining a clearer picture of whether there are specific problems that could be practically addressed on the basis of the approach set forth in the U.S. paper. It is quite possible that negotiations under sub-paragraph 31(ii) could pick up, particularly if it becomes more clear that eventual results under sub-paragraph 31(i) are likely to be limited in scope. Increased information exchange between MEAs and the WTO and more predictable observer status could go a long ways in ensuring that the two systems of international obligations remain compatible and mutually supportive. Finally, the CTE in Special Session is likely to engage in further discussions of ideas put forward by the United States regarding modalities for environmental goods. The CTE will remain the forum to highlight the importance of liberalization in both environmental goods and services in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development and a cleaner environment.

6. Special Session of the Dispute Settlement Body

Status

Following the Fourth Ministerial Conference in November, 2001, the TNC 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."

Major Issues in 2003

The Special Session of the DSB met frequently during 2003 in an effort to implement the Doha mandate. In previous phases of the review of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Discussions intensified in 2003 in order to conclude discussions by May 2003. Members conducted a review of each proposal submitted and requested explanations and posed questions of the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. The Chair of the Special Session offered a draft text for consideration by the Members. Notwithstanding these efforts, Members were unable to conclude discussions. In July, the General Council decided that Members should seek to complete discussions by May 2004.

The United States advocated two proposals. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public for the first time and give greater public access to briefs and panel reports. In addition to open hearings, public briefs, and early public release of panel reports, the U.S. proposal calls on WTO Members to consider rules for "amicus curiae" submissions—submissions by non-parties to a dispute. WTO rules currently allow such submissions, but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In addition, the United States, joined by Chile, submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among WTO Members. The joint proposal contains specific options 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.

Prospects for 2004

In 2004, Members will continue to work with a view to the May 2004 target date to complete the review of the DSU. The Chairman of the DSU review has requested that Members submit revised draft legal text early in 2004. Members will be meeting monthly in multi-day sessions through the end of May in an effort to complete their work.

7. Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Status

With a view to completing the work started in the TRIPS Council on the implementation of Article 23.4, Ministers agreed at Doha to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. This is the

only issue before the Special Session of the Council. As no consensus on the system or other issues emerged at the Fifth Ministerial or in 2003, it is expected that negotiating groups will be reactivated early in 2004, and that this negotiating mandate will be extended.

Major Issues in 2003

During 2003, the TRIPS Council continued its negotiations under Article 23.4, which is intended to facilitate protection of geographic indications. Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Taiwan, and the United States continued to support the "Joint Proposal" under which Members would notify their geographical indications for wines and spirits for incorporation into a register on the WTO website. Members choosing to use the system would agree to consult the website when making any decisions under their domestic laws related to geographical indications or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations with regard to geographical indications on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat. The European Union together with a number of other countries continued to support their alternative proposal for a system under which Members would notify the WTO of their geographical indications for wines and spirits. Other Members would then have eighteen months in which to object to the registration of particular notified geographical indications that they believed were not entitled to protection within their own territory. If no objection were made, each notified geographical indication would be registered and all WTO Members would be required to provide protection as required under Article 23. If an objection were made, the notifying Member and the Member objecting would negotiate a solution, but the geographical indication would have to be protected by all Members that had not objected.

At the April 2003 meeting, Hong Kong, China, introduced a proposal under which a registration should be accepted by participating Members' domestic courts, tribunals or administrative bodies as prima facie evidence of: (a) ownership; (b) that the indication is within the definition of "geographical indications" under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings before domestic courts, tribunals or administrative bodies when dealing with matters related to geographical indications. In effect, a rebuttable presumption is created in favour of owners of geographical indications in relation to the three relevant issues. Although this proposal was discussed, it has not been endorsed by either supporters of the Joint Proposal or the EU proposal.

Prior to the April 2003 meeting, the Chairman of the Special Session issued a note by the Chairman containing a Draft Text of Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (JOB(03)/75. This text was criticized by supporters of the Joint Proposal as going beyond the mandate of the negotiations, especially with regard to participation in the system and legal effect.

Prospects for 2004

In his report to the TNC, the Chair of the Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights noted that several delegations had raised comments and questions on his draft text, and that positions continue to be quite divided. He noted that profound differences exist with respect to the legal effect of registrations, international mechanisms for settling differences regarding geographical indications and participation.

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, so that the negotiations can be completed.

8. Special Session of the Committee on Trade and Development

Status

In February 2002, the Trade Negotiating Committee convened a Special Session of the Committee on Trade and Development (CTD) to fulfill the Doha 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." The Special Session is responsible for reviewing all existing special and differential treatment provisions available to developing-country Members. Under S&D provisions, the WTO provides developing-country Members with technical assistance and transitional arrangements toward implementation of WTO Agreements and, ultimately, full integration into the multilateral trading system. WTO S&D provisions also enable Members to provide better-than-MFN access to markets for developing-country Members. As part of the S&D review, the CTD Special Session provided recommendations to the General Council for consideration at the Cancun Ministerial, where no decisions were taken on S&D.

Major Issues in 2003

The CTD Special Session met in January and February 2003 to continue work under its DDA mandate to review the S&D provisions Debate was lively, particularly with regard to consideration of more than 80 Agreement-specific proposals by various developing-country members which, in their originally-proposed form, entailed reopening Agreements and revisiting the Uruguay Round's overall balance of obligations. By the February 2003 General Council session, the CTD Special Session had not completed its work. In lieu of tabling a final package of recommendations, the CTD instead submitted a progress report to the General Council that included those recommendations achieved to that point. The General Council decided that work would continue through deliberations by heads of delegations. United States helped advanced this next phase of the S&D review by submitting a proposal for an improved process for such deliberations. The renewed effort by heads of delegation in the Spring and Summer of 2003 led to the completion of a set of recommendations that were later submitted by the Chairman of the General Council for adoption at the Cancun Ministerial, although no decision was taken on these recommendations at the Cancun Ministerial.

Prospects for 2004

A resumption of Doha Round negotiations would ultimately include efforts by Committee Members to complete the S&D review under the DDA mandate. Discussions to date have led to crafting solutions reflecting convergence on a number of agreement-specific issues put forward. However, there remain a number of areas that will require more in-depth discussion as the DDA advances, in particular with regard to a more broadly-based assessment of S&D as it pertains to the fact that developing-country Members often present unique individual situations that may not be best addressed by a 'one-size-fits-all' approach. The CTD Special Session has held only preliminary discussions on how S&D treatment and differentiation among various levels of development should be incorporated into the architecture of the WTO, and with regard to the nature of a future mechanism for monitoring implementation and effectiveness of S&D treatment.

C. Work Programs established under the Doha Development Agenda

1. Working Group on Transparency in Government Procurement

Status

Leading up to the Cancun Ministerial, the Working Group on Transparency in Government Procurement (Working Group) continued work on development of elements of an agreement on transparency in government procurement. However, at the close of 2003, it remained unclear as to whether and how work will continue on this important topic in the WTO. General Council

Chairman Perez del Castillo, in his report of December 15, 2003, suggested that work should continue with the aim of reaching agreement on modalities for negotiations of an agreement on transparency in government procurement.

Major Issues in 2003

The Working Group held two formal meetings in February and June 2003, in which it continued to make progress on identifying the key substantive elements of a potential agreement on transparency in government procurement. The Working Group particularly focused on two potential elements of an agreement that several Members, in particular developing countries, have singled out as an area of particular concern. Both elements relate to the enforcement of an agreement: domestic review procedures and the application of WTO dispute settlement procedures. The United States made a written submission to the Working Group in 2003 to address these two potential elements.

The U.S. submission and the discussions of the issue in the Working Group pointed out that an agreement on transparency in government procurement could accommodate different Members existing independent administrative or judicial tribunals and review procedures, and that an agreement could be tailored to preclude the challenge of individual contract awards under the DSU. In addition, transition periods could be used to phase-in application by developing countries of certain provisions of an agreement, including application of the DSU.

The Working Group's discussions confirmed that many WTO Members consider these elements to be fundamental to ensuring efficient and accountable procurement systems and have already incorporated these elements, in their existing procurement laws, regulations, and practices.

The draft ministerial text presented to Ministers at the Cancun Ministerial reaffirmed that negotiations of a multilateral agreement on transparency in government procurement would be limited to the transparency aspects and would not restrict the ability of countries to give preferences to domestic supplies and suppliers. It also provided that such an agreement would cover only procurements above certain value thresholds (to be negotiated), and that coverage beyond goods and central government entities was not prejudged. It also stated that applicability of the DSU was not prejudged, except that individual contract awards would not be subject to the WTO dispute settlement system. In addition, the draft text reaffirmed that negotiations would take into account participants' development priorities and reiterated the commitment to provide technical assistance.

Prospects for 2004

Regardless of how the Doha negotiations proceed, ensuring transparency in government procurement remains a priority for the United States in its pursuit of broader initiatives aimed at promoting the international rule of law, combating international bribery and corruption, and supporting the good governance practices that many countries have adopted as part of their overall structural reform programs. The United States will continue to incorporate transparency in government procurement provisions in its negotiations of bilateral FTAs. In addition, the United States will continue to work to enhance the transparency provisions of the plurilateral WTO Government Procurement Agreement (GPA).

2. Trade Facilitation

Status

The Fourth Ministerial Conference at Doha established an ambitious work program on Trade Facilitation, including a mandate for the Council on Trade in Goods to "review and as appropriate, clarify and improve relevant aspects of Article V, VIII, and X of GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least developed countries." At Doha, it was agreed that negotiations on Trade Facilitation would take place after the Fifth Ministerial Conference, based upon a decision to be taken at that Ministerial on the modalities of negotiations.

Major Issues in 2003

In 2003, the Council for Trade in Goods (CTG) held two formal sessions on Trade Facilitation before the Cancun Ministerial in September. There was a continuing consensus that systemic reforms related to increased transparency and efficiency in the conduct of border transactions would increase trading opportunities and diminish corruption, while providing the additional benefit of enhancing administrative capabilities that ensure effective compliance with various customs-related requirements, ranging from the environment to security. Much of the discussion was devoted to developing country concerns, with key submissions by Canada, Japan and the United States. In particular, a submission by the United States on Special and Differential Treatment fostered a robust exchange of views and elicited a wide range of positive responses to a proposed three point approach to (1) deal with varied needs and abilities of Members to implement results of negotiations through individualized transition periods; (2) create workable partnerships among Members and other institutions to support technical assistance needs; and (3) ensure effective enforcement of prospective Trade Facilitation commitments.

At the Cancun Ministerial Conference, no decision was taken on commencing negotiations on Trade Facilitation. The United States joined many others in supporting elements of the draft Ministerial Declaration text put forward by the Chairman of the Conference which would have launched negotiations on Trade Facilitation, leading to the clarification and improvement of GATT Articles V, VIII and X.

Prospects for 2004

Notwithstanding the overall impasse at the Cancun Ministerial Conference, there emerged new broad-based support for commencing negotiations on Trade Facilitation. While the direction and pace of moving forward on Trade Facilitation will likely be contingent on the more general advancement of the Doha Agenda, at Cancun a number of previously-resisting developing country Members began to openly acknowledge the merit of a launch of negotiations. While the Cancun Ministerial conference featured strident opposition to commencing negotiations from a number of developing countries, particularly those from Africa, a number of such Members have subsequently signaled informally that the Cancun position was a generalized approach driven by strong negative views relating specifically to several other so-called Singapore issues, rather than Trade Facilitation.

Many developing countries have joined the United States and other Members in the view that achieving a negotiated agreement on Trade Facilitation could be one of the most important development-related achievements emerging from the Doha Development Agenda. A broad array of development levels can also be seen among the members of the so-called "Colorado Group," which has worked together for several years toward a launch of WTO negotiations on Trade Facilitation. Members of the Colorado Group include: the United States, Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland.

India and a few other Members have suggested that future WTO work on Trade Facilitation should not lead to new and strengthened WTO disciplines, but should only aim at non-binding or voluntary results. The United States is joined by many other Members in citing experience that shows how a rules-based border environment is an essential element for all Members in securing market access gains, and how such improvements can serve in particular to maximize opportunities for south-south trade. A number of developing countries have also joined the United States in recognizing that small and medium size enterprises (SMEs) have become important stakeholders in advancing WTO agenda in the area of Trade Facilitation. SMEs are poised to take advantage of opportunities provided by the digital economy and ever-improving efficiencies in the movement of goods, while at the same time are particularly disadvantaged when border procedures are opaque and overly burdensome.

3. Working Group on Trade and Competition Policy

Status

In 2003, the WTO Working Group on the Interaction between Trade and Competition Policy (the "Working Group") held its seventh year of work under the oversight of the WTO General Council. The Working Group was established by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate was to "study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework." In December 1998, the General Council authorized the Working Group to continue its work on the basis of a more focused framework of issues. This framework continued to serve as the basis of the Working Group's work until the Doha Ministerial Conference in 2001.

In the November 2001 Doha Ministerial Declaration, the Ministers agreed that a decision was to be taken at the Fifth Session of the Ministerial Conference, by explicit consensus, as to the modalities of negotiations on trade and competition policy. The Ministerial Declaration provided that work leading up to the Fifth Session would focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; (2) provisions on hard-core cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The Ministers recognized the needs of developing and least developed countries for technical assistance and capacity building in this area, and pledged to work in cooperation with other intergovernmental organizations, including UNCTAD, to provide assistance to respond to these needs.

Ministers were unable to reach agreement on trade and competition policy at the Cancun Ministerial. As of year-end 2003 there has not been agreement on a new mandate for further work by the Working Group, and it is not clear whether the Working Group will continue its work in 2004, and, if so, what its mandate will be.

Major Issues in 2003

The Working Group held two meetings in February and May 2003. The Working Group continued to organize its work on the basis of written contributions from Members, supplemented by discussion and commentary offered by delegations at the meetings and, where requested, factual information and analysis from the WTO Secretariat and observer organizations such as the OECD and UNCTAD. As in 2002, the Working Group's discussions focused on the issues specified in paragraphs 24 and 25 of the Doha Declaration—technical assistance and capacity building; provisions on hardcore cartels and modalities for voluntary cooperation; and core principles, including transparency, non-discrimination and procedural fairness. The Working Group also addressed the nature and scope of compliance mechanisms that might be included under a multilateral framework on competition policy, and possible elements of progressivity and flexibility that might be included in such a multilateral framework. In 2003, seventeen written submissions were contributed by twelve Members (counting the European Union and its 15 Member States as one contributor): Australia, Canada, China, Cuba, the European Union, Hong Kong China, Japan, Kenya, Korea, Kuwait, Malaysia, and the United States.

Despite the extensive work conducted on these issues, there remain major differences among Members as to how to proceed on trade and competition policy. The European Union's submissions to the Working Group advocated a multilateral WTO agreement on competition policy with substantive disciplines subject to WTO dispute settlement. Several other Members, including Japan and Korea, likewise advocated a multilateral framework. However, a number of developing country Members responded that they were not ready to proceed to negotiation of a

multilateral agreement, stating that they did not want to be required to have a competition law and authority until they were ready. The United States played an active role in the Working Group, submitting a paper in May on the benefits for all Members of a possible WTO competition "peer review" process.

These divergent viewpoints expressed in the Working Group were reiterated during preparations for the Cancun Ministerial. In light of these differences in views, the revised draft Ministerial text circulated in Cancun called for further clarification of the issues in the Working Group, including consideration of possible modalities for negotiations, with the Working Group to report to the General Council by a specified date. However, as noted above, Ministers were ultimately unable to reach agreement on trade and competition policy.

Prospects for 2004

Given the absence of Ministerial direction at Cancun for further work on trade and competition policy, it is not clear whether the Working Group will continue its work in 2004, and, if so, what its mandate will be.

4. Working Group on Trade and Investment

Status

The Working Group on Trade and Investment (WGTI) was established at the Singapore Ministerial in 1996. At the conclusion of the Doha meeting, Ministers extended the WGTI's mandate and agreed that investment negotiations "will take place after the next Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations." During the period between the Doha and Cancun Ministerials, U.S. contributions to the work of the WGTI were aimed at promoting understanding of the benefits of open investment policies and of the contribution of investment to economic development. WTO Members could not agree in Cancun on a mandate for negotiating on investment and other Singapore issues. As of early 2004, the status of the WGTI and of any future WTO work plan on investment were unclear.

Major Issues in 2003

The Doha Declaration tasked the WGTI with examining seven issues, including the scope and definition of investment; transparency; non-discrimination; approaches to the treatment of investment prior to establishment, based on a GATS-type, positive list; development provisions; exceptions and balance-of-payments safeguards; and consultation and the settlement of disputes between Members. The Doha Declaration also stated that "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, be explicit consensus, at that Session on modalities of negotiations." WTO Members addressed the Doha Declaration issues during several WGTI sessions in 2002 and during two formal WGTI meetings and several informal consultations in 2003. The Working Group also discussed WTO activities relating to technical assistance on trade and investment issues.

The EU and Japan continued in 2003 to be the strongest advocates for the launch of WTO investment negotiations. Korea, Switzerland, and several developing countries, including Mexico, Chile, Singapore, and Costa Rica also advocated investment negotiations.

The EU and Japan argued in 2002 and 2003 that multilateral investment disciplines would stimulate increased flows of investment as well as trade, which increasingly follows investment. They highlighted the fact, which they described as an unfortunate anomaly, that investment to supply services enjoyed substantial multilateral protections under the GATS while investment to manufacture benefited from only minimal protections under WTO agreements.

The United States made similar arguments about the value of multilateral investment disciplines, but chose not to be a demandeur for a WTO investment agreement. Some domestic

stakeholders expressed concern during 2002 and 2003 that WTO investment negotiations would not produce a high-standards agreement. The United States circulated one formal proposal to the WGTI during the period between the Doha and Cancun Ministerials, a 2002 paper arguing that the disciplines of a multilateral investment agreement should extend to portfolio as well as direct investment.

Most developing country WTO Members consistently opposed all but the most limited proposals for WTO investment negotiations tabled either formally or informally during 2003. Developing countries argued that multilateral disciplines would restrict their ability to regulate foreign investment in ways designed to promote economic development objectives. They contended that investment disciplines were beyond both the mandate and the competence of the WTO. Pointing to the international financial crises of the 1990s, some developing countries also argued that multilateral disciplines could increase their vulnerability to increasingly rapid and volatile cross-border flows of portfolio investment capital.

In the weeks before the Cancun Ministerial, the EU and Japan, joined by Korea and Switzerland, proposed the launch of negotiations on a multilateral framework that would include each of the seven elements in the Doha Declaration, as well as other issues or elements that WTO Members might wish to propose. The EU/Japan proposal also called for provisions that would extend special and differential treatment to developing countries, clarify the relationship between an investment agreement and other WTO agreements, and clarify the relationship between a WTO investment agreement and existing bilateral and regional investment agreements.

Countries advocating WTO investment negotiations asserted that a decision had already been taken at Doha to launch negotiations on the basis of the issues identified in the Doha Declaration, but most developing countries asserted that, because they opposed a negotiation, there was no "explicit consensus" as required by the Declaration to allow negotiations to commence.

Developing countries were substantially unified in their opposition to the EU/Japan negotiating proposal. In the days before the Cancun meeting, many developing countries united around a counter-proposal rejecting the launch of investment negotiations in favor of continuing working group discussions under the Doha Declaration mandates. The United States also opposed elements of the EU/Japan proposal that appeared to foreclose the possibility of achieving high standards in certain areas. For example, the EU/Japan proposal failed to clearly endorse coverage of portfolio investment in a potential WTO agreement.

The WTO Secretariat sought to reconcile the EU/Japan and developing country positions by proposing an additional period for consideration of possible negotiating modalities, but this proposal failed to satisfy either side. The conflict between the two positions gave rise to one of the most difficult disputes in Cancun and contributed significantly to the breakdown of negotiations. A decision by the EU and Japan in the final hours of the Ministerial to abandon their effort to achieve the launch of investment negotiations came too late to have a positive effect on the Cancun negotiating dynamic.

Prospects for 2004

WTO members had yet to settle on a course of action on investment and other Singapore issues by the beginning of 2004. The EU shifted direction near the end of 2003, announcing that it would be willing to negotiate plurilateral agreements on investment and other Singapore issues, but a number of developing countries continued to oppose the launch of investment negotiations, whether on a multilateral or plurilateral basis. WTO members also continue to differ on the mission of the WGTI, with some arguing that it should resume efforts at identifying possible negotiating modalities, others arguing that it should limit itself to the further clarification of issues in the Doha Declaration, and a third group arguing that it should be disbanded.

5. Work Program on Electronic Commerce

Status

The Work Program on Electronic Commerce continued to meet through a series of dedicated discussions under the auspices of the General Council. Three discussions were held during 2003.

Major Issues in 2003

As in previous years, most of the sessions focused on the classification of certain electronically downloadable products, and the trade implications that might result from a decision to classify these products as goods or services, including the fiscal implications of classifying something as a good or service and how that might impact the current practice of not imposing customs duties on electronic transmissions. The United States submitted a contribution to the Work Program outlining key principles that could serve as a useful guide in developing trade policies in the area of electronic commerce.

Prospects for 2004

The United States supports active involvement in the on-going negotiations that are important to the development of electronic commerce. The United States will continue to be an active participant in the depicated discussions. In addition, the United States supports extending the current practice of not imposing customs duties on electronic transmissions with a view to making that permanent and binding in the future.

6. Working Group on Trade, Debt, and Finance

Status

Ministers established the mandate for the Working Group on Trade, Debt and Finance (TDF) at the Doha ministerial. Ministers instructed the Working Group to examine the relationship between trade, debt and finance, and to examine 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 countries. The Group was also instructed 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 2003

In 2003, the Working Group held two formal meetings to prepare a report to the Fifth Ministerial Conference. Members reached a consensus on a list of themes for further discussion should Minsters agree to continue the working group. This list of themes included trade liberalization as a source of growth; WTO rules and financial stability; the importance of market access and the reduction of other trade barriers in the Doha Development Agenda negotiations; trade and financial markets; trade-financing; better coherence in the design and implementation of trade-related reforms and monitoring; the inter-linkages between external liberalization and internal reform; and external financing, commodity markets and export diversifications.

Prospects for 2004

Following a resumptions of Doha negotiations, Working Group Members may be asked to continue discussions of the agreed themes and related issues reported to the Fifth Ministerial Conference.

7. Working Group on Trade and Transfer of Technology

Status

At the Fourth Ministerial Conference in Doha, 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." The TNC established the Working Group on Trade and Technology Transfer (WGTTT) under the auspices of the General Council, asking it to report on its progress to the Fifth Session of the Ministerial

Conference (Cancun). The WGTTT was not able to achieve consensus on any recommendations for consideration by ministers in Cancun, nor was any decision on the WGTTT's future work program taken in Cancun or during the December 2003 meeting of the General Council. The United States believes the WGTTT can play a role in helping WTO Members identify ways to promote the increased transfer and absorption of technology through trade, investment, and the provision of technical assistance, but the United States opposes national or multilateral mandates for the transfer of private or government-controlled technology.

Major Issues in 2003

The WGTTT met formally three times in 2003, considering inputs from the Secretariat, WTO members, other WTO bodies, and other intergovernmental organizations. During its March meeting, the WGTTT began its consideration of a paper prepared by the Secretariat, entitled, "A Taxonomy of Country Experiences on International Technology Transfers," which suggested a framework for classifying the policies that governments have adopted to promote technology transfer. The Secretariat paper also included case studies of national experiences with technology transfer policies.

Several WTO members also circulated papers for discussion in the WGTTT. A March submission by the EU, "Reflection Paper on Transfer of Technology to Developing and Least-Developed Countries" highlighted the importance to technology transfer of commercial trade and investment, effective IPR protection, and the absorptive capacities of host countries. India, Pakistan, and several other developing countries submitted a paper in May entitled, "Possible Recommendations on Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries." The United States and several other Members objected to this paper during the WGTTT's May and July sessions, arguing that it appeared to endorse mandates for the transfer of proprietary technology. The United States also objected to the paper's suggestion that some WTO agreements were hindering the transfer of technology.

During 2003, the WGTTT continued to receive written inputs from other WTO bodies on issues relating to trade and technology transfer. Nine WTO bodies reported having performed or planned work in this area. The WGTTT also received three case studies on technology transfer that had been prepared by UNCTAD.

The United States and other developed countries have argued that market-based trade and investment are the most efficient means of promoting technology transfer and that governments should resist mandates for the transfer of proprietary technology. In the U.S. view, the contribution of trade and investment to technology transfer reinforces the case for continued trade and investment liberalization. The United States and others also argued that developing countries need to take steps to enhance their ability to absorb foreign technologies, and that technical assistance from developed countries could promote technology transfer and absorption.

Prospects for 2004

As of early 2004, the post-Cancun status of the WGTTT had not yet been resolved. The United States will support a continuation of the WGTTT's work under the Doha mandate. The United States will work with other countries to examine the relationship between trade and the transfer of technology, but will continue to oppose proposals for the mandated transfer of technology.

D. General Council Activities

Status

The WTO General Council is the highest 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 once every two years. (The Fifth Ministerial Conference met most recently in Cancun, Mexico). The General Council and Ministerial Conference consist of representatives of all WTO Members. 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. All accessions to the WTO must be approved by the General Council or the Ministerial Conference. Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB respectively.

Three major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. 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 Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council. A number of subsidiary bodies report through the Council for Trade in Goods or the Council for Trade in Services to the General Council. The Doha Ministerial Declaration formed 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. The mandates are part of DDA and these were reviewed earlier in this chapter.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, can play an important role in consensus-building. In 2003, the Chairman of the General Council conducted extensive informal consultations, with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. In the latter half of the year, these consultations were convened frequently with a view to finding consensus on both substantive and procedural elements that would enable forward movement on the Doha Development Agenda.

Major Issues in 2003

Ambassador Carlos Perez del Castillo served as Chairman of the General Council in 2003. The major focus of Chairman Perez del Castillo and the General Council were the preparations for the Fifth Ministerial Conference in Cancun in September, as well as the effort to bring all sides back to work in line with the Cancun Ministerial mandate in the months following the Conference. These substantive issues involved in these activities are reviewed in the section on the Trade Negotiations Committee and the Doha Development Agenda. The following issues also figured prominently in the General Council activities:

Coherence: Article III(5) of the Marrakesh Agreement Establishing the WTO provides for coherence in global economic policy making through WTO cooperation with the International Monetary Fund (IMF) and the World Bank. At the May 2003 session of the General Council, both the IMF Managing Director Horst Kohler and World Bank President James Wolfensohn participated in exchange of views with WTO Members. The discussion centered on the linkages among trade, finance and development policies at both the national and international level. Many WTO Members noted the importance of a successful conclusion to the DDA in promoting more coherent policymaking that would advance the shared objectives of sustainable growth, development and poverty reduction.

Review of the U.S. Jones Act: Paragraph 3 of GATT 1994 mandates the General Council to conduct a review every two years to ascertain whether the original conditions creating the need for this exemption "still prevail." The exemption provided in Paragraph 3 applies to certain statutory provisions (collectively referred to as the

"Jones Act") notified to the WTO that prohibit foreign-built or repaired ships from engaging in the coastwise trade (i.e., cabotage). The United States would lose this exemption if the Jones Act were amended to become less WTO-consistent. The General Counsel conducted its third review of Paragraph 3 in December 2003. During this review, some WTO Members requested clarifications on data provided by the United States on U.S. shipyard orders and deliveries. Other WTO Members sought more information on the 2003 appropriations legislation (Pub. L. 108-7), which provided the legal grounds for up to three cruise ships constructed to completion in a shipyard located outside of the United States to receive a coastwise endorsement to operate in regular service transporting passengers between or among the islands of Hawaii. More generally, a number of WTO Members expressed the view that the review should have provided an opportunity to examine from a substantive point of view whether the conditions giving rise to the invocation of this exemption still exist. The General Council took note of the statements made during this year's review and agreed that the next review would begin in 2005.

Trade in Textiles and Clothing: The General Council considered communications from several Members on changes in textiles quotas. These involved submissions of textile-exporting countries on (1) the reduction in potential market (quota) access in 2004 due to the lack of carry forward in the quota phase-out program required by the Agreement on Textiles and Clothing, and (2) the imposition of limitations on future antidumping actions against textile imports from developing countries that they expect will be brought beginning in January 2005 after the Textiles sector is fully integrated into the WTO and quotas currently in effect have expired. No consensus emerged among Members on these submissions.

Waivers of Obligations: As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers, including those applicable to the United States for the Caribbean Basin Economic Recovery Act, and preferences for the Former Trust Territories of the Pacific Islands. The General Council also approved several other waivers, as described in the section on the Council on Trade in Goods (CTG). Annex II contains a detailed list of Article IX waivers currently in force.

Capacity Building through Technical Cooperation: The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (*i.e.*, modernizing their government operations to facilitate effective participation in the negotiation and implementation of WTO Agreements). For its part, the United States directly supports the WTO's trade-related technical assistance (TRTA). In Cancun, the United States pledged an additional $1.2 million for WTO TRTA. This contribution augmented $1 million given earlier in 2003, bringing total U.S. support for WTO TRTA to more than $3 million since the launch of Doha negotiations in November 2001. This money was in direct support of programs like the annual WTO Technical Assistance Plan.

Venue for the Sixth Ministerial Conference: In October 2003, the General Council accepted the invitation extended by Hong Kong to host the Sixth Ministerial Conference. The date of this conference has not yet been determined.

S&D Review: At the February 2003 General Council session, the Committee on Trade and Development put forward a progress report on the S&D review which noted that the Committee had not concluded discussions on a final package of recommendations, but took note of some recommendations that had been agreed in principle. The General Council decided to take up discussion of outstanding agreement-specific proposals under the leadership of Chairman Carlos Perez del Castillo, in the spring and summer of 2003. The Chair focused on a set of recommendations that might yield an early

agreement and involved the expertise of other WTO bodies in the consideration of relevant proposals. Renewed efforts by heads of delegation in the spring and summer helped advance a set of recommendations that were later put forward by the Chair, although not adopted, at the Cancun Ministerial.

Prospects for 2004

The General Council will continue its important role in overseeing implementation of the WTO Agreements and the forward movement of negotiations on the Doha Development Agenda. Management of the WTO, especially with respect to public outreach efforts, consultations with Members, and its work with other institutions on capacity building, will figure prominently in Council discussions over the next year. The Council will meet at least quarterly.

The requirement for ministerial meetings was established in the Uruguay Round to assure regular, political level review by ministers of the operation of the WTO, similar to the practice of other international organizations. Ministerial Conferences were convened in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003). The General Council has the authority to add issues to the WTO's agenda, whether for a work program or negotiation.

1. 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 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." Annex II provides more background information on the WTO dispute settlement process.

Major Issues in 2003

The DSB met 22 times in 2003 to oversee disputes and to address responsibilities such as consulting on proposed amendments to the Appellate Body working procedures 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 will 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 2003, 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.

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 2003.

The Rules of Conduct elaborate on the ethical standards built into the DSU, and 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 to a dispute 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 Uruguay Round Agreements Act (URAA), which directed the 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 Subsidies Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body ("TMB") and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

As noted above, the Rules of Conduct established a disclosure-based system. Examples of the types of information that covered persons must disclose are set forth in Annex II to the Rules, and include: (1) financial interests, business interests, and property interests relevant to the dispute in question; (2) professional interests; (3) other active interests; (4) considered statements of personal opinion on issues relevant to the dispute in question; and (5) employment or family interests.

Appellate Body: The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. On

November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Professor Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. The names and biographical data for the Appellate Body members 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's term as Chairperson runs from December 13, 2003 to December 12, 2004.

In 2003, the Appellate Body issued six reports, of which four involved the United States as a party and are discussed in detail below. The two other reports concerned the European Union's antidumping measures on bed linens from India and on pipe fittings from Brazil. The United States participated in both of these proceedings as an interested third party.

Dispute Settlement Activity in 2003: During its first nine years in operation, 305 requests for consultations (22 in 1995, 42 in1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, and 26 in 2003) were filed with the WTO. During that period, the United States filed 64 complaints against other Members' measures and received 77 complaints on U.S. measures. A number of disputes commenced in earlier years remained active in 2003. A description of those disputes in which the United States was either a complainant, defendant, or third party during the past year follows below.

Prospects for 2004

In 2004, we expect that the DSB will 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. DSB Members will continue to consider reform proposals in 2004.

a. Disputes Brought by the United States

One of the most important components of U.S. trade policy is to ensure U.S. exporters receive open access and fair treatment in foreign markets. In 2003, 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 2003 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process generally has proven to be an effective tool in combating barriers to U.S. exports and advancing our goal of ensuring a level playing field for American goods and services. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals (DS171/196)

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its

transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that arose as a result of Argentina's failure to fully implement its remaining TRIPS obligations as required on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations began July 17, 2000. On May 31, 2002, the United States and Argentina notified the DSB that a partial settlement of this dispute had been reached. Of the ten claims raised by the United States, eight were settled. The United States reserved its rights with respect to two remaining issues: protection of test data against unfair commercial use and the application of enhanced TRIPS Agreement rights to patent applications pending as of the entry into force of the TRIPS Agreement for Argentina (January 1, 2000). The dispute remains in the consultation phase with respect to these issues.

Brazil—Customs valuation (DS197)

The United States requested consultations on May 31, 2000 with Brazil regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the European Union regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continued to monitor the situation in 2003.

Canada—Export subsidies and tariff-rate quotas on dairy products (DS103)

The United States prevailed on its claim that Canada is providing subsidies to exports of dairy products in violation of its Uruguay Round commitment to reduce the quantity of subsidized exports of dairy products. The United States initiated this dispute in 1998, contending that Canada was providing export subsidies on dairy products in excess of its commitment levels and was maintaining a tariff-rate quota (TRQ) on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On August 12, 1998, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Professor Tommy Koh, Chairman; Mr. Guillermo Aguilar Alvarez and Professor Ernst-Ulrich Petersmann, Members. On May 17, 1999, the panel issued its report upholding U.S. arguments by finding that Canada's export subsidies are inconsistent with the Agreement on Agriculture, and that Canada's practice of restricting the import of milk to retail-sized containers imported by Canadian residents is inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel's finding that Canada's export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the Dispute Settlement Body (DSB) on October 27, 1999. On December 22, 1999, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada was to complete full implementation of the DSB's recommendations and rulings no later than January 31, 2001.

While Canada eliminated one of the export subsidies subject to the DSB findings, it introduced its "commercial export milk" scheme

under which exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, on February 16, 2001, the United States, along with New Zealand, requested that the DSB reestablish the panel to review Canada's compliance measures. At the same time, the United States requested authorization to withdraw concessions benefiting goods from Canada if the panel agreed that Canada had failed to comply with the rulings against it. The panel was reestablished on March 1, 2001, with Mr. Peter Paleka replacing Professor Koh, who was no longer available to serve, and with Professor Petersmann serving as Chairman. The panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 3, 2001, the Appellate Body concluded that it did not have enough facts to make a ruling against Canada.

As a result, the United States, along with New Zealand, requested on December 6, 2001 that the panel be reconvened again to allow the complaining parties to present additional factual information. The panel was reestablished on December 18, 2001, with Mr. Peter Pale?ka and Mr. Guillermo Aguilar Alvarez serving as panelists, and with Professor Petersmann serving as Chairman. On July 26, 2002, the panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 20, 2002, the Appellate Body upheld the panel's findings. The DSB adopted the panel and Appellate Body reports on January 17, 2003. In order to permit time for consultations, Canada and the United States agreed to suspend further arbitration proceedings. A settlement of the dispute was notified to the DSB on May 9, 2003.

Canada—Measures Relating to Exports of Wheat And Treatment of Imported Grain (DS276)

On December 17, 2002, the United States requested consultations with Canada concerning the export of wheat by the Canadian Wheat Board and the treatment accorded by Canada to grain imported into Canada. The Government of Canada established the Canadian Wheat Board and granted to this enterprise exclusive and special privileges, including the exclusive rights to purchase and sell Western Canadian wheat for human consumption. The actions of the Government of Canada and the Canadian Wheat Board appear to be inconsistent with the obligations of the Government of Canada under Article XVII of the GATT 1994. Furthermore, with regard to the treatment of grain that is imported into Canada, the United States considers that Canadian measures discriminate against imported grain, including grain that is the product of the United States, in breach of the GATT 1994. Consultations were held January 31, 2003. The United States requested the establishment of a panel on March 6, 2003. The DSB established a panel on March 31, 2003. The Director General composed the panel as follows: Ms. Claudia Orozco, Chair, and Mr. Alan Matthews and Mr. Hanspeter Tschaeni, Members. Following a preliminary procedural ruling, the DSB established a second panel on July 11, 2003, with the same panelists and the same schedule.

Egypt—Apparel Tariffs (WT/DS305)

On December 23, 2003, the United States requested consultations with Egypt regarding the duties that Egypt applies to certain apparel and textile imports. During the Uruguay Round, Egypt agreed to bind its duties on these imports (classified under HS Chapters 61, 62 and 63) at rates of less than 50 percent (ad valorem) in 2003 and thereafter. The United States believes the duties that Egypt actually applies, on a "per article" basis, greatly exceed Egypt's bound rates of duty. Consultations are being scheduled.

European Union—Regime for the importation, sale and distribution of bananas (DS27)

The United States, along with Ecuador, Guatemala, Honduras, and Mexico, successfully challenged the EU banana regime under WTO dispute settlement procedures. The regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. On May 29, 1996, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Stuart Harbinson, Chairman; Mr. Kym Anderson and Mr. Christian Häberli, Members. On May 22, 1997, the panel found that the EU banana regime violated WTO rules; the Appellate Body upheld the panel's decision on September 9, 1997. At the request of the complaining parties, the compliance period was set by arbitration and expired on January 1, 1999. However, on January 1, 1999, the European Union adopted a regime that perpetuated the WTO violations identified by the panel and the Appellate Body. The United States sought WTO authorization to suspend concessions with respect to certain products of the European Union, the value of which is equivalent to the nullification or impairment sustained by the United States. The European Union exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be $191.4 million. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States imposed 100 percent ad valorem duties on a list of EU products with an annual trade value of $191.4 million.

On April 11, 2001, the United States and the European Union agreed to an Understanding that identified the means by which the dispute could be resolved. Pursuant to the Understanding, the European Union implemented a revised import licensing regime for its banana tariff-rate quota on July 1, 2001, and allocated a significantly increased number of licenses to U.S. operators. The United States thereupon suspended its increased duties. The European Union implemented an additional change to the tariff-rate quota by January 1, 2002, which resulted in further increases of licenses allocated to US operators.

European Union—Measures concerning meat and meat products (hormones) (WT/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. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. 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 ("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 which 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. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2003, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol.

European Union—Protection of trademarks and geographical indications for agricultural products and foodstuffs (DS174)

EU Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers this measure inconsistent with the European Union's obligations under the TRIPS Agreement and the GATT 1994. The United States requested consultations regarding this matter on June 1, 1999. Consultations were first held July 9, 1999, and continued through mid-2003. On April 4, 2003, the United States requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. The United States and Australia held joint consultations with the EU on May 27, 2003. The United States requested the establishment of a panel on August 18, 2003, and a panel was established on October 2, 2003.

European Union—Provisional Safeguard Measure on Imports of Certain Steel Products (DS260)

On May 30, 2002, the United States requested consultations with the European Union concerning the consistency of the European Union's provisional safeguard measures on certain steel products with the General Agreement on Tariffs and Trade (1994) and with the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, but did not resolve the dispute. Therefore, on August 19, 2002, the United States requested that a WTO panel examine these measures. The panel was established on September 16, 2002.

European Union—Measures affecting the approval and marketing of biotech products (WT/DS291)

On May 13, 2003, the United States filed a consultation request with respect to the EU's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EU. The moratorium is not supported by scientific evidence, and the EU's refusal even to consider any biotech applications for final approval constitutes "undue delay." The national import bans of previously EU-approved products appear not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003.

Japan—Measures Affecting the Importation of Apples (DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's measures restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, Erwinia amylovora. These restrictions include: the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those

apples for other destinations. Consultations were held on April 18, 2002, and a panel was established on June 3, 2002. The Director-General selected as panelists Mr. Michael Cartland, Chair, and Ms. Kathy-Ann Brown and Mr. Christian Haeberli, Members.

In its report issued on July 15, 2003, the panel agreed with the United States that Japan's fire blight measures on U.S. apples are inconsistent with Japan's WTO obligations. In particular, the panel found that: (1) Japan's measures are maintained without sufficient scientific evidence, inconsistent with Article 2.2 of the SPS Agreement; (2) Japan's measures cannot be provisionally maintained under Article 5.7 of the SPS Agreement (an exception to the obligation under Article 2.2); and (3) Japan's measures are not based on a risk assessment and so are inconsistent with Article 5.1 of the SPS Agreement. Japan appealed the panel's report on August 28, 2003.

The Appellate Body issued its report on November 26, 2003, upholding panel findings that Japan's phytosanitary measures on U.S. apples, allegedly to protect against introduction of the plant disease fire blight, are inconsistent with Japan's WTO obligations. In particular, the Appellate Body upheld the three panel findings, detailed above, that Japan had appealed. The DSB adopted the panel and Appellate Body reports on December 10, 2003.

Mexico—Measures affecting trade in live swine (DS203)

On July 10, 2000, the United States requested consultations with Mexico regarding Mexico's October 20, 1999, definitive antidumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears inconsistent with the Antidumping Agreement, and that other actions by Mexico in the conduct of its investigation are also in violation of the Agreement. In addition, the United States considers that, by maintaining restrictions on the importation of live swine weighing 110 kilograms or more, Mexico was acting contrary to its obligations under the Agreement on Agriculture, the SPS Agreement, the Agreement on Technical Barriers to Trade ("TBT Agreement"), and the GATT 1994. Consultations were held September 7, 2000. Subsequent to the consultations, Mexico issued a protocol which has allowed a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico. On May 23, 2003, Mexico terminated the antidumping duty.

Mexico—Measures affecting telecommunications services (DS204)

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services (``GATS") with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to: (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not fully addressed U.S. concerns, particularly with respect to international telecommunications services, on November 10, 2000, the United States filed a request for establishment of a

panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. The United States requested the establishment of a panel on March 8, 2002. The panel was established on April 17, 2002. On August 26, 2002, the Director-General appointed as chairperson Mr. Ulrich Petersmann (Germany), and Mr. Raymond Tam (Hong Kong, China) and Mr. Björn Wellenius (Chile) as panelists.

Mexico—Definitive antidumping measures on beef and rice (WT/DS295)

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns include: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available"; (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleges violations of various provisions of the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the GATT 1994. Consultations were held July 31 and August 1, 2003. The United States requested the establishment of a panel on the measure on rice on September 19, 2003, and the DSB established a panel on November 7, 2003. Consultations on the measure on beef continue.

Venezuela—Import Licensing Measures on Certain Agricultural Products (DS275)

On November 7, 2002, the United States requested consultations with Venezuela concerning its import licensing systems and practices that restrict agricultural imports from the United States. The United States considers that Venezuela's system creates a discretionary import licensing regime that appears to be inconsistent with the Agreement on Agriculture, the TRIMS Agreement, and the Import Licensing Agreement. The United States held consultations with Venezuela on November 26, 2002.

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 2003 when the United States was a defendant.

United States—Foreign Sales Corporation ("FSC") tax provisions (DS108)

The European Union challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel

report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU 's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 ("the ETI Act"), legislation that repealed and replaced the FSC provisions. However, the European Union claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

On January 14, 2002, the Appellate Body issued its report with respect to the ETI Act. The Appellate Body affirmed the findings of the panel that: (1) the ETI Act's tax exclusion constituted a prohibited export subsidy under the WTO Subsidies Agreement; (2) the tax exclusion constituted an export subsidy that violated U.S. obligations under the WTO Agriculture Agreement; (3) the ETI Act's foreign article/labor limitation provides less favorable treatment to "like" imported products in violation of Article III:4 of GATT 1994; and (4) the ETI Act's transition rules resulted in a failure to withdraw the subsidy as recommended by the DSB under Article 4.7 of the Subsidies Agreement. The DSB adopted the panel and Appellate Body reports on January 29, 2002.

In November 2000, the European Union had sought authority to impose countermeasures in the amount of $4.043 billion as a result of the alleged U.S. non-compliance, and the United States had challenged this amount by requesting arbitration. Under a September 2000 procedural agreement between the United States and the European Union, the arbitration was suspended pending the outcome of the EU's challenge to the WTO-consistency of the ETI Act. With the adoption of the panel and Appellate Body reports, the arbitration automatically resumed. On August 30, 2002, the arbitrator circulated its decision. The arbitrator found that the countermeasures sought by the European Union were "appropriate" within the meaning of Article 4.10 of the Subsidies Agreement because, according to the arbitrator, they were not "disproportionate to the initial wrongful act to which they are intended to respond."

Following the adoption of the panel and Appellate Body reports, legislation was introduced in the U.S. House of Representatives to repeal the ETI Act. After holding hearings, both the House Ways and Means Committee and the Senate Finance Committee reported out bills.

On May 7, 2003, the DSB authorized the European Communities ("EC") to impose countermeasures up to a level of $4.043 billion in the form of an additional 100 percent *ad valorem* duty on various products imported from the United States. On December 8, 2003, the Council of the European Union adopted Council Regulation (EC) No. 2193/2003, which provides for the graduated imposition of countermeasures beginning on March 1, 2004.

United States—1916 Revenue Act (DS136/162)

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled "Unfair Competition"), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Grçar and Mr.

Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the European Union and Japan 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. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, 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. Legislation to repeal the Act and terminate cases pending under the Act was introduced in the House on December 20, 2001 and in the Senate on April 23, 2002, but legislative action was not completed. Legislation repealing the Act and terminating pending cases was again introduced in the Senate on May 19, 2003, and repeal legislation that would not terminate pending cases was introduced in the House on March 4, 2003 and in the Senate on May 23, 2003.

On January 17, 2002, the United States objected to proposals by the EU and Japan to suspend concessions, thereby referring the matter to arbitration. On February 20, 2002, the following individuals were selected by mutual agreement of the parties to serve as Arbitrator: Mr. Dimitrij Grcar, Chair; Mr. Brendan McGivern and Mr. Eugeniusz Piontek, Members. At the request of the United States, the Arbitrator suspended its work on March 4, 2002, in light of on-going efforts to resolve the dispute. On September 19, 2003, the EU requested that its arbitration resume.

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 permits certain retail establishments to play radio or television music without paying royalties to songwriters and music publishers. The European Union claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the European Union 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 for in section 110(5) is inconsistent with the United States' 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 European Union 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 European Union requested arbitration to determine the level of nullification or impairment of

benefits to the European Union 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 European Union in this case is $1.1 million per year. On January 7, 2002, the European Union sought authorization from the DSB to suspend 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 European Union have been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002.

On June 23, 2003, the United States and the EU notified to the WTO 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 covers the three-year period ending 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 it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the European Union requested a panel. A panel was established on September 26, 2000, and at the request of the European Union the WTO Director-General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; 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 European Union 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. On March 28, 2002, the United States and the European Union notified the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB's recommendations and rulings would expire on December 31, 2002, or on the date on which the current session of the U.S. Congress adjourns, whichever is later, and in no event later than January 3, 2003. On December 19, 2003, the EU and the United States agreed to extend the reasonable period of time for implementation until December 31, 2004.

United States—Antidumping measures on certain hot-rolled steel products from Japan (DS184)

Japan alleged that the preliminary and final determinations of the Department of Commerce and the 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 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; 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 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. In view of other DSB recommendations and rulings, after consultations with Japan, the United States requested that the "reasonable period of time" in this dispute be extended until December 31, 2003, or until the end of the first session of the next Congress, whichever is earlier. That request was approved by the DSB at its meeting of December 5, 2002. On December 10, 2003, the DSB agreed to extend the reasonable period of time for implementation until July 31, 2004.

United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea (DS202)

On June 13, 2000, Korea requested consultations regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe. These measures were proclaimed by the United States on February 18, 2000, and introduced on March 1, 2000. Korea argued that such measures were inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000. On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000, and composed of the following panelists: Mr. Dariusz Rosati, Chairman and Robert Azevedo and Eduardo Bianchi, Members. The panel report was circulated on October 29, 2001. The panel found that the U.S. measure violates the Safeguards Agreement, but at the same time rejected several of Korea's claims related to both the measure itself and the investigation. The U.S. notice of appeal was filed with the WTO Appellate Body on November 19, 2001.

The Appellate Body issued its report on February 15, 2002. It rejected some of the panel's findings in favor of the United States, but also upheld several of those findings. The DSB adopted the panel report, as modified by the Appellate Body report, on March 8, 2002. The United States and Korea reached agreement in the dispute on July 29, 2002. Pursuant to that agreement, the United States increased the quantity of Korean line pipe exempt from the safeguard measure to 17,500 tons per quarter, effective September 1, 2002. The safeguard measure remained unchanged with regard to other import sources. On March 18, 2003, the United States notified the DSB that the safeguard measure at issue was terminated on March 1, 2003.

United States—Antidumping measures and countervailing measures on steel plate from India (DS206)

India contended that the Department of Commerce made several errors in its final determinations regarding certain cut-to-length carbon quality steel plate products from India, dated December 13, 1999 and amended on February 10, 2000. India also argued that the USITC made errors with respect to the negligibility, cumulation, and material injury caused by such products. India claimed that these errors were based on deficient procedures contained in the U.S. antidumping and countervailing duty laws, and thus raised questions concerning the obligations of the United States under the Antidumping Agreement, the GATT 1994, the Subsidies Agreement, and the Agreement Establishing the WTO. India requested consultations with the United States regarding this matter on October 4, 2000. The United States and India held

consultations in November 2000 and in July 2001. India then filed a panel request, which focused on a subset of the claims it had raised during consultations. On June 21, 2002, the Panel issued its report in the dispute, rejecting most of India's claims. The Panel agreed with India that one aspect of the challenged determination was not consistent with the Antidumping Agreement. It found that the Department of Commerce had failed to explain why it would have been "unduly difficult" to use certain information that the Indian respondent submitted. The DSB adopted the report on July 29, 2002. On August 27, 2002, the United States announced it intentions on implementing the DSB's rulings and recommendations arising from the report. The United States and India subsequently reached agreement on a reasonable period of time for implementation, ending on December 29, 2002.

On February 7, 2003, the United States implemented the DSB's recommendations and rulings by issuing a new determination in the investigation at issue. The authorities examined and considered all of the data on the record, and provided a thorough explanation of their treatment of this data, thereby fully complying with U.S. WTO obligations.

United States—Countervailing duty measures concerning certain products from the European Communities (DS212)

On November 13, 2000, the European Union requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the European Union, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the European Union in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the European Union challenged 12 separate US CVD proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930. At the request of the European Union, the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

On July 31, 2002, the panel circulated its final report. In a prior dispute concerning leaded bar from the United Kingdom, the European Union successfully challenged the application of an earlier version of Commerce's methodology, known as "gamma." In this dispute, the panel found that Commerce's current "same person" methodology (as well as the continued application of the "gamma" methodology in several cases) was inconsistent with the Subsidies Agreement. The panel also found that section 771(5)(F) of the Tariff Act of 1930—the "change of ownership" provision in the U.S. statute—was WTO-inconsistent. The United States appealed, and the Appellate Body issued its report on December 9, 2002. The Appellate Body reversed the panel with respect to section 771(5)(F), finding that it did not mandate WTO-inconsistent behavior. The Appellate Body affirmed the panel's findings that the "gamma" and "same person" methodologies are inconsistent with the Subsidies Agreement, although it modified the panel's reasoning.

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations. U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the CVD law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 Fed. Reg. 37,125. Second, Commerce applied its new methodology to the twelve determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129 of the Uruguay Round Agreements

Act. As a result of this action, Commerce: (1) revoked two CVD orders in whole; (2) revoked one CVD order in part; and (3) in the case of five CVD orders, revised the cash deposit rates for certain companies. *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities,* 68 Fed. Reg. 64,858 (Nov. 17, 2003).

On November 7, 2003, the United States informed the DSB of its implementation of the DSB's recommendations and rulings.

United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany (DS213)

On November 13, 2000, the European Union requested dispute settlement consultations with respect to the Department of Commerce's countervailing duty order on certain corrosion-resistant flat rolled steel products from Germany. In a "sunset review", the Department of Commerce declined to revoke the order based on a finding that subsidization would continue at a rate of 0.54 percent. The European Union alleged that this action violates the Subsidies Agreement, asserting that countervailing duty orders must be revoked where the rate of subsidization found is less than the 1 percent *de minimis* standard for initial countervailing duty investigations. The United States and the European Union held consultations pursuant to this request on December 8, 2000. A second round of consultations was held on March 21, 2001, in which the European Union made a new allegation that the automatic initiation of sunset reviews by the United States is inconsistent with the SCM Agreement. A panel was established at the EU's request on September 10, 2001. The panel was composed of: Mr. Hugh McPhail, Chair, and Mr. Wieslaw Karsz, Member (selected by agreement of the parties); and Mr. Ronald Erdmann, Member (selected by the Director-General).

In its final report, which was circulated on July 3, 2002, the panel made the following findings in favor of the United States: (1) the EU claims regarding "expedited sunset reviews" and "ample opportunity" for parties to submit evidence were not identified in the panel request, and were therefore outside the panel's terms of reference; (2) because Article 21.3 of the Subsidies Agreement contains no evidentiary standard for the self-initiation of sunset reviews, the automatic self-initiation of sunset reviews by Commerce was not a violation; and (3) the U.S. CVD law "as such" is not inconsistent with Article 21.3 with respect to the obligation that authorities "determine" the likelihood of continuation or recurrence of subsidization in a sunset review. Disagreeing with the United States, however, a majority of the panel found that the Subsidies Agreement's one percent *de minimis* standard for the investigation phase of a CVD proceeding applies to sunset reviews. Because U.S. law applies a 0.5 percent *de minimis* standard in reviews, the majority found a violation with respect to U.S. law "as such" and as applied in the German steel sunset review. In a rare step, one panelist dissented from this finding. The panel also found that Commerce's determination of likelihood of continuation or recurrence of subsidization in the German steel sunset review lacked "sufficient factual basis," and therefore was inconsistent with the obligation to "determine" under Article 21.3.

The United States appealed the *de minimis* finding, but not the case-specific finding concerning Commerce's determination of likelihood. The European Union cross-appealed on the findings it lost. The Appellate Body issued its report on November 28, 2002, and found in favor of the United States on all counts. The DSB adopted the panel and Appellate Body reports on December 19, 2002. On January 17, 2003, the United States informed the DSB of its intent to implement the DSB's recommendations and rulings.

United States—Safeguard measures on imports of line pipe and wire rod from the European Communities (DS214)

On December 1, 2000, the European Union requested consultations with the United States

regarding U.S. safeguard measures on imports of circular welded carbon quality line pipe and wire rod. The European Union argued that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The European Union also claimed that certain aspects of the underlying U.S. safeguards legislation—Sections 201 and 202 of the Trade Act of 1974—and Section 311 of the NAFTA Implementation Act prevented the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were held on January 26, 2001, and informal consultations continued thereafter. A panel was established at the EU's request on September 10, 2001, but it has not yet been composed.

United States—Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) (DS217/234)

On December 21, 2000, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 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. 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 (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General).

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 GATT Article VI. The panel also found that the CDSOA distorts the standing determination conducted by the Commerce Department 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 the Commerce Department's consideration of price undertakings (agreements to settle AD/CVD 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 Anti-dumping 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 AD Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

United States—Countervailing duties on certain carbon steel products from Brazil (DS218)

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel

products from Brazil, alleging that the Department of Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement as it was applied by the United States in this countervailing duty case. Consultations were held on January 17, 2001.

United States—Antidumping duties on seamless pipe from Italy (DS225)

On February 5, 2001, the European Union requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The European Union alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001.

United States—Final countervailing duty determination with respect to certain softwood lumber from Canada (DS257)

On May 3, 2002, Canada requested consultations with the United States regarding the U.S. Department of Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated, claimed that the Commerce Department imposed countervailing duties against programs and policies that are not subsides and are not "specific" within the meaning of the Agreement on Subsidies and Countervailing Measures, and that the Commerce Department failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada's request on October 1, 2002. The panel was composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members. In its report, circulated on August 29, 2003, the panel found that the United States acted consistently with the SCM Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the SCM Agreement. It also found, however, that the United States had calculated the benefit incorrectly and had improperly failed to conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5. The Appellate Body report is expected to issue on January 19, 2004.

United States—Calculation of dumping margins (DS239)

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" (or, not offsetting "dumped" sales with "non-dumped" sales) in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

United States—Definitive safeguard measures on imports of certain steel products (DS248-49, 251-54, 258-59)

By Presidential Proclamation 7529 of March 5, 2002, the United States imposed safeguard measures on ten products: certain carbon flat-rolled steel, hot-rolled bar, cold-finished bar, rebar, certain welded pipe, carbon and alloy fittings and flanges, stainless steel bar, stainless steel rod, stainless steel wire, and tin mill steel. The measures consisted for the most part of supplemental tariffs, with one type of certain carbon flat-rolled steel (steel slab) being subject to a tariff-rate quota ("TRQ"). All measures are scheduled to remain in effect until March 21, 2005, with the tariff rates being decreased by one-fifth in the second and third years. (For the

slab TRQ, the in-quota quantity would increase by 3 percent each year). Our FTA partners (Canada, Mexico, Israel and Jordan), along with developing country WTO Members that account for less than three percent of total imports, are not subject to these measures.

The EC, Japan, Korea, China, Switzerland, and Norway requested consultations under the WTO Dispute Settlement Understanding in March and early April of 2002. Consultations were held on 11-12 April 2002 with these countries as complaining parties, and Canada, Mexico, New Zealand, and Venezuela as third parties. These countries requested the formation of panels, which were established and consolidated with each other in June and July of 2002. New Zealand requested consultations on the steel safeguard measures on May 14, and Brazil on May 21. Consultations were held simultaneously with both on June 13. Panels were established in response to the New Zealand and Brazil requests, and consolidated with the panels in the other disputes. The United States reached agreement with the complaining parties to request that the panel adopt an extended briefing schedule. The Director-General appointed the panelists on July 25, 2002, as follows: Ambassador Stefan Johannesson, Chairman, and Mr. Mohan Kumar, and Ms. Margaret Liang, Members.

In a report issued on July 11, 2003, the Panel found that each of the ITC determinations was inconsistent with WTO rules because the ITC did not properly establish that imports caused injury to domestic steel producers, or that any injury was the result of "unforeseen developments." Having found against the ITC determination, the Panel did not address the Administration's decisions on what safeguard measures to apply in response to the ITC determinations.

The United States appealed the report on August 11, 2003. The Appellate Body issued its report on November 10, 2003, and upheld the Panel's ultimate conclusion that each of the ten U.S. safeguard measures imposed is inconsistent with WTO rules. Specifically, it found with regard to all of the safeguard measures that the United States: (1) failed to demonstrate that the injurious imports were the result of unforeseen developments and (2) failed to establish that, after exclusion of our FTA partners, imports from the remaining countries by themselves caused serious injury to the relevant U.S. industries. The Appellate Body also upheld the panel's finding that the ITC failed to provide an adequate explanation of its finding that imports of certain carbon flat-rolled steel, stainless steel rod, and hot-rolled bar increased. In light of these findings, the Appellate Body did not address the U.S. appeal regarding the panel's conclusions on causation. The DSB adopted the panel and Appellate Body reports on December 10, 2003.

Chinese Taipei requested consultations on November 1, 2002. Chinese Taipei alleged violations of Articles 2, 3, 4, and 5 of the Safeguards Agreement, as well as Articles I:1 and XIX:1(a) of the GATT 1994. Consultations were held December 12, 2002.

United States—Rules of origin for textiles and apparel products (DS243)

Section 334 of the Uruguay Round Agreements Act established statutory rules of origin for textile and apparel products. Section 405 of the Trade and Development Act of 2000 amended Section 334. On January 11, 2002, India requested consultations regarding the rules set out in Section 334 and Section 405, claiming that they distorted textile trade and were protectionist in violation of the Agreement on Rules of Origin. Consultations with India took place on February 7, 2002, February 28, 2002 and March 26, 2002. A panel on this matter was established on June 24, 2002, and composed by agreement of the parties on October 10, 2002. The members were as follows: Mr. Lars Anell, Chair; Mr. Donald McRae and Ms. Elizabeth Chelliah. In a report circulated on June 20, 2003, the panel found that the U.S. rules of origin for textile and apparel products are entirely consistent with the United States' WTO obligations. The DSB adopted the report on July 21, 2003.

United States—Sunset review of antidumping duties on corrosion-resistant carbon steel flat products from Japan (DS244)

On January 30, 2002, Japan requested consultations with the United States regarding the final determination of both the United States Department of Commerce and the United States International Trade Commission on the full sunset review of corrosion-resistant carbon steel flat products from Japan, issued on August 2, 2000 and November 21, 2000, respectively. Consultations were held on March 14, 2002. A panel was established at Japan's request on May 22, 2002. The Director-General selected as panelists Mr. Dariusz Rosati, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

In its report circulated on August 14, 2003, the panel found that the United States acted consistently with its international obligations under the WTO in conducting this sunset review. The panel found that Commerce may automatically initiate a sunset review; that U.S. law contains proper standards for conducting sunset reviews; that the *de miminis* and negligibility provisions in the Antidumping Agreement apply only to investigations, not sunset reviews; that U.S. administrative practice can only be challenged with respect to its application in a particular sunset review, not "as such"; and that Commerce and the ITC properly conducted this particular sunset review. Japan appealed the report on September 15, 2003.

The Appellate Body issued its report on December 15, 2003. The Appellate Body agreed that the United States may maintain the antidumping duty order at issue. The Appellate Body, however, concluded that the panel had not fully considered relevant arguments in finding that the Sunset Policy Bulletin can not be challenged "as such," and reversed the finding on that basis. The DSB adopted the panel and Appellate Body reports on January 9, 2004.

United States—Equalizing excise tax imposed by Florida on processed orange and grapefruit products (DS250)

On March 20, 2002, Brazil requested consultations with the United States regarding the "Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States—Section 601.155 Florida Statutes. Consultations were held with Brazil on May 2, 2002, and June 27, 2002, and a panel was established on October 1, 2002, but is not yet composed.

United States—Sunset reviews of antidumping and countervailing duties on certain steel products from France and Germany (DS262)

On July 25, 2002, the European Union requested consultations with the United States with respect to anti-dumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France (dealt with under US case numbers A-427-808 and C-427-810) and Germany (dealt with under US case numbers A-428-815 and C-428-817), and on imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany (dealt with under US case numbers A-428-816 and C-428-817). Consultations were held on September 12, 2002.

United States—Final dumping determination on softwood lumber from Canada (DS264)

On September 13, 2002, Canada requested WTO dispute settlement consultations concerning the amended final determination by the U.S. Department of Commerce of sales at less than fair value with respect to certain softwood lumber from Canada, as published in the May 22, 2002 *Federal Register*, along with the antidumping duty order with respect to imports of the subject products. Canada alleged that Commerce's initiation of its investigation concerning the subject products, as well as aspects of its methodology in reaching its final determination, violated the GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994. Consultations were held on October 11, 2002. On December 6, 2002, Canada requested establishment of a panel, and the DSB established the panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows: Mr.

Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members.

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 Agreement on Subsidies and Countervailing Measures, Article 19 of the Agreement on Agriculture, Article XXII of the General Agreement on Tariffs and Trade 1994, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Brazilian consultation request on U.S. support measures that benefit upland cotton claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture, and the General Agreement on Tariffs and Trade 1994. Consultations were held on December 3, 4 and 19 of 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertains to "prohibited and actionable subsidies provided to US 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 US producers, users and exporters of upland cotton" [footnote omitted]. The Dispute Settlement Body established the panel on March 18, 2003. On May 19, 2003, the Director General appointed as panelists Dariusz Rosati of Poland, Chair; Daniel Moulis of Australia and Mario Matus of Chile, Members.

United States—Sunset reviews of antidumping measures on oil country tubular goods from Argentina (DS268)

On October 7, 2002, Argentina requested consultations with the United States regarding the final determinations of the United States Department of Commerce (USDOC) and the United States International Trade Commission in the sunset reviews of the antidumping duty order on oil country tubular goods (OCTG) from Argentina, issued on November 7, 2000, and June 2001, respectively, and the USDOC's determination to continue the antidumping duty order on OCTG from Argentina, issued on July 25, 2001. Consultations were held on November 14, 2002, and December 17, 2002. Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director General composed the panel as follows: Mr. Paul O'Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members.

United States—Investigation of the U.S. International Trade Commission in softwood lumber from Canada (DS277)

On December 20, 2002, Canada requested consultations concerning the May 16, 2002 determination of the U.S. International Trade Commission (notice of which was published in the May 22, 2002 *Federal Register*) that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. Canada alleged that flaws in the U.S. International Trade Commission's determination caused the United States to violate various aspects of the GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures. Consultations were held January 22, 2003. Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members.

United States—Countervailing duties on steel plate from Mexico (WT/DS280)

On January 21, 2003, Mexico requested consultations on an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico. Mexico alleges that the Department of Commerce used a WTO-inconsistent methodology—the "change-in-ownership"

methodology—to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the WTO Agreement on Subsidies and Countervailing Measures. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on August 4, 2003, and the DSB established a panel on August 29, 2003.

United States—Anti-dumping measures on cement from Mexico (WT/DS281)

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations of Commerce and the ITC, and the ITC's refusal to conduct a changed circumstances review. Mexico also referred to certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. Mexico cited a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the ITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003.

United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the ITC. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appears to be on the analytical standards used by Commerce and the ITC in sunset reviews, although Mexico also challenges certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003.

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

On March 13, 2003, Antigua & Barbuda requested consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the *General Agreement on Trade in Services* ("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 & Barbuda from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003. Antigua & Barbuda requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of the Antigua & Barbuda, the WTO Director-General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members.

United States—Laws, regulations and methodology for calculating dumping margins ("zeroing") (WT/DS294)

On June 12, 2003, the European Union 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.

United States—Countervailing duty investigation on dynamic random access memory semiconductors (DRAMS) from Korea (WT/DS296)

On June 30, 2003, Korea requested consultations regarding determinations made by Commerce and the ITC in the countervailing duty investigation on DRAMS from Korea, and related laws and regulations. Consultations were held August 20, 2003. Korea requested further consultations on August 18, 2003, which were held October 1, 2003. Korea requested the establishment of a panel on November 19, 2003. The panel request covered only the Commerce and ITC determinations made in the DRAMS investigation.

2. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement Establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM is a valuable resource for improving the transparency of Members' trade and investment regimes and in ensuring adherence to WTO rules. The TPRM examines national trade policies of each Member on a schedule designed to cover the full WTO Membership on a frequency determined by trade volume. The process starts with an independent report by the WTO Secretariat on the trade policies and practices of the Member under view. This Member works closely with the Secretariat to provide relevant information for the report. The Secretariat report is accompanied by another report prepared by the government undergoing the review. Together these reports are discussed by the WTO Membership in a TPRB session. At this session, the Member under review will discuss the report and answer questions on its trade policies and practices. The express purpose of the review process is to strengthen Members observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system. A number of Members have remarked that the preparations for the review are helpful in improving their own trade policy formulation and coordination. The current process reflects improvements to streamline the TPRM and gives it broader coverage and greater flexibility. Reports cover the range of WTO agreements including goods, services, and intellectual property and are available to the public on the WTO's web site at www.wto.org. Documents are filed on the site's Document Distribution Facility under the document symbol "WT/TPR."

Major Issues in 2003

During 2003, the TPRB conducted the following 17 reviews: Maldives, El Salvador, Canada, Burundi, South African Custom's Union (comprised of Botswana, Lesotho, Namibia, South Africa, and Swaziland), New Zealand, Morocco, Indonesia, Niger/Senegal (reviewed together as West-African Monetary Union members), Honduras, Bulgaria, Guyana, Haiti, Thailand, Chile, and Turkey. This group included six least-developed country Members and seven Members reviewed for the first time. As of the end of 2003, the TPRM had conducted 182 reviews, covering 110 out of 146 Members (counting the European Union as fifteen) and representing approximately 87 percent of world merchandise trade.

Reviews have emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of trade policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfillment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing-countries of customs valuation methods, the adaptation of national legislation to WTO requirements and technical assistance.

As of the end 2003, twenty of the WTO's 30 least-developed country Members have been reviewed. For least developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have implications and uses beyond the meeting of the TPRB. The TPRB's report to the Singapore Ministerial Conference recommended greater attention be paid to LDCs in the preparation of the TPRB timetable, and a 1999 appraisal of the operation of the TPRM also drew attention to this matter. Trade Policy Reviews of LDCs have increasingly performed a technical assistance function and have been useful in broadening the understanding of LDC's trade policy structure. These reviews tend to enhanced understanding of WTO Agreements, enabling better compliance and integration in the multilateral trading system. In some cases, the TPR has facilitated better interaction between government agencies. The TPRM's comprehensive coverage of trade policies also enables Members to identify shortcomings in specific areas where further technical assistance may be required.

The seminars and the technical assistance involve close cooperation between LDCs and the WTO Secretariat. This cooperation continues to respond more systematically to technical assistance needs of LDCs. The review process for an LDC now includes a multi-day seminar for its officials on the WTO and, in particular, the trade policy review exercise and the role of trade in economic policy; such seminars were held in 2003 for the review process of Gambia and Rwanda, a similar seminar has been held for Guyana.. Similar exercises have been conducted in Benin, Burkina Faso, Mali. Belize and Suriname. The Secretariat Report for an LDC review includes a section on technical assistance needs and priorities with a view to feeding this into the Integrated Framework process.

Prospects for 2004

The TPRM will continue to be an important tool for monitoring Members' adherence to WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. The program for 2004 calls for conducting 16 reviews, including the United States and the European Union, as well as, Brazil, Belize, Jamaica, Korea, Norway, Singapore, Sri Lanka, Suriname, and the Custom's territory of Switzerland and Liechtenstein. In addition, five LDC Members will be reviewed as well—Benin, Burkina Faso, Gambia, Mali, and Rwanda.

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 Trade-related Investment Measures (TRIMS)) in addition to the Textiles Monitoring Body (TMB), and the Working Party on State Trading.

Major Issues in 2003

In 2003, the CTG held five formal meetings. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions taken by individual Members with respect to the operation of agreements. Many of these complaints were resolved through consultation. In addition, four major issues were extensively debated in the CTG in 2003:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System, renegotiation of tariff schedules, and waivers for the implementation of the Kimberly Process. A list of waivers currently in force can be found in Annex II.

TRIMS Article 9 Review: The Council met several times, formally and informally, to consider proposals by India and Brazil to lower the level of obligations for developing countries under the TRIMS agreement. Developed countries expressed their opposition to rewriting the agreement.

China Transitional Review: On November 26, the CTG conducted China's Transitional Review (TRM) as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information, answered questions posed by Members and reviewed the TRM reports of CTG subsidiary bodies. (See Chapter IV Section F on China for more detailed discussion of its implementation of WTO commitments).

Trade Facilitation: CTG met twice in 2003 in sessions dedicated to this issue. The CTG discussed how to improve and clarify Article X (transparency), Article VIII on fees and formalities, and Article V (transit). Progress was made in all of these areas.

Textiles: The CTG considered two proposals from developing countries concerning textile trade. Developing countries proposed that Members maintaining textile restraints increase quota growth rates for the remainder of the ATC. However, Members maintaining textile restraints argued that they had followed the provisions of the ATC precisely when calculating the appropriate quota levels. Developing country Members also proposed that Members maintaining textile restraints grant carry forward for the year 2004. However, these Members rejected this proposal citing the fact that all quotas are eliminated beginning in January 2005 and the ATC does not provide for carry forward in 2004.

Prospects for 2004

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Outstanding waiver requests will also be further examined.

1. Committee on Agriculture

Status

In 1995, the WTO formed the Committee on Agriculture to oversee the implementation of the Agreement on Agriculture and to provide a forum for Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems without needing dispute settlement. The Committee also has responsibility for monitoring the parties to the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net Food-Importing Developing Countries (or "NFIDC Decision").

Major Issues in 2003

The Committee held four formal meetings in March, June, September, and November 2003, to review progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of 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, 171 notifications were subject to review during 2003. The United States actively participated in the notification process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States raised questions concerning elements of domestic support programs used by the European Union, Canada, Norway, South Africa, and India; identified restrictive import licensing and tariff-rate quota administration practices by China, the European Union, Norway, New Zealand, South Africa, and Barbados; questioned Chinese Taipei's use of the special agricultural safeguard; and raised concerns with India's export policies. The Committee also proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States

identified concerns with India's soybean oil tariffs, the Dominican Republic's import licensing scheme, and China's export subsidies, value-added tax policies, and TRQ allocation processes.

In the framework of the follow-up to the Decision by the Doha Ministerial Conference on Implementation-Related Issues and Concerns, the following agricultural implementation-related issues were further considered by the Committee: (1) the 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 Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) improving the effectiveness of the implementation of the NFIDC Decision; and (3) enhancing Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner.

On the basis of its formal and informal discussions regarding short-term financing difficulties by least-developed and net food-importing developing countries, a number of recommendations were adopted by the Committee. These recommendations were approved by the General Council at its meeting on 24-25 July.

At its March meeting, the Committee decided to accept the application by Namibia to be included in the WTO list of net food-importing developing countries. This list currently comprises the least-developed countries as recognized by the United Nations and the following 24 developing country Members of the WTO: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, Egypt, Honduras, Jamaica, Jordan, Kenya, Mauritius, Morocco, Namibia, Pakistan, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia and Venezuela.

The annual monitoring exercise on the follow-up to the NFIDC Decision as a whole was undertaken at the November meeting of the Committee, on the basis, *inter alia*, of Table NF:1 notifications by donor Members as well as contributions by the observer organizations.

Prospects for 2004

The United States will continue to make full use of the Committee on Agriculture 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 any other trade-distorting practices by WTO Members. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on least developed and net food-importing developing countries in accordance with the Agreement on Agriculture.

2. 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 Agreement is overseen by the Committee on Antidumping Practices, 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 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 Committee has adopted Working Group recommendations on: (1) pre-initiation notifications under Article 5.5 of the Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; (3) extensions of time to supply information; (4) the timeframe to be used in calculating the volume of dumped imports for making the determination under Article 5.8 of the Agreement as to whether the volume of such imports is negligible; and (5) guidelines for the improvement of annual reviews under Article 18.6 of the Agreement.

The last two recommendations listed above, both agreed upon in November 2002, addressed issues referred to the Committee by the 2001 Ministerial Decision on Implementation-Related Issues and Concerns. In 2003, the Committee and a number of WTO Members, including the United States, began implementing those recommendations. Many Members, including the United States, filed notifications with respect to their practices as to the timeframe under Article 5.8 of the Agreement, in accordance with the Committee's recommendation on that issue. In addition, pursuant to the Committee's recommendation under Article 18.6 designed to improve transparency in the Committee's annual reviews, in 2003 a number of Members, including the United States, provided additional information in their semi-annual reports to the Committee, and the Committee's annual report reflected this additional information.

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. Under this framework, the Informal Group held meetings in April and October 2003 to discuss the topics of: (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent circumvention can be dealt with under existing WTO rules and what other options may be deemed necessary.

Major Issues in 2003

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 experience with respect to Members' application of antidumping remedies.

In 2003, the Antidumping Committee held two meetings, in May and October. At its meetings, the 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 in each case over the preceding six months.

Among the more significant activities undertaken in 2003 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following:

Notification and Review of Antidumping Legislation: To date, 75 Members of the WTO have notified that they currently have antidumping legislation in place, while 29 Members have notified that they maintain no such legislation. In 2003, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Armenia, China, Costa Rica, Dominican Republic, Estonia, the European Union (EU), Latvia, Lithuania, Mexico, New Zealand, Nicaragua, Pakistan, Peru and Zimbabwe. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings.

Notification and Review of Antidumping Actions: In 2003, 32 WTO Members notified that they had taken antidumping actions during the latter half of 2002, whereas 27 Members did so with respect to the first half of 2003. (By comparison, 35 Members notified that they had not taken any antidumping actions during the latter half of 2002, and 26 Members notified that they had taken no actions in the first half of 2003). These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

China Transitional Review: At the October 2003 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its second annual transitional review with respect to China's implementation of the Agreement. Several Members, including the United States, presented written and oral questions to China with respect to China's antidumping laws and practices, particularly emphasizing concerns about a lack of transparency in some of China's practices, with China orally providing information in response to these questions at the October 2003 meeting. The United States also submitted several sets of questions to China with respect to its notifications to the WTO of its antidumping regulations and rules, as part of the regular Committee review of notifications of antidumping legislation, and submitted follow-up questions to China in late 2003 after receiving China's initial responses.

European Union Expansion: At both its May and October 2003 meetings, the Committee discussed issues pertaining to the status of outstanding antidumping measures of the EU in light of the future expansion of the EU from 15 members to 25 members in 2004. The United States filed written questions to the EU on this issue, raising concerns about whether the EU's announced intention to extend automatically, upon expansion, its antidumping measures now covering imports into the territory of the 15 current member-states of the EU to cover imports into the territory of the 25 member-states after expansion would be consistent with the Antidumping Agreement, particularly in the absence of an additional determination of injury covering the territory of the 25 member-states. At the Committee's October 2003 meeting, the EU responded orally to the U.S. questions, and several other Members raised additional questions and concerns on this issue.

Working Group on Implementation: The Working Group held two rounds of meetings in April and October 2003. The Working Group's principal focus in 2003 was the selection of new topics for discussion, and then the first discussion of those topics. In April 2003, the Working Group considered various possible topics, and, upon its recommendation, the Committee in May 2003 approved four topics for the Working Group to discuss beginning at the fall meeting: (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; and (4) judicial, arbitral or administrative reviews under Article 13. At its October 2003 meeting, the Working Group held its first discussion of these topics, with the United States submitting papers on the topics of foreign exchange fluctuations, conduct of verifications, and judicial, arbitral or administrative review. In addition to these topics, the Group also considered at the April and October 2003 meetings a draft recommendation on conditions of competition relevant to cumulation under Article 3.3. No agreement has been reached by the Group on this draft recommendation, but it is expected that the Group will consider this issue again in 2004.

The Working Group continues to serve as an active venue for work regarding the practical implementation of WTO antidumping provisions. It offers important opportunities for Members to examine issues and candidly exchange views and information across a broad range of topics. It has drawn a high level of partic-

ipation 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. Implementation concerns and questions stemming both from one's own administrative experience and from observing the practices of others are equally addressed. 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 Agreement's provisions and exploring options for improving practices among antidumping administrators.

Informal Group on Anticircumvention: The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its two meetings in 2003, the Informal Group on Anticircumvention continued its useful discussions on the first three items of the agreed framework of (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent can circumvention be dealt with under the relevant WTO rules? To what extent can it not? And what other options may be deemed necessary?

Members submitted papers and made presentations outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, that have legislation intended to address circumvention, responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. For the October 2003 meeting of the Informal Group, the United States submitted a paper summarizing its experience in two recent circumvention investigations that it had conducted.

Prospects for 2004

Work will proceed in 2004 on the areas that the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention 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 Committee is important to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other countries 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 Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2004. These reports are becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II). This promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation will continue to play an important role as more and more Members enact laws and begin to apply them. There has been a sharp and widespread interest in clarifying understanding of 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. Indeed, it is only in the Antidumping Committee and the Working Group that Members can devote the considerable

time and resources needed to conduct a responsible examination of these questions. For these reasons, the United States will continue to rely upon 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 which Members employ to implement them. Therefore, as Members continue to submit papers on the topics being considered and participate actively in the discussions, the Group's utility should continue to grow. In 2004, the Working Group will continue its discussion of the four topics that it began discussing at its October 2003 meeting: (1) export prices to third countries vs. constructed value under Article 2.2 of the Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; and (4) judicial, arbitral or administrative reviews under Article 13.

The work of the Informal Group on Anticircumvention will also continue in 2004 according to the framework for discussion on which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible.

3. Committee on Customs Valuation

Status

The purpose of the WTO Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation) 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 provided through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied.

Major Issues in 2003

The Agreement is administered by the WTO Committee on Customs Valuation, which held three formal meetings in 2003. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO). In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Committee on Customs Valuation 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. In April 2003, the WTO Secretariat compiled information indicating that 31 Members were using preshipment inspection regimes.

Experience continues to demonstrate that the implementation of the Agreement on Customs Valuation by developing countries often represents their first concrete and meaningful step toward reforming their customs regimes, and ultimately moving to a rules-based border environment for conducting trade transactions. Because the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish one of the incentives for corruption by customs officials. For all of these reasons, as part of an overall strategic approach to trade facilitation, the United States has taken an aggressive role at the WTO on matters related to customs valuation.

U.S. exporters across all sectors—including agriculture, automotive, textile, steel, and information technology products—have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. U.S. exporters to many developing countries have had market access gains undermined through the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy - one that provides no measure of administrative transparency or procedural fairness. 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. It is notable that the use of minimum import prices, a practice inconsistent with the operation of the Agreement on Customs Valuation, continues to diminish as more developing countries undertake full implementation of the Agreement.

Achieving universal adherence to the WTO Agreement on Customs Valuation has been a longstanding and important objective of the United States, dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary as a "code," until mandated as part of membership in the WTO. Under the Uruguay Round Agreement, special transitional measures were provided for developing country Members, allowing for delayed implementation of the Agreement on Customs Valuation and resulting in individual implementation deadlines for such Members beginning in 2000.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2003 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Working with key trading partners, the United States led the consultations for most such requests, which resulted in the development of a detailed decision tailored to the situation of the requesting Member. Each decision has included an individualized benchmarked work program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests. The United Arab Emirates maintains an extension of the delay period in accordance with the provisions of paragraph 1, Annex III. El Salvador, Guatemala, Madagascar, and Sri Lanka maintain reservations that have been granted under paragraph 2, Annex III for minimum values, or under the Article IX waiver provisions.

In 2003, in accord with the Doha Ministerial mandate on "Implementation-Related Issues and Concerns," the Committee continued to examine five proposals from India pertaining to the operation of several provisions of the Agreement. Support for these proposals from other WTO Members has been limited, and Members did not come to consensus on these issues in 2003. The Committee also actively worked to meet another Doha implementation-related mandate to "identify and assess practical means" for addressing concerns by several Members on the accuracy of declared values of imported goods. The Technical Committee was requested to provide this input, and in May 2003 it submitted its report along with a draft "Guide To the Exchange of Customs Valuation Information." The Committee's work in this area will continue in 2004.

An important part of the Committee's work is the examination of implementing legislation. As of November 2003, 74 Members had notified their national legislation on customs valuation. During 2003, the Committee concluded the examinations of amendments to Australia's legislation, and the legislation of Bolivia, Brunei Darussalam, China, Côte d'Ivoire, Cuba, Morocco and Slovakia. In November 2003, the Committee also conducted a Transitional Review in accordance with Paragraph 18 of the Protocol of China's accession to the WTO.

The Committee's work throughout 2003 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 2004

The Committee's work in 2004 will include a review of the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other Members concerning implementation deadlines. The

Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. The Committee will also work toward conclusion of its examination of the implementation-related proposals by India. 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 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.

4. Committee on Import Licensing

Status

The Committee on Import Licensing was established to administer the Agreement on Import Licensing Procedures and to monitor compliance with the mutually agreed rules for the application of these widely used measures. The Committee meets at least twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations of the Agreement. The Committee also receives questions from Members on the licensing regimes notified by other Members, and addresses specific observations and complaints concerning Members' licensing systems. While not a substitute for dispute settlement procedures, these consultations on specific issues allow Members to clarify problems and possibly to resolve them before they become disputes. Since the accession of China to the WTO in December 2001, the Committee has also conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism provided for in the Protocol of Accession.

Background

The Agreement on Import Licensing Procedures establishes rules for all WTO Members that use import licensing systems to regulate their trade. Its obligations establish disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. The Agreement's provisions are intended to ensure that the use of such procedures by Members does not create additional barriers to trade beyond what was intended by the requirements themselves. The notification requirements and the system of regular Committee reviews seek to increase the transparency and predictability of Members' licensing regimes. While the Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they establish the base line of what constitutes a fair and non-discriminatory application of the procedures. The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems where certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions, for quotas and tariff-rate quotas (TRQs) or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Agreement.

Major Issues in 2003

At its meetings in May and October 2003, the Committee reviewed 64 initial or revised notifications, completed questionnaires on procedures, and replies to questions from Committee members from 59 WTO Members (including EU Member States), a slight decline in the number of notifications from 2002 but bringing the number of Members notifying at least once to an all time high. The United States notified its licensing requirements for imports subject to the safeguard measures on steel products. Written questions were also submitted on Indonesia's non-automatic licensing system for selected textile products, first notified during 2002. The United States sought information and explanations from Indonesia on the operation of this licensing

system; the administration of the restrictions; the number and nature of import licences granted over a recent period; the distribution of such licences among supplying countries; and available import statistics with respect to the products subject to import licensing.

The Committee continued discussions on how the number and frequency of notifications by Members could be increased. The Chairman reported that at the end of 2003, only 26 of 146 Members (counting EU member states individually), had never submitted a notification to the Committee, bringing the percentage of WTO members with at least an initial notification to 83 percent. Concern remained, however, that notifications were not being submitted with the frequency required by the Agreement.

Since the September 2002 Committee meeting, four WTO Members have submitted requests for consultations initiating dispute settlement cases concerning import licensing procedures. The Philippines, the United States, and Nicaragua requested consultations with Australia, Venezuela, and Mexico respectively, concerning licensing requirements on agricultural products. The EU sought consultations addressing import restrictions in India's import and export trade policy in the period 2002-2007.

At its October meeting, the Committee carried out its second annual review of China's implementation of its WTO commitments relating to import licensing procedures as part of the Transitional Review Mechanism (TRM) included in the terms of China's accession protocol. The United States and other WTO Members, including the EU, Japan and Chinese Taipei, raised questions and concerns regarding China's implementation in several areas, including trading rights, China's administration of import quotas for automobiles, China's administration of TRQs for bulk agricultural commodities and fertilizer, and China's use of import inspection permits for a range of agricultural products. A report on the meeting was transmitted for use by the General Council conducting the overall review in December.

Prospects for 2004

Both in the context of the Doha Development Agenda and in the day-to-day administration of current obligations, consideration of import licensing procedures is likely to intensify, principally with regard to the administration of agricultural TRQs, safeguard measures, and technical and sanitary requirements applied to imports. The Committee also will continue to be the point of first contact in the WTO for Members with complaints or questions on the licensing regimes of other Members. As use of import licensing increases, e.g., to enforce national security, environmental, and technical requirements, to administer TRQs, or to manage safeguard measures, utilization of the Committee as a forum for discussion and review will increase. As demonstrated by the recent increase in requests for formal consultations, this could have the effect of increasing the number of dispute settlement cases on import licensing requirements as well.

The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Agreement, with renewed focus on securing timely revisions of the notifications, including the questionnaire, and responses to written questions, as required by the Agreement. The Committee will also continue to conduct annual reviews of China's import licensing operations in support of the TRM.

5. Committee on Market Access

Status

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

Major Issues in 2003

During 2003, WTO Members continued implementing the tariff reductions agreed in the Uruguay Round with the Committee having responsibility for verifying that implementation is proceeding on schedule. The Committee held two formal meetings in 2003, resumed a suspended formal meeting held over from November 2002, and held five informal meetings to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; (2) the WTO Integrated Data Base; (3) finalizing consolidated schedules of WTO tariff concessions in current HS nomenclature; (4) reviewing the status of notifications on quantitative restrictions and reverse notifications of non-tariff measures; and, (5) implementation issues related to "substantial interest." The Committee also conducted its second annual transitional review of China's implementation of its WTO accession commitments.

Updates to the Harmonized System (HS) of tariff nomenclature: In 1993, the Customs Cooperation Council—now known as the World Customs Organization (WCO)—agreed to approximately 400 sets of amendments to the HS, which were to enter into effect on January 1, 1996. These amendments result in changes to the WTO schedules of tariff bindings. Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting bound tariff items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession and can pursue unresolved objections under GATT 1994 Article XXVIII.

Since 1996, successive waivers have been granted by decisions of the General Council until implementation procedures can be finalized. The majority of WTO Members have completed the process, but a few Members continue to require waivers. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members which had adopted the HS in the years following its introduction on January 1, 1988.

Using the same procedures, the Committee also began to review Members' WTO amendments which took effect on January 1, 2002 (HS2002). Drawing from the experience of HS96, the Committee, working with the Secretariat, has developed electronic procedures that will facilitate and expedite the process of reviewing and approving the 373 proposed amendments under HS2002. The United States submitted its proposed changes to the Secretariat in December 2001.

Integrated Data Base (IAB): The Committee addressed issues concerning the IAB, which is to be updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. The U.S. objectives are to achieve full participation in the IAB by all WTO Members and, ultimately, to develop a method to make the trade and tariff information publicly available. In recent years, the United States has taken 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.

During 2003, the separate Negotiating Group on Non-Agricultural Market Access also took up this issue and developed procedures to facilitate the transfer of applicable tariff and trade data from other sources. As a result, participation has continued to improve. As of December 2003, 95 Members and three acceding countries had provided IAB submissions.

Consolidated schedule of tariff concessions (CTS): The Committee continued work to implement an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflects Uruguay Round tariff concessions; HS96 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (*e.g.*, participation in the

Information Technology Agreement). The data base also includes agricultural support tables. The CTS will be linked to the IAB and will serve as the vehicle for conducting Doha negotiations in agriculture and non-agricultural market access.

China Transitional Review: In October 2003, the Committee conducted the second annual review of China's implementation of its WTO commitments on market access. The review touched upon issues such as implementation of China's schedule of tariff commitments, tariff-rate quota administration, management of industrial quotas, and China's application of value added and consumption taxes.

Implementation Issues: The Committee continued a discussion from 2002 on two implementation issues referred by the General Council. The first, a proposal by St. Lucia, dealt with the definition of "substantial supplier" in the context of quota allocations. Several developing countries expressed concern that the proposal could undermine the rights and obligations of some Members. The Secretariat undertook several analyses of the substantial supplier issue. The Committee also examined the issue of redistribution of negotiating rights. After lengthy discussion on these topics, the Committee reported back to the General Counsel that it could not reach a consensus on either issue.

Prospects for 2004

The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will likely explore technical assistance needs related to data submissions. As Members finalize HS96 updates, the Committee will turn to reviewing Members' amended schedules based on the HS2002 revision. The electronic verification process, which incorporates the CTS data, will facilitate the review process and help developing countries to generate their own HS2002 submissions.

6. Committee on Rules of Origin

Status

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The Agreement on Rules of Origin 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 request. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade regimes. The harmonization work program is more complex than initially envisioned under the Agreement, which originally set for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2003 and will continue into 2004.

The Agreement is administered by the WTO Committee on Rules of Origin, which met formally and informally throughout 2003. The Committee also served 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 Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the harmonization work program.

As of the end of 2003, 84 WTO Members notified the WTO concerning non-preferential rules of origin, of which 43 Members notified that they had non-preferential rules of origin and 41 Members notified that they did not have a non-preferential rules of origin regime. 89 Members notified the WTO concerning preferential rules of origin, of which 86 notified about their preferential rules of origin and four notified that they did not have preferential rules of origin.

Major Issues in 2003

The WTO Committee on Rules of Origin continued to focus on the work program on the multilateral harmonization of non-preferential rules of origin. U.S. proposals for the WTO origin harmonization work program have been developed under the auspices of a Section 332 study being conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The proposals reflect input received from the private sector and ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the WTO Committee on Rules of Origin. Representatives from several U.S. Government agencies continue to be actively involved in the WTO origin harmonization work program, including the Bureau of Customs and Border Protection (formally the U.S. Customs Service), the U.S. Department of Commerce, and the U.S. Department of Agriculture.

In addition to the October 2003 formal meeting, the Committee conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. The Committee proceeded in accordance with a December 2001 mandate from the General Council, which extended the harmonization work program while specifically requesting that the Committee on Rules of Origin focus during the first half of 2002 on identifying core policy issues arising under the harmonization work program that would require attention of the General Council.

The Committee continued to make progress in reducing the number of issues that remained outstanding under the harmonization work program, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In 2003, the Committee focused on approximately 90 unresolved issues identified as "core policy issues." Many of these issues are particularly significant due to their broad application across important product sectors, including steel, beef products, sugar, automotive goods, and dairy products. Specific origin questions among these "core policy issues" include, for example, how to determine the origin of fish caught in an Exclusive Economic Zone, or whether the refinement, fractionation, and hydrogenation substantially transform oil and fat products to a degree appropriate to confer country of origin. A cross-cutting unresolved "core policy issue" continues to arise from the apparent absence of common understanding among Members concerning the Agreement's prospective obligation, upon completion of the harmonization and implementation of the results, for Members to "apply rules of origin equally for all purposes." As a result, positions have sometimes been divided between a strictly neutral analysis under the criterion of 'substantial transformation' and an advocacy of restrictiveness for certain product-specific rules that would be unwarranted for application to the normal course of trade but is perceived as necessary for the operation of certain regimes or measures covered by other Agreements.

Prospects for 2004

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 result in non-transparency, discrimination, and a lack of predictability. Attention will continue to be given to the implementation of the Agreement's important disciplines related to transparency, which are recognized elements of what are considered to be "best customs practices."

Further progress in the harmonization work program will remain contingent on achieving appropriate resolution of the "core policy issues" identified by the Committee. In accordance with a decision taken by the General Council in July 2003, work will continue on addressing these issues. The General Council, at its meeting in July 2003, extended the deadline for completion of the 94 core policy issues to July 2004. The General Council also agreed that following resolution of these core policy issues, the CRO would complete its remaining technical work by December 31, 2004.

7. Committee on Safeguards

Status

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

The Agreement on Safeguards incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking safeguard actions to prevent or remedy serious injury to a domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- requires a transparent, public process for making injury determinations;
- sets out clearer definitions than GATT Article XIX of the criteria for injury determinations;
- requires safeguard measures to be steadily liberalized over their duration;
- establishes an eight-year maximum duration for safeguard actions, and 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, which had been utilized by countries to avoid GATT disciplines and which adversely affected third-country markets.

Major Issues in 2003

During its two regular meetings in April and October 2003, the Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from China, Costa Rica, Croatia, the European Union, Indonesia, Japan, Latvia, Mexico, and Chinese Taipei.

The 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, from the following Members: Bulgaria on iron and steel; Ecuador on fibreboard, smooth ceramics and ceramics and porcelains; Estonia on swine meat, the European Union on certain prepared or preserved mandarins; Hungary on ammonium nitrate and white sugar; India on bisphenol A; Jordan on aerated water; Moldova on sugar; the Philippines on glass mirrors, figured glass and float glass; Poland on matches; and Venezuela on footwear.

The Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Bulgaria on ammonium nitrate; China on certain steel products; the Czech Republic on sugar, tubes & pipes, and ammonium nitrate; Hungary on certain steel products and ammonium nitrate; India on edible vegetable oils; Jordan on sanitary ware products and pasta; Latvia on swine meat; the Philippines on glass mirrors, figured glass and float glass; Poland on certain steel products, calcium carbide and water heaters; the Slovak Republic on ammonium nitrate.

The Committee reviewed Article 12.1(c) notifications, regarding a decision to apply or extend a safeguard measure, from the following Members: Bulgaria on crown corks and ammonium nitrate;

China on certain steel products; the Czech Republic on sugar, tubes & pipes, and ammonium nitrate; Ecuador on fibreboard and matches; Hungary on certain steel products and ammonium nitrate; India on epichlorohydrin; Jordan on sanitary ware products and pasta; Latvia on live pigs and pork; the Philippines on cement; Poland on certain steel products, calcium carbide and water heaters; and the Slovak Republic on ammonium nitrate.

The Committee received notifications from the following Members of the termination of a safeguard investigation with no safeguard measure imposed: Bulgaria on urea and steel; the Czech Republic on wires, ropes and cables; certain steel products, and citric acid, Hungary on certain steel products and ammonium nitrate; and from Jordan on ceramic tiles, electric accumulators and two types of cooking appliances and aerated water.

The Committee reviewed a notification from the United States on the results of the mid-term review of its safeguard measures on steel.

The Committee reviewed Article 12.4 notifications, regarding the application of a provisional safeguard measure, from the following Members: Chile on fructose; the Czech Republic on ammonium nitrate; Ecuador on smooth ceramics; Hungary on ammonium nitrate and white sugar; the Philippines on glass mirrors, figured glass and float glass; and Venezuela on iron/steel "U" sections and footwear.

China Transitional Review: At the October 2003 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its second transitional review with respect to China's implementation of the Agreement. Several Members, including the United States, addressed questions and comments to China, with a particular emphasis on transparency concerns, relating to China's notification of its safeguard regulations and rules, and to China's safeguard measure with respect to certain steel products. China's representatives provided oral responses at the October meeting. In addition to its comments during the transitional review, the United States also submitted several sets of written questions to China as part of the regular Committee reviews of notifications of safeguards legislation and notifications of safeguard actions, in order to obtain further information on China's safeguard rules and practices. China submitted written responses in October 2003, and we expect to follow up in 2004 with respect to these issues.

Implementation: At both the April and October 2003 meetings, the Committee discussed various issues pertaining to Article 9.1 of the Agreement, concerning the exclusion of developing country Members from the application of safeguard measures when certain criteria are met. In addition, pursuant to the direction of the General Council, the Committee considered a proposal by the Africa Group with respect to special and differential treatment for developing country Members under paragraphs 1 and 2 of Article 9 of the Agreement. The Committee adopted a report to the General Council on this issue at a special meeting in July 2003, stating that it was unable to reach consensus with respect to the proposal.

Prospects for 2004

The Committee's work in 2004 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 laws. Among the notifications in late 2003 that the Committee will be reviewing in 2004 are notifications by the EU of its provisional safeguard measure on certain prepared or preserved mandarins, and by Brazil of its intention to extend its safeguard measure on toys.

8. Committee on Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures to ensure that sanitary and phytosanitary measures address legitimate

human, animal and plant health concerns; do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products; and are not disguised restrictions on international trade. SPS measures protect against risks associated with plant or animal borne pests and diseases, additives; contaminants; toxins and disease-causing organisms in foods, beverages, or feedstuffs. Fundamentally, the Agreement requires that such measures be based on science and developed through systematic risk assessment procedures. At the same time, the SPS Agreement preserves every WTO Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

The SPS Committee is a forum for consultation on Members' existing or proposed SPS measures that affect international trade, the implementation and administration of the Agreement, technical assistance, and the activities of the international standard-setting bodies. It also includes discussions of the Agreement's provisions related to transparency in the development and application of SPS measures, special and differential treatment, technical assistance, and equivalence.

Participation in the Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. In addition, representatives of a number of international organizations are invited to attend meetings of the Committee as observers on an *ad hoc* basis: the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the FAO/WHO Codex Alimentarius Commission, the FAO International Plant Protection Convention Secretariat (IPPC), the International Office of Epizootics (OIE), the International Organization for Standardization (ISO) and the International Trade Center (ITC), and others.

A number of documents relating to the work of the SPS Committee are available to the public directly from the WTO website: www.wto.org. The SPS Committee documents are indicated by the symbols, "G/SPS/...." Beginning in 2000, notifications of proposed SPS measures are indicated by G/SPS/N ("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 country). Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point shown in the box below. Reports of Committee meetings are issued as "G/SPS/R/..." (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/SPS/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public on the WTO's website.

Major Issues in 2003

In 2003, the Committee met three times and the Secretariat convened a workshop on the operation of inquiry points immediately following the November meeting. These meetings are used increasingly by members to raise concerns regarding the new and existing SPS measures of other Members. In addition, members are using the Committee meetings to exchange views and experiences in implementing various provisions of the agreement such as equivalence, transparency and regionalization. The United States views this as a positive development as it demonstrates growing familiarity with and implementation of the provisions of the SPS Agreement and increasing recognition of the value of the Committee as a venue to discuss SPS-related trade issues among Members.

With assistance from the United States and other donors, the 34 countries participating in the Free Trade Area of the Americas negotiations attended each of the meetings of the Committee in 2003. This significantly expanded capital-based, and Geneva-based, participation in the Committee. Plans are being made to secure funding sources to continue this assistance for attendance at future meetings.

BSE-TSE[2]: The Committee also devoted considerable time to discussing Members activities regarding BSE and TSE's. Several Members have proposed and introduced measures to protect consumers and animals against BSE. The Committee discussed the need for these measures to be based on science and that international standards should be used as the basis of Members' actions, unless Members have a scientific justification for a more protective measure than that provided by the international standard. The United States anticipates that BSE will continue to be an issue of interest and concern of many Members and the Committee will have extensive discussions about the nature of the disease and measures taken by Members to protect public health and animal health. Several Members, including the United States, raised concerns about the non-science based categorization of countries' BSE-status and the use of this categorization to restrict trade.

Implementation of the Bioterrorism Act: At the November 2002 meeting and at each 2003 meeting of the Committee, the United States provided information on the implementation of the Public Health Security and Bioterrorism Preparedness Act of 2002, known simply as the Bioterrorism Act (BTA). The primary requirements of the BTA which affect food imported into the United States are: the requirement for all food handling facilities (including foreign facilities if they export to the United States), with some exceptions such as farms and restaurants, to register with the U.S. Food and Drug Administration (FDA); and to provide prior notice of all food consignments imported into the United States. Under the leadership of FDA, various U.S. agencies have conducted outreach and education to other countries to ensure exporters to the United States are aware of these requirements and know how to comply. Part of this effort included the presentation of information at each meeting of the SPS Committee and special outreach sessions conducted on the margins of the March and November Committee meetings to provide Members with the opportunity to discuss these new requirements with FDA experts. During the March Committee meeting, Members were encouraged to submit comments and concerns about the proposed rules on registration and prior notice before the close of the comment period on April 4, 2003. The concerns of Members were also noted by FDA and appropriate responses were provided. At the November meeting, the major changes from the proposed rules that were reflected in the interim final rules and implementation requirements were explained both in the Committee meeting and at a special outreach meeting hosted by the United States. Members were also informed that although the implementation of the interim final rules could not be delayed (due to the automatic implementation provisions of the BTA on December 12, 2003), the United States would show flexibility regarding the enforcement of these requirements.

Equivalence: At the request of developing-country Members, the Committee held several informal meetings on the provisions of Article 4 of the Agreement—Equivalence. In 2001, the United States submitted a paper (G/SPS/W/111) outlining our views and the activities of regulatory agencies as they relate to equivalence. This paper and submissions from other Members enabled the Committee to develop and approve a decision of the Committee (G/SPS/19) which outlines steps designed to make it easier for Members to make use of the provisions of Article 4 of the Agreement. In 2002, the Committee began discussions on certain aspects of this decision which need clarification. The Committee adopted a work plan for the next two years on the clarification of this decision.

Notifications: During several discussions in the Committee regarding specific trade concerns among Members and equivalence, Members indicated that a specific discussion on the

2 Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy

notification requirements and process would be helpful. The Committee decided to have informal meetings on notifications and transparency in 2002. At the June meeting, the Committee adopted a revision to the notification form and added space for Members to describe measure recognized to be equivalent.

Technical Assistance: In June 2000, the United States submitted information (G/SPS/W/181) on technical assistance which had been provided to Members on SPS issues. This information is updated on an annual basis to reflect assistance provided since the previous report in July 2001 (G/SPS/W/181add.1), June 2002 (add.2) and in June 2003 (add.3). Committee meeting, the United States provided updated information((G/SPS/W/181add.2) describing the technical assistance provided by U.S. agencies since the last report.

China's Transitional Review Mechanism: The United States participated in the Committee's second review of China's implementation of its WTO under paragraph 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions regarding China's notification procedures, scientific basis for some of its SPS measures, national treatment and import inspection and approval procedures (G/SPS/W/139). This paper and those of other Members formed the basis of the Committee's discussions at the November meeting. China provided oral responses to the questions raised by the United States and other Members and restated its commitment to implement the provisions of the SPS Agreement.

Transparency: The SPS Agreement provides a process whereby WTO Members can obtain information on other Members' proposed SPS regulations and control, inspection, and approval procedures, and the opportunity to provide comments on those proposals before implementing Members' make their final decisions. These transparency procedures have proved extremely useful in preventing trade problems associated with SPS measures. The United States continued to press all WTO Members to establish an official notification authority, as required by the Agreement, and to ensure that the Agreement's notification requirements are fully and effectively implemented. Each Member is also required to establish a central contact point, known as an inquiry point, to be responsible for responding to requests for information or making the appropriate referral. This inquiry point circulates notifications received under the Agreement to interested parties for comment. The SPS inquiry point for the United States is:

U.S. Inquiry Point

Office of Food Safety and Technical Services
Attention: Carolyn F. Wilson
Foreign Agricultural Service
U.S. Department of Agriculture
AG Box 1027
Room 5545 South Agriculture Building
14th and Independence Avenue, S.W.
Washington, DC 20250-1027

Telephone: (202) 720-2239
Fax: (202) 690-0677
email: ofsts@fas.usda.gov

Prospects for 2004

The Committee will continue to monitor implementation of the Agreement by WTO Members. As mentioned above, the number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise concerns and then work bilaterally to resolve specific trade concerns. The number of concerns in this area is evidence of the importance and usefulness Members place on the effective operation of the Agreement. The Committee will continue to be an important forum for Members to provide information about efforts to manage and control food safety and animal health emergencies as well as ongoing food safety, animal and plant health activities that affect international trade.

In addition, during 2004, the United States expects the Committee to continue discussions on technical assistance and notifications. To date, developed countries have submitted most of the

papers and the United States will be encouraging developing-country Members to participate more actively in both formal meetings and informal consultations to identify improvements. At the November meeting, Committee agreed to an informal meeting in March 2004 on Article 6, Regionalization. Members have been invited to submit papers on their experiences with these provisions of the Agreement. These discussions are expected to continue throughout 2004. As a result of implementation discussions in the General Council, the Committee will need to address plans for conducting a review of the Agreement as agreed upon by the General Council. The Committee will continue to monitor the development of international standards, guidelines and recommendations by standard-setting organizations. The Committee will seek to identify areas where the development of additional or new standards would facilitate international trade and provide this information to the appropriate standard-setting organization for consideration. The Committee will also prepare for and conduct a review of China's implementation of the SPS Agreement.

9. Committee on Subsidies and Countervailing Measures[3]

Status

The Agreement on Subsidies and Countervailing Measures (Subsidies 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. The Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.[4] Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, yet are also actionable (through CVD or dispute settlement action) 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 WTO[3] Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

Major Issues in 2003

The Committee held two regular meetings in 2003. In addition to its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. In this regard, the Committee took action to address the poor and declining state of compliance with subsidy notifications in an effort to find a long-term solution to the problem. During the fall meeting, the

3 For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, Subsidies Enforcement Annual Report to the Congress, February 2004.

4 Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies so long as such assistance conformed to the applicable terms and conditions set forth in Article 8. In addition, Article 6.1 of the Agreement provided that certain other subsidies, referred to as dark amber subsidies, could be presumed to cause serious prejudice. These were: (i) subsidies to cover an industry's operating losses; (ii) repeated subsidies to cover a firm's operating losses; (iii) the direct forgiveness of debt (including grants for debt repayment); and (iv) when the ad valorem subsidization of a product exceeds five percent. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had not resulted from the subsidy. However, as explained in our1999 report, a mandatory review was conducted in 1999 under Article 31 of the Agreement to determine whether to extend the application of these provisions beyond December 31 of that year. They expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

Committee also undertook its second transitional review with respect to China's implementation of the Agreement. Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement, the ramifications of European Union enlargement on existing trade remedy measures, and the election of two persons to the Permanent Group of Experts. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and subsidies, 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 Agreement. To date, 97 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 35 Members have not yet notified that they maintain such legislation. Among the notifications of CVD laws and regulations reviewed in 2003 were those of: Antigua and Barbuda; Argentina; Brazil; China; Costa Rica; Czech Republic; Dominican Republic; the European Communities; Grenada; Japan; Lithuania; Mexico; New Zealand; Nicaragua; Pakistan; Turkey; and, Zimbabwe[5]. The notifications of Armenia and Peru were scheduled to be reviewed at the fall 2003 regular meeting but were postponed until next year.

As for CVD measures, six WTO Members notified CVD actions taken during the latter half of 2002, and eleven Members notified actions taken in the first half of 2003. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Costa Rica, the European Union, Latvia, Mexico, New Zealand, Peru, South Africa, the United States and Venezuela. With respect to subsidy notifications, 34 Members provided new and full notifications for 2003. (Importantly, the United States submitted its subsidy notification in 2003, continuing to be in compliance with its subsidy notification obligations under the Agreement.) Twenty-two of these notifications were reviewed in the fall of 2003. The remainder will be reviewed next year. In 2003, the Committee continued its examination of new and full notifications submitted for 1998 and 2001, as well as updating notifications submitted for 1999 and 2000.

Although WTO Membership was 146 as of December 2003, as noted above, only 34 Members provided new and full notifications for 2003. Only 59 Members submitted new and full subsidy notifications for 2001, while 47 and 43 Members, respectively, submitted updating notifications for the 1999 and 2000 periods. Notably, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.

In view of the ongoing difficulties experienced by Members, in meeting the Agreement's subsidy notification obligations, a three-prong strategy has been employed to address the problem. The first prong was to examine alternative practical approaches to the frequency and nature of subsidy notifications, as well as their review. In 2001, Members decided to devote maximum effort to submitting new and full notifications, every two years, and to de-emphasize the review of the annual updating notifications. Examination of the format for a subsidy notification constituted the second prong of the strategy.

5 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.

Efforts in this regard were made in 2002 and culminated in the adoption in 2003 of a revised, simplified format. The third prong was the organization of a subsidy notification seminar, geared to participation by capital-based officials responsible for notification which was held in 2002. Pursuant to an informal U.S. initiative, several developed country Members have offered technical assistance to neighboring developing country Members experiencing difficulty in assembling and submitting subsidy notifications. Implementation of this initiative will hopefully provide the needed impetus for those developing countries in need to meet their obligations under the Subsidies Agreement and thereby address, at least in part, the relatively poor record of WTO Members in submitting notifications of their subsidy programs.

China Transitional Review: At the fall meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the second annual transitional review with respect to China's implementation of its WTO obligations in the areas of subsidies, countervailing measures and pricing policies. A number of Members, including the United States, presented written and oral questions and concerns to China in these areas. China provided substantial information with respect to its countervailing duty laws and regulations, as well as some information regarding its pricing policies. While China orally described some of its subsidy programs in response to Members' inquiries during the transitional review, it has not submitted a subsidies notification since becoming a WTO Member, citing numerous practical difficulties in assembling and submitting the appropriate information. During the transitional review, the United States and others expressed concern that China had not yet submitted a subsidies notification and urged it to do so as soon as possible.

Extension of the transition period for the phase out of export subsidies: Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2001. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Subsidies Committee by December 31, 2002. The Committee has the authority to decide whether an extension is justified. In making this determination, the Committee must consider the "economic, financial and development needs" of the developing country Member. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.[6] If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

In an attempt to try and address the concerns of small exporter developing countries, a special procedure within the context of Article 27.4 of the Agreement, was adopted at the Fourth Ministerial Conference under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than $20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures are eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.[7]

In 2002, Colombia, El Salvador, Panama and Thailand made requests under the normal extension process provided for in the Agreement. Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras,

6 Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

7 In addition to agreement on the specific length of the extension, it was also agreed at the Fourth Ministerial Conference, in essence, that the Committee should look favorably upon the extension requests of Members which do not meet all the specific eligibility criteria for the special small exporter procedures but which are similarly situated to those that do meet all the criteria. This provision added at the request of Colombia.

Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.[8] Uruguay requested an extension for one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidies programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries.

In 2003, no requests were made for extensions under the normal Article 27.4 procedures.[9] Requests were made however, by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries. Colombia also requested an extension for two of its export subsidies programs for which extensions were granted under the procedure agreed to at the Fourth Ministerial Conference. All these requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Committee conducted a detailed review of more than 46 export subsidy programs. At the end of the process, all of the requests under the special procedures were granted. Throughout the review and approval process, the United States took a leadership role in ensuring close adherence to all of the preconditions necessary for continuation of the extensions.

The Methodology for Annex VII(b) of the Agreement: Annex VII of the Agreement identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable under the dispute settlement process. Secondly, a higher *de minimis* threshold is provided for in countervailing duty investigations of imports from these countries, although this standard expired at the end of 2002.[10] The countries 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).[11] A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the $1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the *de facto* interpretation by the Committee of the $1,000 threshold was current (i.e., nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an approach based on certain World Bank data that were used by the Uruguay Round negotiators in 1990 in developing Annex VII(b). While many Members expressed the view that they could accept this proposed methodology, other

8 Bolivia, Guatemala, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did need to make any decisions as to whether their particular programs qualify under the special procedures.

9 As a result, the export subsidy programs of Colombia, El Salvador, Panama and Thailand which had been granted normal Article 27.4 extensions in 2002, must be phased out within two years (i.e., the end of 2005).

10 This de minimis for Annex VII countries was 3 percent, compared with the 2 percent for other developing countries.

11 Annex VII(b) countries 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.

Members indicated that it was more appropriate to rely on more recently available data. Thus, it was not possible to reach a consensus on the question of methodology.

At the Fourth Ministerial Conference, it was agreed:

> ... that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches U.S. $1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached U.S. $1000 based upon the most recent data from the World Bank.[12]

No alternative methodology was proposed in 2002. Therefore, the Chairman's methodology proposed in 2001 has been in effect since January 1, 2003. The WTO Secretariat updated the calculations later in the year.[13]

European Union Expansion: At the fall meeting, the Committee discussed issues pertaining to the status of outstanding countervailing duty measures of the EU in light of the future expansion of the EU from 15 members to 25 members in 2004. The United States filed written questions to the EU on this issue, raising concerns about whether the EU's announced intention to extend automatically, upon expansion, its countervailing duty measures now covering imports into the territory of the 15 current member-states of the EU to cover imports into the territory of the 25 member-states after expansion would be consistent with the Agreement, particularly in the absence of an additional determination of injury covering the territory of the 25 member-states. The EU responded orally to the U.S. questions, and several other Members raised additional questions and concerns on this issue. Discussion will continue in 2004.

Permanent Group of Experts: Article 24 of the 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 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 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 WTO 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 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year. At of the beginning of 2002, the members of the Permanent Group of Experts were: Professor Okan Aktan; Mr. Jorge Castro Bernieri; Dr. Marco Bronckers; Professor R.G. Flores Jr.; and Mr. Hyung-Jin Kim. Professor Flores' term as a member of the PGE

12 The addition of the phrase "for three consecutive years" was added at the request of Honduras which was concerned that their possible graduation from Annex VII in the near future might place them in a worse position than those Members which avail themselves of the special procedures under Article 27.4 for small developing country exporters.

13 See G/SCM/110.

expired in the spring of 2003. In addition, Mr. Castro-Bernieri, who was elected to the PGE for the term 2001-2006, resigned upon his appointment to the WTO Secretariat. Mr. Terence P. Stewart—a recognized international trade law practitioner from the United States—and Mr. Yuji Iwasawa were elected to replace Mr. Castro-Bernieri and Professor Flores to the PGE, assuming terms until spring 2006, and spring 2008, respectively.

Prospects for 2004

In 2004, the United States will continue to work with others to try to identify ways to rationalize the burdens of subsidy notification for all WTO Members without diminishing transparency or taking away from the other substantive benefits of the notification obligation and to provide technical assistance when available and where appropriate. Second, the United States will participate actively in the review of other WTO Members' CVD legislation and actions, as well as China's Transitional Review, and will bring to Members' and the Committee's attention any concerns which may arise about such laws or actions, whether in general or in the context of specific proceedings. Thirdly, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

10. 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 product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. Its aim is to prevent the use of technical requirements as unnecessary barriers to trade. The Agreement applies to a broad range of industrial and agricultural products, though sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. It establishes rules that help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations and conformity assessment procedures are to be developed and applied on a non-discriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

U.S. Inquiry Point

National Center for Standards and Certification Information
National Institute of Standards and Technology (NIST)
100 Bureau Drive, Stop 2150
Gaithersburg, MD 20899-2150

Telephone: (301) 975-4040
Fax: (301) 926-1559
email: ncsci@NIST.GOV

NIST offers a free web-based service, Export Alert!, that provides U.S. customers with the opportunity to review and comment on proposed foreign technical regulations that can affect them. By registering for the Export Alert! Service, U.S. customers receive, via e-mail, notifications of drafts or changes to foreign regulations for a specific industry sector and/or country. To register on-line contact:

The TBT Committee[14] serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: A key opportunity for the public resulting from the TBT Agreement is the ability to obtain information on proposed standards, technical regulations and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Members are also required to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on technical requirements or making the appropriate referral.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/...." Notifications by Members of proposed technical regulations and conformity assessment procedures which 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 country or Member).[15] Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the 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). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and is available to the public on the WTO's website.

Major Issues in 2003

The TBT Committee met three times in 2003. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. U.S. interventions were primarily targeted at a variety of proposals from the European Commission that could seriously disrupt trade.

---

14 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 international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an ad hoc basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

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

The Committee conducted its Eighth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/12, and its Eighth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in G/TBT/CS/1/Add.7 and G/TBT/CS/2/Rev.9. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.8.

Follow-up to the Second Triennial Review of the Agreement: Beyond bilateral trade concerns discussed under "Statements on Implementation," the work of the Committee has focused on issues identified in the Second Triennial Review of the Agreement (see G/TBT/9). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of their rights and obligations under the Agreement. In follow-up to that review, priority attention has been given to technical assistance and the implementation needs of developing countries, as well as to trade effects resulting from labeling requirements.

Technical Assistance: In the Second Triennial Review, the Committee recognized the importance of ensuring that solutions to implementation problems were targeted at the specific priorities and needs identified by individual or groups of developing country Members. This called for effective coordination at the national level between authorities, agencies, and other interested parties to identify and assess the priority infrastructure needs of a specific Member. The Committee recognized the need for coordination and cooperation between donor Members and organizations, as well as between the Committee, other relevant WTO bodies, and donor organizations. In order to enhance the effectiveness of technical assistance and cooperation, the Committee agreed to develop a demand-driven technical cooperation program beginning with the identification and prioritization of needs by developing countries, and working with other relevant international and regional organizations. To this end, the Committee developed and conducted a *Questionnaire for a Survey to Assist Developing Country Members to Identify and Prioritize their Specific Needs in the TBT Field* (G/TBT/W/178). To date, over 50 WTO Members responded to the survey. The Secretariat prepared an un-restricted summary of the survey responses received prior to the October 17, 2002, meeting of the Committee (G/TBT/W/186). On March 18, 2003 the Committee held a Workshop on Technical Assistance which included presentations on assistance needs, case studies on successful approaches, and a discussion of future strategies.

Labeling: The Committee intensified its exchange of information on issues associated with labeling requirements, noting the frequency with which specific concerns regarding mandatory labeling were raised at meetings of the Committee during discussions on implementation, and stressing that although such requirements can be legitimate measures, they should not become disguised restrictions on trade. Since the conclusion of the Second Triennial Review, a number of Members presented papers on their views, including submission from the United States (G/TBT/W/165). Although Switzerland and the European Union suggested the need for clarification of TBT disciplines to better address labeling concerns, their view gained little support, with most WTO Members including the United States emphasizing the need to comply with existing obligations. In response to a request from the Committee, the Secretariat prepared two background papers to inform the discussions: a compilation of notifications made since 1995 (G/TBT/W/183), and a compilation of specific trade concerns related to labeling raised at meetings of the TBT Committee (G/TBT/W/184). The Secretariat estimates some 723 notifications have been made between January 1, 1995 and August 31, 2002 which involved labeling proposals. The Committee held a "Learning Event" on labeling on October 21-22, 2003. The event was focused on case studies, with a particular focus on developing countries' concerns.

Third Triennial Review: At its meeting on November 7, 2003, the Committee concluded its Third Triennial Review of the Agreement (G/TBT/13). The review reflected discussions undertaken by the Committee since the conclusion of the Second Triennial Review in 2000. The Review focused on the following topics: (a) implementation and administration of the Agreement; (b) good regulatory practice; (c) transparency procedures; (d) conformity assessment procedures; (e) technical assistance and special and differential treatment; and, (f) other elements. Among other things, the Committee agreed to intensify its exchange of information on conformity assessment , including implementation of supplier's declaration of conformity and other approaches to facilitate the acceptance of conformity assessment results through future workshops. It will also explore ways to facilitate coordination within the WTO and with other bodies technical assistance in response to identified needs. The United States submission for the Triennial Review is contained in G/TBT/W/220. The Triennial Review includes a listing of all the submissions made by Members in the context of the review and which are available at www.wto.org. It also includes information, by Member, on whether they have established an enquiry point and provided a Statement regarding domestic steps that have been taken to implement the Agreement.

Prospects for 2004

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing. The Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of specific concerns. In 2004, the Committee is expected to host at least one workshop on conformity assessment in follow-up to the Third Triennial Review. Follow-up on issues raised in past reviews, or discussion of new issues in preparation for the Fourth Review, are driven by Members statements and submissions. The U.S. priorities are likely to continue to focus on good regulatory practice, transparency and technical assistance.

11. Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligation to treat imports no less favorably than domestically produced products and the GATT Article XI obligation not to impose quantitative restrictions on imports. The TRIMS Agreement thus requires the elimination of certain measures imposing requirements on, or linking advantages to, the performance 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 violate its obligations. The TRIMS Agreement required formal notification and eventual elimination of TRIMS measures that existed at the time the agreement came into force in January 1995. Developed countries were required to eliminate notified TRIMS by the beginning of 1997, developing countries by the beginning of 2000, and least developed countries by the beginning of 2002. In 2001, eight developing countries were granted up to four additional years (retroactive to the beginning of 2000) to eliminate notified TRIMS. These extensions expired at the end of 2003.

Developments relating to the TRIMS Agreement are monitored and discussed both in the CTG and in the CTG Committee on Trade-Related Investment Measures (TRIMS Committee). The United States focused its work on TRIMS issues in several areas during 2003: the review of the operation of the TRIMS Agreement mandated under Article 9; monitoring compliance with the agreement; proposals for the provision of special and differential treatment relating to the TRIMS Agreement; and a review of China's compliance efforts.

Major Issues in 2003

The TRIMS Committee held three formal meetings during 2003. TRIMS issues were also discussed during several meetings of the CTG.

The CTG continued its review of the operation of the TRIMS Agreement mandated by Article 9 of the Agreement. Members discussed proposals by several developing countries—including a 2002 paper from Brazil and India submitted under the Doha Ministerial Declaration mandate (paragraph 12(b)) to review the implementation of WTO agreements—recommending that the TRIMS Agreement be amended to allow developing countries to use TRIMS for development purposes.

The United States and several other WTO members opposed proposals to amend the TRIMS Agreement, arguing that TRIMS had been shown to distort trade flows and to discourage foreign investment, harming developing countries. Given the lack of consensus on proposals to amend the TRIMS Agreement, the United States argued that the Article 9 review should be concluded. The United States also argued that individual WTO Members experiencing difficulty complying with the Agreement should seek relief under existing WTO waiver mechanisms.

During meetings of the TRIMS Committee and of the CTG in late 2002 and 2003, the United States sought to verify whether the eight WTO Members that received extensions of their TRIMS phase-out deadlines in 2001 had eliminated notified measures and come into full compliance with the Agreement. In November 2003, six of these countries (Argentina, Colombia, Mexico, Philippines, Romania, and Thailand) reported that they had eliminated outstanding measures or were on track to do so by the end of the year. The Malaysian delegation was not able to describe the current status of its efforts to phase-out remaining TRIMS. Pakistan reported that it would not eliminate certain auto-related TRIMS by the end of 2003. In December, Pakistan requested that its deadline for eliminating certain measures in the automotive sector be extended again, until the end of 2006.

As part of the review of special and differential treatment provisions, the Chairman of the General Council considered several TRIMS-related proposals submitted by a group of African countries. One proposal stated that WTO Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by developing and least-developed countries to safeguard their balance of payments. Under the second proposal, least-developed or other low-income WTO Members experiencing balance-of-payments difficulties would be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. The final African proposal would have required the CTG to grant new requests from least-developed countries and certain other developing countries for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS.

The African S&D proposals were discussed during several TRIMS Committee meetings in June and July. The United States argued that any TRIMS measures imposed for balance-of payments purposes must follow existing WTO rules on balance-of-payments safeguards. The United States also said that it would not be appropriate to adopt fixed time periods for maintaining TRIMS measures in response to balance-of-payments crises and that, given the lack of requests for TRIMS extensions from least-developed countries to date, it was not convinced that a policy of automatically granting requests for longer TRIMS transition periods was warranted. Following extensive consultations, the Chairman concluded that it would be possible to reach agreement on the first African proposal, but that compromise on the other proposals was not attainable. The Chairman noted the absence of consensus in a July report to the General Council.

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its second annual review in 2003 of China's implementation of the TRIMS Agreement and related

provisions of the Protocol. The United States' principal objectives were to obtain information and clarification regarding China's WTO compliance efforts and to convey to China, in a multilateral setting, the concerns that it has regarding Chinese practices and/or regulatory measures that may not be in accordance with China's WTO commitments. During the October meeting of the TRIMS Committee, U.S. questions focused on China's regulation of the auto sector. U.S. agencies are analyzing China's policies and its responses to U.S. questions in an effort to decide whether and how to pursue these issues during future meetings of the CTG or the TRIMS Committee.

Prospects for 2004

In early 2004, the United States will seek to verify the elimination of TRIMS by the countries that received extensions of the transition period until the end of 2003. The United States will also engage other WTO Members in efforts to promote compliance with the TRIMS Agreement.

12. Textiles Monitoring Body

Status

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervises the implementation of all aspects of the Agreement. Pursuant to the provisions of the ATC, the 10-year period for phasing out textile restraints ends on December 31, 2004. After that date, all remaining textile restraints maintained under the provisions of the ATC will be eliminated and the TMB will cease to exist. In 2003, TMB membership was composed of appointees and alternates from the United States, the European Union, Japan, Canada, Turkey, Peru, Indonesia, China, India, and Korea. Each TMB member serves in a personal capacity.

The ATC succeeded the Multifiber Arrangement (MFA) as an interim arrangement establishing special rules for trade in textile and apparel products on January 1, 1995. All Members of the WTO are subject to the disciplines of the ATC, whether or not they were signatories to the MFA, and only Members of the WTO are entitled to the benefits of the ATC. The ATC is a ten-year arrangement which provides for the gradual integration of the textile and clothing sector into the WTO and provides for improved market access and the gradual and orderly phase-out of the special quantitative arrangements that have regulated trade in the sector among the major exporting and importing nations.

The United States has implemented the ATC in a manner which ensures that the affected U.S. industries and workers as well as U.S. importers and retailers have a gradual, stable and predictable regime under which to operate during the quota phase-out period. At the same time, the United States has aggressively sought to ensure full compliance with market-opening commitments by U.S. trading partners, so that U.S. exporters may enjoy growing opportunities in foreign markets.

Under the ATC, the United States is required to "integrate" products which accounted for specified percentages of 1990 imports in volume over three stages during the course of the transition period—that is, to designate those textile and apparel products for which it will henceforth observe full GATT disciplines. Once a WTO Member has "integrated" a product, the Member may not impose or maintain import quotas on that product other than under normal GATT procedures, such as Article XIX. As required by Section 331 of the Uruguay Round Agreements Act, the United States selected the products for early integration after seeking public comment, and published the list of items at the outset of the transition period, for purposes of certainty and transparency. The integration commitments for stages one and two were completed in 1995 and 1998. The United States notified the TMB in 2001 of the integration commitments for stage three and implemented these commitments on January 1, 2002. The list for all three stages may be found in the *Federal Register*, volume 60, number 83, pages 21075-21130, May 1, 1995.

Also as part of the ATC, with each "stage" is a requirement that the United States and other importing Members increase the annual growth rates applicable to each quota maintained under the Agreement by designated factors. Under the ATC, the weighted average annual growth rate for WTO Members' quotas increased from 4.9 percent in 1994 to 9.3 percent in 2002.

Major Issues in 2003

A considerable portion of the TMB's time in 2003 was spent reviewing notifications made under Article 2 of the ATC dealing with textile products integrated into normal GATT rules and no longer subject to the provisions of the ATC. WTO Members wishing to retain the right to use the Article 6 safeguard mechanism were required in 2001 to submit a list of products comprising at least 18 percent (calculated by trade volume) of the products included in the annex to the ATC. A number of these notifications were defective for various reasons and in a number of cases the TMB's review has carried into 2003. The TMB expressed concern that a number of countries which announced their intention to retain the right to use Article 6 safeguards failed to make the required integration notification. TMB documents are available on the WTO's web site: http://www.wto.org. Documents are filed in the Document Distribution Facility under the document symbol "G/TMB." The TMB also reviewed notifications from the United States, the European Union, Canada and Turkey concerning their textile restraints on China. These notifications were made to the TMB following the accession of China to the WTO in December 2001.

Prospects for 2004

Although the TMB will dissolve at the end of 2004, the United States will continue to monitor compliance by trading partners with market opening commitments, and will raise concerns regarding the implementation of these commitments through 2004 in the TMB and in other WTO fora, as appropriate. The United States will also pursue further market openings, including in negotiations with WTO applicants in the process of acceding to the WTO. In addition, the United States will continue to respond to surges in imports of textile products which cause or threaten serious damage to U.S. domestic producers. The United States will also continue efforts to enhance cooperation with U.S. trading partners and improve the effectiveness of customs measures to ensure that restraints on textile products are not circumvented through illegal transshipment or other means.

13. Working Party on State Trading

Status

Article XVII of GATT 1994 requires Members to place certain restrictions on the behavior of state trading firms and on private firms to which they accord special or exclusive privileges to engage in importation and exportation. Among other things, Article XVII requires Members to ensure that "state trading enterprises" 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. To address the ambiguity regarding which types of firms fall within the scope of "state trading enterprises," an agreement was reached in the Uruguay Round referred to as "*The Understanding on the Interpretation of Article XVII*" (the "Understanding"). The Understanding defines a state trading enterprise and instructs Members to notify the Working Party of all enterprises in their territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

A WTO Working Party was established in 1995 to review, *inter alia*, the notifications of state trading enterprises and the coverage of state trading enterprises that are notified, and to develop an illustrative list of relationships between Members and state trading enterprises and the kinds of activities engaged in by these enterprises, which may be relevant for the purposes of Article XVII of GATT 1994. All Members are required under Article XVII of GATT 1994 and paragraph 1 of the Understanding to submit annual notifications of their state trading activities.

The WTO Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to non-agricultural products. Before the Uruguay Round, agricultural products were effectively outside the disciplines of GATT 1947. This also limited review of state trading enterprise activities, since many state trading enterprises directed trade in agricultural products. The lack of tariff bindings on agricultural products in most countries also limited the scope of GATT 1947 disciplines because without tariff bindings governments could raise import duties and state trading enterprises could impose domestic mark-ups on imported products.

Under the Agreement on Agriculture, all agricultural tariffs (including tariff-rate quotas (TRQs)) are now bound. While further work is needed on the administration of TRQs, bindings act to limit the scope of state traders to manipulate imports. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading enterprises. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading enterprises, particularly single-desk importers or exporters of agricultural products, and have called for more meaningful disciplines.

Major Issues in 2003

New and full notifications were first required in 1995 and, subsequently, every third year thereafter. updating notifications indicating any changes are to be made in the intervening years. The notifications submitted by WTO Members as of November 11, 2003 were: 40 Updating Notifications for 2000; 49 New and Full Notifications for 2001; 31 Updating Notifications for 2002; and 12 Updating Notifications for 2003. On November 24, 2003, the United States submitted New and Full Notifications of its state trading enterprises for 1998 and 2001 and Updating Notifications for 1999, 2000, 2002 and 2003.

The Working Party held one formal meeting in November 2003 where it reviewed Member notifications. It also adopted a recommendation to the Council for Trade in Goods to change the periodicity of notifications from new and full notifications every three years with updating notifications in the intervening years, to new and full notifications every two years with an elimination of the updating notifications.

In October 2003, the United States submitted a request for information from Egypt regarding the operations of the Alexandria Cotton Exporters' Association (ALCOTEXCA) and its members, pursuant to Article XVII:4(c) of GATT 1994. Article XVII:4(c) provides that a Member that has reason to believe its interests are being adversely affected by the operations of a state trading enterprise may request that the Member establishing, maintaining or authorizing such enterprise supply information about its operations related to carrying out the provisions of GATT 1994. The United States believes that its interests are being adversely affected by the operations of the (ALCOTEXCA) and its members.

Prospects for 2004

As part of the agricultural negotiations in the WTO, the United States proposed specific disciplines on both import and export agricultural state trading enterprises that would expand transparency and competition for these entities. Specifically, the United States has proposed the elimination of exclusive trading rights of single desk exporters, stronger notification requirements, and the elimination of the use of government funds or guarantees to finance potential operational deficits or to otherwise insulate export state trading enterprises from market or pricing risk.

In 2004, the Working Party on state trading enterprises will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information could be submitted as part of the notification process to enhance transparency of state trading enterprises.

F. Council for Trade in Services

Status

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established services firms with foreign ownership. The Agreement 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 national schedules, similar to the national schedules for tariffs. The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. Ongoing negotiations take place in the CTS meeting in Special Session, described earlier in this chapter. The following section discusses work of the CTS regular session.

Major Issues in 2003

The Fifth Protocol of the GATS (Financial Services) was reopened for three new members during 2003: the Dominican Republic, Uruguay, and Poland.

India tabled a paper concerning implementation of GATS Article VII, regarding Mutual Recognition. Several developing country Members argued that lack of mutual recognition agreements regarding the qualifications of service providers effectively limits market access. In particular, India argued that Members must investigate whether some non-governmental entities were delegated powers by the government to conclude mutual recognition agreements and therefore required notification pursuant to Article VII. This issue is especially, but not exclusively relevant to providers of professional services.

The United States, with the support of other WTO Members, raised concerns regarding China's implementation of its GATS commitments in the distribution, express delivery, and telecommunications sectors during regular CTS meetings and as part of the Transitional Review of China's implementation of its services commitments.

The CTS continued to discuss proposals by some WTO Members for a technical review of Article XX:2 of the GATS. At its July meeting, the Council referred the matter for consideration by the Committee on Specific Commitments, which is due to report back to the Council at its first informal meeting in 2004. Discussion has continued on Members' concerns that the scheduling provisions in Article XX:2 may produce unintended confusion regarding the relationship between commitments in the Market Access and National Treatment columns of Member Schedules.

The first air transport review, which is required under the GATS Annex on Air Transport Services, examined developments in the air transport sector and the operation of the Annex with a view to considering the possible further application of the GATS in the air transport sector. The review began in late 2000 and was concluded at the CTS Regular Session meeting in October 2003. In October 2001, the United States submitted a written statement presenting its views that to date, bilateral and plurilateral venues outside the WTO have proven to be effective in promoting liberalization in this important sector (available at http://docsonline.wto.org. Documents are filed in the WTO Document Distribution Facility under the document symbol: S/C/W/198). The Council decided to formally commence the second review at its last regular meeting in 2005, without prejudice to Members' views on the interpretation of the Annex.

In April 2003, the European Union formally notified the Chair of the Special Session under Article V of the GATS regarding the consolidation of the European Union (15) to include Austria, Finland, and Sweden. As a result of the consolidation, several GATS commitments made by the three countries were withdrawn or modified. The Council addressed the issue of the EU Article V

notification at its July meeting. A number of Members voiced concerns about the notification process used by the EU, which constituted the first use of GATS Article XXI. A large number of Members also voiced concern about apparent EU intent to introduce new most favored nation (MFN) exemptions as a result of this enlargement. Concerns were generally raised about the use of Article XXI, especially in light of EU intent to enlarge further in 2004. To allow more time for consultations and examination, the EU and Members claiming an interest pursuant to Article XXI mutually agreed to extend the period of negotiations until June 1, 2004.

Prospects for 2004

The CTS Regular Session will continue to discuss work related to ongoing implementation of the GATS, including with regard to Article VII and Article XXI. Once the CSC reports on its discussions of Article XX.2, the CTS will decide whether to continue discussion of the issue.

1. Comittee on Trade in Financial Services

Status

The Committee on Trade in Financial Services (CTFS) enables WTO Members to explore any financial services market access or regulatory issue deemed appropriate, including implementation of existing trade commitments.

Major Issues in 2003

The CTFS met five times in 2003. During the reporting period, the Dominican Republic, Poland and Uruguay ratified their commitments under the 1997 Financial Services Agreement and completed procedures at the WTO to make those commitments binding under the GATS (accepted the "Fifth Protocol"). Brazil, Jamaica and the Philippines are now the only remaining participants from the 1997 negotiations that have not yet accepted the Fifth Protocol. WTO Members urged those three countries to accept the Fifth Protocol as quickly as possible and, in the meantime, to provide detailed information on the status of their domestic ratification efforts.

Several WTO Members, including Hong Kong, China, Switzerland, Peru, Malaysia and Turkey reported on developments under their financial services regimes, including issues such as e-finance. The IMF and the World Bank made special presentations on financial services issues, the IMF focusing on issues connected with financial sector stability and the World Bank, on how openness of the banking sector contributes to overall economic growth.

In December, 2003, the CTFS carried out a review of China's implementation of its WTO financial services commitments as part of China's Transitional Review Mechanism. The United States and other WTO members expressed concerns with China's implementation of certain commitments in the insurance, motor vehicle financing, and banking sectors.

2. Working Party on Domestic Regulation

Status

GATS Article VI, on Domestic Regulation, directs the CTS to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures A 1994 Ministerial Decision assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at www.wto.org).

After the completion of the Accountancy Disciplines, in May 1999 the CTS established a new Working Party on Domestic Regulation (WPDR) which also took on the work of the predecessor WPPS and its existing mandate. The WPDR is now charged with determining whether these or similar disciplines may be more generally applicable to other sectors. The Working

Party shall report its recommendations to the CTS not later than the conclusion of the services negotiations.

Major Issues in 2003

With respect to the development of generally applicable regulatory disciplines, Members discussed a possible Annex to the GATS, which would consist of horizontal disciplines on licensing procedures and requirements, technical standards, qualification procedures and requirements, and transparency. Such regulatory disciplines would be aimed at ensuring that regulations are not in themselves a restriction on the supply of services. The United States has supported negotiating horizontal transparency disciplines, however it has signaled its interest in pursuing a sector specific approach with respect to the other elements.

The United States has supported focusing the Working Party's discussion on examples of problems or restrictions for which new disciplines would be appropriate, before defining the disciplines themselves. Some Members have suggested that any regulatory disciplines should only apply to sectors in which countries have scheduled specific commitments. The Working Party has also reviewed the relationship between any future regulatory disciplines and existing transitional mechanisms, recognition issues, and licensing procedures based on submissions from Singapore, India, and the EU.

Members continued to solicit views on the accountancy disciplines from their relevant domestic professional bodies, exploring whether the accountancy disciplines might serve as a model for those professions. The Secretariat has also conducted similar consultations with International Organizations. The results varied; in some professions, the accountancy disciplines could be applied, with perhaps a few modifications; in other professions, the accountancy disciplines were not applicable. During these consultations however, some Members found a general lack of familiarity with the GATS and/or the accountancy disciplines. The Working Party agreed to hold a workshop on domestic regulations for trade policy experts and regulators; The workshop is scheduled to occur in 2004.

Prospects for 2004

The Working Party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access. A workshop on domestic regulations for Member's trade policy and regulatory experts is planned for early 2004. Some Members may want to pursue additional negotiations, including extending the "Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector" to other sectors.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules was established to determine whether the GATS should include new disciplines on emergency safeguards, government procurement, or subsidies. The Working Party held five formal meetings in 2003. Of the three issues, the GATS established a deadline only for safeguards which has since then been extended to March 15, 2004.

Major Issues in 2003

Members provided a progress report on safeguards negotiations in March 2003 and progress reports on government procurement and subsidies in July 2003 in preparation for the Fifth Ministerial Conference.

The Working Party continued its examination of the desirability and feasibility of an emergency safeguard for services, as well as the scope of Article X's mandate to negotiate on "the question of" emergency safeguard measures. Members evaluated different safeguard-type provisions contained in economic integration agreements and in statements made by Members in previous meetings. The Working Party also discussed a hypothetical example presented by ASEAN of a situation justifying the use of an emergency safeguard. Discussions on these issues also reviewed

submissions made by Switzerland and the EU, documents produced by the Chair and Secretariat, and Members' previous submissions.

On government procurement, the EU proposed negotiating an annex which would lay out conditions under which certain GATS provisions would apply to government procurement of services. Members continue to disagree on whether the scope of Article XIII excludes negotiations on market access, national treatment and most favored nation. Members reviewed different government procurement related provisions included in economic integration agreements. The United States continued to support commitments for transparency of government procurement of services and goods, and building on work conducted in the WTO Working Group on Transparency in Government Procurement.

With respect to subsidies, the Working Party examined possible definitions of what could be considered a subsidy, as well as what could be considered "trade distortive." Members sought to obtain more information on subsidies in services sectors, including from other international organizations. The Chair issued an updated "Checklist" on Subsidies" for Members to submit additional information. The Secretariat updated an earlier compilation of subsidy disciplines included in economic integration agreements.

Prospects for 2004

Discussion on all three issues will continue in 2004. Given the March 15, 2004 deadline, and developing countries strong interest in emergency safeguards, these negotiations will be poised either for another extension or suspension of Article X's mandate, or a political decision on the scope of Article X's mandate (i.e. definitive decision on whether to an emergency safeguard mechanism will be construed). We can expect that developing countries will tie progress on further services liberalization commitments to an acceptable resolution on emergency safeguards. Members will also continue to gather further information for government procurement and subsidies negotiations, and discuss proposals for a possible Annex or set of disciplines. The United States will need to ensure that any transparency disciplines for government procurement or commitments affecting services government procurement, are in line with those applied to government procurement of goods. Subsidies discussions will likely focus on Member's ability to obtain information on different types of services subsidies, from different sources, and use examples to examine "trade distortive" aspects.

4. Committee on Specific Commitments

Status

The Committee on Specific Commitments examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in Member schedules in sectors for which there is no sectoral body, currently all sectors except financial services. The Committee works to improve the classification of services so that scheduled commitments reflect the services activities, particularly to ensure coverage of evolving services.

Major Issues in 2003

Before the submission of offers by June 30 as mandated by the Doha Declaration, the Chair of the CSC provided guidance on the parameters for the submission of offers.

At its July 2003 meeting, the Council for Trade in Services referred consideration of issues relating to Article XX:2 of the GATS to the CSC. The primary issue of concern is the relationship between Market Access and National Treatment commitments, particularly the interpretation of a Members's Schedule where one column reads "None" while the other reads "Unbound." The Committee held discussions on the topic at its meetings in September and December, and is scheduled to report back to the Council in 2004.

The Committee also continued work on improving classification of services in individual sectors for which problems have been identified. In particular, the Committee addressed classification issues in legal services and energy services.

Prospects for 2004

Work will continue on technical issues and other issues raised by Members.

G. Council on Trade-Related Aspects of Intellectual Property Rights

Status

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is a multilateral agreement that sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights through civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members with regards to the protection and enforcement of intellectual property rights. Disputes between WTO Members regarding implementation of the TRIPS Agreement can be settled using the procedures of the WTO's Dispute Settlement Understanding.

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. Most substantive obligations are phased in based on a Member's level of development. Developed-country Members were required to implement the obligations of the Agreement fully by January 1, 1996; developing country Members generally had to implement fully by January 1, 2000; and least-developed country Members must implement by January 1, 2006. Based on a proposal made by the United States at the Doha WTO Ministerial Conference, however, the transition period for least developed countries 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, was extended by the TRIPS Council until January 1, 2016. The WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for least developed country Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product protection for pharmaceutical inventions.

The WTO TRIPS Council monitors implementation of 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 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.

Major Issues in 2003

In 2003, the TRIPS Council held four formal meetings, including "special negotiation sessions" on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits called for in Article 23.4 of the Agreement (See separate discussion of this topic elsewhere in Chapter IV and below). In addition to continuing its work reviewing the implementation of the Agreement by developing countries and newly-acceding Members, the Council's work in 2003 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

Review of Developing Country Members' TRIPS Implementation: As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2003 devoted considerable time to reviewing the Agreement's implementation by developing country Members and newly acceding Members as well as to providing assistance to developing country Members so they can fully implement the Agreement. In particular, the TRIPS Council called for developing country Members to respond to the questionnaires already answered by developed-country Members regarding their protection of geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. This article permits Members to exclude from patentability plants, animals, and essential biological processes for producing plants and animals. The Council also concentrated on institution building internally and with the World Intellectual Property Organization (WIPO). During the TRIPS Council meetings, 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 Members' implementation of their obligations.

During 2003, the TRIPS Council completed reviews of the implementing legislation of China (as part of China's transitional review), Brazil, Cameroon, Kenya and the Philippines, and noted new responses received from and the outstanding material required to complete the reviews of 15 other Members..

Intellectual Property and Access to Medicines: At the Doha Ministerial Conference, Ministers acknowledged the serious public health problems afflicting Africa and other developing and least developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis, and other epidemics. In doing so, WTO Ministers adopted the Declaration on the TRIPS Agreement and Public Health, clarifying the flexibilities available in the TRIPS Agreement that may be used by WTO Members to address public health crises. The declaration sends a strong message of support for the TRIPS Agreement, confirming that it is an essential part of the wider national and international response to the public health crises that afflict many developing and least developed Members of the WTO, in particular those resulting from HIV/AIDS, tuberculosis and malaria and other epidemics. Ministers worked in a cooperative and constructive fashion to produce a political statement that answers the questions identified by certain Members regarding the flexibility inherent in the TRIPS Agreement. This strong political statement demonstrates that TRIPS is part of the solution to these crises. The statement does so, without altering the rights and obligations of WTO Members under the TRIPS Agreement, by reaffirming that Members are maintaining their commitments under the Agreement while at the same time highlighting the flexibilities in the Agreement. Ministers agreed on the need for a balance between the needs of poor countries without the resources to pay for cutting-edge pharmaceuticals and the need to ensure that the patent rights system which promotes the continued development and creation of new lifesaving drugs is promoted.

The United States is pleased that the Declaration reflects and confirms our profound conviction that the exclusive rights provided by Members as required under the TRIPS Agreement are a powerful force supporting public health objectives. As a consequence of Ministers' efforts, we believe those Members suffering under the effects of the pandemics of HIV/AIDS, tuberculosis and malaria, particularly those in sub-Saharan Africa, should have greater confidence in meeting their responsibilities to address these crises. The United States will continue working with the international community to ensure that additional funding and resources are made available to the least developed and developing country Members to assist them in addressing their public health care problems.

One major part of the Doha Declaration was the agreement to provide an additional ten-year tran-

sition period (until 2016) for least developed countries, which was first proposed by the United States. On June 27, 2002, the TRIPS Council implemented this aspect of the Doha Declaration by taking a decision that least developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until January 1, 2016. This decision is made without prejudice to the right of least developed country Members to seek other extensions of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.

In paragraph 6 of the Declaration on the TRIPS Agreement and Public Health, Ministers recognized the complex issues associated with the ability of certain Members lacking domestic manufacturing capacity to make use of the flexibilities in the TRIPS Agreement. Ministers directed the TRIPS Council to find an expeditious solution to the difficulties certain Members might face in using compulsory licensing if they lacked sufficient manufacturing capacity in the pharmaceutical sector and to report to the WTO General Council by the end of 2002. Intensive discussions were undertaken on a solution that, with appropriate provisions on scope, safeguards and transparency, would waive the obligation in paragraph 31(f) that requires that compulsory licenses, when granted, be predominantly for the supply of the domestic market, since it is this limitation that could make it difficult for a Member lacking manufacturing capacity of its own to obtain a needed pharmaceutical if that product were patented in the Member from which supply was being sought.

Throughout the ensuing negotiations to develop such a solution, the United States remained committed to the Doha Declaration and worked intensively to find a solution that would provide life-saving drugs to those truly in need. As the negotiations drew to a close, however, it became clear that some WTO Members and advocacy organizations sought to expand the scope of diseases beyond that intended at Doha to allow countries to override drug patents to treat a wide range of concerns, such as obesity. The United States was seriously concerned that this approach could substantially undermine the WTO rules on patents which provide incentives for the development of new pharmaceutical products.

While pledging to continue to work with other WTO Members to try to find a solution within the WTO, on December 20, the United States announced an immediate practical solution to allow African and other developing countries to gain greater access to pharmaceuticals and HIV/AIDS test kits when facing public health crises. The United States pledged to permit these countries to override patents on drugs produced outside their countries in order to fight HIV/AIDS, malaria, tuberculosis, and other types of infectious epidemics, including those that may arise in the future. Specifically, the United States pledged not to challenge any WTO Member that contravenes WTO rules to export drugs produced under compulsory license to a country in need, and called on others to join the United States in this moratorium on dispute settlement.

The United States notified the WTO in early January 2003 of the specific terms and conditions of the moratorium. The key elements of this moratorium include a commitment not to pursue dispute settlement against a Member that notifies the TRIPS Council of its intention to issue a compulsory license to permit the production and export of a patented pharmaceutical product or HIV/AIDS test kit to eligible importing economies. Eligible importing economies will be those economies, other than those classified by the world bank as "high income economies," that: (1) are facing a grave public health crisis associated with HIV/AIDS, malaria or tuberculosis or other infectious epidemics of comparable scale and gravity, including those that may arise in the future; (2) have no or insufficient production capacities in the pharmaceutical sector; and (3) have so notified the TRIPS Council. The moratorium also included measures to guard against product diversion, including steps to ensure that the product can be easily identified and a

requirement that all countries, to the extent of their ability, act to ensure that the drugs are not diverted from countries in need.

Following intensive consultations in 2003, the TRIPS Council, at its meeting of 28 August 2003, approved the draft Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", along with the text of a statement to be read by the General Council Chairman at its adoption by the WTO General Council. On 30 August 2003, the General Council adopted the Decision in the light of the statement read out by its Chairman. The statement describes members' "shared understanding" on how the decision is to be interpreted and implemented. It says the decision should be used in good faith to protect public health and not for industrial or commercial policy objectives and that all reasonable measures should be taken to prevent medicines from being diverted away from those countries for which they are intended to be provided. The decision takes the form of an interim waiver of Article 31(f), which allows countries producing generic copies of patented products under compulsory licenses to export the products to eligible importing countries where certain procedures are followed. The waiver will last until the WTO's intellectual property agreement is amended. At its meeting of November 18, the Chairman of the TRIPS Council launched informal consultations with Members to discuss how best to amend the TRIPS Agreement. The United States pledged its full support to the Chairman in order to transform the Agreement in August, including the Perez-Motta text and Chairman's Statement, into an amendment of the TRIPS Agreement with a view to its adoption within six months, if not sooner.

TRIPS-related WTO Dispute Settlement Cases: During the year, the United States continued to pursue consultations with the European Union regarding its failure to provide TRIPS-consistent protection of geographical indications of U.S. nationals, and on 29 August 2003, the United States and Australia each requested the establishment of a panel to examine EU rules on the protection of trademarks and geographical indications for agricultural products and foodstuffs. At its meeting of 2 October 2003, the United States and Australia presented their second request, and the WTO Dispute Settlement Body agreed to established the panel. The United States and Australia mentioned their serious concerns about the discriminatory nature of the EU regulation. The United States complained that the regulation did not allow the registration of non-EU geographical indications unless the geographical indication was from a country that offered geographical indication protection that was equivalent to that of the EU. Australia argued that the EU regime was inconsistent with existing WTO rules prohibiting discriminatory treatment, did not give due protection to trademarks, and was overly complex and prescriptive. The EU said that its regulation was fully compatible with WTO rules. The DSB established a single panel and the following countries requested to be third parties: Australia, United States, Mexico, New Zealand, Guatemala, India, Chinese Taipei, Turkey and Colombia.

There are a number of other WTO Members that likewise appear not to be in full compliance with their TRIPS obligations. The United States, for this reason, is still considering initiating dispute settlement procedures against several Members. We will continue to consult informally with these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these and other countries' enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

Geographical Indications: The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of Article 23-level protection to geographical indications for products other than wines and spirits and to report to the Trade Negotiations Committee by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chair should report to the TNC on the issues

related to extension of Article 23-level protection to geographical indications for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on geographical indications and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members. Throughout 2003, the United States and many like-minded Members continued to argue that *demandeurs* had not established that the protection provided geographical indications 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 geographical indications, and that the benefits accruing to those few Members that had longstanding statutory regimes for the protection of geographical indications would represent a windfall, while other Members with few or no geographical indications would receive no counterbalancing benefits. The draft Declaration for the WTO 5th Ministerial Conference in Cancun, Mexico, would have extended the mandate to discuss "issues related to extension" but not create a new mandate for GI negotiations. While willing to continue the dialog in 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. We view such initiatives as efforts to take back the names of many famous products, such as feta and parmesan, from U.S. producers who have invested considerable time and resources to make these names famous and who are currently using such terms in a manner fully consistent with international intellectual property agreements.

No further progress has been made on the Article 24.2 review of the application by Members of TRIPS provisions on geographical indications in spite of the review continuing to be on the TRIPS Council's agenda. At each of the 2003 TRIPS Council meetings, the United States urged developing country Members that have not yet provided information on their regimes for the protection of geographical indications, and most of them have not, to do so. The United States also continued to support a proposal by New Zealand in 2000, and by Australia in 2001, that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members as reflected in the responses to the "checklist." The TRIPS Council Chairman intends to consult with Members on how to proceed with the review in 2004.

Review of Current Exceptions to Patentability for Plants and Animals: TRIPS Article 27.3(b) permits Members to except from patentability plants and animals and biological processes for the production of plants and animals. Members may not, however, except from patentability micro-organisms and non-biological and microbiological processes. As called for in the Agreement, the TRIPS Council initiated a review of this provision in 1999 and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. In 1999, in order to facilitate the review by enabling easy comparisons, the Secretariat had prepared a synoptic table of information provided by developed Members on their practices. This portion of the review revealed that there was considerable uniformity in the practices of the developed Members. During the discussion, the United States noted that the ability to patent micro-organisms and non-biological and microbiological processes, as well as plants and animals, had given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment in those countries providing patent protection in this area. In 2001, the United States

again called for developing country Members to provide this same information so that the Council would have a more complete picture on which to base its discussion. Regrettably, most developing country Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b), such as the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and traditional knowledge.

The Doha Declaration directs the Council for TRIPS, 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 CBD, and the protection of traditional knowledge and folklore. The Council, at its March 2002 meeting, agreed to handle each of these topics as a separate agenda item, in order to avoid confusion, but the discussions have tended to overlap. Since the review began in 1999, the United States has introduced five separate papers discussing various aspects of the subjects under discussion, including a paper discussing in depth the provisions of the CBD that might have any relationship to the TRIPS Agreement and describing how the CBD's provisions regarding access to genetic resources and benefit sharing can be implemented through an access regime based on contracts that would spell out the conditions of access, including benefit sharing and reporting. Other papers describe the practices of the National Cancer Institute and the access regime of the U.S. National Park Service as examples of how a contractual access regime would function. The United States has suggested that any Member that has a question about whether a particular CBD implementation proposal would run afoul of TRIPS obligations raise the issue with the Council so that it might obtain the views of other Members. Updated information on organization activities was submitted from the FAO, the CBD, UNCTAD, UPOV, WIPO and the World Bank.

Non-violation: The Doha Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, not to make use of such complaints. Throughout the year, the Council continued to discuss the operation of non-violation nullification and impairment complaints in the context of the TRIPS Agreement. Some Members argued that the possibility of such complaints created uncertainty. As in past years, the United States continued to support the automatic expiration of the moratorium at the 5th Ministerial meeting as no more uncertainty was created by non-violation cases in the TRIPS context than was the case with other WTO agreements, and that Article 26 of the Dispute Settlement Understanding and GATT decisions on non-violation provide sufficient guidance to enable a panel or the Appellate Body to make appropriate determinations in such cases. No consensus on a recommendation to establish scope and modalities or to extend the moratorium emerged by the time of the 5th Ministerial meeting.

Electronic Commerce: The TRIPS Council continued discussing the provisions of the TRIPS Agreement most relevant to electronic commerce and explored how these provisions apply in the digital world. The United States specifically suggested that the Secretariat might usefully undertake a study of how Members are implementing TRIPS with respect to the Internet environment. The United States will continue to support discussion of the application of the TRIPS Agreement in the digital environment, and encourage countries to implement the "Internet" Treaties of the World Intellectual Property Organization (WIPO), i.e., the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Further Reviews of the TRIPS Agreement: Article 71.1 calls for a review of the Agreement in light of experience gained in implementation, beginning in 2002. The Council continues to consider how the review should best be conducted in light of the Council's other work. The Doha Ministerial

Declaration directs that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

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.

Implementation of Article 66.2: Article 66.2 requires developed countries to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least developed 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. During 2003, the TRIPS Council adopted a Decision calling on developed countries to provide detailed reports every third year, with annual updates, on these incentives. The reports are to be reviewed in the TRIPS Council at its last meeting each year. The United States had given detailed reports on specific U.S. Government institutions (the African Development Foundation and Agency for International Development) and incentives as required.

Prospects for 2004

In 2004, the TRIPS Council will continue to focus on transforming the August 30 agreement on compulsory licensing for export into an amendment of the TRIPS Agreement, its built-in agenda and the additional mandates established in Doha, including on issues related to the extension of Article 23-level protection for geographical indications 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 2004 continue to be:

- to transform the Chairman's Statement and the Perez-Motta text into an amendment of the TRIPS Agreement;
- to resolve differences through dispute settlement consultations and panels, where appropriate;
- to continue its efforts to ensure full TRIPS implementation by developing-country Members; and
- to ensure that provisions of the TRIPS Agreement are not weakened.

H. 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. Following the Doha Ministerial Conference concluded in November 2002, the CTE in regular session continued discussion of many of the issues under consideration in recent years with a focus on issues identified in the Doha Declaration, including market access for issues associated with environmental measures; TRIPS and environment, and labeling for environmental purposes under paragraph 32; capacity-building and environmental reviews under paragraph 33; and discussion of the environmental aspects of Doha negotiations under paragraph 51. These issues in the Doha Declaration are separate from those that are subject to specific negotiating mandates in the Declaration and that are being taken up by the CTE in Special Session.

Major Issues in 2003

In 2003, the CTE met in Regular Session four times. The United States continued its active role in discussions, as discussed below.

Market Access under Doha Sub-Paragraph 32(i): The CTE in Regular Session continued to structure discussions on both a general and sectoral basis. In general, however, discussions demonstrated a low level of interest in these issues compared to those that took place in 2002. The more limited discussions in 2003 related specifically to submissions by Japan regarding the fisheries and forestry sectors. Most delegations questioned assertions by Japan that these sectors might be excluded from market access negotiations due to considerations of sustainable development.

TRIPS and Environment under Doha Sub-Paragraph 32(ii): Discussions under this item continued to focus, as they had prior to the Doha Ministerial Conference, on whether there may be any inherent conflicts between the TRIPS Agreement and the Convention on Biological Diversity (CBD) with respect to genetic resources and traditional knowledge. In this regard, the European Communities presented its ideas regarding access to, and benefit sharing associated with, genetic resources and traditional knowledge. In general, Members reiterated that the TRIPS Council was the most appropriate forum to consider these issues.

Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii): During 2003, there was considerable discussion among Members regarding proposals from the European Communities for future work on environmental labeling. Most Members continued to question the rationale for singling out environmental labeling for special consideration separate from ongoing work in the Committee on Technical Barriers to Trade on labeling more generally. As a result, there was no consensus in the CTE prior to the Cancun Ministerial for intensifying its ongoing work on environmental labeling.

Capacity Building and Environmental Reviews under Doha Paragraph 33: Many developing country Members stressed the importance of benefiting from technical assistance related to negotiations in the WTO on trade and environment, particularly given the complexity of some of these issues. The United States submitted a related paper that sought to highlight some of the themes that had emerged from these discussions, including the potential benefits associated with national environmental reviews of trade negotiations. Most Members agreed that a key aspect of capacity building in this area involves increasing communication and coordination between trade and environment officials at national levels. Additionally, the United States and Canada continued to update the CTE in Regular Session on their respective reviews of the WTO negotiations, while the European Union provided additional information on its sustainability impact assessments.

Discussion of Environmental Effects of Negotiations under Doha Paragraph 51: During the course of 2003, the CTE in Regular Session received updates from key WTO Secretariat officials on developments in other areas of negotiations, including agriculture, non-agricultural market access, services and rules.

Prospects for 2004

It is unlikely that discussion of these environmental issues identified in the Doha Declaration that do not have a negotiating mandate will increase in focus or intensity, although prospects could increase for more concrete discussions on how to enhance developing countries' capacities to increase coordination at national levels between trade and environmental officials. Additionally, the CTE in Regular Session may devote increasing attention to the substance of the mandate in paragraph 51 of the Doha Declaration.

2. Committee on Trade and Development

Status

In 1965, the GATT established the Committee on Trade and Development (CTD or the "Committee") to strengthen its role in the economic development policies of less-developed Contracting Parties. Today, the CTD is a subsidiary body of the WTO General Council.

The Committee provides Members an opportunity to discuss trade issues from a development perspective, in contrast to most other WTO committees which are responsible for implementation of particular WTO Agreements. In 2002, the General Council instructed the CTD, as part of a DDA, to develop a work program to examine the issues surrounding fuller integration of small and vulnerable economies into the multilateral trading system.

Following the First Ministerial Conference in Singapore in 1996, the WTO formed a CTD subcommittee on Least-Developed Countries (LDCs) to implement a Ministerial initiative to help integrate LDCs into the multilateral trading system. The plan of action outlines an "Integrated Framework" (IF) to better coordinate trade-related technical assistance activities of donors to LDCs from six core international organizations: the International Monetary Fund, the International Trade Center, the United Nations Conference on Trade and Development, the United Nations Development Program, the World Bank and the WTO. The IF process also encourages the participation of the broader development community through a consultative group of bilateral donors and other multilateral organizations. The Doha Declaration, in order to continue progress toward this goal, instructed the subcommittee to design a work plan to consider issues of importance to LDCs including further coordination of technical assistance through the IF and additional steps to facilitate LDCs in joining the WTO.

Major Issues in 2003

In 2003, the Committee held four formal sessions leading up to the Cancun Ministerial and an additional two sessions by year's end. A continuing focus of the CTD and LDC Subcommittee has been monitoring the on-going efforts of the WTO, the International Trade Center (ITC), and the IF in providing trade-related technical assistance to developing-country Members. As standing items on the Committee's agenda, Members considered the development aspects of Doha negotiations and electronic commerce. The United States also initiated discussion of WTO reviews for regional trade agreements among developing countries. The United States voiced support for greater transparency through more in-depth examination of these agreements.

In the summer of 2003, several Members launched a renewed discussion of global trends in commodity prices. Commodity dependant producers submitted a paper outlining the difficulties posed by volatile and declining world prices for many primary products. The United States and other Members gave the view that price trends are functions of markets. To address problems of commodity volatility, Members should look to market-based strategies over efforts to manage supply. The proper role for the WTO as an institution in addressing this issue should be to focus efforts on trade policy-related aspects that play a role in commodity price trends and volatility.

WTO Technical Assistance Plan: Working closely with the newly created Institute for Training and Technical Cooperation, the Committee continued efforts to improve the WTO's Trade-Related Technical Assistance (TRTA) programs. The WTO received over 1045 requests from 120 countries (reflecting all levels of development) as input into the 2003 Plan. The WTO was on track to deliver the 441 activities in the 2003 Technical Assistance despite the effects of SARS and war in Iraq. Activities generally took the form of regional or national seminars and workshops, trade policy courses, or internships, and covered topics ranging from accession and market access issues to technical barriers to trade.

The United States directly supports the WTO's TRTA. At the Cancun Ministerial, the United States pledged an additional $1.2 million for WTO TRTA. This contribution augmented $1 million given earlier in 2003, bringing total U.S. support for WTO TRTA to more than $3 million since the launch of Doha negotiations in November 2001. This money was in direct support of programs like the annual WTO Technical Assistance Plan. In 2003, the WTO also finished implementing two grants, totaling

$1.02 million, under the Africa Trade and Investment Policy Program (ATRIP), supporting WTO training for Africans. The grants funded dispute settlement courses, computer-based training modules on WTO agreements, WTO training for Africans in Ghana and two regional seminars on agriculture and services.

The United States has worked out an agreement with the International Trade Center (ITC) to make the ITC's Interactive TradeMap database available to all countries where USAID has a Mission or presence. The Interactive TradeMap provides on-line access to the world's largest trade database. USAID will also work with the ITC to ensure that developing and transition countries have access to market analysis tools and training courses on trade in services.

Small Economy Issues: The Doha Declaration mandates an examination of small economy trade-related issues. The Committee continued this examination by discussing proposals submitted by Members of the small economies group and others. The United States has engaged actively in this dialogue. Overall, Committee Members recognized the potential benefits of Doha negotiations for smaller economies, which rely on an open trading system to foster growth. The United States, in particular, encouraged small economies to consider regional cooperation and resource sharing as a way to address institutional limitations due to size. The CTD recommended that discussion of this topic in dedicated session continue, and asked that Members of the small economies group rework proposals in light of recent exchanges.

Implementation: As part of the Doha work plan on implementation, the Committee also considered a proposal to review GATT provisions that allow Members in early stages of development under certain circumstances to undertake restrictive trade measures. No consensus was reached to undertake a formal review of these provisions.

Sub-Committee on Least-Developed Countries: In 2003, the Sub-Committee on Least-Developed Countries focused discussions on enhancing the participation of LDCs in the Multilateral Trading System, the IF and WTO programs on trade-related technical assistance, accessions of LDCs into the WTO, and market access for LDCs.

LDC Accession: The LDC subcommittee initiated regular reports from Chairs of working parties of an LDC accession. These discussions focused on progress toward meeting the requirements of WTO Membership. Establishment of regular Chair reports follows the adoption of guidelines by the General Council in 2002 to streamline and simplify the accession process for LDC applicants. The United States participated actively in discussions with Working Party Chairs. The United States urged continued support from donors of those LDC applicants undertaking reforms, and encouraged LDCs to use the accession process to improve its trading environment. Efforts by Members to streamline the accession process have yielded tangible results. The United States and the WTO Membership welcomed the first two LDCs–Nepal and Cambodia–as they joined the WTO at the Cancun Ministerial.

The "Integrated Framework"(IF): The IF is the mechanism for coordinating the work of six multilateral agencies (IBRD, IMF, UNCTAD, WTO, ITC and UNDP) in mainstreaming trade into the development strategies of LDCs. The IF process starts with a Diagnostic Trade Integration Study (DTIS), which analyzes the technical assistance requirements for each country. The World Bank has completed DTIS for Cambodia, Lesotho, Madagascar, Mauritania, Malawi, Senegal and Yemen. USAID has completed a comparable diagnostic study for Mozambique, and has contributed a series of in-depth sector studies in support of the World Bank's DTIS for Mali. Additional DTISs are currently scheduled for Burundi, Djibouti, Eritrea, Ethiopia, Guinea, Mali and Nepal. Twelve other LDCs have requested to participate in the IF process, and their requests are being evaluated according to criteria agreed by the IF Steering Committee. The United States contributed funds for the past three years to the Integrated Framework Trust Fund in order to finance the DTIS. This includes $200,000

of the $1.2 million pledged at the Cancun Ministerial specifically reserved for the Trust Fund. The United States provided more than $31 million for trade capacity building activities in IF countries in Fiscal Year 2003, through USAID's bilateral assistance programs. Most of this assistance addressed "supply side" capacity building priorities identified by least developed countries in the IF process.

Prospects for 2004

The CTD will continue its function as the forum for trade-related development issues within the WTO. Particular emphasis is likely to be placed on efforts to improve the quality of WTO TRTA. As part of this work, the CTD must insist on enhanced mechanisms for monitoring, evaluating, outsourcing, and delivering TRTA in a way that is flexible and responsive to requests from Members. More broadly, the Committee will seek to improve the participation of developing-countries Members in the Multilateral Trading System. Resumption of Doha negotiations would reinvigorate work on small-economy issues and discussion of the developmental aspects of the DDA.

The Subcommittee will continue to take steps to improve the opportunities available to LDCs to further their integration into the trading system. Resumption of Doha negotiations would renew attention to efforts in technical cooperation, market access, LDC accession, and the IF process.

3. Committee on Balance of Payments Restrictions

Status

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

Major Issues in 2003

Following the establishment of the WTO in 1995, the BOP Committee has demonstrated that the Uruguay Round Understanding on BOP provides Members with additional, effective tools to enforce international obligations. During 2003, no Member imposed new Balance of Payment restrictions.

The BOP Committee held one meeting during the year, in November, to conduct the second review of China's accession commitments as part of the annual Transitional Review Mechanism (TRM). To date, China has not notified the Committee of any BOP restrictions. Since China holds significant foreign reserves, it is not anticipated that China could justify BOP restrictions. During the first TRM in 2002, the United States and the EU posed questions regarding China's progress in liberalizing controls on its capital account. At the November 2003 TRM, Chinese Taipei asked additional questions on China's use of capital controls. In response, China noted that it does not restrict converting currency for current account transactions. However in regards to the outward remittance of earnings or dividends of foreign firms, these can only be converted if firms provide relevant documents that meet the "bona fide test" of earnings under China's laws on Foreign Invested Enterprises. According to China, this policy is designed to reduce money laundering and curb hot money. For purposes of transparency, China has committed to publish information on Foreign Exchange measures on the web and via the news media. China has published all laws, regulations and measures on the administration of foreign exchange through the Foreign Trade and Economic Cooperation Gazette and the website of the State Administration of Foreign Exchange (www.safe.gov.cn). The United States will

continue to monitor China's compliance with its WTO commitments under BOP Agreement and its accession protocal.

As part of the work program agreed at Doha, Committee Members continued to consider proposals by delegations and certain suggestions provided by the Chair to clarify the respective roles of the IMF and BOP Committee in balance of payment proceedings. The BOP Committee did not arrive at a consensus on this issue in 2003.

Prospects for 2004

Should other Members resort to new BOP measures, WTO rules require a thorough program of consultation with this Committee. The United States expects the Committee to continue to ensure that BOP provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

4. Committee on Budget, Finance, and Administration

Status

WTO Members are responsible for establishing and presenting to the General Council for approval the budget for the WTO Secretariat via the Budget Committee. The Committee meets throughout the year to address the financial requirements of the organization. In 2003, the Secretariat presented a biennial budget, setting out budget proposals for both 2004 and 2005. 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 and the largest contributor to the WTO budget. For the 2004 budget, the U.S. assessment rate is 15.735 percent of the total assessment, or Swiss Francs (CHF) 25,863,615 (about $19.9 million). The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property. Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II.

Major Issues in 2003

New Salary Modalities: In May 2003, the General Council adopted a recommendation by the Committee to use a new salary methodology in future salary adjustments. The Committee's recommendation was based on a review that was provided for in the WTO's Staff Regulations. The review determined that the WTO salary scale lagged behind those in comparable international organizations. The salary commitments in the 2004 and 2004 WTO budget are based on this new methodology.

Biennial Budgeting: In August 2003, the General Council adopted a Committee recommendation to move to a biennial budget cycle. In the view of WTO Members, biennial budgeting will allow for better planning and strategic thinking. It will also provide both Members and the WTO Secretariat with greater predictability with regard to the financial requirements of the WTO. Members also felt that a biennial budgeting process could be a more efficient use of time resources for both Members and the WTO Secretariat.

Agreed Budget for 2004 and 2005: The demand for budgetary resources created by (1) the statutory commitments with regard to salary, contribution to the pension fund and other staff costs; (2) the replenishment of the Appellate Body Operating Fund; and (3) the need to allocate annually the costs of Ministerial Conferences were the major issues facing the Budget Committee and the WTO members in determining the appropriate level of increase. The Committee proposed, and the General Council approved, a budget for the WTO Secretariat and Appellate Body of CHF 161,776,500 in 2004 and CHF 166,804,200 in 2005.

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 by the Uruguay Round agreements, and considering the systemic implications of such agreements and regional initiatives on the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV was the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU. 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 countries. The Uruguay Round added two more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV; and Article V of the General Agreement on Trade in Services (GATS), which governs services economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment if certain requirements are met. First, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. Second, duties and other restrictions of commerce applied to third countries upon the formation of a CU must not, on the whole, be higher or more restrictive than was the case before the agreement. For an FTA, no duties or restrictions may be higher. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional cases. With respect to the formation of a CU, the parties must notify Members to negotiate compensation to other Members for exceeding their WTO bindings with market access concessions. An analogous compensation requirement exists for services.

Major Issues in 2003

During 2003, the Committee held two formal meetings. The Committee has 147 agreements under review, 119 referred by the Council on Trade in Goods, 27 by the Council for Trade in Services, and 1 by the Committee on Trade and Development.[16] The Committee has completed its factual examination for over 82 agreements but has a backlog of draft reports, as Members do not agree on the nature of appropriate conclusions. In November 2003, the Committee held a seminar for Geneva delegates and visiting capital-based representatives to hear academic and other views on the impact of RTAs on the multilateral trading system.

Prospects for 2004

The Doha Declaration paragraph 29 calls for clarifying and improving rules for regional trade agreements, a mandate that is being undertaken by the Rules Negotiating Group. Accordingly, the discussion of systemic issues and improving the examination process in the CRTA has, in effect, been delayed. In the interim, two meetings have been scheduled for 2004, during which the Committee will continue to review the new regional trade agreements notified to the WTO and referred to the Committee. The European Union is expected to notify the WTO under Article XXIV early in 2004 of its May 2004 enlargement to include ten additional countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia). Some CRTA Members are likely to be interested in a prompt CRTA review of the enlargement following notification.

16 A list of all regional trade agreements notified to the GATT/WTO and in force is included in Annex II to this report.

The biennial reporting requirement on the operation of agreements has been shifted by a year, to 2004. Nineteen reports are due on July 31, 2004, including a report on the United States-Israel FTA.

6. Accessions to the World Trade Organization

Status

Armenia and Macedonia (officially known as the Former Yugoslav Republic of Macedonia) became the 145th and 146th WTO Members on February 5 and April 4 respectively. In addition, the Fifth Minister Conference at Cancun, Mexico, approved the accession packages of Cambodia and Nepal, both of which will become members after their respective parliaments ratify their accession commitments. Significant progress towards completion of negotiations also was recorded with a number of the other twenty-four applicants with established Working Parties. Russia, Ukraine, and Saudi Arabia made major progress towards completion of market access negotiations and in terms of legislative implementation of WTO provisions. This progress provided support and momentum for development of draft Working Party documents and Protocol commitments. Substantial work was also recorded on the accession packages of Samoa and Tonga, Ethiopia and Afghanistan requested accession.

By the end of 2003, of the accession applicants with established Working Parties, only the Bahamas and Ethiopia had not yet submitted initial descriptions of their trade regimes. Bhutan, Cape Verde, and Tajikistan provided this essential comprehensive information in 2003. Initial working parties convened for the accessions of Sudan and Bosnia and Herzegovina for a first review of the information submitted on their foreign trade regimes. Working Party meetings and/or bilateral market access negotiations were also held during 2003 with Algeria, Belarus, Cambodia, Kazakhstan, Lebanon, Nepal, Russia, Samoa, Tonga, Ukraine, and Vietnam. The chart included in the Annex to this section reports the current status of each accession negotiation.

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. It is widely recognized that 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 growth, development, and investment.

The accession process strengthens the international trading system by ensuring that new Members understand and can implement WTO rules from the outset, and it offers current Members the opportunity to secure expanded market access opportunities and to address outstanding trade issues in a multilateral context. In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to conduct the negotiations. Accession negotiations can be time consuming and technically complex, involving a detailed review of the applicant's entire trade regime by the Working Party and negotiations for import market access. Applicants need to be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make trade liberalizing specific commitments on market access for goods, services, and agriculture.

The terms of accession developed with Working Party members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Working Party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service suppliers, and agriculture schedules that include commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation to the General Council or

Ministerial Conference for approval. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the applicant's instrument of ratification is received in Geneva, WTO Membership becomes effective.

The United States 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 and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce. The assistance can include short-term technical expertise focused on specific issues, e.g., Customs, IPR, or TBT, and/or a WTO expert in residence in the acceding country. Current WTO Members that received technical assistance in their accession process from the United States include Albania, Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, and Moldova. Most had U.S.-provided resident experts for some portion of the process. Among current accession applicants, the United States provides a resident WTO expert for the accessions of Azerbaijan, Cape Verde, Lebanon, Ukraine, and Serbia and Montenegro, and a U.S.-funded WTO expert resident in the Kyrgyz Republic provides WTO accession assistance to Kazakhstan, Uzbekistan, and Tajikistan on an "as requested" basis, and other forms of technical and expert support on WTO accession issues to Algeria, Bosnia and Herzegovia, Nepal, Russia, and Vietnam

Major Issues in 2003

WTO Members sought to demonstrate that the new guidelines approved in December 2002 for streamlined and accelerated accession negotiations with least developed country (LDC) accession applicants could work in practice.[17] The General Council had developed these guidelines to address the unique challenges that the accession process posed for countries with extremely low levels of income and economic development, lack of human resources to conduct the negotiations, infra-structure deficiencies, and a general lack of capacity to implement WTO provisions without additional time and technical assistance. By tying full implementation of WTO provisions to transitional arrangements and technical assistance, and making full use of existing WTO flexibilities and special provisions for LDCs, current WTO Members sought to use the WTO accession process to promote reform and build trade capacity in the applicant economic regimes while simplifying and streamlining the accession process.

Cambodia and Nepal were the first accession applicants to complete the accession process under the new guidelines. Both countries will complete implementation of WTO provisions over transition periods with extensive technical assistance. Market access commitments were substantial and will, over time, provide for better market access for imported goods and services on a basis that supports economic development. The Fifth Ministerial Conference at Cancun approved the accession packages of Cambodia and Nepal in September 2003. During 2003 there was also intensive work on the accessions of Samoa (another LDC) and Tonga.

Continuing the accelerated pace initiated in 2002, the Working Party on Russia's WTO Accession met five times to revise the draft Working Party report text, as well as to review legislative implementation of WTO provisions

17 Twenty-nine LDCs are already WTO members. The accession packages of Nepal and Cambodia were approved by the Fifth Ministerial Conference at Cancun, and Vanuatu has completed negotiations but not submitted the results to the General Council for approval. Negotiations with Samoa are advanced and moving forward. Bhutan, Cape Verde, Ethiopia, Laos, Sudan, and Yemen have not yet commenced negotiations. All but Ethiopia have submitted initial documentation, and Sudan has had a first WP meeting. Afghanistan has applied for accession, but no WP has been established. Of the nine remaining LDCs that have not applied for WTO membership, two (Equatorial Guinea and Sao Tome and Principe) are WTO observers.

and progress in bilateral market access negotiations. Taking note of Russia's commitment to intensify its efforts to complete negotiations by the end of 2004, Ukraine, Belarus, and Kazakhstan also sought to intensify negotiations during 2003, and work was initiated on their draft Working Party reports. After a hiatus of almost three years, work on Saudi Arabia's accession resumed at an accelerated pace in October. By the end of the year, a revised draft Working Party report was in circulation and Saudi Arabia was making good progress in market access negotiations with WP members. Work on the Doha Ministerial agenda and preparations for the Fifth Ministerial Conference intensified after mid-year, however, and work on other accessions slowed considerably.

Prospects for 2004

Russia, Ukraine, and Saudi Arabia are deeply engaged in legislative implementation of WTO provisions and market access negotiations to establish their schedules of concessions for market access in goods and services. While much work remains, they have all indicated that they hope to complete their accession negotiations in 2004 and it is likely that Members' efforts on accession will be focused on these countries during 2004. Other accession applicants, including a number of LDCs, will continue to press for additional meetings and negotiating time with WTO Members in order to promote progress in their accession negotiations. In addition to Tonga, Belarus, and Kazakhstan, whose accession work is advanced, Algeria, Lebanon, and Vietnam are likely to be active. Other active accessions should include Samoa, Cape Verde, and Bhutan (all LDCs), Bosnia and Herzegovian and Tajikistan. U.S. representatives will remain key players in all accession meetings, as the negotiations provide opportunities to expand market access for U.S. exports, to encourage trade liberalization in developing and transforming economies, to promote trade capacity building in LDC applicants, and to support a high standard of implementation of WTO provisions by both new and current Members.

I. Plurilateral Agreements

1. Committee on the Expansion of Trade in Information Technology Products

Status

The Information Technology Agreement, or ITA, was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. The Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. Currently, the ITA has 61 participants representing 95 percent of world trade in information technology products.[18] The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, set-top boxes, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments.

Major Issues in 2003

The WTO Committee of ITA Participants held four formal meetings in 2003, during which the Committee reviewed the implementation status of the Agreement. While most participants have fully implemented tariff commitments, a few countries are still awaiting the completion of domestic procedural requirements or have not yet submitted the necessary documentation.

Four new members (Egypt, China, Bahrain and Morocco) joined the ITA in 2003, reflecting the

18 ITA participants are: Albania, Australia, Bahrain, Bulgaria, Canada, China, Costa Rica, Croatia, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, European Union (on behalf of 15 Member States), Georgia, Hong Kong China, Iceland, India, Indonesia, Israel, Japan, Jordan, Republic of Korea, Krygyz Republic, Latvia, Lithuania, Macau, Malaysia, Mauritius, Moldova, Morocco, New Zealand, Norway, Oman, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Slovenia, Switzerland and Liechtenstein, Chinese Taipei, Thailand, Turkey, and the United States. Armenia and Macedonia have indicated their intention to join the ITA.

growing interest of developing country Members in trade in information technology products. In addition, two international non-governmental organizations, the International Trade Center (ITC) and the Organization for Economic Cooperation and Development (OECD) have been granted observer status in the Committee, as has the World Customs Organization (WCO), for meetings where the issues of HS classification and HS amendments are included in the agenda.

The Committee continued its work to reconcile classifications by ITA participants of certain information technology products where Members have applied divergent HS classification. The Secretariat updated and categorized its compilation of the list of divergences. Customs experts will continue to meet on these issues in 2004 and discuss the treatment of each category of products. The Committee agreed that one item will be sent to the WCO for a classification opinion. Work on classification divergences is expected to continue at the next Committee meeting in 2004.

The Committee also made progress on the Non-Tariff Measures (NTMs) Work Program, affecting trade in ITA products. As part of its work on one of the key issues identified by Members, electro-magnetic compatibility and electro-magnetic interference (EMC/EMI), the Committee held a workshop in April, which was well-attended by Member Government's trade and regulatory authorities and included observers from the private sector. More than 20 participants responded to the survey on EMC/EMI, which the Secretariat used to update a report describing the nature of the problem. Further work on this issue is expected to continue in 2004.

Prospects for 2004

The Committee's work program on non-tariff measures continues to proceed in step with tariff implementation issues, but members have begun an active consultation process to determine whether there are other issues that should be pursued and how work on non-tariff measures in the ITA context relates to similar activities in the context of Doha negotiations. Participants also will continue to consult with each other informally on the possibility of expanding product coverage for new technologies that have been developed since the ITA was founded. Throughout 2004, the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation, along with addressing further technical classification issues. In addition, the Committee will continue to monitor implementation of the Agreement, including undertaking any necessary clarifications. The next formal meeting on the Committee will be in February 2004. A number of additional WTO Members are actively working on proposals to join the ITA in 2004.

2. Committee on Government Procurement

Status

The WTO Government Procurement Agreement (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 it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important Agreement. The 28 current signatories are: the United States; the European Union and its member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom); the Netherlands with respect to Aruba; Canada; Hong Kong China, China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland. Albania, Bulgaria, Chinese Taipei, Estonia, Georgia, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Moldova, Oman, Panama, and Slovenia are in the process of negotiating GPA accession.

Major Issues in 2003

GPA Article XXIV:7(b) and (c) calls for the Parties to undertake further negotiations with a view to improving both the text of the Agreement and

achieving the greatest possible extension of its coverage among all Parties and eliminating remaining discriminatory measures and practices. With regard to the text of the Agreement, the United States has continued to take the lead in advocating significant streamlining and clarification of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. Much of the existing text of the GPA was developed in the late 1970s during the negotiations on the original GATT Government Procurement Code. As the current review of the Agreement has proceeded, the Committee has recognized that the GPA text needs to be modified to reflect ongoing modernization of the Parties' procurement systems and technologies, and to encourage other Members to accede to it.

In August and February 2003, the Committee held formal meetings and informal meetings in February, May, June, August and November. The Parties focused primarily on the simplification and improvement of the GPA, with the overall objective of promoting expanded membership of the GPA by making it more accessible to non-Parties. During 2003, the Committee made significant progress in its revision of the text, and has reached provisional agreement on the basic structure and drafting style of the Agreement.

As provided for in the GPA, the Committee monitors participants' implementing legislation. In 2003, the Committee completed its review of the national implementing legislation of Iceland.

Prospects for 2004

In February 2004, the Committee plans to reach agreement on modalities for negotiations relating to extension of coverage and elimination of discriminatory measures and practices. It will commence market access negotiations after work on the text is completed. In 2004, the Committee will also continue its review of the legislation of the Netherlands with respect to Aruba, and its consideration of ways to improve accession procedures.

By spring of 2004, the Committee intends to reach provisional agreement on a revised text of the GPA. In the first half of 2004, the Committee will hold three informal meetings with the aim of completing work on the text. One of the important issues in the review of the text that will require further work is the treatment that developing countries should be given upon accession to the GPA, with the aim of facilitating additional accessions by developing countries.

3. Committee on Trade in Civil Aircraft Status

The Agreement on Trade in Civil Aircraft ("Aircraft Agreement"), concluded in 1979, is a plurilateral agreement. The Aircraft Agreement is part of the WTO Agreements, however, it is in force only for those Members who have accepted it.

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on a non-discriminatory or MFN basis to all WTO Members. The Signatories have also provisionally agreed to duty-free treatment for ground maintenance simulators, although not a covered item under the current agreement. In areas other than tariffs, the Aircraft Agreement establishes international obligations concerning government intervention in aircraft and aircraft component development, manufacture and marketing.

As of January 1, 2004, there were 30 signatories to the Aircraft Agreement: Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Egypt, Estonia, the European Union, Denmark, France, Georgia, Germany, Greece, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, Malta, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Albania and Croatia committed to become parties upon accession to the WTO, and Oman agreed to become a party within three years of accession.

Major Issues in 2003

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. During 2003, the full Aircraft Committee met twice.

The Aircraft Committee continued to consider proposals to modernize the provisions of the Aircraft Agreement to conform with the WTO and to change the definition of "civil" vs. "military" aircraft to clarify the coverage of the Aircraft Agreement, but was unable to reach consensus on either proposal. The United States requested that the Aircraft Committee consider ways to improve the operation of the Aircraft Agreement to avoid market distortions, specifically focusing on government actions related to marketing in aircraft sales campaigns. The United States suggested exploring mechanisms to improve communication to address perceived inconsistencies between Signatory actions and the obligations of the Aircraft Agreement.

Prospects for 2004

The United States will continue to seek new Signatories to the Aircraft Agreement, both from countries having civil aircraft industries and from other countries procuring civil aircraft products but not currently significant civil aircraft product manufacturers. The latter countries are being encouraged to become Signatories to the Aircraft Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products based solely upon commercial and technological factors.