V. TRADE ENFORCEMENT ACTIVITIES

A. Enforcing U.S. Trade Agreements

1. Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements to which the United States is a party and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when appropriate. Vigorous investigation efforts by relevant agencies, including the U.S. Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. The newly established Interagency Trade Enforcement Center (ITEC), reporting to the USTR and in close collaboration with the U.S. Department of Commerce, brings together research, analytical resources, and expertise from across the Federal Government into one organization significantly enhancing the capability of the United States to investigate foreign trade practices that are potentially unfair.

Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. USTR seeks to achieve this goal through a variety of means, including:

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

- Vigorously monitoring and enforcing bilateral and plurilateral agreements;

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

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

- Promoting U.S. interests under free trade agreements (FTAs) through work programs, accelerated tariff reductions, and use or threat of use of dispute settlement mechanisms, including with respect to enforcement of labor laws or basic widely recognized labor rights and environmental laws.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the

United States has filed 101 complaints at the WTO, thus far successfully concluding 69 of them by settling 29 disputes favorably and prevailing in 40 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements involving rules on trade in goods, trade in services, and intellectual property protection.

a. Satisfactory settlements

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

The United States has been able to achieve this preferred result in 29 disputes concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value-added tax; China's use of prohibited subsidies; China's treatment of foreign financial information suppliers; China's government support tied to promotion of Chinese brand names abroad; China's subsidies for so-called Famous Brands; China's support for wind power equipment; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' automotive regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

b. Litigation successes

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 40 cases to date. In 2012, the United States prevailed in disputes involving China's measures related to the exportation of raw materials, China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States, and China's measures affecting electronic payment services. In prior years, the United States prevailed in cases involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights; the EU's subsidies to Airbus for large civil aircraft; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; the EU's tariff treatment of certain information technology products; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; Mexico's discriminatory soft drink tax; the Philippines' discriminatory taxation of imported distilled spirits; and Turkey's measures affecting the importation of rice.

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

c. ITEC

In his 2012 State of the Union Address, President Obama called for increased efforts to investigate unfair trading practices in countries around the world, including creation of a new trade enforcement unit. On February 28, 2012, the President signed Executive Order 13601, establishing the Interagency Trade Enforcement Center, or ITEC. ITEC levels the playing field for American workers and businesses by bringing a more aggressive "whole-of-government" approach to addressing unfair trade practices, and significantly enhances the Government's capabilities to challenge unfair trade practices around the world. ITEC increases the efforts devoted to trade enforcement, as well as leverages existing resources more efficiently across the Administration. Personnel from various contributing Government agencies comprise a deep pool of analytical support for trade enforcement efforts. In a close, collaborative effort, USTR and the U.S. Department of Commerce have assembled ITEC staff from a variety of agencies including the U.S. Departments of Commerce, Agriculture, and State, and with a diverse set of language skills and expertise including intellectual property rights, subsidy analysis, economics, agriculture, and animal health science.

An intelligence community liaison provides a variety of critical services and assistance to ITEC in furtherance of its objectives, including introducing ITEC, its mission, and priorities to the various collection and analytic components of the intelligence community. ITEC serves as the primary forum within the Federal Government for executive departments and agencies to coordinate enforcement of international and domestic trade rules. These efforts will include, as appropriate, an increase in engagement with foreign trade partners through the World Trade Organization, as well as through utilization of domestic trade enforcement authorities when necessary.

In 2012, ITEC quickly began contributing to fulfilling the President's goals. For example, ITEC played a critical role in providing research and analysis regarding three important matters (China Rare Earths Export Restraints, Argentina Import Licensing, and China Export Bases) for which there were serious concerns regarding U.S. trade interests. In each instance, the United States initiated steps in the WTO to protect U.S. rights. In addition, by the end of 2012 the critical initial infrastructure for ITEC had been established. It is being expanded on an ongoing basis. In coordination with other offices at USTR and other agencies, ITEC has identified priority projects for research and analysis regarding a number of countries and issues. ITEC staff has developed detailed workplans and is researching those projects intensively. These efforts are being supplemented by research activities conducted by other agencies in coordination with ITEC.

2. WTO Dispute Settlement

U.S. enforcement successes in 2012 include prevailing in a dispute involving China's export restrictions, including export quotas and export duties, on a number of important raw materials. The United States also prevailed in its challenge to China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States and in its challenge to China's restrictions and requirements

pertaining to electronic payment services (EPS) for payment card transactions and the suppliers of those services.

The United States launched five new WTO disputes in 2012, requesting WTO consultations with India regarding its import prohibitions on various U.S. poultry products purportedly to prevent the entry of avian influenza into India; China's export restraints, including export duties and export quotas, on rare earths, tungsten, and molybdenum; China's imposition of antidumping (AD) duties and countervailing duties (CVD) on imports of certain automobiles from the United States; Argentina's import restrictions including the broad use of non-transparent and discretionary import licensing requirements and burdensome trade balancing commitments; and China's auto and auto parts "export base" program, which appears to provide extensive prohibited export subsidies. Other ongoing enforcement actions include a dispute involving the EU's ban on the importation and marketing of U.S. poultry, a challenge to China's imposition of antidumping duties and countervailing duties on imports of chicken broiler products from the United States, and a compliance proceeding to determine whether the EU has complied with the WTO's recommendations to withdraw subsidies provided to Airbus, a manufacturer of large civil aircraft, or to remove their adverse effects.

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

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

The primary mandate of the SEO is to examine subsidy complaints and concerns raised by U.S. exporting companies and to monitor foreign subsidy practices to determine whether there is reason to believe they

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

During 2012, USTR and IA staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by IA officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. U.S. State Department officials at posts where IA staff are not present have also handled such inquiries.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (http://esel.trade.gov) includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. This database is frequently updated, making information on subsidy programs quickly available to the public.

b. Monitoring and Challenging Foreign Antidumping, Countervailing Duty and Safeguard Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Subsidies Agreement permit WTO Members to impose antidumping (AD) or countervailing duties to offset injurious dumping or subsidization of products exported from one Member to another. The United States actively monitors, evaluates, and where appropriate, participates in ongoing AD and CVD cases conducted by foreign countries in order to safeguard the interests of U.S. industry and to ensure that Members abide by their WTO obligations in conducting such proceedings.

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

Further, IA tracks foreign AD and CVD actions, as well as safeguard actions involving U.S. exporters, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of such actions. Information about foreign trade remedy actions affecting U.S. exports is accessible to the public via IA's website at http://ia.ita.doc.gov/trcs/index.html. The stationing of IA officers to certain overseas locations and close contacts with U.S. Government officers stationed in embassies worldwide has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports. In addition, IA promotes fair treatment, transparency, and consistency with WTO obligations through technical exchanges and other bilateral engagements.

During the past year, over 90 trade remedy actions involving exports from the United States were closely monitored, notable examples of which include: **Antidumping**— China's separate investigations of coated paper, glycol ether, and polysilicon; India's investigations of solar cells; the European Union's

investigation involving bioethanol; Mexico's separate investigations of chicken and ethylene glycol monobutyl ether (EGBE); South Africa's expiry review of chicken products; **Countervailing Duty**— the European Union's investigation of bioethanol; China's investigation of polysilicon; Peru's investigation of cotton; **Safeguards**— Brazil's investigation of fine or table wine; Chile's investigation of maize; Egypt's separate investigations of cotton textile and mixed cotton textile, and cotton yarn; India's investigation of dioctyl phthalate; Russia's investigation of combine harvesters; and Thailand's separate investigations of hot-rolled steel flat products and woven fabric.

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

4. Monitoring Foreign Standards-related Measures and SPS Barriers

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

As part of this intensified effort to identify and confront such barriers, in March 2010 USTR published two new reports, the Report on Technical Barriers to Trade (TBT) and the Report on Sanitary and Phytosanitary Measures. Both of these reports serve as tools to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports and thereby support efforts to gain market access for American farmers, ranchers, and businesses. USTR published the third TBT and SPS annual reports in April 2012. These annual reports are based on assessments from other U.S. Government agencies, including from commercial, agricultural, and foreign service officers stationed abroad, and submissions from industry and other interested stakeholders.

These reports also describe the actions that the United States has taken to address the specific trade concerns identified through these efforts, as well as ongoing processes for monitoring SPS and standards-related actions that affect trade. USTR's activities in the WTO SPS Committee and the WTO TBT Committee are at the forefront of these efforts. (*For additional information, see Chapter II.E.3 and Chapter II.E.8.*) USTR also engages on these issues through, *inter alia*, mechanisms established by free

trade agreements, such as NAFTA, and through other regional and multilateral organizations, such as APEC and the OECD.

USTR will issue new, up-to-date TBT and SPS Reports in 2013 to continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during 2012, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made. These updates, and the actions highlighted therein will be based in part on the input USTR receives from stakeholders. In October 2012, USTR issued a *Federal Register* Notice requesting producers, growers, industry, and other members of the public to submit views on SPS and standards-related measures that act as significant barriers to U.S. exports.

B. U.S. Trade Laws

1. Section 301

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

a. Operation of the Statute

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

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

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

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

b. Developments during 2012

During 2012, USTR received no petitions requesting the initiation of an investigation. As described below, there were developments in 2012 relating to a previously initiated Section 301 investigation.

c. European Communities – Measures Concerning Meat and Meat Products (Hormones)

A directive of the European Communities (EC or European Union (EU) as of December 2009) prohibits the import into the EU of animals and meat from animals to which certain hormones have been administered (the "hormone ban"). This measure has the effect of banning most imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EU's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but it failed to do so. Accordingly, in May 1999, the United States requested authorization from the Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT 1994. The EC did not contest that it had failed to comply with its WTO obligations, but it objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the EC and its Member States of tariff concessions and related obligations under the GATT 1994 covering trade up to $116.8 million per year. In a notice published in the *Federal Register* in July 1999, USTR announced that the United States was exercising this authorization by using authority under Section 301 to impose 100 percent *ad valorem* duties on a list of certain products of certain EC Member States.

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

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

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

In May 2009, the United States and the EC announced the signing of a Memorandum of Understanding (MOU) in the EC-Beef Hormones dispute. Under the first phase of the MOU, which concluded in August

2012, the EC was obligated to open a new beef tariff-rate quota (TRQ) for beef not produced with certain growth-promoting hormones in the amount of 20,000 metric tons at zero rate of duty. The United States in turn was obligated not to increase additional duties above those in effect as of March 23, 2009. The MOU provides for a possible second phase in which the EU would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all additional duties imposed in connection with the Beef Hormones dispute.

On August 3, 2012, the United States and the EU, by mutual agreement, entered into the second phase of the MOU. USTR met the phase 2 obligations of the United States by terminating the remaining additional duties in May 2011, in advance of the phase 2 start date. As provided in the MOU, the EU in turn expanded the TRQ for beef produced without certain growth promoting hormones.

The United States continues to have an authorization from the WTO DSB to suspend concessions on EU products. USTR will continue to monitor EU implementation of the MOU and other developments affecting market access for U.S. beef products. If EU implementation and other developments do not proceed as contemplated, USTR will consider additional actions under Section 301 of the Trade Act.

2. Special 301

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

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

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

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

a. 2012 Special 301 Review Announcements

On April 30, 2012, the United States announced the results of the 2012 Special 301 annual review. The 2012 report reflects the Obama Administration's resolve to encourage and help maintain effective IPR protection and enforcement worldwide. In the Report, USTR announced that Malaysia was removed from the Watch List after making significant strides, including passing copyright amendments that strengthen copyright protection, intensified IPR enforcement, and promulgating regulations to protect pharmaceutical test data. In addition, Spain was removed from the Watch List because of its adoption of regulations implementing a law to combat piracy over the Internet. Ukraine was moved to the Priority Watch List from the Watch List in light of serious and growing concerns relating to counterfeiting and rampant piracy, including piracy over the Internet.

The 2012 Special 301 review process examined IPR protection and enforcement in 77 countries. Following extensive research and analysis, USTR designated 40 countries below as follows:

- Priority Watch List: Algeria, Argentina, Canada, Chile, China, India, Israel, Indonesia, Pakistan, Russia, Thailand, Ukraine, Venezuela.

- Watch List: Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Italy, Jamaica, Kuwait, Lebanon, Mexico, Norway, Peru, Philippines, Romania, Tajikistan, Turkey, Turkmenistan, Uzbekistan, Vietnam.

- Section 306 Monitoring: Paraguay.

The Report is the result of robust stakeholder input and interagency consultation. USTR requested written submissions from the public through a notice published in the *Federal Register* on December 28, 2011. The 2012 review yielded 42 comments from interested parties. The submissions received by USTR were made available to the public online at www.regulations.gov, docket number USTR-2011-0021. On February 23, 2012, USTR conducted a public hearing at which interested persons testified before the interagency Special 301 subcommittee. The hearing included testimony from 12 witnesses, including representatives from industry, non-governmental organizations and foreign governments. A transcript of the hearing was posted at www.ustr.gov.

In September 2012, USTR removed Israel from the Special 301 Priority Watch List based on steps it took under a Memorandum of Understanding (MOU) signed in 2010. Under the MOU, both Governments agreed that Israel would introduce three laws to the Knesset to improve the country's pharmaceutical patent regime. USTR announced that since Israel had introduced these laws, the United States was moving Israel from the Priority Watch List to the Watch List. USTR also announced that, as called for in the MOU, the United States would remove Israel from the Watch List once the three laws are enacted.

USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin to publish the Notorious Markets List separately from the Special 301 Report, as an "Out-of-Cycle Review of Notorious Markets," in order to increase public awareness and guide related enforcement efforts. Notorious Markets are marketplaces that have been the subject of enforcement action or that may merit further investigation for possible intellectual property rights infringements.

The Notorious Markets List was published in December 2012, and highlighted positive developments since the issuance of the previous Notorious Markets Review in December 2011. For example, USTR noted that Chinese Internet website Taobao worked with rights holders to significantly decrease the listing of infringing products for sale through its website, and committed to continue working to streamline its

complaint procedures to further reduce listings of counterfeit products. USTR encouraged other Chinese online marketplaces to take similar actions to ensure the timely removal of listings for sales of pirated and counterfeit goods on their sites. Similarly, Chinese website Sogou was removed from the list based on reports that it had also made notable efforts to work with rights holders to address the availability of infringing content on its site. In addition, the Philippine government took significant enforcement actions at the Quiapo Shopping District, which reduced the number of counterfeit and pirated goods available for sale in this marketplace.

In January 2012, shortly after the release of the previous Notorious Markets Review, the U.S. Department of Justice filed criminal copyright charges against defendants associated with the website MegaUpload, the cyberlocker site that actively promoted the unauthorized distribution of protected content through subscriptions and reward schemes for frequent uploaders. As a result of these actions, several cyberlockers in 2012 changed their business models in ways that reduce or eliminate piracy; others, such as btjunkie, also included in last year's list, shut down their operations completely. In addition, the Mexican government took action to shut down the operations of the previously-listed Bit Torrent Tracker Demonoid. Both Modchip.ca and Consolesource, which were listed for involvement in the marketing of circumvention devices, were also reportedly shut down before Canada implemented its recently enacted Copyright Modernization Act, which includes new provisions against trafficking in circumvention devices. As a result of these actions, these sites were not included in the December 2012 report.

Notwithstanding the progress made in 2012, USTR found that several markets continued to operate despite legal rulings or enforcement actions against them. In particular, the vKontakte website continues to operate, via its social media site, a music service that courts in Russia have found to be infringing. In Ukraine, the website Ex.ua, which offered unauthorized downloading and streaming of various content, was shut down on January 31, 2012 by criminal law enforcement authorities, but was back online by February 2. Servers and evidence seized in the raid of Ex.ua's offices were reportedly returned and the criminal case was reportedly closed in June with no further action. USTR urged the governments of Russia and Ukraine to persist in efforts to ensure that notorious markets are not allowed to continue infringing operations.

3. Section 1377 Review of Telecommunications Agreements

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

The 2012 Section 1377 Review focused on a range of concerns, including: impediments to the cross-border flow of data, access to networks of major suppliers of telecommunications services, increases in fixed and mobile call termination rates, and a variety of issues affecting the telecommunications equipment trade in Brazil, China, and India.

4. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the U.S. Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at "less than fair value") and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of

material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the Trade Agreements Act of l979, the Trade and Tariff Act of 1984, the Trade and Competiveness Act of 1988, and the 1994 Uruguay Round Agreements Act.

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

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

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

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

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

The United States initiated 11 antidumping investigations in 2012 and imposed 7 antidumping orders.

5. Countervailing Duty Actions

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

The CVD law's purpose is to offset certain foreign government subsidies that benefit imports into the United States. CVD procedures under Title VII are very similar to antidumping procedures, and CVD determinations by Commerce and the USITC are subject to the same system of judicial review as are

antidumping determinations. Commerce normally initiates investigations based upon a petition submitted by a U.S. industry or an entity filing on its behalf. The USITC is responsible for investigating material injury issues. The USITC makes a preliminary finding as to whether there is a reasonable indication of material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise, Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination. If the USITC's final determination is affirmative, Commerce will issue a CVD order. CBP collects CVDs on imported goods.

The United States initiated five CVD investigations and imposed five new CVD orders in 2012.

6. Other Import Practices

a. Section 337

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

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

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

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

In 2012, the USITC instituted 40 new Section 337 investigations. In addition, the USITC instituted three enforcement proceedings in 2012. During the year, the USITC issued 4 general exclusion orders, 3 limited exclusion orders, and 26 cease and desist orders covering imports, as follows: *Certain Ground Fault Circuit Interrupters and Products Containing Same*, 337-TA-739 (general exclusion order and 12 cease and desist orders); *Certain Handbags, Luggage, Accessories, and Packaging Thereof*, 337-TA-754 (general exclusion order); *Certain Mobile Devices, Associated Software, and Components Thereof*, 337-TA-744 (limited exclusion order); *Certain Mobile Communication Devices and Related Software*, 337-TA-710 (limited exclusion order); *Certain Starter Motors and Alternators*, 337-TA-755 (limited exclusion order and one cease and desist order); *Certain Lighting Control Devices including Dimmer Switches and Parts Thereof*, 337-TA-776 (general exclusion order and 4 cease and desist orders); and *Certain Protective Cases and Components Thereof*, 337-TA-780 (general exclusion order and 9 cease and desist orders). Each of these orders became final after policy review.

b. Section 201

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

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

As of January 1, 2013, the United States had no measures in place under Section 201. The United States did not impose any Section 201 measures during 2012, and did not commence any safeguard investigations.

c. Section 421

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

Section 421 of the Trade Act of 1974, as amended by the U.S.-China Relations Act of 2000, implements this safeguard mechanism in U.S. law. For an industry to obtain relief under Section 421, the USITC must first make a determination that products of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the

domestic producers of like or directly competitive products. The statute directs that, if the USITC makes an affirmative determination, the President shall provide import relief, unless the President determines that provision of relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States.

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

In April 2009, the United Steelworkers Union filed a petition under Section 421 with respect to certain passenger vehicle and light truck tires. On September 11, 2009, following an affirmative market disruption finding by the USITC, the President issued a determination imposing additional duties on such tires for a period of three years. The additional duties, which went into effect on September 26, 2009, were set at 35 percent *ad valorem* for the first year, 30 percent *ad valorem* for the second year, and 25 percent *ad valorem* for the third year. The duties expired on September 25, 2012.

On September 14, 2009, China requested consultations with the United States in the WTO with respect to the imposition of the additional duties. China alleged that the additional duties imposed by the President were inconsistent with GATT 1994, the Agreement on Safeguards and China's Protocol of Accession. China also alleged that the USITC's determination of market disruption was inconsistent with the Protocol of Accession. In addition, China alleged that the level and duration of the duties were inconsistent with the Protocol of Accession. Finally, China alleged that the section 421 definition of "significant cause" was in and of itself inconsistent with the Protocol of Accession. The WTO established a panel in January 2010 to hear this dispute. In a report circulated on December 13, 2010, the panel found in favor of the United States with respect to all of China's claims. China appealed with respect to the panel's findings regarding the USITC's determination. The Appellate Body upheld all of the panel's findings in a report circulated on September 5, 2011.

7. Trade Adjustment Assistance

a. Overview and Assistance for Workers

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

On October 21, 2011, President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), which preserves the key goals of the 2009 program – such as covering service workers and workers whose jobs shift to China, India, or any other countries – to ensure workers harmed by trade have the best opportunity to acquire skills and credentials to get good jobs. The passage of these critical elements of TAA offers trade-affected workers the best opportunity to retrain and retool for the 21st century economy, ensuring quality employment providing a middle class standard of living.

The TAA program currently offers the following services to eligible workers: training; weekly income support; out-of-area job search and relocation allowances; case management and employment services; assistance with payments for health insurance coverage through the utilization of the Health Coverage Tax Credit (HCTC); and wage insurance for some older workers. In FY 2012, $575,000,000 was allocated to State Governments to fund and administer TAA benefits.

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

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

In FY 2012, the U.S. Department of Labor issued 1,138 certifications compared to 1,207 certifications in FY 2011 and an estimated 81,695 workers were eligible for TAA benefits compared to 104,475 in FY 2011. The ETA received 1,460 petition filings in FY 2012 compared to 1,389 petitions filed in FY 2011.

b. Trade Adjustment Assistance for Farmers

Through the Trade Adjustment Assistance (TAA) for Farmers Program, the U.S. Department of Agriculture (USDA) provides training and cash benefits to eligible producers of raw agricultural commodities and fishermen whose operations have been hurt by import competition. The program provides training specifically tailored to the needs of farmers and fishermen, enabling them to compete more effectively with producers of similar imported products. The training is intended to offer domestic producers an opportunity to improve their production, consider different marketing opportunities, and evaluate alternative enterprises.

Program benefits include an orientation workshop, and a minimum of 12 hours of online or in-person training on the development of business plans. Eligible producers, who complete an approved initial and long-term business plan subsequent to the training, are entitled to receive cash payments to implement the plans. All producers must complete the program within 36 months from the date their respective petition is approved.

The TAA for Farmers Program was reauthorized and modified on February 17, 2009, by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). In addition to reauthorizing the program, this legislation provided it with $90 million per year in funding for Fiscal Years (FYs) 2009-2010, and $22.5 million in funding for the first quarter of FY 2011. The Program officially expired on February 12, 2011. Approved FY 2009-2011 applicants may nonetheless continue to receive training and payments through September 2013.

On October 12, 2011, the U.S. Congress passed the Trade Adjustment Assistance Extension Act of 2011, which reauthorized the TAA for Farmers Program through the first quarter of FY 2014. However, the U.S. Congress has not appropriated funding for new participants for FY 2012, FY 2013, or FY 2014. As a result, in FY 2012, USDA did not accept any new petitions and is unlikely to accept new petitions or applications for benefits in FY 2013 or FY 2014.

c. Assistance for Firms and Industries

The U.S. Economic Development Administration's (EDA) Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized by chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. § 2341 et seq.) (Trade Act). Public Law 93-618, as amended, provides for trade adjustment assistance for firms and industries (19 USC §§2341-2355; 2391). Section 233 of Public Law 112-40 authorizes the TAAF Program through December 31, 2013.

The TAAF Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment to become more competitive in the global marketplace. To be certified for the program, a firm must show that an increase in imports of like or directly competitive articles contributed importantly to the decline in sales or production and to the separation or threat of separation of a significant portion of the firm's workers. The Secretary of the U.S. Commerce Department is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the U.S. Department of Commerce's Economic Development Administration (EDA). The U.S. Economic Development Administration's regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed via EDA's Internet website at: http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.

In Fiscal Year (FY) 2012, EDA awarded a total of $16,755,014.62 in TAAF Program funds to its national network of 11 Trade Adjustment Assistance Centers, each of which is assigned a different geographic service area. During FY 2012, EDA certified 79 petitions for eligibility and approved 102 adjustment proposals.

Additional information on the TAAF Program (including eligibility criteria and application process) is available at http://www.eda.gov/programs.htm.

8. United States Preference Programs

a. Overview

The United States has a number of programs designed to encourage economic development in lower income countries by offering non-reciprocal, preferential duty-free U.S. market access to imports from countries covered by these programs. Individual countries may be covered by more than one preferential market access program. In such countries, exporters may choose among programs when seeking preferential access to the U.S. market. U.S. imports benefiting from preferential access under these programs totaled an estimated $69 billion in 2012, down about 12 percent from 2011. This compares to an overall 3.5 percent increase in total U.S. goods imports for consumption from the world over the same period. The decrease was largely due to a 37 percent decline in U.S. imports under African Growth and Opportunity Act (AGOA, excluding GSP) because of declining oil imports from some major AGOA oil-producing countries. Non-oil AGOA imports, which are the primary target of policy interventions to increase trade under AGOA, declined more modestly, by 3.6 percent, from $3.1 billion to $3.0 billion.

As a share of total U.S. goods imports for consumption, imports under non-reciprocal preference programs decreased from 3.6 percent in 2011 to 3.0 percent in the first 11 months of 2012. Again, the decrease would appear to be attributable largely to the decline in AGOA oil imports. Each programs' respective share of total U.S. preferential imports in the first 11 months of 2012 was as follows: (AGOA, excluding GSP), 48 percent; GSP, 29 percent; Andean Trade Preference Act (ATPA), 18 percent; and Caribbean Basin Initiative (CBI) and Caribbean Basin Trade and Partnership Act (CBTPA); 5 percent. Trade under GSP and ATPA increased in 2012, attributable in part to the fact that these two programs

were authorized for the full year, unlike in 2011, while trade under AGOA and CBI/CBTPA decreased. See the sections below for more information on developments related to specific preference programs.

b. Generalized System of Preferences

History and Purposes

The U.S. Generalized System of Preferences (GSP) program was established under the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) and is currently authorized through July 31, 2013. The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for a wide range of products from designated beneficiary countries and territories. Duty-free treatment under the GSP program is not available for products that the President determines to be import-sensitive or that the statute excludes from the program. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and an important means of sustaining momentum for their economic reform and liberalization. The GSP program also helps to lower the cost of imported goods for U.S. businesses and consumers.

Beneficiaries

As of January 1, 2013, there were 127 designated GSP beneficiary developing countries (BDCs) and territories. Of these, 83 countries and territories are eligible for standard GSP benefits, which mean they can export approximately 3,500 products duty free to the United States. Forty-four are "least-developed" beneficiary developing countries (LDBDCs) that are eligible to export an additional 1,500 products to the United States duty free.

There were several changes to the list of GSP beneficiaries in 2012. A Presidential Proclamation of March 26, 2012 announced the designation of the Republic of South Sudan as a BDC, effective April 15, 2012, and as an LDBDC, effective May 28, 2012. The same Proclamation announced the suspension of Argentina from GSP eligibility, effective May 28, 2012, based on that country's failure to meet the statutory GSP eligibility requirement of acting in good faith in recognizing as binding and enforcing arbitral awards. Colombia and Panama were removed from eligibility for GSP and other unilateral preference programs following the entry into force of their respective free trade agreements with the United States on May 15, 2012 (Colombia) and October 31, 2012 (Panama). Senegal, already a BDC, was also designated an LDBDC, effective September 3, 2012.

In addition, the President announced that Gibraltar, the Turks and Caicos Islands, and the Federation of St. Kitts and Nevis[34] had become "high income" countries as defined by the World Bank and that, consistent with the GSP statute, their designation as BDCs would be terminated effective January 1, 2014.

Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) take steps to afford workers internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. U.S. industry has noted that a country's participation in the GSP program helps to promote a business and investment environment that benefits U.S. investors as well as the beneficiary countries.

[34] The presidential proclamation regarding Gibraltar and Turks and Caicos was issued on June 29, 2012, and the presidential proclamation regarding St. Kitts and Nevis was issued on December 20, 2012.

Eligible Products

As of the end of 2012, approximately 5,000 products were eligible for duty-free treatment under GSP, with nearly 1,500 products reserved for LDBDCs only. The list of GSP-eligible products from all beneficiaries includes most non-sensitive, dutiable manufactures and semi-manufactures; selected agricultural and fishery products; and many types of chemicals, minerals, and building materials that are not otherwise duty free. The GSP statute precludes certain import-sensitive articles from receiving GSP treatment, including most non-silk textiles and apparel; watches; most footwear, handbags, and luggage; and some gloves and leather products. The products that receive preferential market access only when imported from LDBDCs include petroleum and certain chemicals, plastics, animal and plant products, prepared foods, beverages, rum, and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are eligible for GSP treatment. Currently, the United States has agreements providing for certification and GSP eligibility of certain handmade, folkloric products with the following BDCs: Afghanistan, Botswana, Cambodia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Timor-Leste, Tunisia, Turkey, and Uruguay.

Program Results

- *Value of Trade Entering the United States under the GSP program*: The value of U.S. imports claimed under the GSP program in the first 11 months of 2012 was approximately $18.6 billion, a 9.5 percent increase compared to the same period in 2011.[35] By comparison, total U.S. imports from GSP beneficiary countries increased by 9.8 percent, by value, over the same period.[36] The increase in trade under GSP in 2012 may be attributable in part to the reauthorization of GSP in October 2011[37] and to an increase in GSP imports from India, which was the largest source of GSP imports in 2012.

  Top U.S. imports under the GSP program in 2012 (at the four-digit HTSUS level), by trade value, were ferroalloys, motor vehicle parts, new pneumatic rubber tires, jewelry of precious metal, crude petroleum oils and oils from bituminous minerals, aluminum products, iron and steel tubes and pipe fittings, certain transmission parts bearing housings and gears, certain wires and cables, and electric motors and generators.

  In 2012 (through November), based on trade value, the top five GSP BDC suppliers were, in order, India, Thailand, Brazil, Indonesia, and South Africa. Eight of the top 50 GSP BDCs in 2012 were LDBDCs. In order of GSP trade value, these were Angola, Democratic Republic of Congo, Bangladesh, Cambodia, Malawi, Nepal, Ethiopia, and Madagascar.

- *The GSP Program's Contribution to Economic Development in Developing Nations*: The GSP program helps countries diversify and expand their exports, an important developmental goal. The 2012 data on exports to the United States indicate that some beneficiaries have made progress in diversifying and expanding their exports to the United States under the GSP program. Among the countries with significant increases in GSP trade in 2012 were India, Turkey, Angola, the Democratic Republic of Congo, Pakistan, and Tunisia. Diversification of exports under GSP

[35] U.S. International Trade Commission, DataWeb (accessed November 14, 2012).
[36] Based on GSP-eligible countries as of July 1, 2012.
[37] Although GSP benefits were restored retroactively to January 2011, the 10-month lapse in GSP authorization in 2011 appears to have been a factor in the overall reduction of GSP-eligible imports in 2011.

also enhances the productive capacity and competitiveness of beneficiary countries with respect to their exports to markets other than the United States.

- *Efforts to promote wider distribution of the use of GSP benefits among beneficiaries*: As directed by the U.S. Congress, the Administration has sought to broaden the use of the GSP program's benefits among beneficiary countries. In 2012, USTR carried out GSP outreach activities in several countries, including Egypt, Tunisia, Pakistan, Nepal, Sri Lanka, Albania, Bosnia and Herzegovina, and Uruguay. For additional details and multiple-language GSP guides and country-specific analyses, go to "GSP in Use – Country Specific Information" under "Generalized System of Preferences" on the USTR website at http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun.

- *Benefits to the U.S. Economy:* The GSP program helps not only beneficiary developing countries, but also U.S. businesses and families. The program is a significant source of imports and products for U.S. businesses, including small and medium sized companies. The GSP program also helps reduce costs for U.S. manufacturers that utilize inputs that are not produced or available domestically, thereby helping to improve the competitiveness of U.S. manufacturing.

Annual Reviews

An important element of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility. Detailed information on elements of each Annual Review is available on the "Annual Reviews" pages on the USTR website at http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0.

Conclusion of the 2011 GSP Annual Review

The results of the 2011 GSP Annual Review of product petitions were announced in a Presidential Proclamation dated June 29, 2012. Among other determinations, seven new cotton products were made GSP-eligible for LDBDCs, one product was redesignated for GSP eligibility, four petitions for competitive need limitation (CNL) waivers were granted (out of nine accepted for review), and the CNL waivers for three products from two countries were revoked. The Proclamation and a complete list of the results are available on the "GSP: 2011 Annual Review" page on the USTR website at http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-4. On December 28, 2012, USTR published a notice in the *Federal Register* announcing that it had denied a petition submitted as part of the 2011 Annual Review to add certain pinch-seal plastic bags to eligibility for trade benefits under GSP.

As part of the GSP 2011 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) also considered several petitions to withdraw or limit a country's GSP benefits for not meeting certain GSP eligibility criteria. On July 12, 2012, USTR announced that it had closed, with no change to GSP benefits, the country practice case regarding worker rights in Sri Lanka in view of the significant progress made by the government of Sri Lanka in addressing worker rights issues. On the same date, USTR also announced that it had accepted for formal review three country practices petitions submitted as part of the 2011 Annual Review—on Fiji regarding worker rights and on Indonesia and Ukraine regarding intellectual property rights—as well as a petition on Iraq regarding worker rights that had been submitted as part of an earlier review. A public hearing was held on October 2, 2012 on these four newly accepted petitions. USTR deferred a decision on the acceptance of a country practice petition on Russia

regarding expropriation. Other outstanding country practices petitions that remained under active review at year's end included petitions on Lebanon, Russia and Uzbekistan with respect to IPR protection and petitions on Bangladesh, Georgia, Niger, the Philippines, and Uzbekistan with respect to worker rights or child labor concerns. For a complete list of the country practices petitions that remained under review as of July 1, 2012, go to http://www.ustr.gov/webfm_send/3487.

2012 GSP Annual Review

On July 30, 2012, a notice was published in the *Federal Register* launching the 2012 GSP Annual Review. That notice is available at http://www.regulations.gov/#!documentDetail;D=USTR-2012-0013-0001. On December 28, 2012, USTR announced that it had accepted for formal review petitions to add four products to eligibility for duty-free treatment under GSP and petitions for waivers of CNLs for 12 products from six countries.

c. The African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA), enacted in 2000, is a key element of U.S. economic policy in Africa, providing eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2012, 40 sub-Saharan African countries were eligible for AGOA benefits. Over 93 percent of U.S. imports from these countries entered the United States duty free in 2012 (first 11 months of 2012 annualized).

AGOA requires the President to determine annually which of the sub-Saharan African countries listed in the Act are eligible to receive benefits under the Act. These decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has met the eligibility criteria, or whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, among others, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized worker rights. The Act also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of international human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, and prospective beneficiary governments. Through the AGOA eligibility review process, the annual AGOA Forum meeting (*see below*), and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries. During 2012, the annual review resulted in President Obama designating 39 countries as eligible for AGOA benefits in 2013. The Republic of Mali and the Republic of Guinea-Bissau were both determined to be ineligible after military coups took place in both countries. South Sudan, as discussed below, was added to the list of eligible countries.

The United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as the "AGOA Forum," is an annual ministerial-level meeting with AGOA-eligible countries. The eleventh meeting of the AGOA Forum was held in June 2012 in Washington, DC. U.S. Trade Representative Ambassador Ron Kirk and Deputy U.S. Trade Representative Demetrios Marantis participated in the 2012 Forum, along with senior officials from more than a dozen U.S. Government agencies. They met with numerous African trade ministers, leaders of African regional economic organizations, and representatives of the African and American private sectors and civil society to discuss issues and strategies for advancing trade, investment, and economic development in Africa as well as ways to increase two-way U.S.-African trade.

During the AGOA Forum, Ambassador Kirk reiterated the Administration's support for legislation to extend AGOA's Third Country Fabric Provision which was due to expire in September 2012, and to add South Sudan to the list of sub-Saharan countries which could be considered for AGOA eligibility. Shortly after the Forum, the U.S. Congress passed and the President signed into law legislation to accomplish these two important goals. In December 2012, President Obama determined that South Sudan met the criteria for AGOA eligibility, ensuring that the country would receive AGOA benefits in 2013 for the first time.

AGOA and related GSP imports from AGOA-eligible countries were valued at $34.9 billion in 2012 (first 11 months of 2012 annualized), down 35 percent from 2011. Petroleum products continued to account for the largest portion of AGOA/GSP imports. The leading non-oil imports under AGOA/GSP in 2012 included apparel, vehicles and parts, ferroalloys, citrus, wine, chemicals, nuts, cocoa powder, essential oils, cut flowers, and fruit juices. The leading AGOA/GSP beneficiary countries were Nigeria, Angola, South Africa, Chad, and the Republic of the Congo.

d. Andean Trade Preference Act

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

Bolivia's eligibility for benefits was suspended effective December 2008. Further, in accordance with the statute, since the President did not determine that Bolivia satisfied the program's eligibility requirements in his June 30, 2009 report to the U.S. Congress, no benefits remain in effect under the program for Bolivia. In December 2010 the U.S. Congress removed Peru's beneficiary status under the ATPA effective January 1, 2011, since Peru had become a free trade agreement partner of the United States. Effective May 15, 2012, with the entry into force of the U.S.-Colombia Trade Promotion Agreement, Colombia was no longer a beneficiary country under the ATPA program. Currently, only Ecuador receives benefits under the program. On June 30, 2012, USTR issued the Sixth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended. The U.S. Congress has extended the program through July 31, 2013.

e. Caribbean Basin Initiative

During 2012, the Caribbean Basin Economic Recovery Act (CBERA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA) trade programs, collectively known as the CBI, remained a vital element in U.S. economic relations with its neighbors in Central America and the Caribbean. The CBI provides beneficiary countries and territories with duty-free access to the U.S. market. Current beneficiary countries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. The United States published a Federal Register notice in October 2012 soliciting comments on the extension of benefits to Curacao, Sint Maarten and the Turks and Caicos Islands, as successor political entities of the recently dissolved Netherlands Antilles. The notice also solicited comments on the expansion of CBTPA benefits to eligible countries not currently receiving those benefits but which requested them in 2012.

On the date the CAFTA-DR entered into force for Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic, each country ceased to be designated as a CBERA and CBTPA

beneficiary. Similarly, the U.S.-Panama Trade Promotion Agreement entered into force on October 31, 2012 and Panama ceased to be designated as a CBERA and CBTPA beneficiary.

Since its inception, the CBI has helped beneficiaries diversify their exports. In conjunction with economic reform and trade liberalization by beneficiary countries, the trade benefits of CBI have contributed to their economic growth. In December 2011, USTR submitted its biannual report to the U.S. Congress on the operation of the CBERA. The report can be found on the USTR website, www.ustr.gov.