

# 2019 Trade Policy Agenda

and

# 2018 Annual Report

of the President of the United States on  
the Trade Agreements Program



Office of the United States Trade Representative

Ambassador Robert E. Lighthizer



# FOREWORD

The 2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program are submitted to the Congress pursuant to Section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213). Chapter V and Annex III of this document meet the requirements of Sections 122 and 124 of the Uruguay Round Agreements Act with respect to the World Trade Organization. The discussion on the Generalized System of Preferences (GSP) in Chapter III satisfies the reporting requirement contained in the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, div. M, title V, § 501(c)). This report includes an annex listing trade agreements entered into by the United States since 1984. Data for 2018 presented in this report are annualized based on 11 months of data for goods and services unless otherwise specified.

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report and gratefully acknowledges the contributions of all USTR staff to the writing and production of this report and notes, in particular, the contributions of Will Davis, Billy S. Glass, Samuel Gruber, Julie McNees, Nathaniel Moulton, and Lida Weinstock. Appreciation is extended to partner Trade Policy Staff Committee agencies.

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# LIST OF FREQUENTLY USED ACRONYMS

AD.....	Antidumping
AGOA.....	African Growth and Opportunity Act
APEC.....	Asia-Pacific Economic Cooperation
ASEAN.....	Association of Southeast Asian Nations
BIT.....	Bilateral Investment Treaty
BOP.....	Balance of Payments
CAFTA-DR.....	Dominican Republic-Central America-United States Free Trade Agreement
CBERA.....	Caribbean Basin Economic Recovery Act
CBI.....	Caribbean Basin Initiative
CVD.....	Countervailing Duty
DDA.....	Doha Development Agenda
DOL.....	U.S. Department of Labor
DSB.....	WTO Dispute Settlement Body
DSU.....	WTO Dispute Settlement Understanding
EU.....	European Union
FOIA.....	Freedom of Information Act
GATT.....	General Agreement on Tariffs and Trade
GATS.....	General Agreement on Trade in Services
GDP.....	Gross Domestic Product
GI.....	Geographical Indications
GPA.....	WTO Agreement on Government Procurement
GSP.....	Generalized System of Preferences
ICTIME.....	Interagency Center on Trade Implementation, Monitoring, and Enforcement
ILO.....	International Labor Organization
IPR.....	Intellectual Property Rights
ITA.....	WTO Information Technology Agreement
KORUS.....	United States-Korea Free Trade Agreement
MFN.....	Most-Favored Nation
MOU.....	Memorandum of Understanding
NAFTA.....	North American Free Trade Agreement
OECD.....	The Organization for Economic Cooperation and Development
SBA.....	U.S. Small Business Administration
SME.....	Small and Medium-Sized Enterprise
SPS.....	Sanitary and Phytosanitary
TAA.....	Trade Adjustment Assistance
TBT.....	Technical Barriers to Trade
TFA.....	WTO Trade Facilitation Agreement
TIFA.....	Trade and Investment Framework Agreement
TPRG.....	Trade Policy Review Group

TPSC.....	Trade Policy Staff Committee
TRIMS .....	Trade-Related Investment Measures
TRIPS.....	Trade-Related Intellectual Property Rights
TRQ .....	Tariff-Rate Quota
URAA .....	Uruguay Round Agreements Act
USAID .....	U.S. Agency for International Development
USMCA .....	United States-Mexico-Canada Agreement
USTR .....	United States Trade Representative
WTO .....	World Trade Organization

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**THE PRESIDENT'S  
2019 TRADE POLICY AGENDA**



# I. THE PRESIDENT'S TRADE POLICY AGENDA

## INTRODUCTION

Since President Trump took office, Americans have benefited from an improving economy. In 2016, U.S. gross domestic product grew by only 1.6 percent. But in 2017, that figure grew to 2.2 percent. And last year, U.S. gross domestic product grew by 2.9 percent – higher than that of any other G-7 country.<sup>1</sup> Over the last two years, the United States has created 4.8 million new jobs, including over 450,000 new manufacturing jobs. Not only are more Americans working, but Americans are also taking home bigger paychecks. Nominal average hourly earnings for American workers rose by 3.3 percent from December 2017 to December 2018.<sup>2</sup> Inflation also remained in check – with prices increasing by only 1.9 percent since December 2017.<sup>3</sup>

Americans who trade have shared in this growth. In 2017, U.S. merchandise exports totaled \$1.6 trillion, more than six percent higher than 2016 levels.<sup>4</sup> Over the same period, U.S. services exports rose 5.1 percent, an increase of nearly \$40 billion.<sup>5</sup> In 2018, U.S. exports rose even further. By November 2018 – the last month for which data is available – U.S. exports of goods and services were up seven percent from the same period in 2017.<sup>6</sup> American export growth in 2018 included increases in U.S. exports of autos, foods and beverages, and industrial supplies, as compared to their levels during the first eleven months of 2017.<sup>7</sup> Imports have also grown. In 2017, the United States imported more than \$2.3 trillion in goods – an increase of seven percent from 2016 levels.<sup>8</sup> By November 2018 – the last month for which data is available as of February 2019 – U.S. imports had increased a further eight percent over their 2017 levels for the same period. These facts show that under the policies of the Trump Administration, U.S. trade has grown significantly.

This recent trade growth has contributed to a historic streak of positive job gains. U.S. job creation grew from 2.2 million in 2017 to 2.7 million in 2018.<sup>9</sup> Over 2018, job growth averaged 223,000 jobs per month. Significantly, this growth was consistently solid throughout 2018, as the U.S. economy added over 100,000 jobs every month over the year.<sup>10</sup> Notably, 2018 marks only the second time since 2000 that such consistent job growth has occurred for a full calendar year.<sup>11</sup>

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<sup>1</sup> See Bureau of Economic Analysis, News Release (February 28, 2018), [https://www.bea.gov/system/files/2018-03/gdp4q17\\_3rd.pdf](https://www.bea.gov/system/files/2018-03/gdp4q17_3rd.pdf).

<sup>2</sup> See Bureau of Labor Statistics, Current Employment Statistics Highlights (December 2018), <https://www.bls.gov/web/empstat/ceshighlights.pdf>.

<sup>3</sup> Bureau of Labor Statistics, Real Earnings—December 2018, <https://www.bls.gov/news.release/pdf/realer.pdf>

<sup>4</sup> U.S. Trade in Goods and Services, <https://www.census.gov/foreign-trade/statistics/historical/gands.pdf>.

<sup>5</sup> U.S. Trade in Goods and Services, <https://www.census.gov/foreign-trade/statistics/historical/gands.pdf>

<sup>6</sup> Monthly U.S. International Trade in Goods and Services, November 2018, <https://www.census.gov/foreign-trade/Press-Release/2018pr/11/ft900.pdf>.

<sup>7</sup> Real Exports of Goods by Principal End-Use Category (Seasonally Adjusted), Chained (2012) U.S. Dollars, <https://www.census.gov/foreign-trade/statistics/historical/realexp.pdf>.

<sup>8</sup> Trade in Goods with World, Seasonally Adjusted, <https://www.census.gov/foreign-trade/balance/c0004.html>.

<sup>9</sup> See Bureau of Labor Statistics, Current Employment Statistics Highlights (December 2018), <https://www.bls.gov/web/empstat/ceshighlights.pdf>; Bureau of Labor Statistics, Current Employment Statistics Highlights (December 2017), <https://www.bls.gov/ces/highlights122017.pdf>.

<sup>10</sup> See Bureau of Labor Statistics, Archived Current Employment Statistics Monthly Highlights, January – December 2018, <https://www.bls.gov/ces/ceshighlightsarch.htm>.

<sup>11</sup> See Council of Economic Advisers, 2018 Ends with 312,000 Jobs Created in December; Strong Year for the Job Market (Jan. 4, 2019), <https://www.whitehouse.gov/articles/2018-ends-312000-jobs-created-december-strong-year-job-market/>.

This 2018 job growth includes significant gains in manufacturing employment.<sup>12</sup> Manufacturing has been a bright spot since President Trump’s election. From 2013 to 2016, the United States created an average of 8,000 manufacturing jobs per month. In the two years of the Trump Administration, that average has grown to approximately 20,000 manufacturing jobs per month. Last year, the U.S. created 264,000 new manufacturing jobs,<sup>13</sup> the largest such increase in 21 years.<sup>14</sup>

These data indicate that the United States has made great strides in dealing with the challenges of globalization – challenges that have bedeviled most of the developed world in recent years. Over the last two years, the United States has shown that a developed country can experience broad economic growth that is shared by workers – including workers in the manufacturing sector.

Trade policy plays a vital role in this effort. Under the leadership of President Trump, American trade policy is generating benefits for American workers. While much remains to be done, the Administration has already made significant progress toward implementing its trade agenda. Our goal is to ensure that hard work and innovation are rewarded, while unfair trade practices and illegal government subsidies are punished. As our policies continue to take effect, we are confident that American workers and businesses will benefit from the chance to compete in a fairer world.

As described below, the Trump Administration inherited a significantly flawed trading system, with problems that affected U.S. trade agreements as well as global trade institutions. That system rewarded countries like China that engaged in unfair and market-distorting trading practices – from industrial subsidies to theft of intellectual property. That system also encouraged outsourcing of manufacturing jobs to countries with significantly weaker labor and environmental standards than the United States. These and other flaws were hurting U.S. businesses and workers – and leading to concerns about globalization throughout the developed world. When President Trump took office, the U.S. manufacturing sector had endured massive job losses, and wages had stagnated or even declined for many American families.

Faced with this crisis, the Trump Administration took immediate and decisive action to implement a new trade agenda. The Administration withdrew the United States from the Trans-Pacific Partnership (TPP) and engaged with strategic U.S. trading partners to renegotiate existing agreements and negotiate new agreements. These agreements will ensure that American workers and businesses can reap their share of the benefits of trade. The Office of the U.S. Trade Representative (USTR) and other parts of the Administration have used both domestic laws and international fora to press U.S. trade priorities and enforce trade commitments made by America’s trading partners. In 2019, the Administration will continue this work and take further steps to rebalance America’s trade relationships and the global economy.

For too long, workers here and throughout the developed world have been frustrated by elected officials who talk about the problems resulting from globalization – but do nothing about them. For too long, policymakers here and throughout the developed world have been intimidated by the claim that any effort to shift trade policy in a more worker-friendly direction represents some type of Smoot-Hawley style “protectionism.” But this is nonsense – recent events demonstrate that by using its leverage as the world’s largest market, the United States can create better conditions for U.S. workers, *and* encourage more efficient global markets.

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<sup>12</sup> See Bureau of Labor Statistics, Employment change by industry, December 2018, seasonally adjusted, 12-month net change, <https://www.bls.gov/charts/employment-situation/employment-by-industry-monthly-changes.htm>

<sup>13</sup> See Bureau of Labor Statistics, Current Employment Statistics Highlights (December 2018), <https://www.bls.gov/web/empsit/ceshighlights.pdf>.

<sup>14</sup> See Council of Economic Advisers, 2018 Ends with 312,000 Jobs Created in December; Strong Year for the Job Market (Jan. 4, 2019), <https://www.whitehouse.gov/articles/2018-ends-312000-jobs-created-december-strong-year-job-market/>.



Under President Trump's leadership, the United States is now charting a course that leads to stronger growth – and better jobs – for all Americans. The Trump Administration has promoted economic growth through historic tax reform and a policy of deregulation that encourage more business activity in the United States. But the Trump Administration has also used the leverage of the U.S. market to obtain fairer and better treatment for U.S. companies and workers to do more business in markets around the world. As a result, the United States now has an economy that is not only growing faster than that of any other G-7 country – but is also generating new opportunities for the type of blue-collar workers and middle-class families who have far too often been left behind.

This year presents exciting opportunities for U.S. trade policy. The Administration is urging Congress to approve the United States-Mexico-Canada Agreement (USMCA) – a new trade regime for North America that will treat American workers and businesses much better than the outdated NAFTA. The Administration continues to press China to address long-standing U.S. concerns about unfair practices in that country. The Administration intends to launch new trade negotiations with Japan, the European Union, and the United Kingdom to provide even more opportunities for U.S. workers and exporters. All of this effort is part of an ongoing upgrade to adjust U.S. trade policy to the realities of the 21<sup>st</sup> century economy. As that upgrade continues, the new jobs and higher wages that we have seen so far are only the beginning of what Americans can accomplish.

# **REBALANCING TRADE TO BENEFIT AMERICANS:**

## **THE PRESIDENT’S 2019 TRADE POLICY AGENDA**

In outlining the President’s Trade Policy Agenda, we wish to emphasize three major points. First, President Trump inherited a deeply flawed global trading system that put U.S. companies and workers at an unfair disadvantage – and discouraged true market competition. Second, under President Trump’s leadership, the Administration has undertaken a major revision of U.S. trade obligations – as well as much stricter enforcement of U.S. trade laws – to create a fairer and more efficient global economy. Third, the Administration will continue pursuing new trade deals – and stronger enforcement – throughout 2019.

### **A. The Administration Inherited a Trade System With Many Problems**

For many years after World War II, the United States benefited from a global trading system that generally encouraged more efficient markets here and around the world. By the time President Trump took office, however, significant flaws in that system were hurting American workers and businesses. Existing trade agreements were imbalanced and outdated, and efforts to negotiate new rules within the multilateral trading system had failed. American workers and businesses were suffering. In fact, the global trading system appeared to be tilted in favor of non-market economies like China. Furthermore, the United States was considering whether to join the TPP – a deal that would have made these trends even worse. Each of these points is discussed in more detail below.

#### **1. Outdated and Imbalanced Trade Agreements**

President Trump inherited trade agreements that were outdated and imbalanced. Furthermore, these agreements had failed to deliver promised benefits to U.S. businesses and workers. Such flaws were particularly present in the North American Free Trade Agreement (NAFTA) and the United States-Korea Free Trade Agreement (KORUS).

##### **a. NAFTA**

When NAFTA went into force on January 1, 1994, many pundits and policymakers assured American workers that the agreement would create a massive number of new jobs, and that the United States would enjoy expanding trade surpluses with Mexico upon implementation.<sup>15</sup> President Bill Clinton, who signed the bill that approved NAFTA, declared further that NAFTA’s side agreements on the environment and labor would make it a “force for social progress as well as economic growth.”<sup>16</sup>

Unfortunately for the American people, these promises were not fulfilled. In fact, NAFTA brought reduced opportunities for many Americans.<sup>17</sup> According to one study, NAFTA reduced the wage growth

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<sup>15</sup> See, e.g., Gary Clyde Hufbauer, Jeffrey J. Schott, Diana Clark, & Robin Dunnigan, *NAFTA: An Assessment*, INSTITUTE FOR INTERNATIONAL ECONOMICS at 14–15 (1993).

<sup>16</sup> Public Papers of the Presidents of the United States: William J. Clinton (1993, Book II), Remarks on Signing the NAFTA Implementation Act (Dec. 8, 1993), <https://www.govinfo.gov/content/pkg/PPP-1993-book2/html/PPP-1993-book2-doc-pg2139-3.htm>.

<sup>17</sup> See M. Angeles Villarreal & Ian F. Fergusson, *The North American Free Trade Agreement*, CONGRESSIONAL RESEARCH SERVICE at 16 (May 24, 2017); U.S. International Trade Commission, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2016 Report*, Inv. No. 332-555, USITC Pub. No. 4614 (June 2016) 180–81.

of certain American blue-collar workers in highly affected industries by 16 percent.<sup>18</sup> Further, NAFTA contained terms that incentivized companies across the United States to outsource production, especially to Mexico. Such results were encouraged by the fact that under NAFTA, labor rights and environmental protection provisions were merely aspirational and unenforceable.

Furthermore, the U.S. goods trade balance with Mexico – which had been in surplus each of the three years before NAFTA entered into force – soured almost immediately after NAFTA’s implementation. The United States had a trade deficit in goods with Mexico of more than \$15 billion in 1995, and that deficit grew to more than \$70 billion by 2017.<sup>19</sup> Remarkably, Mexican workers saw little benefit from this change. Mexican manufacturing wages, in U.S. dollars, have not risen to converge with U.S. and Canadian rates, and the gap between the countries remains comparable to that when NAFTA passed. Remarkably, although NAFTA’s flaws had been apparent for decades, when President Trump took office there had been no major changes to the agreement since it entered into force in 1994.

## **b. KORUS**

KORUS, which entered into force in 2012, also failed to bring about promised benefits. KORUS was estimated to increase U.S. exports to Korea by around \$10 billion, and to bring about substantial improvements to Korea’s regulatory environment.<sup>20</sup> Increases in U.S. imports from Korea as a result of KORUS, by contrast, were expected to be modest.<sup>21</sup> After nearly six years, however, KORUS’s record was disappointing.

With over 90 percent of two-way trade in goods free of tariffs, U.S. exports of goods to Korea had risen by less than \$5 billion in 2017, as compared to 2011 levels.<sup>22</sup> By contrast, U.S. imports of Korean goods had grown by approximately \$15 billion over the same period.<sup>23</sup> By 2017, the U.S. goods deficit with Korea had increased by 73 percent since KORUS came into effect. Meanwhile, U.S. stakeholders expressed concern that Korea had failed to fully implement its obligations under KORUS in areas such as automobiles, labor, competition, customs, pharmaceuticals, and medical devices.

## **2. A failing multilateral trade system**

Meanwhile, President Trump inherited a multilateral trade system that had largely broken down. No new significant multilateral market access agreement has been made at the World Trade Organization (WTO) since it was formed in 1994. The last major effort to reach such an agreement – the Doha Round – collapsed in 2008. While a few members are still trying to revive the Doha Round, such an effort would be a mistake – the Doha Development Agenda (DDA) is outdated and fails to properly address modern issues such as digital trade. Indeed, Ministers at the WTO’s Tenth Ministerial Conference in December 2015 – more than a year before President Trump took office – collectively acknowledged that there was no consensus to reaffirm the DDA’s mandates.<sup>24</sup> Some WTO rules are unable to keep up with modern

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<sup>18</sup> McLaren & Hakobyan, “Looking for Local Labor Market Effects of NAFTA,” 2012, *cited in* U.S. International Trade Commission, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2016 Report*, Inv. No. 332-555, USITC Pub. No. 4614 (June 2016) 258–59.

<sup>19</sup> U.S. Census Bureau, Trade in Goods with Mexico, <https://www.census.gov/foreign-trade/balance/c2010.html>

<sup>20</sup> U.S. International Trade Commission, U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects, USITC Pub. No. 3949 (Sept. 2007), at xvii & xviii.

<sup>21</sup> *Id.* at xvii.

<sup>22</sup> U.S. Census Bureau, Trade in Goods with South Korea, <https://www.census.gov/foreign-trade/balance/c5800.html>

<sup>23</sup> *Id.*

<sup>24</sup> *See* Ministerial Conference, Tenth Session, Nairobi, 15–18 December 2015, Draft Nairobi Ministerial Declaration (Dec. 19, 2015), WT/MIN(15)/W/33/Rev.3, paras. 30–34.

economic challenges and today's unfair trade practices. The WTO's inability to adequately differentiate among developing country Members, combined with misaligned expectations about which Members should contribute to negotiated outcomes, are among the factors accounting for the WTO's lack of achievements in new negotiations.

Another important reason for the failure of multilateral negotiations is that judicial activism at the WTO's Appellate Body tempted countries to demand special privileges through litigation – rather than seeking to build consensus through negotiation. For many years, the WTO Appellate Body repeatedly seized more power for itself – while undermining and disregarding the very rules under which the dispute settlement system was created. The Appellate Body's actions led to a lack of trust in the decisions that emerged from its process. Years of complaints by prior U.S. Administrations about activism at the Appellate Body were ignored. Furthermore, this activism had the disastrous effect of making it harder for market-based countries like the United States to push back against unfair practices abroad and discouraged them from adjusting their own trade policies in response to growing concerns about globalization. In fact, one of the most striking developments of recent years is that while the United States has long expressed concerns about the Appellate Body, China – an enormous non-market economy – advocates for giving that body even more power over trade policy.

### **3. Unfair trade that harmed U.S. workers and businesses**

Due to the failures of U.S. trade agreements and the multilateral trading system, many American workers and businesses were suffering significant harm when the Administration came into office. As described below, non-market policies by China and other countries had led to global overcapacity in key industries such as steel and aluminum. Meanwhile, China was engaging in a widespread campaign to obtain valuable U.S. intellectual property, denying American innovators the full value of their inventions and damaging the U.S. economy as a whole. In addition, some U.S. trading partners were disregarding certain labor and environmental obligations, and American farmers faced non-science-based barriers to the export of their goods.

#### **a. Non-market policies causing overcapacity**

When the Trump Administration took office, key American industries such as steel and aluminum faced massive global overcapacity due to non-market-oriented policies of China and other countries. This overcapacity had already contributed to closures of U.S. steel mills and aluminum smelters, and had made the U.S. economy increasingly reliant on imports of steel and aluminum. The domestic steel industry lost 14,100 American jobs in 2015 and 2016. Capacity utilization of American steel mills was only 69.4 percent in 2016, a level that inhibited efficient operations and discouraged American steel companies from investing in research and development. Meanwhile, China and other steel-producing nations dramatically *increased* their production capacity – despite growing evidence of global overcapacity. By 2016, China had enough capacity to produce as much steel as the rest of the world combined.<sup>25</sup>

The U.S. aluminum industry faced similar problems. Between 2000 and 2017, 18 of 23 U.S. aluminum smelters shut down, and between 2013 and 2016 alone, the primary aluminum sector in the United States lost around 8,000 American jobs. Although the United States had been the world's largest producer of aluminum in 2000, by 2016, U.S. aluminum accounted for just 1.5 percent of global production. In 2016 and 2017, when aluminum prices neared record lows, U.S. aluminum production was only about

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<sup>25</sup> U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security* (Jan. 11, 2018) at 5.

half of its 2015 levels. Meanwhile, China – which had accounted for less than 15 percent of global aluminum production in 2000 – made roughly 55 percent of the world’s aluminum in 2016.<sup>26</sup>

In short, the Trump Administration inherited a severe overcapacity crisis in both steel and aluminum – a pair of crises for which the multilateral trading system had no good answers. Efforts to work with other countries on these issues – such as the Global Forum on Steel Excess Capacity established by the G-20 in 2016 – had done nothing to stop the problems described above. Furthermore, if these problems were not addressed, the United States would likely see similar difficulties in numerous other industries – as the same non-market practices that contributed to excess capacity in steel and aluminum would likely take place in other industries. Thus, it was vital for the Administration to convince markets – and its trading partners – that this type of behavior would lead to severe consequences.

### **b. China’s attacks on U.S. innovation**

Meanwhile, the United States faced another major crisis that threatened the very future of its economy. For a country like ours that depends on innovation and creativity for much of its economic growth, strong protection of intellectual property and technology is vital. But the Trump Administration inherited a situation in which China was using a variety of unfair and market-distorting tactics to take valuable U.S. intellectual property. These tactics included joint venture requirements and other foreign investment restrictions, which effectively pressured U.S. investors in China to partner with Chinese companies and provided these Chinese “partners” access to the intellectual property of their U.S. counterparts. Furthermore, when U.S. intellectual property owners were permitted to license their technology in China, they had to do so under discriminatory regulations that barred U.S. owners from receiving market-rate returns. China had also implemented outbound foreign investment programs to obtain U.S. intellectual property through the acquisition of targeted U.S. companies. Finally, in repeated cyber intrusions into U.S. commercial networks, the Chinese government had targeted the business confidential information and other sensitive data of American companies – despite pledges not to do so.

Together, these developments represented a severe threat to the U.S. economy and the future prosperity of all Americans. Technology and intellectual property play a vital role in the U.S. economy – supporting some 45.5 million American jobs and accounting for over 38 percent of U.S. GDP and 52 percent of U.S. exports.<sup>27</sup> In addition, China’s policies effectively deprived U.S. companies of the full value of their intellectual property and technology, and inhibited U.S. companies from fairly competing in China’s large market. Theft of U.S. intellectual property was also threatening American companies’ technological competitive edge in global markets by denying fair returns for American intellectual property investment and discouraging reinvestment in future innovations.

Once again, the multilateral trading system offered no practical solution for the United States. Many of the worst actions undertaken by China – such as the numerous informal methods of pressuring U.S. companies to share their technology with Chinese partners – were not captured by China’s obligations at the WTO. Furthermore, key U.S. trading partners showed little willingness to take practical steps to pressure China on these issues. Nevertheless, the United States had to find some way to persuade China to stop its predatory actions.

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<sup>26</sup> U.S. Department of Commerce, *The Effect of Imports of Aluminum on the National Security* (Jan. 17, 2018) at 44.

<sup>27</sup> USTR, *Findings of the Investigation into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974* (Mar. 22, 2018), at 44–45 available at <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

### **c. Trading partners' disregard of labor and environmental obligations**

Separately, when the Trump Administration took office, U.S. trading partners were taking advantage of weak labor and environmental obligations to take jobs from the United States. In Mexico, for example, the government's failure to consistently enforce labor laws and protect worker rights left workers with little recourse regarding violations of freedom of association, poor working conditions, and other labor problems. Among other problems, union leadership in Mexico was elected without majority worker support, and collective bargaining agreements were imposed without worker support. Such policies and practices have kept Mexican workers' wages low, and harmed workers and their families on both sides of the border. Furthermore, these practices encouraged companies to outsource production to Mexico, in the hopes that they could reduce costs by using low-wage labor. These facts help to explain why Mexican wages remained stagnant for years, even as the U.S. trade deficit with Mexico surged.

Meanwhile, in Peru, the Trump Administration inherited a situation where there was strong evidence that illegal logging continued in Peru despite the forestry obligations in the U.S.-Peru Free Trade Agreement. In 2015, the Department of Homeland Security in Houston detained and ultimately destroyed several large shipments of timber imported from Peru based on evidence that the timber had been harvested illegally. Also in 2016, in response to a request under our bilateral trade agreement that Peru verify the legal origin of timber exported to the United States from the Peruvian company Oroza, Peru found that significant portions of that particular timber shipment were not compliant with Peru's law, regulations, and other measures on harvest and trade of timber products. Violations of this type not only lead to environmental harm, they also encourage outsourcing. The United States has decided, as a matter of public policy, to require all businesses operating in this country to comply with certain basic environmental standards. Similarly, it is vital that when U.S. trading partners agree to environmental standards, those standards must be enforced.

### **d. Trade barriers to U.S. farm exports that were not grounded in science**

Finally, when the Trump Administration took office, U.S. farmers faced a variety of trade barriers that were not grounded in science. For example, Argentina had banned U.S. pork, pork products, and beef, while Japan had banned U.S. lamb. Even U.S. trade agreements did not necessarily guarantee full market access to exports by U.S. farmers. For example, NAFTA did not provide full market access for exports of U.S. dairy products into Canada. The Trump Administration has worked with America's trading partners to address such barriers, and has secured market access for U.S. meats in Argentina, Japan, and elsewhere. U.S. dairy products will receive significant new access into the Canadian market under the USMCA, discussed below, which the Administration concluded in 2018 to replace NAFTA.

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In sum, when the Trump Administration took office, globalization was not working as advertised for too many Americans. Between 2000 and 2010, the U.S. manufacturing sector shed over 5.5 million jobs,<sup>28</sup> and recovered only a fraction of this total in the years after the financial crisis. Over the 2000–2016 period, U.S. GDP growth averaged only 1.9 percent per year.<sup>29</sup> Over this period, real median household

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<sup>28</sup> Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics survey (National), available at <https://www.bls.gov/data/#employment>.

<sup>29</sup> World Bank, GDP growth (annual%), <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=US>.

incomes generally declined through 2012, only regaining the income level of 2000 in 2016 and 2017.<sup>30</sup> Meanwhile, China enjoyed surging growth, with average annual GDP growth rate of 9.4 percent from 2000 through 2016.<sup>31</sup> These events led many observers to believe that the future of the global economy belonged to the state-driven economy of China – not the market-based system of the United States. Perhaps most frustrating of all, many of the problems facing Americans were the direct result of unfair, market-distorting practices that rendered markets less efficient.

Some have suggested that the United States could have addressed these difficulties by joining the Trans-Pacific Partnership (TPP), a proposed free trade deal with 11 other countries in North America, South America, and the Pacific Region. President Trump correctly recognized, however, that joining the TPP would have made the situation worse. For example, one major problem for U.S. workers is that the rules of trade encouraged companies to outsource production to countries with weaker labor and environmental rules than the United States. Under the rules of origin contained in the TPP, an automobile with 55 percent of its production in China – and 45 percent of the production in Vietnam – would have entered the U.S. market duty free. TPP provisions on labor, the environment, intellectual property, and currency were all insufficient to address longstanding U.S. concerns. In short, the TPP would have spurred further outsourcing, and put U.S. workers at even more of an unfair disadvantage.

Furthermore, it seems clear that China would have been a major beneficiary from a U.S. entry into TPP. The weak rules of origin in TPP would have encouraged massive outsourcing to China, with just enough production in low-wage TPP countries – such as Vietnam and Malaysia – to satisfy TPP requirements. U.S. workers – or, indeed, workers in almost any country with strong labor and environmental standards – would have found it extremely difficult to compete with such production. As more and more countries moved their production to countries like China, Vietnam, and Malaysia, further loss of U.S. intellectual property and technology would have been inevitable. If anything, it seems likely that over time, even U.S. companies would relocate more of their research and development efforts to be closer to their production facilities.

Some have suggested that the United States could have used the TPP as leverage to force China to adopt market-based reforms. But the example of China’s entry into the WTO shows that such hopes have been disappointed in the past. If anything, the increased access to the U.S. market that China would have obtained due to the weak rules of origin in TPP would have given China more leverage – not less – in dealing with U.S. policymakers.

## **B. The Administration Has Kept Its Promises to Make U.S. Trade Policy Work Better for American Workers**

In his 2016 campaign, President Trump argued strenuously that the multilateral trading system was hurting American workers. He called for significant changes in U.S. trade policy. Among other things, he promised to withdraw from the TPP, to renegotiate NAFTA and other flawed U.S. trade deals, and to strictly enforce U.S. trade laws against China and other countries that engage in market-distorting practices. As soon as he took office, President Trump began to turn his promises into reality.

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<sup>30</sup> United States Census Bureau, Historical income Tables: Household, Table H-8. Median Income by State – 2 Year Average, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html>.

<sup>31</sup> World Bank, GDP growth (annual%), <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=CN>.

## **1. Withdrawing from the TPP**

Within days of his inauguration, President Trump fulfilled his promise to withdraw the United States from the TPP. Doing so at once avoided wasting further time on a deal that would have hurt U.S. workers. The U.S. withdrawal from the TPP allowed the United States to begin pursuing better and fairer trade relationships with its major trading partners – including other TPP countries.

The United States already has free trade agreements with six TPP countries (Canada, Australia, Mexico, Chile, Peru, and Singapore). As discussed in more detail below, in 2018 the United States significantly renegotiated its trade relationship with Mexico and Canada to conclude the USMCA. President Trump has also indicated a willingness to engage with the other TPP countries (including Japan, Vietnam, Malaysia, and New Zealand), and has already taken steps toward negotiating a bilateral trade agreement with Japan.

## **2. Obtaining better trade deals**

In only two years, the Administration revised and rebalanced existing U.S. trade agreements with three of our major trading partners: Korea, Canada, and Mexico. These revised deals have begun to fulfill President Trump's promise to rebalance U.S. trade relationships to ensure that American businesses and workers share in the benefits of trade.

### **a. KORUS revisions**

As discussed above, the overall benefits to the United States of KORUS fell well short of expectations. In response, the Administration acted quickly to remedy this situation and rebalance the agreement. In July 2017, Ambassador Lighthizer called for a Special Session of the KORUS Joint Committee to initiate the process for modifying and amending KORUS. This process was successful. In September 2018, President Trump and Korean President Moon Jae-In agreed to a revised KORUS – which came into force on January 1, 2019. Concurrent with the Administration's engagement with Korea during 2018 to address our trade imbalance, substantial progress was made to reduce the deficit to achieve more balanced trade.

The revised agreement changes KORUS in a number of ways designed to rebalance KORUS to the advantage of U.S. workers and businesses. For example, Korea has now agreed to double the number of U.S. automobile exports that can enter the Korean market by meeting U.S. safety standards – instead of Korean standards. Korea has also agreed to recognize U.S. standards for auto parts necessary to service U.S. vehicles in Korea. Korea also agreed to the extended phase-out of the 25 percent U.S. tariff on Korean trucks for an additional 20 years. This tariff will now remain in place until 2041 – thus encouraging increased production of pickup trucks in the United States.

In addition, Korea agreed to address long-standing concerns with onerous and costly procedures to verify the origin of exports under KORUS. Many U.S. stakeholders had complained that such procedures were being used in Korea to limit U.S. exports. Moreover, the United States and Korea established a working group to monitor and address future issues that may arise in this regard. Korea also agreed to amend its pharmaceutical reimbursement policy to ensure non-discriminatory and fair treatment for U.S. exports from the pharmaceutical manufacturing industry.

Two key points should be made about the revisions to KORUS. First, while trade negotiations often take years to complete, the revisions to KORUS were completed in a matter of months. U.S. negotiators notified Korea in July 2017 of their intent to address serious issues related to KORUS, and the



parties announced in March 2018 that they had reached an agreement. By September 2018, the agreement had been signed, and all formal changes were approved in the Korean National Assembly by December 2018. Second, the Trump Administration was quickly able to achieve significant outcomes for U.S. workers and businesses. These facts support President Trump's belief that the size and importance of the U.S. market give this country significant leverage in trade negotiations – and they show how the Administration is using that leverage to obtain better terms for American workers.

### **b. Replacement of NAFTA with the United States-Mexico-Canada Agreement (USMCA)**

In 2018, the Administration also fulfilled President Trump's campaign promise to renegotiate NAFTA. As discussed above, in the more than two decades since its entry into force, NAFTA had become outdated and had failed to deliver its expected benefits. On November 30, 2018, the United States, Canada, and Mexico signed the United States-Mexico-Canada Agreement (USMCA), which will replace NAFTA, rebalance America's trade relationships with Canada and Mexico, and better serve the interests of American workers, farmers, ranchers, and businesses. As with KORUS, these negotiations took place at unprecedented speed – negotiations began in August 2017 and ended in September 2018. The USMCA provides further evidence of the leverage available to the United States in trade negotiations – when we choose to use it.

One of the Administration's top priorities in 2019 is to obtain Congressional approval of the USMCA. The USMCA gives more priority to the interests of American workers than any prior deal signed by the United States. It is not merely a new trade deal – it is a new paradigm for future agreements. The USMCA proves that the United States can obtain better trade agreements that not only promote market-efficient outcomes, but also pay special heed to concerns of American workers. Indeed, the USMCA is the most advanced trade agreement ever negotiated by the United States on key issues like labor, environmental protection, currency, intellectual property, and digital trade. Some of the most critical points about USMCA are summarized below.

#### **i. The USMCA rebalances NAFTA in favor of U.S. workers**

As described above, NAFTA has failed to bring about certain promised benefits – or even to create a level playing field for American workers. The USMCA rebalances U.S. trade relations with Canada and Mexico to benefit American workers and businesses and reduce incentives to outsource by providing strong labor protections, robust and innovative rules of origin, and revised investment provisions.

One of President Trump's principal objectives in the renegotiation of NAFTA was to discourage outsourcing by companies seeking to take advantage of unfairly depressed wages and poor labor standards in Mexico. Another was to create a more level playing field for American workers. One major problem with NAFTA is that it has no enforceable labor provisions – only a side agreement that has long been ineffective at addressing the U.S. concerns. By contrast, the USMCA brings labor obligations into the core of the agreement and makes them fully enforceable. In fact, the USMCA includes the strongest, most advanced, and most comprehensive labor provisions of any trade agreement.

In the USMCA, Mexico has – for the first time – committed to specific legislative actions that will require it to overhaul its system of labor justice and that will provide for the effective recognition of the right to collective bargaining. The USMCA also requires parties to adopt, maintain, and enforce labor rights as recognized by the International Labor Organization without waiving or derogating from those rights. Additionally, the USMCA includes new commitments from these two trading partners to take

measures to prohibit the importation of goods produced by forced labor, to address violence against workers exercising their labor rights, and to ensure that migrant workers are protected under labor laws.

In short, the USMCA sends a dramatic signal to our trading partners: the time for using trade deals to take advantage of American workers, or to use unfair labor practices to steal U.S. jobs, is over. The USMCA marks the beginning of a new era in globalization, in which the effects of trade policy on American workers will finally be taken seriously.

The USMCA also includes stricter rules of origin – particularly with respect to automobiles and automotive parts – to ensure that American workers will share the benefits of trade. In developing these rules of origin, the United States proceeded from the fundamental premise that companies should not obtain the benefit of a trade agreement unless they are actively producing goods in the countries that are parties to the agreement. A situation like we saw in TPP – where an automobile mostly produced in a non-party like China could obtain duty-free treatment – is a recipe for outsourcing. The USMCA rejects such an approach. Instead, the USMCA is designed to revitalize the U.S. auto industry by encouraging increased production in this country and the region.

Compared to NAFTA, the USMCA represents a dramatic improvement for U.S. autoworkers. Under NAFTA, an automobile can obtain duty-free treatment so long as 62.5 percent of the automobile is made in the NAFTA region. Furthermore, NAFTA “deems” certain auto parts – such as electronic parts – as being made in the NAFTA region when used in the production of an automobile even if such parts are produced entirely outside the NAFTA region. As a result, automobiles can be sold in the United States with no duties even when less than 62.5 percent of the automobile is made in the United States, Canada, or Mexico. Under the USMCA, however, an automobile will qualify for duty-free treatment only if 75 percent of the content originates in the NAFTA region. Furthermore, the USMCA does not “deem” any part as being made in the North American region – to qualify, a part must actually be made in North America. The USMCA also requires that to qualify for duty-free treatment, an automobile must have certain core parts – parts that are the source of high-wage, high-skilled manufacturing and jobs – produced in the NAFTA region. Taken together, these provisions will create strong new incentives for automakers to invest and manufacture in the United States and North America.

But that’s not all. Under NAFTA, the rules of origin are satisfied so long as the relevant production takes place in any of the three NAFTA countries – the United States, Mexico, or Canada. In other words, a car produced solely in Mexico will qualify for duty-free treatment in the United States. Not surprisingly, this rule encourages automakers to base their production in Mexico, where wages – as described above – have been kept artificially low. This situation is not fair to American workers – and under the USMCA, it will change.

To qualify for duty-free treatment under USMCA, at least 40-45 percent of a vehicle’s content must be produced by workers in the NAFTA region that earn an average wage of at least \$16 per hour. No plants in Mexico are close to fulfilling this requirement, which means that companies seeking to serve the U.S. market will have a strong incentive to increase production in the United States. The new rules of origin in USMCA should result in billions of dollars in new investment related to U.S. production of automobiles and auto parts in the short-term, while providing substantial benefits over the long-term as companies make decisions about where to locate and source parts for the new energy and autonomous vehicles of the future.

These provisions represent a dramatic change in U.S. trade policy. For decades, the United States signed trade deals that often encouraged companies to shift production from this country into other countries with much lower labor costs. Now, we are taking a different approach – an approach designed to ensure

that American workers have a much better chance of competing on more equal terms for the type of manufacturing jobs that have long been a backbone of our middle class.

## **ii. The USMCA upgrades key NAFTA obligations**

After more than two decades in force, NAFTA was significantly out of date. Any free trade agreement between the United States, Canada, and Mexico should represent the gold standard for deals that promote economic growth, reflect the realities of the 21<sup>st</sup> century economy, and create conditions for fairer competition between U.S. workers and their North American counterparts. NAFTA has never met this standard. NAFTA lacks provisions governing modern trade issues related to intellectual property, e-commerce, and digital trade. NAFTA also lacks any significant enforceable provisions to discourage unfair labor and environmental practices. As discussed below, the USMCA upgrades NAFTA in these important areas.

First, the USMCA provides strong and effective protection and enforcement of intellectual property rights. Significantly, these provisions go well beyond what Mexico and Canada had agreed to as part of the TPP negotiations and the original NAFTA. For example, the USMCA offers the strongest protections against trade secret misappropriation of any trade agreement, including civil remedies and criminal penalties. For the first time, the USMCA will include strong standards to discourage Canada and Mexico from issuing rules on new geographical indications that would prevent U.S. producers from using common names for food products, and establishes a consultation mechanism for new geographical indications recognized by free trade agreements.

The USMCA also includes robust protection of copyrights, including full national treatment, as well as a minimum term of copyright protection that exceeds the TPP standard but does not change U.S. law. The agreement imposes strong measures against circumvention of technological protection measures that often protect digital music, movies, and books. Finally, the USMCA establishes appropriate copyright safe harbors, which protect intellectual property and provide predictability for legitimate enterprises that do not directly benefit from infringement, consistent with U.S. law. The USMCA also requires parties to implement the most comprehensive enforcement measures of any trade agreement, including enforcement measures with regard to the digital environment.

The United States is extremely competitive in the field of digital trade, and U.S. trade policy should reflect that fact. The USMCA does so by including the strongest rules in support of digital trade that can be found in any trade agreement to date. For example, the USMCA prohibits customs duties and other discriminatory measures from being applied to digital products such as e-books, videos, music, software and games. The USMCA also facilitates cross-border data transfer and minimizes limits on the location of data storage and processing. The USMCA streamlines digital transactions by permitting the use of electronic authentication and electronic signatures, while protecting consumers' and businesses' confidential information and guaranteeing that enforceable consumer protections are applied to the digital marketplace. The USMCA also limits governments' ability to require businesses to disclose proprietary computer source code and algorithms, and supports innovation in digital trade and e-commerce by promoting open access to government-generated public data and limiting civil liability of Internet platforms for third-party content that such platforms host or process, outside of intellectual property enforcement. Together, these provisions will encourage a robust market in digital trade between the United States, Canada, and Mexico – a development that should result in increased prosperity, and good-paying jobs, in all three countries.

Finally, the USMCA includes the most comprehensive set of enforceable environmental obligations of any U.S. agreement. NAFTA has no enforceable provisions regarding environmental protection – only a side agreement that does nothing to discourage outsourcing by companies seeking to avoid U.S. environmental rules. By contrast, the USMCA prohibits harmful fisheries subsidies, including those that benefit vessels or operators involved in illegal, unreported, and unregulated (IUU) fishing. The USMCA ensures strong enforcement to combat IUU fishing, and enhances the effectiveness of customs inspections of shipments containing wild fauna and flora at ports of entry to combat trafficking in wildlife, timber, and fish. The USMCA protects marine species such as whales and sea turtles, and prohibits shark-finning. The USMCA also includes the first-ever provision to improve air quality, prevent and reduce marine litter, and support sustainable forest management. In addition, the USMCA envisions continued work on environmental rules. The parties have committed to work together to protect marine habitat and provided robust and modernized mechanisms for public participation and environmental cooperation. This means that for years to come, the nations of North America can set a global standard for balancing economic growth with responsible stewardship of the environment.

### **iii. The USMCA combats non-market practices**

The USMCA also includes a number of ground-breaking provisions to combat subsidies and non-market practices that have the potential to disadvantage U.S. workers and businesses. Many of these provisions – while important in the context of North America in their own right – set important new precedents for future trade negotiations with potential partners outside the region. For example, companies owned or controlled by governments – so-called “state-owned enterprises” – have a number of unfair advantages when it comes to competing against private companies. A state-owned enterprise may receive capital on extremely favorable terms, or may be under less pressure than a private company to deliver a strong rate of return. For these reasons, many U.S. stakeholders have long expressed concern about being forced into situations where they have to compete against a company that is supported by its government.

To address this problem, the USMCA contains new and stronger provisions designed to ensure that state-owned enterprises do not distort markets in the NAFTA region. Specifically, the agreement defines state-owned enterprises broadly, to include not only entities in which the government holds a majority stake, but also entities in which the government owns a minority of the equity but nonetheless is able to exercise control. In addition, the USMCA includes new state-owned enterprise subsidy disciplines that go beyond existing rules and prohibit subsidies that are particularly trade-distorting.

Currency manipulation is another way for countries to give their companies and workers an unfair advantage over their U.S. counterparts. For example, by keeping the value of its currency artificially low, a country can effectively raise the price of imports, while lowering the price of its exports. While this problem has been recognized for many years, it has not been seriously addressed in prior U.S. trade deals. The USMCA changes that, with new policy and transparency commitments on currency issues. Specifically, the USMCA requires high-standard commitments to refrain from competitive devaluations and targeting exchange rates, while significantly increasing transparency and providing mechanisms for accountability. This approach – which is unprecedented in the context of a U.S. trade agreement – will help reinforce macroeconomic and exchange rate stability.

Finally, the USMCA contains provisions designed to protect U.S. interests if Canada or Mexico decides to enter into negotiations for a free trade agreement with China or other non-market economies. One of the primary purposes of the USMCA is to ensure that economic competition takes place on a true *market* basis. Success in economic competition should reflect hard work and innovation – not unfair government support and other market-distorting practices. Accordingly, the USMCA provides that if any

party undertakes to negotiate a free trade agreement with China or other non-market economy, that party must notify the others of its intentions. Through the USMCA, the United States is agreeing to provide special trade privileges to Canada and Mexico. If Canada and Mexico then decide to give similar privileges to China, a non-market economy, the United States will be disadvantaged and lose the benefit of the original bargain. If either Canada or Mexico do negotiate a free trade agreement with China, the United States will have the option to end its obligations under the USMCA to that nation, while maintaining its economic ties through the USMCA to the other party. This new provision – which has not been included in any prior U.S. trade deal – provides a dramatic new tool to preserve fair market competition in North America.

#### **iv. The USMCA’s term and review provisions will encourage upgrades and improvements in the future**

As discussed above, one of the biggest problems with NAFTA is that it is more than 25 years old. NAFTA went into effect before most Americans had ever heard of the Internet. As a result, it lacks any meaningful provisions on key issues like digital trade and emerging issues related to protection of intellectual property. The United States should never be in a position where American workers and companies are hamstrung by an old agreement that is unbalanced or fails to account for modern realities. To prevent this problem in the future, the USMCA takes a new approach to setting the term of the agreement.

In the era of globalization, U.S. trade agreements have been given no definite time frame – once they go into effect, they remain in place unless the parties agree to make a change, or one party withdraws. In other words, unless one party is prepared to threaten to terminate the agreement, it is impossible to compel the other parties to renegotiate. The USMCA, by contrast, is subject to a 16-year term, with the possibility of extensions if agreed to by the parties. The agreement provides that the United States, Canada, and Mexico will review the operation of the USMCA every six years. At the end of these reviews, each party must confirm whether it wishes to extend the USMCA’s term for another 16 years. If there is no agreement to extend the USMCA in a particular review, the parties will meet every year until an agreement to extend is reached, or until the term of the agreement expires.

These provisions ensure that the USMCA will not suffer the same fate as NAFTA, which had become unbalanced and outdated long before it was renegotiated. Moreover, the increasing value of the U.S. economy in coming years will provide strong incentives for Mexico and Canada to renegotiate and satisfy U.S. concerns during these regular reviews. In short, the term and review provisions are part of a new paradigm whereby trade deals are monitored more closely, and U.S. policymakers are in a stronger position to advocate for the interests of American workers.

#### **v. The USMCA represents a significant improvement over the TPP**

Before President Trump’s decision to withdraw, the United States, Mexico, and Canada were all parties to the TPP. The TPP included certain provisions – on topics such as intellectual property and market access – that are similar to provisions in the USMCA. Because of these facts, some have suggested that the USMCA is merely a revision of the TPP. This is not correct. While the USMCA built upon ideas developed in negotiating the TPP, the USMCA represents a much better deal for U.S. workers and the U.S. economy than the TPP would have been. Many of the differences between the USMCA and the TPP have been described above. For example, the USMCA’s rules on intellectual property, digital trade, labor, and the environment are significantly stronger and more effective than anything in the TPP. The TPP also has no provision like the one in the USMCA that discourages parties from signing free trade agreements with China. (Indeed, as discussed above, the TPP would likely have benefited China.) The TPP has no review

mechanism like the one in the USMCA. As explained above, each of these provisions is critical to ensuring that American workers will be treated fairly. All of them are present in the USMCA. None of them was present in the TPP.

There are other ways in which the USMCA improves upon the TPP. As discussed above, the USMCA includes stronger rules of origin that exceed those in both NAFTA and the TPP. The robust rules of origin contained in the USMCA govern the tariff treatment not only of autos and auto parts, but also of other industrial products such as chemicals, steel-intensive products, textiles and apparel, glass, and optical fiber. The USMCA also establishes procedures that streamline certification and verification of rules of origin and that promote strong enforcement of those rules. These USMCA provisions will help prevent duty evasion before it happens, and ensure that only producers using sufficient and significant North American parts and materials receive preferential tariff benefits.

In addition, the USMCA provides U.S. producers with market access in Canada and Mexico that exceeds both NAFTA and the TPP. The USMCA includes new provisions for transparency in import and export licensing procedures. The agreement prohibits parties from requiring the use of local distributors for importation, restricting the importation of commercial goods that contain cryptography, and restricting the importation of used goods. In addition, the USMCA updates provisions for the duty-free temporary admission of goods to cover shipping containers and other substantial holders used in the shipment of goods. The USMCA also includes important improvements that will enable food and agriculture to be traded more fairly, and which will allow for expanded exports of American agricultural products. This includes securing significant new access for U.S. producers to Canada's market for dairy, eggs, and poultry. The new agreement resolves a number of persistent trade irritants with Canada that are of great significance to a number of U.S. businesses, from dairy farmers in Wisconsin and upstate New York, to winemakers in California, Oregon, and Washington state.

Finally, the USMCA includes new provisions governing specific manufacturing sectors, including information and communication technology, pharmaceuticals, medical devices, cosmetic products, and chemical substances. These sectoral annexes include provisions that exceed NAFTA and the TPP by promoting enhanced regulatory compatibility, best regulatory practices, and increased trade among the United States, Canada, and Mexico.

In short, the USMCA represents the beginning of a new era in U.S. trade policy. It not only brings the NAFTA relationship into the 21<sup>st</sup> century, it contains unprecedented new requirements to ensure that American workers will fully benefit from that relationship. Passage of the USMCA is a win-win outcome for American business – and American workers. We urge Congress to quickly approve the USMCA.

### **c. Advancing U.S. interests through other negotiations**

In addition to pursuing new free trade agreements, the Trump Administration has continued to hold meetings with existing trade partners pursuant to other procedures. For example, USTR has more than fifty Trade and Investment Framework Agreements (TIFAs) with individual countries or regional groupings across the globe. These TIFAs provide opportunities to resolve trade and investment issues at an early stage – including issues related to market access, labor, the environment, and intellectual property rights. TIFAs allow the United States and its partners to pursue topics of mutual interest with the objective of improving cooperation and enhancing opportunities for trade and investment.

The United States has also continued to engage in multilateral trade discussions. For example, the United States remains one of the most active participants in WTO committees that cover topics such as trade remedies, import licensing, standards and technical barriers to trade, and government procurement,

and is driving much of the work in those committees forward. The United States is committed to ensuring that WTO Members fully implement the WTO Trade Facilitation Agreement (TFA), which came into effect in February 2017. The TFA, once fully implemented, can cut worldwide trade costs by between 12.5 percent and 17.5 percent and will greatly benefit U.S. new-to-export companies and U.S. small businesses. Over the past year, the United States has pursued exploratory work among like-minded WTO Members toward plurilateral negotiations on electronic commerce designed to safeguard and promote digital trade. The United States also works with partners in the Asia-Pacific Economic Cooperation (APEC) in an effort to advance free, fair, and reciprocal trade and investment in the region while delivering meaningful results for U.S. exporters.

The United States works closely with market-driven economies at the Organization for Economic Cooperation and Development (OECD) to encourage high-standard trade policies and practices. Through its efforts at the WTO, APEC, the OECD, and other multilateral organizations, the United States seeks to ensure that U.S. businesses and workers can reap their fair share of the benefits of global trade. It is also critical that these organizations are able to keep up with the challenges of the modern economy through meaningful reform. The United States wants to see multilateral institutions that work, but not those that go beyond their mandate and impose on the sovereignty of their members.

### **3. Aggressive enforcement of U.S. trade laws**

Negotiating new and better trade deals is vital to America's future. But President Trump also understands the importance of strong and effective enforcement of U.S. trade laws to prevent other countries from unfairly attacking this market. Over the last two years, the Administration has undertaken aggressive action on this front. Congress has enacted procedures for unfair trade investigations under Section 301 of the Trade Act of 1974, safeguard actions under Section 201 of the Trade Act of 1974, and national security investigations of imports under Section 232 of the Trade Expansion Act of 1962. In recent decades, these tools were largely unused – even as millions of American manufacturing jobs disappeared, and as countries like China used unfair practices to hurt U.S. companies. But under President Trump's leadership, the Administration is using all available tools to create a fairer and stronger economy for American workers.

#### **a. Investigation of China's intellectual property practices**

A significant part of USTR's aggressive enforcement of U.S. trade laws has been its investigation into China's treatment of U.S. intellectual property under Section 301 of the Trade Act of 1974. During the 2016 campaign, President Trump promised that he would use Section 301 to address unfair trade – and he has kept that promise. As discussed below, this investigation was initiated in August 2017, and in 2018 – after China refused to address the conduct at issue in this investigation – the United States imposed three rounds of tariffs on Chinese imports to the United States. The United States also engaged with other trading partners who share similar concerns with China's treatment of intellectual property. These actions are discussed in more detail below.

#### **i. Purpose and history of Section 301**

Section 301 of the Trade Act of 1974, as amended, is a key enforcement tool designed to address a wide variety of unfair acts, policies, and practices of U.S. trading partners.<sup>32</sup> Under Section 301 procedures, three categories of acts, policies, or practices of a foreign country are potentially actionable: (1) trade

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<sup>32</sup> See Trade Act of 1974, 19 U.S.C. §§ 2411–2417.

agreement violations; (2) acts, policies, or practices that are unjustifiable (defined as those that are inconsistent with U.S. international legal rights) and that burden or restrict U.S. commerce; and (3) acts, policies, or practices that are unreasonable or discriminatory and that burden or restrict U.S. commerce.<sup>33</sup> If a foreign country's acts, policies, or practices are determined to be actionable under Section 301, the United States may suspend or withdraw trade benefits to that country, impose duties or other restrictions on that country's imports, make binding agreements that commit the foreign country to eliminate the offending conduct or provide compensatory trade benefits, or restrict or deny the issuance of service sector authorizations to nationals of that country.<sup>34</sup>

Section 301 investigations may be initiated through petitions by interested persons or self-initiated by USTR. From 1975 through the early 1990s, Section 301 procedures were regularly used by Administrations of both parties to investigate a variety of actions, ranging from China's tariff on major home appliances to the European Communities' export subsidies on sugar.<sup>35</sup> When the United States joined the WTO, the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act made clear that the authority of Section 301 was still available to address unfair practices not covered by trade agreements. Instead of using this authority, however, the United States largely remained passive in the face of new market-distorting practices that put Americans at an unfair disadvantage. In 2017, however, President Trump changed U.S. policy in this regard – under his leadership, USTR undertook a major investigation under Section 301 into China's unfair practices with respect to U.S. intellectual property.

## **ii. USTR's investigation into China's treatment of U.S. intellectual property**

USTR initiated an investigation into China's treatment of U.S. intellectual property on August 18, 2017.<sup>36</sup> On the same day, USTR requested consultations with the Government of China concerning the issues under investigation.<sup>37</sup> USTR also provided public notice of its investigation, and solicited written comments and oral testimony from interested persons.<sup>38</sup>

USTR's Section 301 investigation was led by career professionals, and gave all interested parties the opportunity to be heard. On October 10, 2017, USTR held a hearing on the issues in the Section 301 investigation. After considering the testimony at this hearing, as well as extensive written comments from a wide array of interested parties, USTR issued a report of its findings in the investigation on March 22, 2018.<sup>39</sup> Based on the evidence in its report, USTR determined that China had adopted actionable policies and practices (1) requiring or pressuring U.S. companies to transfer technology to Chinese entities through joint venture requirements and other foreign ownership restrictions, administrative reviews, and licensing

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<sup>33</sup> Trade Act of 1974, 19 U.S.C. § 2411(a)-(b).

<sup>34</sup> In cases in which USTR determines that import restrictions are the appropriate action, preference must be given to the imposition of duties over other forms of action. 19 U.S.C. § 2411(c).

<sup>35</sup> See Office of the U.S. Trade Representative, Monitoring and Enforcement, Section 301 Table of Cases, [https://ustr.gov/archive/assets/Trade\\_Agreements/Monitoring\\_Enforcement/asset\\_upload\\_file985\\_6885.pdf](https://ustr.gov/archive/assets/Trade_Agreements/Monitoring_Enforcement/asset_upload_file985_6885.pdf)

<sup>36</sup> See Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 82 Fed. Reg. 40, 213-14 (Aug. 24, 2017); Addressing China's Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology, 82 Fed. Reg. 39, 007 (Aug. 17, 2017).

<sup>37</sup> See Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 82 Fed. Reg. 40, 213-14 (Aug. 24, 2017).

<sup>38</sup> See 82 Fed. Reg. 40,213 (Aug. 24, 2018).

<sup>39</sup> USTR, Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974 (Mar. 22, 2018), <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.



procedures, (2) using its technology regulations to force U.S. companies to license their technologies on non-market terms that favor Chinese recipients, (3) generating technology transfer from U.S. companies by directing or facilitating systematic investment in, and acquisition of, these U.S. companies and assets, and (4) stealing sensitive commercial information and trade secrets of American companies through unauthorized intrusions into their computer networks.<sup>40</sup>

Based on these findings, the United States initiated a WTO dispute with respect to the one practice that could be addressed under WTO rules, namely, China's measures pertaining to the licensing of intellectual property rights, on March 23, 2018.<sup>41</sup> The United States continued to pursue the other practices covered by the Section 301 investigation on a bilateral basis.

### **iii. U.S. efforts to negotiate with China and the imposition of tariffs**

As noted, the United States requested consultations with China on August 18, 2017, the same day that the Section 301 investigation was initiated. Instead of accepting this request for consultations, however, China's Ministry of Commerce expressed "strong dissatisfaction" with the United States and decried the investigation as "irresponsible" and "not objective."<sup>42</sup>

Nevertheless, the Administration continued to engage with China on Section 301 issues. On May 4, 2018, a cabinet-level U.S. delegation traveled to Beijing to discuss bilateral economic issues, including China's policies addressed in the Section 301 report of March 22, 2018.<sup>43</sup> Less than two weeks later, senior Administration officials hosted a trade delegation from China in Washington, D.C. on May 17, 2018.<sup>44</sup> On June 2 and 3, 2018, another high-level U.S. delegation met with its Chinese counterparts in Beijing for additional discussions.<sup>45</sup>

Each of these meetings gave China an opportunity to address U.S. concerns. Throughout these meetings, U.S. officials provided China with detailed evidence of the problems created by China's unfair practices. They also discussed specific reforms to improve our trading relationship. Unfortunately, however, China failed to respond in a productive manner. Faced with this intransigence, the United States proceeded to take steps to impose tariffs as permitted under Section 301. Specifically, on July 6, 2018 and August 23, 2018, USTR imposed tariffs on approximately \$50 billion of Chinese imports as part of the U.S.

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<sup>40</sup> See Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 14, 906-09 (Apr. 6, 2018).

<sup>41</sup> Press Release, Office of the U.S. Trade Representative, Following President Trump's Section 301 Decisions, USTR Launches New WTO Challenge Against China (Mar. 23, 2018), <https://ustr.gov/about-us/policyoffices/press-office/press-releases/2018/march/following-president-trump%E2%80%99s-section>. See also Request for Consultations by the United States, China — Certain Measures Concerning the Protection of Intellectual Property Rights, WTO Doc. WT/DS542/1 (Mar. 26, 2018), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds542\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm).

<sup>42</sup> Press Release, Ministry of Commerce, The People's Republic of China, MOFCOM Spokesman Comments on the 301 Investigation of the US against China (Aug. 23, 2018), <http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201708/20170802631394.shtml>.

<sup>43</sup> Press Release, The White House, Statement of the United States Trade Delegation's Visit to Beijing (May 4, 2018), <https://www.whitehouse.gov/briefings-statements/statement-united-states-trade-delegations-visit-beijing/>.

<sup>44</sup> Press Release, The White House, Trump Administration Officials to Host Trade Delegation from China (May 16, 2018), <https://www.whitehouse.gov/briefings-statements/trump-administration-officials-host-trade-delegationchina/>

<sup>45</sup> Press Release, U.S. Embassy and Consulates in China, Readout of Discussions between Administration Officials and a Delegation from China Regarding the Trade Relationship between the United States and China (June 5, 2018), <https://china.usembassy-china.org.cn/readout-of-discussions-between-administration-officials-and-a-delegationfrom-china-regarding-the-trade-relationship/>.

response to China's unfair trade practices with respect to U.S. intellectual property.<sup>46</sup> Before imposing these tariffs, USTR provided public notice of the specific tariff lines that would be affected, and solicited public comment on issues such as whether the imposition of tariffs on particular products would cause disproportionate economic harm to U.S. interests.

After these tariffs were imposed, however, China made clear – both in public statements and in government-to-government communications – that it would not change the unfair policies identified in USTR's Section 301 investigation. Indeed, China denied there were problems with respect to its policies involving technology transfer and intellectual property.<sup>47</sup> In fact, China responded to the U.S. action by increasing duties on certain U.S. exports to China – an obvious attempt to cause further harm to the U.S. economy.<sup>48</sup>

These actions demonstrated that USTR's initial tariff action was no longer appropriate to obtain the elimination of China's unfair trade acts, policies, and practices. In addition, the burden or restriction on United States commerce of these acts, policies, and practices continued to increase. Thus, in accordance with direction from the President, on September 24, 2018, USTR imposed additional tariffs on approximately \$200 billion of imports from China.<sup>49</sup> These tariffs were initially set at 10 percent, and were scheduled to increase to 25 percent on January 1, 2019.

#### **iv. Working with allies to address mutual concerns**

In seeking to persuade China to change its behavior, the Administration reached out to other countries that also are adversely affected by China's unfair trading practices. The United States has worked closely with leaders from the EU and Japan, who share many of the concerns expressed by the United States regarding China's actions. At the conclusion of trilateral meetings held in May 2018, trade ministers of the United States, Japan, and the EU "confirmed" their "shared view" that no country should require or pressure technology transfer from foreign companies to domestic companies."<sup>50</sup> The statement specifically observed

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<sup>46</sup> See Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28710 (June 20, 2018); Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 40823 (Aug. 16, 2018).

<sup>47</sup> See Press Release, Ministry of Commerce, The People's Republic of China, Statement by the Ministry of Commerce [Regarding the Statement by the U.S. Trade Representative on Section 301 Action] (July 12, 2018); Press Release, Ministry of Commerce, The People's Republic of China, The Office of the USTR Notes on 23rd That It Will Hold Hearings on Imposing Tariffs of \$16 Billion on Chinese Imports on 24th and 25th. What's MOFCOM's Comment? (July 27, 2018), <http://english.mofcom.gov.cn/article/pressconferencehomepage/foreigntrade/201808/20180802772812.shtml>

<sup>48</sup> State Council Customs Tariff Commission Public Notice on Additionally Imposing Tariffs on \$50 Billion of Imported Products Originating from the United States (State Council Customs Tariff Commission, 2018 Public Notice No. 5, issued June 16, 2018); State Council Customs Tariff Commission Public Notice on Additionally Imposing Tariffs on Certain Imported Products (Batch 2) Originating from the United States (State Council Customs Tariff Commission, 2018 Public Notice No. 6, issued Aug. 3, 2018); State Council Customs Tariff Commission Public Notice on Additionally Imposing Tariffs on \$16 Billion of Imported Products Originating from the United States (State Council Customs Tariff Commission, 2018 Public Notice No. 7, issued Aug. 8, 2018); State Council Customs Tariff Commission Public Notice on the Implementation of Additionally Imposing Tariffs on Approximately \$60 Billion of Imported Products Originating from the United States (State Council Customs Tariff Commission, 2018 Public Notice No. 8, issued Sep. 18, 2018, effective Sep. 24, 2018).

<sup>49</sup> See Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47974 (Sep. 21, 2018).

<sup>50</sup> Press Release, Office of the U.S. Trade Representative, Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union (May 31, 2018), <https://ustr.gov/about-us/policyoffices/press-office/press-releases/2018/may/joint-statement-trilateral-meeting>.

that such transfers could occur through the use of joint venture requirements, foreign equity limitations, administrative review and licensing processes, or other means.<sup>51</sup>

At the conclusion of follow-up trilateral meetings in September 2018, U.S., Japanese, and EU trade ministers issued a statement recalling their shared view that no country should require or pressure technology transfer from foreign companies.<sup>52</sup> The Ministers called these practices “deplorable” and affirmed that they would use “effective means” to halt forced technology transfer and would further discuss enforcement and rule-making as tools to address this problem.<sup>53</sup> Following further trilateral meetings in January 2019, the Ministers again confirmed their agreement to cooperate in the area of forced technology transfers.<sup>54</sup>

## **v. Recent progress in negotiations**

Facing an imminent increase in tariff rates, President Xi of China met with President Trump at the G-20 meeting in Buenos Aires on November 30, 2018. President Trump and President Xi agreed to immediately begin negotiations on structural changes with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture. Both parties agreed that they would endeavor to have this transaction completed within the next 90 days. To give both countries more time to resolve their differences, President Trump agreed to leave tariffs at 10 percent for \$200 billion worth of Chinese imports to the United States until March 2, 2019.

At that meeting, China also agreed to purchase a substantial amount of agricultural, energy, industrial, and other products from the United States to reduce the trade imbalance between the two countries.<sup>55</sup> China also agreed to start purchasing agricultural product from American farmers immediately.

Following the meeting in Buenos Aires, talks between the United States and China have proceeded at a rapid pace and at a very high level of engagement. Negotiators from the United States and China have met on four separate occasions: in Beijing from January 7-9, 2019; in Washington, D.C. from January 30-31; in Beijing again from February 11-15; and in Washington, D.C. again from February 19-24. In addition, China has agreed to suspend additional 25 percent tariffs it had imposed on U.S. autos in July 2018.<sup>56</sup>

At the conclusion of the last meeting in Washington, D.C., President Trump announced that the parties had made substantial progress on important structural issues and, therefore, the tariff increase on certain Chinese imports that had been scheduled for March 2 is being delayed while talks continue. If both sides make additional progress, President Trump also announced that he and President Xi of China will meet to conclude the agreement between the United States and China.

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<sup>51</sup> *Id.*

<sup>52</sup> Press Release, Office of the U.S. Trade Representative, Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union (Sep. 25, 2018), <https://ustr.gov/about-us/policyoffices/press-office/press-releases/2018/september/joint-statement-trilateral>.

<sup>53</sup> *Id.*

<sup>54</sup> See Joint Statement of the Trilateral Meeting of the Trade Ministers of the European Union, Japan, and the United States (Jan. 9, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/january/joint-statement-trilateral-meeting>.

<sup>55</sup> See Statement from the Press Secretary Regarding the President’s Working Dinner with China (Dec. 1, 2018), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-working-dinner-china/>.

<sup>56</sup> Lin Zhu and Lingling Wei, *China to Suspend Punitive Tariffs on U.S. Cars and Auto Parts for Three Months*, THE WALL STREET JOURNAL (Dec. 14, 2018).

USTR will remain vigilant in monitoring developments to ensure that China's actions are consistent with its international obligations and the commitments it has made to the United States in connection with the Section 301 investigation.

#### **b. Safeguard measures against imported washing machines and solar panels**

During the 2016 campaign, President Trump promised to strictly enforce Section 201 of the Trade Act of 1974 – which provides for “safeguard” relief under certain circumstances. Again, President Trump has kept his promise. Modern U.S. trade agreements, including the WTO Agreement, rest on the expectation that reducing barriers to trade will increase opportunities for U.S. exporters and decrease costs to consumers. But they have also recognized that sometimes these expectations are not fulfilled, and that domestic industries facing increased imports will come under unusual competitive stress. To address these possibilities, U.S. trade agreements regularly include “escape clauses” or “safeguard” provisions that allow the United States to impose temporary trade restrictions when increased imports of a product harm domestic producers of that product.

In 2017, the Administration applied such a mechanism – found in Section 201 of the Trade Act of 1974 – to protect U.S. producers of solar panels and washing machines. Section 201 procedures permit domestic producers to request the U.S. International Trade Commission (ITC) to conduct an investigation of increased imports and their effects on the U.S. market. If the ITC finds that imports have increased such that they are a substantial cause of serious injury, or the threat thereof, to a domestic industry producing an article like or directly competitive with the imported articles, the President shall take all appropriate and feasible action within his authority he considers necessary to facilitate efforts by the domestic industry to make a positive adjustment to import competition, as long as the economic and social benefits of such action are greater than the costs.

Before President Trump took office, the United States had last used Section 201 in 2002, when President Bush imposed temporary tariff increases on a number of steel products. Domestic steel producers used the relief to restructure their operations, emerging from the process stronger and more competitive than before. Nevertheless, Section 201 had remained unused for over a decade, even as numerous industries were harmed by import surges.

In May and June 2017, U.S. producers filed petitions with the ITC – an independent agency of the U.S. government – requesting investigations of imports of solar cells and modules, and of large residential washing machines. The ITC conducted thorough investigations and determined in both cases that increased imports were a substantial cause of serious injury to U.S. producers. Specifically, in the washing machines action, the ITC's investigation revealed that the volume of imported washing machines nearly doubled from 2012 to 2016. The ITC also found that foreign producers had engaged in significant underselling and aggressive pricing, which forced U.S. producers to reduce prices to defend their market share.<sup>57</sup> The ITC's investigation of solar panels revealed that from 2012 to 2016, U.S. imports of the products at issue grew by nearly 500 percent. The ITC found that as a result of this surge of imports, many American producers of solar panels ceased production entirely or moved their operations abroad, while those that remained in operation in the U.S. faced consistently negative financial performance that forced them to reduce capital

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<sup>57</sup> See U.S. International Trade Commission, *Large Residential Washers*, Inv. No. TA-201-076, Pub. No. 4745 (Dec. 2017), at 38–44.

investment and R&D expenditures.<sup>58</sup> In both cases, the ITC recommended that the President impose temporary tariffs in order to give domestic producers an opportunity to recover from the harm caused by imports.

In response, President Trump used his authority under Section 201 to increase tariffs on solar cells and modules, as well as imported washing machines.<sup>59</sup> In so doing, President Trump acted in a manner consistent with the ITC's findings, which were based in turn on its extensive analysis of the underlying facts. With his actions, President Trump showed the world that Section 201 is not a dead letter, and that relief would be available when justified by the facts. This type of enforcement is critical to avoid harmful import surges like the ones at issue in these actions.

### **c. National security investigations of imports**

President Trump has also taken steps to protect U.S. national security under Section 232 of the Trade Expansion Act of 1962. This statute permits the Department of Commerce, in consultation with the Department of Defense, to investigate the effect of imports on the national security of the United States. The President imposed tariffs on imports of steel and aluminum in 2018 pursuant to Section 232 investigations, and the Department of Commerce has launched investigations into the national security effects of automobile imports and uranium imports.

As explained above, market-distorting practices in China and other countries resulted in massive volumes of excess capacity in both the steel and aluminum industries. Because of this excess capacity, U.S. producers of steel and aluminum found it impossible to obtain a true, market-based price for their products. The result was a pair of crises in these two vital industries. For years before President Trump took office, the U.S. government had alerted other countries to the problems facing U.S. and other market-based steel and aluminum producers. The United States also had tried to work with the OECD Steel Committee. The OECD recognized the “serious problems” of overcapacity in 2016.<sup>60</sup> And, at the urging of the United States, launched a Global Forum on Steel Excess Capacity.<sup>61</sup> All of these efforts were designed to find a solution to the ongoing problems resulting from global excess capacity.

Unfortunately, these efforts were not successful. China and the other countries responsible for the world's excess capacity were simply unwilling to take any practical steps that would make a significant difference for U.S. producers. Under these circumstances, the Trump Administration faced a stark choice: take unilateral action, or risk permanent long-term damage to steel and aluminum production in the United States.

Losing even more of the nation's steel and aluminum production raised serious concerns about U.S. national security. The Department of Commerce conducted a detailed investigation pursuant to Section 232, and concluded that: (1) the U.S. steel and aluminum industries were being harmed by imports and

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<sup>58</sup> See U.S. International Trade Commission, *Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products)*, Volume I: Determination and Views of Commissioners, Inv. No. TA-201-75, Pub. No. 4739 (Nov. 2017), at 21 and 31–38.

<sup>59</sup> See *To Facilitate Positive Adjustment to Competition From Imports of Large Residential Washers*, 83 Fed. Reg. 3553 (Jan. 25, 2018); *To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes*, 83 Fed. Reg. 3541 (Jan. 25, 2018).

<sup>60</sup> OECD, *Outcomes from the High-Level Symposium on Excess Capacity and Structural Adjustment in the Steel Sector* (Apr. 18, 2018), [www.oecd.org/sti/ind/steel-excess-capacity-outcomes.htm](http://www.oecd.org/sti/ind/steel-excess-capacity-outcomes.htm).

<sup>61</sup> Statement by Secretary of Commerce Penny Pritzker and U.S. Trade Representative Michael Froman following the Launch of the Global Forum on Steel Excess Capacity (Dec. 17, 2016), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/december/statement-secretary-pritzker-and>.

global excess capacity, and (2) import restrictions were justified to address the national security concerns associated with such harm. In response to this report, President Trump imposed tariffs on steel and aluminum – tariffs that have been extremely effective in preventing further harm to domestic producers. The Administration negotiated country-wide exemptions to the tariffs for those countries that agreed to satisfactory alternative means to address the threatened impairment to U.S. national security of steel and aluminum imports from their countries.

The Administration has also launched an investigation into the national security effects of automobiles and automotive parts. In February 2019, Secretary Ross provided his Section 232 report on automobile and automotive parts imports to President Trump.

#### **d. Robust enforcement of U.S. trade rights**

The Administration has also continued its robust enforcement of U.S. antidumping and countervailing duty (AD/CVD) laws. In 2018, the Department of Commerce issued 54 new AD/CVD orders, including 19 that concern products from China and 25 that concern steel or steel-related products from various countries.<sup>62</sup> These orders concern a wide range of imported products, including plywood, aluminum foil, mechanical tubing, ripe olives, biodiesel, and others.

The Administration continues to defend U.S. enforcement of domestic trade remedies actions and other measures against WTO challenges. Over the last ten years, U.S. actions have been challenged over fifty times at the WTO. About half of those challenges were against U.S. trade remedies actions. Increasingly, foreign governments are not content to challenge the application of U.S. trade laws in particular cases – they seek to weaken the laws themselves. For example, in 2016, China challenged the United States’ use of non-market economy methodology in U.S. antidumping proceedings involving products from China. China and other countries have challenged other aspects of U.S. AD/CVD laws, including whether subsidies found to be specific under U.S. law are sufficiently specific to comply with WTO rules and whether WTO rules permit practices permitted under U.S. trade laws, such as the use of adverse facts available when non-cooperating respondents fail to provide requested necessary information, zeroing, and differential pricing analysis.

In such cases, USTR’s primary objective is defending the ability of the U.S. Department of Commerce to apply appropriate antidumping and countervailing duties to combat market-distorting practices that hurt U.S. farmers, workers, and industries. If U.S. trade laws are weakened, we will see more attacks on the U.S. market by foreign producers who sell products at dumped and subsidized prices. Domestic enforcement of U.S. trade remedies laws is critical to ensuring that trade is fair – and that American workers can compete on a level playing field with workers in other countries. Undermining those laws not only distorts markets, it also undermines support for free trade. USTR, therefore, will continue its aggressive efforts to defend U.S. trade laws from unwarranted challenges at the WTO and elsewhere.

In 2018, USTR has also been actively engaged in numerous dispute settlement actions outside the AD/CVD context, including important offensive actions related to technology transfer policies, export subsidies, and agricultural market access, and defensive actions related to the Trump Administration’s actions under Section 232. For example, the United States recently won a WTO dispute against China finding that China provides excessive government support to its grain producers. This finding is a significant victory for U.S. agriculture that will help American farmers compete on a more level playing

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<sup>62</sup> See U.S. International Trade Commission, Antidumping and Countervailing Duty Orders in Place, as of December 31, 2018, [https://www.usitc.gov/sites/default/files/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls).

field. In fact, the United States is the most active single litigant at the WTO. As of today, USTR is pursuing 18 offensive disputes at the WTO, is defending the United States in 32 disputes, and is a third party in another 20 disputes.<sup>63</sup> USTR has also directly engaged with trading partners to address trade concerns. For example, in response to mounting evidence of illegal timber harvesting in Peru, the Trump Administration took unprecedented action to ban imports of timber from the Peruvian company Oroza for three years or until Peru could provide evidence that the company is in fact complying with all relevant Peruvian laws and regulations.

#### **4. Ensuring appropriate application of trade preference programs**

The Trump Administration has also continued to ensure appropriate application of U.S. trade preference programs, including the Generalized System of Preferences (GSP). The GSP, established by the Trade Act of 1974, eliminates duties on thousands of products when those products are imported from designated beneficiary countries and territories – if such beneficiaries meet 15 statutory eligibility criteria. These criteria include, among others, affording internationally recognized worker rights, providing adequate and effective protection of intellectual property rights, and assuring the United States that the beneficiary will provide equitable and reasonable access to its market.

In 2018, USTR implemented a new assessment process to ensure that beneficiary countries meet all GSP criteria. The first set of assessments focused on beneficiary countries in Asia and the Pacific Islands. As a result of this process, as well as petitions from U.S. stakeholders, USTR launched new GSP eligibility reviews of India, Indonesia, Kazakhstan, Thailand, and Turkey. The purpose of these reviews is to determine whether the subject countries are truly satisfying the statutory criteria to receive the benefits of GSP treatment.

USTR has also vigorously engaged with countries subject to GSP eligibility reviews launched in previous years. These efforts led to concrete improvements in worker rights in Bolivia, Iraq, and Uzbekistan. It also led to improved protection of intellectual property rights in Ukraine and Uzbekistan.

To build on these efforts, in 2019 USTR will conduct a similar assessment process with GSP-eligible countries in Europe and the Western Hemisphere. USTR will continue to hold countries that are not meeting the GSP criteria to account, and will ensure that all countries receiving benefits under the GSP program live up to the statutory eligibility criteria.

In 2018, USTR continued to uphold trade preference program eligibility under the African Growth and Opportunity Act (AGOA). The AGOA annual review conducted in 2018 resulted in the termination of Mauritania's AGOA eligibility, effective January 1, 2019. The President determined that Mauritania is making insufficient progress toward combating forced labor, in particular the scourge of hereditary slavery.

#### **5. Defending U.S. interests at the WTO**

Following through on President Trump's promise to put America first, the Administration has also stood up to efforts by some at the WTO to infringe on national sovereignty. Throughout 2018, USTR representatives repeatedly made clear that the dispute settlement process at the WTO has strayed far from the system agreed to by WTO Members, and has appropriated to itself powers that WTO Members never intended to give it. These concerns were discussed in detail in last year's version of this Agenda, and there

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<sup>63</sup> See WTO, Disputes by Member, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm).

is no need to repeat that discussion here in full.<sup>64</sup> The key point is that the WTO Appellate Body has repeatedly sought to create new obligations not covered in the WTO agreements. As made clear in the Statement of Administrative Action to the Uruguay Round Agreements Act, the United States is a sovereign country, and U.S. officials are responsible to the American people for their trade policy. The United States cannot be held responsible for obligations to which its elected officials never agreed. Thus, efforts by the Appellate Body to create new obligations are not legitimate.

These concerns are not new. For many years, and in multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach and overreaching on procedural issues, interpretative approach, and substantive interpretations. This approach fails to apply the WTO rules as written and agreed to by the United States and other WTO Members.

The United States has also provided essential leadership with respect to other critical aspects of reform of the WTO. The Administration has led efforts to improve performance related to notification and transparency obligations under WTO Agreements; we have provided concrete proposals to address the fundamental problems related to self-designation of developing country status; and we are contributing on a daily basis to the improved functioning of the regular committees where much of the WTO's work is accomplished.

Meanwhile, the WTO is not well equipped to handle the fundamental challenge posed by a non-market economy like China. China has no fear of WTO dispute settlement, even as it continues to embrace a state-led, mercantilist approach to the economy and trade that is fundamentally incompatible with the open, market-based approach expressly envisioned and followed by other WTO Members. As the United States has repeatedly made clear at the WTO, China pursues an array of non-market industrial policies and other unfair competitive practices aimed at promoting and supporting its domestic industries. At the same time, China creates unfair disadvantages for foreign companies and their goods and services. These actions have caused serious harm to the United States and many other WTO Members and their companies and workers. Unfortunately, however, many of China's unfair practices – including most of the practices described in USTR's Section 301 report – are not covered by WTO rules.

While the WTO dispute settlement process is of only limited value in dealing with China's non-market practices, the Chinese government is eager to draw upon the judicial activists at the WTO to protect its economic system. Indeed, China plainly seeks to exploit the WTO dispute settlement process to discourage U.S. policymakers from using their leverage to push for market-opening changes. For example, China launched a WTO case against the United States alleging that the U.S. Section 301 investigation violates the WTO agreements. In other words, China seeks to use the WTO dispute settlement system to shield a broad range of trade-distorting policies and practices not covered by WTO rules.

Meanwhile, China has also imposed retaliatory tariffs on U.S. goods with an annual trade value of approximately \$100 billion – more than half of all U.S. exports to China – without claiming any WTO justification for these retaliatory tariffs. China's invocation of WTO dispute settlement based on the same actions for which it has already imposed retaliatory measures is a clear attempt by China to exploit WTO dispute settlement to continue the type of unfair practices identified in USTR's Section 301 investigation.

In fact, China has pushed for changes that would make the WTO even *more* unaccountable to WTO Members. For example, the United States has voiced concern that the WTO Appellate Body has strayed from the role agreed to it by WTO Members by exceeding the 90-day deadline for appeals, reviewing panel

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<sup>64</sup> The 2018 Trade Policy Agenda is available at: <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF>.



findings on domestic law (findings of fact), or issuing advisory opinions on issues not necessary to the resolution of a dispute. In response to U.S. concerns, China and other WTO Members have put forth proposals that endorse changing the rules of WTO dispute settlement to accommodate and authorize the very WTO Appellate Body actions that the United States has protested. Such proposals would not return WTO dispute settlement to what was originally agreed to by WTO Members, and instead would permit China flexibility to circumvent WTO rules. It is very troubling to see that China believes that giving more authority to the Appellate Body would be in China's interest.

The United States remains committed to fulfilling its obligations under WTO agreements. Under the leadership of President Trump, however, the United States will certainly reject efforts by the WTO Appellate Body to create new obligations to which WTO Members have not agreed. As shown throughout this document, President Trump inherited a trading system that was deeply flawed, and was generating harmful outcomes for American workers in many instances. The United States government must have the policy space necessary to address the extensive problems discussed in this agenda. That policy space must include the ability to use tariffs or other forms of leverage to persuade other countries to take our concerns seriously.

The current healthy state of the U.S. economy – and the recent boom in employment, including manufacturing employment – shows that the U.S. government can and should adjust trade policy as necessary to avoid the type of challenges inherited by this Administration. Trade policy, like tax policy, must reflect the wishes, concerns, and priorities of the American people – and should not be dictated by technocrats who are not responsible to Americans. The United States remains an independent nation, and our trade policy will be made here – not in Geneva. We will not allow the WTO Appellate Body and dispute settlement system to force the United States into a straitjacket of obligations to which we never agreed.

### **C. The Administration Will Continue Rebalancing America's Trade Relationships**

As shown above, the Trump Administration has already taken major steps to implement a trade policy that is more favorable to American workers. We have significantly re-written major trade deals with Korea, Mexico, and Canada. We have undertaken dramatic new enforcement efforts to stop unfair trading practices in China and other countries. These actions have contributed to a stronger U.S. economy, which has generated increased trade, more jobs, and higher wages for all Americans.

But our work is not yet finished. In 2019, the Trump Administration will continue trying to rebalance U.S. trade relationships for the benefit of American workers and businesses. We have already discussed Congressional approval and subsequent implementation of the USMCA, which will be one of our top priorities. We have also addressed the ongoing negotiations with China, which are another major priority. Other key priorities are discussed in more detail below.

#### **1. Supporting national security**

In last year's trade agenda, we stated that “[f]or the Trump Administration, trade policy is intended to advance our national interest. Thus, our trade policy should be consistent with, and supportive of, our national security strategy.”<sup>65</sup> This statement remains central to our thinking. As shown throughout this Agenda, we have been focused on efforts to strengthen the U.S. economy, and thereby help to generate the resources necessary to preserve our national security. We have also concentrated on efforts to preserve the innovation and technology that remain vital not only to our economy, but also to our national defense. In

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<sup>65</sup> *Id.* at 3.

our efforts to renegotiate NAFTA, in our enforcement actions against China, and in our discussions with other trading partners, we have consistently emphasized the importance of encouraging U.S. innovation.

Another element of supporting national security includes protecting the ability of the American people to govern themselves. As discussed above, in our democratic system of government, it is vital that “We the People” maintain the ability to change our trade policy as necessary to protect our national interest.

As the United States has made clear on numerous occasions, the United States and other WTO Members each have the right to determine, for itself, what it considers in its own essential national security interests. This has been the understanding of the United States for over 70 years, since the negotiation of the General Agreement on Tariffs and Trade (GATT). That understanding has been shared by every WTO Member whose national security action was the subject of complaint. Despite this understanding, multiple Members are urging the WTO to overrule the United States’ determinations concerning its own essential national security interests regarding trade in steel and aluminum under Section 232. Such a decision by the WTO to second guess U.S. national security determinations would threaten serious damage to the multilateral trading system. The United States intends to fight vigorously these efforts to impinge its national sovereignty.

## **2. Pursuing new trade deals with strategic partners**

On October 16, 2018, the U.S. Trade Representative notified Congress, consistent with Trade Promotion Authority procedures, that the Trump Administration intends to negotiate separate trade agreements with Japan, the European Union, and the United Kingdom.<sup>66</sup> As a part of the process of forming its negotiating objectives for these agreements, USTR also solicited public comments and held three public hearings.<sup>67</sup>

In negotiations with Japan, the United States seeks a trade agreement that will address both tariff and non-tariff barriers and achieve fairer, more balanced trade in a manner consistent with congressional objectives.<sup>68</sup> The United States and Japan are the world’s first and third largest national economies, respectively, representing about 30 percent of global gross domestic product. Although Japan is an important export market for U.S. producers – receiving some \$67.6 billion in U.S. goods exports in 2017 (including \$12 billion in agricultural exports) – sectors such as automobiles, agriculture, and services face challenges in exporting to Japan due to multiple tariff and non-tariff barriers. Such barriers have exacerbated chronic U.S. trade imbalances with Japan, as the U.S. trade deficit in goods with Japan was \$68.9 billion in 2017, virtually unchanged from 2016. Several key competitors have also recently concluded free trade agreements with Japan and now have a strong and growing price advantage over U.S. exporters. Through a trade agreement, the United States and Japan seek to expand trade and investment between them, and promote a strong, stable, and mutually beneficial trade and economic relationship.

In a free trade agreement with the EU, the United States seeks to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities for trade and investment with

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<sup>66</sup> See Trump Administration Announces Intent to Negotiate Trade Agreements with Japan, the European Union, and the United Kingdom (Oct. 16, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/october/trump-administration-announces>.

<sup>67</sup> 83 Fed. Reg. 57,790 (Nov. 16, 2018) (UK); 83 Fed. Reg. 54,164 (Oct. 26, 2018) (Japan); 83 Fed. Reg. 57,526 (Oct. 15, 2018) (EU).

<sup>68</sup> Office of the U.S. Trade Representative, United States-Japan Trade Agreement (USJTA) Negotiations, Summary of Specific Negotiating Objectives (Dec. 2018), [https://ustr.gov/sites/default/files/2018.12.21\\_Summary\\_of\\_U.S.-Japan\\_Negotiating\\_Objectives.pdf](https://ustr.gov/sites/default/files/2018.12.21_Summary_of_U.S.-Japan_Negotiating_Objectives.pdf).

the EU.<sup>69</sup> The economic relationship between the United States and the EU is the largest and most complex in the world, with \$1.3 trillion in annual two-way trade. Despite this significant trade volume, U.S. exporters in key sectors have been challenged by multiple tariff and non-tariff barriers for decades, leading to chronic U.S. trade imbalances with the EU. For example, in 2017, the U.S. trade deficit in goods with the EU was \$151.4 billion. As indicated in the joint statement issued by President Trump and European Commission President Jean-Claude Juncker following their July 25, 2018 meeting, the United States and the EU would like to pursue negotiations to strengthen their trade relationship to the benefit of all American and European citizens.

In a free trade agreement with the UK, the United States will likewise seek the elimination of tariff and non-tariff barriers, and aim to achieve a fairer and deeper trade relationship. The United States and the United Kingdom have already signed a bilateral agreement on prudential measures regarding insurance and reinsurance, continuity agreements on wine and distilled spirits, and mutual recognition agreements in certain sectors, all of which are important steps in providing regulatory certainty and market continuity as the UK prepares to leave the EU.<sup>70</sup>

The Trump Administration continues to engage with other countries regarding efforts to deepen trade relationships, promote fair, balanced trade, and support American jobs and prosperity. For example, in August 2018, the United States and Kenya established a trade and investment working group to explore ways to deepen trade and investment between the two countries.<sup>71</sup> At present, trade between the two countries stands at about \$1 billion per year, and over 70 percent of Kenya's exports to the United States enter under the African Growth and Opportunity Act (AGOA). The Administration's engagement with African countries is intended to support comprehensive trade policies and begin to lay the groundwork for a stronger future trade relationship.

### **3. Continued enforcement of U.S. laws and trading rights**

In 2019, the Trump Administration will continue aggressively enforcing U.S. trade laws to protect the interests of American businesses and workers. This trade enforcement will include not only monitoring of trade agreements, but also direct engagement with trading partners and engagement in multilateral fora such as WTO committees. USTR will also continue to promote U.S. interests under U.S. bilateral free trade agreements through means such as work programs and accelerated tariff reductions. USTR's technical assistance to trading partners will also continue in 2019, especially assistance provided to developing country partners, to ensure that key agreements are fully implemented on schedule.

As necessary, USTR will also pursue formal challenges to acts, policies, or practices of foreign governments that are inconsistent with WTO rules under the dispute settlement procedures of the WTO, and will vigorously defend U.S. actions when challenged by foreign governments. Where appropriate, USTR may take action under Section 301 of the Trade Act of 1974 or recommend action under other statutory authorities granted to the President, as appropriate.

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<sup>69</sup> Office of the U.S. Trade Representative, United States-European Union Negotiations, Summary of Specific Negotiating Objectives (Jan. 2019), [https://ustr.gov/sites/default/files/01.11.2019\\_Summary\\_of\\_U.S.-EU\\_Negotiating\\_Objectives.pdf](https://ustr.gov/sites/default/files/01.11.2019_Summary_of_U.S.-EU_Negotiating_Objectives.pdf).

<sup>70</sup> See Joint Statement on Signing the Bilateral Agreement on Prudential Measures Regarding Insurance and Reinsurance (Dec. 19, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/december/joint-statement-signing-bilateral>.

<sup>71</sup> See USTR, Joint Release By USTR Robert Lighthizer And Kenyan Cabinet Secretary For Industry, Trade And Cooperatives, Peter Munya (Aug. 27, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/joint-release-ustr-robert-lighthizer>.

#### **4. Rebalancing the global economy**

In 2019, the Trump Administration will continue pressing our trading partners to recognize the need to balance the global economy. A principle problem facing the global trading system is that certain countries persistently run a current account deficit (meaning that they import more goods and services than they export), while other countries persistently run a current account surplus (meaning that they export more goods than they import).

For the past decade, the United States, the United Kingdom, France, Australia, New Zealand, Canada, Brazil, and Mexico, among others, have persistently run current account deficits.<sup>72</sup> Meanwhile, countries including Germany, Switzerland, Denmark, Norway, The Netherlands, Japan, China, Korea, and Russia have consistently run current account surpluses over the past ten years.<sup>73</sup> These persistent trends – which have led to tensions and instabilities throughout the world – demonstrate the significant imbalance in global trade that was in existence when President Trump took office.

President Trump is working to achieve a more balanced economy, which leads to more sustainable economic growth, as well as more production and jobs here in America. The Administration has already taken significant steps to create a more balanced and sustainable trading system, including by withdrawing from the TPP, revising NAFTA and KORUS, and ramping up enforcement of U.S. trade remedies laws. Changes to U.S. tax and regulatory policy are designed to both make the U.S. economy more competitive and increase production in the United States. So far, the United States has seen improvements in production, employment, exports, and wages.

The global economy remains imbalanced however, and the U.S. current account deficit has been highly persistent over the last few years. Accordingly, in 2019, the United States will continue pressing our trading partners for policy changes that will address this imbalance and lead to a more balanced economy here and abroad. The United States looks forward to working with our trading partners to address these and other issues in the coming years.

### **CONCLUSION**

In 2018, the Trump Administration took significant steps to rebalance U.S. trade so that American businesses and workers would share in the benefits of our trade relationships. To this end, the Administration engaged with strategic trade partners to renegotiate existing agreements and to begin negotiating new agreements. The Administration also continued to enforce U.S. trade rights in both domestic and international fora, and stood up for America's interests under existing trade agreements. In 2019, we will continue these efforts, as we take further steps to rebalance America's trade relationships and the global economy.

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<sup>72</sup> World Bank Databank, Current account balance, <https://data.worldbank.org/indicator/BN.CAB.XOKA.CD>

<sup>73</sup> *Id.*





**2018 ANNUAL REPORT  
OF THE  
PRESIDENT OF THE UNITED STATES  
ON THE  
TRADE AGREEMENTS PROGRAM**





# II. AGREEMENTS AND NEGOTIATIONS

## A. Concluded Negotiations

### 1. United States-Mexico-Canada Agreement/North American Free Trade Agreement

#### Overview

On November 30, 2018, at the direction of President Trump, the United States Trade Representative, along with his counterparts from Mexico and Canada, signed the United States-Mexico-Canada Agreement (USMCA), thereby fulfilling President Trump's promise to the American people to renegotiate the North American Free Trade Agreement (NAFTA). The USMCA is a comprehensive overhaul of the outdated NAFTA that will promote freer, fairer, and more balanced trade between the Parties; ensure fairness and reciprocity for American workers, farmers, ranchers, and businesses; incentivize job creation in the United States – particularly in the manufacturing sector; and grow the North American economy. The USMCA sets a new high standard for U.S. trade agreements going forward.

The USMCA is a state-of-the-art agreement that maintains the zero tariffs already in place and includes new and far-reaching obligations designed to achieve three principal objectives:

First, the USMCA rebalances the NAFTA to promote increased production in the United States and North America and to ensure that non-parties do not gain unwarranted benefits through the agreement. The USMCA features innovative rules of origin for automobiles and automobile parts that, when fully implemented, will create strong incentives to invest and manufacture in the United States and North America. These rules are designed to address incentives created by the NAFTA to produce automobiles and automobile parts using low-wage labor. A higher regional value content threshold, when taken in conjunction with the closing of key NAFTA loopholes such as 'deemed originating', will ensure that only producers using significant North American parts and materials receive preferential tariff benefits under the USMCA. In addition, for the first time in any agreement, the USMCA includes a labor value content rule, which will promote the use of high-wage labor in automobile production, thereby helping ensure a level playing field for U.S. workers in this sector.

The USMCA also includes the strongest, most advanced, and most comprehensive labor obligations of any U.S. trade agreement. Unlike the NAFTA, the USMCA's labor provisions have been incorporated into the text of the agreement and are fully enforceable. It includes a special Annex that requires Mexico to overhaul its system of labor justice to ensure that workers have the right to secret ballot votes to elect and challenge union leadership and to approve new and existing collective bargaining agreements. This will promote better working conditions and higher wages for Mexican workers and will create the conditions for fairer competition between U.S. and Mexican workers.

The USMCA also includes important improvements that will enable food and agriculture to be traded more fairly, and which will allow for expanded exports of American agricultural products. This includes securing significant new access for U.S. producers to Canada's market for dairy, eggs, and poultry. Additionally, the USMCA makes significant reforms to the investor-State dispute settlement mechanism that safeguard U.S. sovereignty while ensuring adequate protection for U.S. investors in Mexico and Canada.

Second, the USMCA modernizes the NAFTA with provisions that reflect the realities of the 21st century economy. It includes the strongest provisions on digital trade, financial services, and the protection and

enforcement of intellectual property rights of any U.S. trade agreement. The USMCA also does more than any other U.S. trade agreement to take on the non-tariff barriers that can hinder U.S. exports, even after tariffs have been eliminated. It includes chapters covering anticorruption and small and medium-sized businesses, as well as comprehensive new provisions on transparency and regulatory matters, including state-of-the-art chapters on technical barriers to trade, sanitary and phytosanitary measures, and a new chapter on good regulatory practices. In addition – like labor – the USMCA will replace the NAFTA side agreement on environment with a state-of-the-art, fully enforceable environment chapter containing strong and comprehensive obligations within the core text of the agreement.

Third, the USMCA contains a set of ground-breaking provisions to combat subsidies and non-market practices that have the potential to disadvantage American workers and businesses. These include: 1) a first-of-its-kind chapter to address unfair currency practices; 2) pioneering rules on the definition of and subsidies provided to state-owned enterprises (SOEs); and, 3) transparency obligations with respect to any USMCA Party's future trade negotiations with non-market economies. These changes will help mitigate the trade-distorting impact of unfair trade practices in North America.

Once in force, the USMCA will result in more balanced, reciprocal trade with Mexico and Canada, support higher-paying jobs for Americans, and ensure that North America remains the world's economic powerhouse.

## **Elements of NAFTA**

On January 1, 1994, the NAFTA entered into force. Tariffs on nearly all goods were eliminated progressively, with duties and quantitative restrictions eliminated, as scheduled, by January 1, 2008. Canada still maintains tariffs on dairy, poultry, and egg products while the United States still maintains tariffs on dairy, sugar, and peanut products from Canada. United States-Mexico trade is fully duty-free. In 2018, the United States exported an estimated \$301 billion worth of goods to Canada, and imported an estimated \$322 billion worth of goods from Canada, for a bilateral trade deficit in goods of \$21 billion.<sup>1</sup> During the same year, the United States exported an estimated \$267 billion worth of goods to Mexico, and imported an estimated \$347 billion worth of goods from Mexico, for a bilateral trade deficit in goods of an estimated \$80 billion.<sup>1</sup> The United States has had a trade deficit in goods with both Mexico and Canada in every year since 1994.<sup>2</sup>

In 2017, U.S. exports of services to Canada were an estimated \$58.7 billion and U.S. imports were an estimated \$32.8 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$121.3 billion

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<sup>1</sup> Goods data annualized based on January through November 2018; services data annualized based on January through September 2018.

<sup>2</sup> The international shipment of non-U.S. goods through the United States can make standard measures of bilateral trade balances potentially misleading. For example, it is common for goods to be shipped through regional trade hubs without further processing before final shipment to their ultimate destination. This can be seen in data reported by the United States' two largest trading partners, Canada and Mexico. The U.S. data report a \$17.1 billion goods deficit with Canada in 2017, and a \$71.0 billion goods deficit with Mexico. Both countries report substantially larger U.S. goods surpluses in the same relationship. Canada reports a \$97.1 billion surplus, and Mexico a \$132.4 billion surplus. This reflects the large role of re-exported goods originating in other countries (or originating in one NAFTA partner, arriving in the United States, and then returned or re-exported to the other partner without substantial transformation).

U.S. statistics count goods coming into the U.S. customs territory from third countries and being exported to our trading partners, without substantial transformation, as exports from the United States. Canada and Mexico, however, count these re-exported goods as imports from the actual country of origin. In the same way, Canadian and Mexican export data may include re-exported products originating in other countries as part of their exports to the United States, whereas U.S. data count these products as imports from the country of origin. These counting methods make each country's bilateral balance data consistent with its overall balance, but yield large discrepancies in national measures of bilateral balance. It is likely that a measure of the U.S. trade deficit with Canada and Mexico excluding re-exports in all accounts would be somewhere in between the values calculated by the United States and by our country trading partners.

in 2015 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$100.0 billion. U.S. exports of services to Mexico were an estimated \$33.3 billion in 2017 and U.S. imports were an estimated \$26.3 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$42.8 billion in 2015 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$8.6 billion. The United States has had a trade surplus in services with both Mexican and Canada in every year since 1999.

### *Operation of the Agreement*

The NAFTA's central oversight body is the NAFTA Free Trade Commission (FTC), composed of the United States Trade Representative, the Canadian Minister of Foreign Affairs, and the Mexican Secretary of Economy, or their designees. The FTC is responsible for overseeing implementation and elaboration of the NAFTA and government-to-government dispute settlement.

The FTC held its most recent meeting in Washington, D.C. on April 3, 2012. Since October 2012, trade ministers, senior officials, and experts from the United States, Canada, and Mexico have met regularly to expand and deepen trade and investment opportunities in North America, including through frequent and extensive meetings beginning in 2017 for the negotiation of the USMCA.

### *NAFTA and Labor*

The North American Agreement on Labor Cooperation (NAALC), a supplemental agreement to the NAFTA, promotes effective enforcement of domestic labor laws. The NAALC established a tri-national Commission for Labor Cooperation, composed of a Ministerial Council and an administrative Secretariat. Each NAFTA Party also established a National Administrative Office (NAO) within its Labor Ministry to serve as a contact point with the other Parties and to provide for the submission and review of public communications on labor law matters. Since 2010, the NAOs have assumed the duties of the NAALC Secretariat, including carrying out cooperative activities.

The USMCA's labor obligations incorporate and greatly exceed the fundamental aspects of the NAALC, and represent the highest standard of any trade agreement. The Labor Chapter of the USMCA requires the Parties to adopt and maintain in law and practice labor rights as recognized by the International Labor Organization, to effectively enforce their labor laws, and not to waive or derogate from their labor laws. It includes new provisions requiring Parties to take measures to prohibit the importation of goods produced by forced labor and to address violence against workers exercising their labor rights. The USMCA also includes specific obligations related to union democracy and collective bargaining rights in Mexico (see below on Labor Chapter Annex).

The NAALC remains in force pending passage of the USMCA. As of publication, there are five pending submissions under the NAALC. Three are pending with the Mexican NAO (two involving the United States and one involving Canada), one with the United States' NAO (involving Mexico), and two with the Canadian NAO (one involving Mexico and one involving the United States). One submission is pending with the United States and Canadian NAOs.

In December 2018, Mexico's Executive submitted legislation to its congress that would amend the Federal Labor Law to implement landmark constitutional reforms to the labor justice system enacted in February 2017. The reforms would transfer the authority to adjudicate labor disputes from tripartite Conciliation and Administrative Boards to new labor courts and the registration of unions and collective bargaining agreements to a new, independent, impartial, and specialized Federal "Institute." Under the terms of the USMCA Labor Chapter Annex on "Workers Representation in Collective Bargaining," the reforms must

include specific provisions to prohibit the registration of so-called protection contracts, which are collective bargaining agreements entered into by non-representative unions, often without the knowledge of workers, and undermine legitimate collective bargaining and suppress wages. The Annex also includes a commitment to require a review of existing collective bargaining agreements within a period of four years from enactment of the labor reform, to verify that a majority of the workers covered by the collective bargaining agreement have expressed their support for the agreement through a personal, free, and secret vote.

The Administration is consulting closely with the Mexican government regarding the content of the reforms to ensure the final legislation improves labor standards, protects Mexican workers' labor rights, and fully implements the obligations undertaken by Mexico under the USMCA. The Lopez Obrador Administration submitted draft legislation to Mexico's congress on December 22, 2018. Mexico's Congress began considering the legislation in the session that opened on February 1, 2019.

### *NAFTA and the Environment*

The North American Agreement on Environmental Cooperation (NAAEC), a supplemental agreement to the NAFTA, promotes effective enforcement of environmental laws and supports regional environmental cooperation initiatives. The USMCA Environment Chapter upgrades and modernizes the NAAEC, which will remain in force pending passage of the USMCA (*for additional information, see Chapter IV.D*).

On June 26-27, 2018, the Commission for Environmental Cooperation (CEC) Council met in Oklahoma City, Oklahoma. The Council reviewed progress to date in implementing 10 cooperative projects related to supporting the legal and sustainable trade in select North American species and improving industrial energy efficiency. It also announced three new initiatives focused on innovation in green growth and preparedness, resilience to extreme events, and monitoring the atmosphere. In 2018, the CEC Parties continued the practice of reporting on actions taken on public submissions on enforcement matters concluded over the previous year.

## **2. United State-Korea Free Trade Agreement**

### **Overview**

Korea is an important ally and key trading partner. However, the United States-Korea Free Trade Agreement (KORUS FTA), which came into force on March 15, 2012, has been a major disappointment overall. Since the KORUS FTA went into effect in 2012, the U.S. trade deficit in goods with Korea increased from \$13.2 billion in 2011 to an estimated \$18.2 billion in 2018, while the overall deficit decreased from \$6.3 billion in 2011 to an estimated \$5.7 billion in 2018.<sup>3</sup>

As directed by the President, the U.S. Trade Representative worked to resolve issues through the Joint Committee process under the KORUS FTA. In July 2017, Ambassador Lighthizer initiated trade discussions with Korea, leading to special sessions of the Joint Committee in 2017 and further negotiations regarding amendments and modifications to the FTA in early 2018. On September 24, 2018, the United States and Korea signed a number of modifications and amendments to the KORUS FTA. These amendments and modifications entered into force on January 1, 2019.

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<sup>3</sup> Goods trade annualized based on January through November 2018 data; services trade annualized based on January through September 2018 data.

## Operation and Improvement of the Agreement

Through negotiations and updates to the KORUS FTA, the United States achieved outcomes aimed at improving the large trade deficit in industrial goods, with a particular emphasis on automobiles and related parts. The United States also addressed KORUS FTA implementation concerns that have hindered U.S. exports to Korea.

In the automotive sector, key outcomes from the negotiations include:

- **Truck Tariffs:** Korea agreed to extend the phase-out of the 25 percent U.S. tariff on trucks until 2041, or a total of 30 years following the entry into force of the KORUS FTA in 2012. These tariffs were previously scheduled to phase out by 2021.
- **Greater Access for U.S. Exports:** Korea will double the number of U.S. automobile exports (to 50,000 cars per manufacturer per year) that can meet U.S. safety standards in lieu of Korean standards and enter the Korean market without further modification.
- **Harmonization of Testing Requirements:** U.S. gasoline engine vehicle exports will be able to show compliance with Korea's emission standards using the same tests that are conducted to show compliance with U.S. regulations, without additional or duplicative testing for the Korean market.
- **Recognition of U.S. Standards for Auto Parts:** Korea will recognize U.S. standards for auto parts necessary to service U.S. vehicles, and reduce labeling burdens for parts.
- **Improvements to CAFE Standards:** Korea will expand the amount of "eco-credits" available to help meet fuel economy and greenhouse gas requirements under the regulations currently in force, while also ensuring that fuel economy targets in future regulations will be set taking U.S. regulations into account and will continue to include more lenient targets for small volume manufacturers.

With respect to Korea's implementation of the KORUS FTA, Korea also agreed to make improvements in the areas of customs and pharmaceuticals. Korea agreed to address long-standing concerns regarding onerous and costly customs verification procedures by agreeing on principles for conducting verification of origin of exports under the FTA and establishing a working group to monitor and address future issues that arise. Korea also committed to amend its Premium Pricing Policy for Global Innovative Drugs to make it consistent with Korea's commitments under KORUS to ensure non-discriminatory treatment for U.S. pharmaceutical exports.

## B. Agreements Notified for Negotiation

### 1. United States–European Union Trade Agreement

On October 16, 2018, at the direction of the President, U.S. Trade Representative Robert Lighthizer notified Congress that the Administration intended to initiate negotiations on a trade agreement with the European Union (EU). On November 15, 2018, the Office of the United States Trade Representative (USTR) issued a *Federal Register* notice seeking public comment on a proposed U.S.-EU trade agreement, including U.S. interests and priorities in order to develop U.S. negotiating positions. The period for submission of public comments closed on December 10, 2018. On December 14, 2018, USTR held a public hearing on the proposed United States-EU trade agreement. USTR also consulted extensively with relevant congressional

and trade advisory committees on U.S. negotiating objectives and positions. On January 11, 2019, USTR published detailed negotiating objectives for the United States-EU Trade Agreement.

*(See Chapter IIB.3 for further discussion of the proposed United States-European Union Trade Agreement.)*

## **2. United States–Japan Trade Agreement**

On October 16, 2018, at the direction of the President, U.S. Trade Representative Robert Lighthizer notified Congress that the Administration intended to initiate negotiations on a trade agreement with Japan. On October 26, 2018, USTR issued a *Federal Register* notice seeking public comment on the proposed U.S.-Japan Trade Agreement, including U.S. interests and priorities, in order to develop U.S. negotiating positions. The period for submission of public comments closed on November 26, 2018. On December 10, 2018, USTR held a public hearing on the proposed United States-Japan Trade Agreement. USTR also consulted extensively with relevant congressional and trade advisory committees on U.S. negotiating objectives and positions. On December 21, 2018, USTR published detailed negotiating objectives for the United States-Japan Trade Agreement.

*(See Chapter II.D.3 for further discussion of the proposed United States-Japan Trade Agreement.)*

## **3. United States–United Kingdom Trade Agreement**

Following a national referendum in 2016, the United Kingdom (UK) notified the European Union (EU) in March 2017 of its intention to leave the EU (known as “Brexit”), which began a two-year process of negotiating the terms of the UK exit from the EU. In July 2017, the United States and the UK established the U.S.-UK Trade and Investment Working Group in order to: explore ways to strengthen trade and investment ties prior to Brexit; ensure that existing United States-EU agreements are transitioned to U.S.-UK agreements; lay the groundwork for a potential future free trade agreement once the UK has left the EU; and collaborate on global trade issues. The Working Group met in March, July, and November 2018.

On October 16, 2018, at the direction of the President, U.S. Trade Representative Robert Lighthizer notified Congress that the Administration intended to initiate negotiations on a trade agreement with the UK after the UK has exited the EU. On November 16, 2018, USTR issued a *Federal Register* notice seeking public comment on a proposed U.S.-UK trade agreement, including U.S. interests and priorities in order to develop U.S. negotiating positions. The period for submission of public comments closed on January 15, 2019. On January 29, 2019, USTR held a public hearing on the proposed U.S.-UK trade agreement. USTR also consulted extensively with relevant congressional and trade advisory committees on U.S. negotiating objectives and positions. On February 28, 2019, USTR published detailed negotiating objectives for the U.S.-UK Trade Agreement.

*(See Chapter II.D.2 for further discussion of the proposed United States-United Kingdom Trade Agreement.)*

## C. Free Trade Agreements in Force

NOTE: The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994, and remains in effect. It will be replaced by the United States-Mexico-Canada Agreement (USMCA), signed on November 30, 2018, once that agreement enters in force. Information on the NAFTA can be found in *Section II.A.1: Concluded Negotiations – USMCA-NAFTA*.

### 1. Australia

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. The United States meets regularly with Australia throughout the year to review market access concerns under the FTA. In 2018, following USTR's and the U.S. Department of State's engagement under the United States-Australia FTA Joint Committee, Australia removed the luxury car tax on re-imported cars that are refurbished overseas. After a 14-year ban, U. S. exporters also gained access to the Australian market for U.S. heat-treated beef products in May 2018.

Since the FTA entered into force, U.S.-Australia goods and services trade have increased, with bilateral U.S.-Australia trade in services more than tripling.<sup>4</sup> In 2018, the United States had an estimated \$15.4 billion goods trade surplus with Australia and an estimated \$13.7 billion services trade surplus, relative to \$14.5 billion and \$14.4 billion, respectively, in the year before.<sup>4</sup> In 2018, the United States had an estimated \$1.9 billion deficit in agricultural trade with Australia.<sup>4</sup>

### 2. Bahrain

The United States-Bahrain Free Trade Agreement (FTA), which entered into force on August 1, 2006, continues to generate export opportunities for the United States. Upon entry into force of the Agreement, 100 percent of the two-way trade in industrial and consumer products, and trade in most agricultural products, immediately became duty free. The United States-Bahrain Bilateral Investment Treaty, which took effect in May 2001, covers investment issues between the two countries. In 2018, the United States exported an estimated \$1.9 billion worth of goods to Bahrain, relative to \$899 million the year before, and imported an estimated \$999 million worth of goods from Bahrain, relative to \$996 million the year before.<sup>5</sup> In addition, Bahrain opened its services market, creating important new opportunities for U.S. financial services providers and U.S. companies that offer telecommunication, audiovisual, express delivery, distribution, health care, architecture, and engineering services.

To manage implementation of the FTA, the agreement establishes a central oversight body, the United States-Bahrain Joint Committee (JC), chaired jointly by the Office of the U.S. Trade Representative and Bahrain's Ministry of Industry and Commerce. Meetings of the JC have addressed a broad range of trade issues, including: 1) efforts to increase bilateral trade and investment levels; 2) efforts to ensure effective implementation of the FTA's customs, investment, and services chapters; 3) possible cooperation in the broader Middle East and North Africa (MENA) region; and, 4) additional cooperative efforts related to labor rights and environmental protection.

In 2018, the United States and Bahrain signed a Memorandum of Understanding on Trade in Food and Agriculture Products stating that Bahrain will continue to accept existing U.S. export certifications for food and agricultural products.

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<sup>4</sup> Goods trade annualized based on January through November 2018 data; services trade annualized based on January through September 2018 data.

<sup>5</sup> Goods trade annualized based on January through November 2018 data.

## *Labor*

During the year, U.S. and Bahraini officials continued to engage on labor rights concerns highlighted during consultations that began in 2013 under the United States-Bahrain FTA. Areas of discussion included: 1) improving Bahrain's capacity to respond to cases of employment discrimination; 2) considering legal amendments to improve the consistency of Bahraini labor laws with international labor standards; 3) enhancing outreach and enforcement of labor laws on freedom of association and collective bargaining; and, 4) encouraging regular dialogue among tripartite stakeholders within Bahrain on labor matters. In particular, the United States urged the government of Bahrain to follow up on its commitment to establish a unit within the Ministry of Labor to ensure compliance by employers with employment discrimination laws. In July 2017, Bahraini officials launched the Flexible Work Permit program designed to bring out-of-status migrant workers into legal residency status with a "self-sponsor" visa that no longer ties them to a single employer. Since the program's launch over 13,000 previously out-of-status workers have enrolled in the program.

*For a discussion of environment related activities in 2017, see Chapter IV.D.1*

## **3. Central America and the Dominican Republic**

### **Overview**

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. CAFTA-DR eliminates tariffs, opens markets, reduces barriers to services, and promotes transparency.

Central America and the Dominican Republic represent the third largest U.S. goods export market in Latin America, behind Mexico and Brazil. U.S. goods exports to the CAFTA-DR countries were valued at an estimated \$32.0 billion in 2018, compared to an estimated \$30.6 billion in the year before.<sup>6</sup> Combined total two-way goods trade in 2018 between the United States and CAFTA-DR Parties was an estimated \$57.0 billion, compared to an estimated \$54.3 billion in the year before.<sup>6</sup> The United States had an estimated \$7.0 billion trade surplus with the CAFTA-DR countries in 2018, virtually unchanged from the year before.<sup>6</sup>

The Agreement has been in force since January 1, 2009, for all seven countries that signed the CAFTA-DR. It entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua during 2006, for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

### **Elements of the CAFTA-DR**

#### *Operation of the Agreement*

The central oversight body for the CAFTA-DR is the Free Trade Commission (FTC), composed of the U.S. Trade Representative and the trade ministers of the other CAFTA-DR Parties or their designees. The CAFTA-DR Coordinators, who are technical level staff of the Parties, maintain ongoing communication to follow up on agreements reached by the FTC, to advance technical and administrative implementation issues under the CAFTA-DR, and to define the agenda for meetings of the FTC.

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<sup>6</sup> Annualized based on January through November 2018 data.



U.S. export and investment opportunities with Central America and the Dominican Republic have continued to grow under the CAFTA-DR. All the CAFTA-DR partners have committed to strengthening trade facilitation, regional supply chains, and implementation of the Agreement. U.S. consumer and industrial goods may enter duty free in all of the other CAFTA-DR member-country markets. Nearly all U.S. textile and apparel goods meeting the Agreement's rules of origin enter the other CAFTA-DR countries' markets duty free and quota free, promoting regional integration and opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies. Under the CAFTA-DR, exports of sensitive products under tariff rate quotas constitute over 85 percent of U.S. agricultural exports to the region. These quotas will continue to increase annually until all tariffs are eliminated by no later than 2025.

## *Labor*

### Labor Capacity Building

Ongoing labor capacity building activities are supporting efforts to promote workers' rights and improve the effective enforcement of labor laws in the CAFTA-DR countries. This includes ongoing support from USAID for efforts to protect the rights of workers in the informal economy and to lift barriers to formalization, for building the capacity of workers and their organizations to constructively advocate for workers' rights with public authorities and employers, and for ensuring that workers and employers develop skills and expertise to resolve disputes. In 2018, USAID continued to support these activities as part of its Global Labor Program, and the U.S. Department of State continued funding a program to combat labor violence in Honduras and Guatemala.

### Dominican Republic

In 2013, the Department of Labor (DOL) issued a report in response to a public communication that alleged that the government of the Dominican Republic had failed to effectively enforce labor laws in the Dominican sugar sector. The DOL report highlighted concerns about potential and apparent violations of Dominican Republic labor laws in the sugar sector with respect to: 1) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; 2) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and, 3) a prohibition on the use of any form of forced or compulsory labor. The DOL also noted concerns in the sugar sector with respect to Dominican labor law on freedom of association, the right to organize, and collective bargaining. In addition, the report raised significant concerns about procedural and methodological shortcomings in the inspection process that undermine the government's capacity to identify labor violations. During 2018, the United States has continued to engage with the government of the Dominican Republic, the sugar industry, and civil society groups on the concerns identified in the report. Sugar producers have engaged in the process to varying degrees and have implemented reforms that address some underlying concerns raised in the public communication and the DOL report. The DOL conducted two missions to the Dominican Republic, including an exchange in which an expert U.S. labor investigator shared expertise on enforcement of labor laws in the agricultural sector with her Dominican counterparts. Nevertheless, procedural and methodological shortcomings in the labor inspections process remain. The DOL published a review of the implementation of the report's recommendations in May 2018. In 2018, the DOL funded a \$5 million technical assistance project designed to improve working conditions and address child labor in the Dominican agriculture sector.

### Honduras

In March 2012, the American Federation of Labor and Congress of Industrial Organizations and 26 Honduran worker and civil society groups filed a public submission with the DOL alleging that the government of Honduras had failed to effectively enforce its labor laws under the CAFTA-DR labor

chapter. In February 2015, the DOL issued a public report with detailed recommendations to improve respect for labor rights in Honduras and address the concerns identified in the submission. Both governments pledged to work together to address the issues raised in the report and issued a joint statement to announce their intention to develop a plan with concrete commitments and timelines to bolster labor enforcement. In December 2015, the DOL and Honduras announced the multi-year Monitoring and Action Plan (MAP), which includes comprehensive commitments by Honduras to address legal and regulatory frameworks for labor rights, undertake institutional improvements, intensify targeted enforcement, and improve transparency. (For additional information on the DOL report and the joint statement, visit <https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/Progress-Labor-Rights-Honduras-Labor-Monitoring-Action-Plan>.)

Honduras passed a comprehensive new labor inspection law in January 2017, and has made significant progress over the past three years implementing the MAP, including by convening ten tripartite meetings with private sector and labor stakeholders to discuss progress under the MAP. In 2018, the DOL conducted four missions to Honduras to follow up to the MAP. In October 2018, the DOL published [a statement on the status of implementation of the MAP](#).

The U.S. Government is providing a number of technical cooperation projects in Honduras to support employment and labor rights, including programs supported by USAID and by the U.S. Department of State to promote freedom of association, union formation, and labor-management relations and to counter labor violence. The DOL funds an \$8.7 million project to reduce child labor and improve labor rights in support of the government of Honduras' implementation of MAP commitments. The DOL also funds a \$16.5 million technical assistance project to support vocational training and skill-building for at-risk youth and prevent their engagement in exploitative labor and the worst forms of child labor in Honduras and El Salvador, including youth at risk of migrating.

#### Costa Rica, El Salvador, and Guatemala

On July 25, 2017, a Labor Procedural Reform went into effect in Costa Rica. The Reform amends various sections of the Labor Code pertaining to freedom of association and collective bargaining, and streamlines certain labor procedures. In line with this reform, the DOL funds a \$2 million technical assistance project to build the capacity of labor inspectors to enforce labor laws with respect to minimum wages, hours of work, and occupational safety and health (OSH) in the agricultural export sector. The project is also working with workers and agricultural sector unions to improve implementation of those laws.

In 2018, the government of El Salvador took measures to address issues related to gender discrimination. On January 30, 2018, the Legislative Assembly reformed the Labor Code to prohibit discriminatory practices and violence against women in the workplace.

The government of Guatemala established a National Tripartite Commission on Labor Relations and Freedom of Association and submitted legislation to institutionalize the Commission to Guatemala's congress in 2018. This progress contributed to the November 2018 closure of a complaint submitted to the International Labor Organization (ILO) in 2012 by Guatemalan workers alleging violations of ILO Convention 87 on freedom of association. The Commission will report annually to the ILO Governing Body and publicly on additional labor-related progress through 2020. According to the Guatemalan Ministry of Labor, application of the June 2017 law restoring sanction authority to the Ministry has resulted in the collection of roughly \$114,000 in fines, with remediation by employers of the underlying violations. Lack of resources and a consistent failure to enforce labor court orders for anti-union dismissals, including reinstatement and back wages, remain serious obstacles to enforcement of labor law. In December 2018, the DOL awarded the ILO \$2.5 million to bolster labor law enforcement in Guatemala's agricultural export

sectors. Violence against labor union activists continues to be a serious concern reported by the ILO, labor stakeholders, and international NGOs.

### *Environment*

*For a discussion of environment related activities in 2018, see chapter IV.D.2.*

### **Other Implementation Matters**

During 2018 all of the CAFTA-DR countries, except Guatemala, took the necessary domestic actions to implement the modifications to the product-specific rules of origin to reflect the 2017 changes to the Harmonized System nomenclature, on which the FTC agreed in 2017. In December 2017, President Trump proclaimed the implementation of the 2017 modifications for the United States, to be effective on a future date that will be announced in the *Federal Register*.

Tariff-rate quota (TRQ) quantity and individual-country quota levels for chicken leg quarters had been established under the agreement only through December 31, 2017. As a result of consultations with USTR, Guatemala reached agreement with the United States in 2017 to accelerate the elimination of tariffs on U.S. exports of fresh, frozen, and chilled chicken leg quarters. Under this agreement, Guatemala’s elimination of tariffs for fresh, frozen and chilled poultry occurred four and a half years earlier than originally planned; U.S. poultry exports would have faced an out-of-quota tariff of 12.5 percent in 2017, but instead received duty free treatment. Guatemala and the United States also reached agreement for Guatemala to establish a TRQ allowing imports of 1,000 metric tons of processed chicken leg quarters to enter duty free each year through December 31, 2021. The tariffs and TRQ will be eliminated effective January 1, 2022.

In 2018, El Salvador, Honduras, and Nicaragua implemented the agreement reached with the United States that established each importing country’s annual TRQ quantity of chicken leg quarters for the five-year period between January 1, 2018 and January 1, 2023. The new TRQ agreement was established through bilateral exchanges of letters between the United States and each respective country and through a Decision of the FTC. The agreed TRQ levels, which represent increases from current TRQ levels, are set out in the table below.

These newly established TRQ levels will remain in effect through December 31, 2023, after which all U.S. chicken leg quarters will be imported duty free. As of January 1, 2018, El Salvador, Guatemala, Honduras, and Nicaragua established a total regional duty-free TRQ of 21,810 metric tons (MT) per year, with individual country minimum quota levels, for U.S. chicken leg quarters.

COUNTRY	2017 TRQ (MTs)	AGREED TRQs (MTs)					2023
		2018	2019	2020	2021	2022	
Honduras	5,344	5,477	5,587	5,810	6,043	6,284	Unlimited
El Salvador	4,638	4,858	4,955	5,153	5,359	5,574	Unlimited
Nicaragua	3,174	3,582	3,654	3,800	3,953	4,111	Unlimited
<b>TOTAL</b>	<b>13,156</b>	<b>13,917</b>	<b>14,196</b>	<b>14,763</b>	<b>15,355</b>	<b>15,969</b>	<b>Unlimited</b>

In 2018, the United States also continued to work closely with its CAFTA-DR partners on bilateral and regional matters related to proper implementation of the Agreement. For example, the U.S. Government

continued to work with several CAFTA-DR partners on implementation of agricultural and sanitary and phytosanitary trade matters. The U.S. Government worked to improve the transparency and effectiveness of regulatory and TRQ administration procedures, which has resulted in improved access for U.S. exporters of several agricultural products including rice, potatoes, onions, and dairy products.

The U.S. Government also worked with several countries to ensure implementation of the Agreement's provisions on intellectual property (IP), including those related to the protection of geographical indications, plant varieties, certain undisclosed test and other data, and other IP enforcement efforts.

The FTC committed to addressing inefficiencies and obstacles to cross-border trade in the region to increase the transparency and predictability of trade and doing business. The CAFTA-DR countries are poised to benefit from trade facilitation, including reforms to customs practices that reduce the costs and time of transporting goods across borders within highly integrated manufacturing and supply chain networks that exist throughout the region.

The FTC further emphasized the need for greater regional integration and agreed to support supply chain systems in the region through several project initiatives. The United States is supporting advances in this area through various trade capacity building efforts detailed above. These initiatives include efforts to support the U.S. textile and apparel industry by strengthening utilization of the Agreement.

### **Trade Capacity Building**

In addition to the labor and environment programs discussed above, trade capacity building programs and planning in other areas continued throughout 2018 under the Central America Strategy formulated by the Office of the United States Trade Representative (USTR) and other U.S. Government agencies.

The Central America Strategy promotes trade facilitation in the region and directs diplomatic engagement and programs toward increasing trade capacity within the CAFTA-DR countries. USAID and other U.S. Government donors, such as the U.S. Departments of Agriculture (USDA), State, and Commerce, and agencies with expertise such as USTR carried out bilateral and regional projects with the CAFTA-DR partner countries.

The U.S. Department of Commerce (Commerce) is implementing the trade facilitation program *Central America Customs, Border Management, and Supply Chain*, which provides technical assistance to the Northern Triangle governments of El Salvador, Guatemala, and Honduras (Northern Triangle) on implementing transparency reforms to improve and simplify customs clearance procedures. The Program promotes the prosperity objectives set forth in the U.S. Strategy for Engagement in Central America and the Alliance for Prosperity Initiative by strengthening implementation of, and ensuring compliance with, the commitments outlined in both the CAFTA-DR and the World Trade Organization's Trade Facilitation Agreement (WTO TFA). In 2018, Commerce together with USTR conducted initial assessments of the host governments' policies and practices with respect to the CAFTA-DR and WTO TFA commitments and identified policy objectives in both agreements to ensure the program goals are measurable and supported by international commitments.

Commerce's Commercial Law Development Program (CLDP) and USTR also are implementing the program, *Building El Salvador's Trade and Competitiveness in Textiles and Apparel to Strengthen Trade and Regional Economic Prosperity*, to improve regional prosperity in Central America by fostering human and institutional capacity to support and strengthen the Salvadoran textile and apparel industry. The Program focuses on interconnected issues to strengthen El Salvador's textile and apparel industry including: understanding CAFTA-DR benefits; implementing effective marketing strategies; strengthening supply chain management; developing products proactively; and sustaining the industry's competitive advantage

through stakeholder cooperation and education. Strengthening the capabilities and efficiencies of the Salvadoran textile and apparel industry enhances export opportunities along the full United States-CAFTA-DR supply chain. In 2018, CLDP and USTR conducted an initial assessment of the textile and apparel industry in El Salvador and conducted the first bilateral workshop, “Benefitting from the CAFTA-DR,” which explored issues affecting the industry’s competitiveness in the context of the global supply chain, utilization of the CAFTA-DR, and the U.S.-regional supply chain.

In 2018, USAID continued implementing the Regional Trade and Market Alliances (RTMA) Project to build trade and institutional capacity in Central America and improve trade facilitation. Through this project, USAID supports Central American governments and businesses in areas related to coordinated border management, including customs administration and other border control agencies, promoting improved information technology and efficient procedures, harmonizing regulations, and other steps to reduce the time and cost to trade across borders. USAID also supported a series of workshops to provide technical assistance to border control agencies like those responsible for customs, agriculture, immigration, and police, to design coordinated border inspection procedures. Additional funds were committed to focus on key commercial border crossings between the Northern Triangle countries. USAID also fostered enhanced public-private dialogue regarding trade facilitation, paving the way for the implementation of the WTO Trade Facilitation Agreement. In 2018, a partnership between USAID and the International Finance Corporation (IFC) to implement an information technology (IT) platform for mutual recognition of sanitary registries with Central American Ministries of Health was operational for food and beverage products produced by and traded among Costa Rica, El Salvador, Guatemala, and Honduras. To strengthen this IT mutual registration platform, in 2018 USAID provided IFC with additional funds to develop the national level systems of Guatemala and Honduras to improve procedural, legal and organizational efficiencies. Additional training also was provided to the private sector on how to use the Mutual Recognition IT system.

USAID also has partnered with USDA to continue supporting CAFTA-DR countries so that their private sectors can take advantage of the trade agreement. USAID, in an interagency agreement with USDA, organized two workshops on the U.S. regulatory system, internal standards, and WTO obligations for CAFTA-DR countries. The purpose of these workshops was to show the CAFTA-DR countries how the U.S. regulatory system operates, introduce them to their counterparts in the U.S. Government, and to begin to resolve a number of outstanding policy issues that disrupt trade with the United States and between CAFTA-DR members. In addition, USDA delivered 11 training sessions in the region on the U.S. Food and Drug Administration Food Safety Modernization Act to inform the private sector and government officers of Central America and the Dominican Republic on the new requirements for exporting food products to the United States. By meeting these international export standards, Central America will be able to increase exports and household income.

In July 2018 a new Trade Facilitation and Border Management project was awarded by USAID. This new project will continue building upon the previous RTMA project, which closed in April 2018. A main component of this new project includes developing a Trade Facilitation Academy, through which all agencies working at the borders will be trained in topics related to trade facilitation and coordinated border management, including aspects of trade agreements, such as the CAFTA-DR.

## **4. Chile**

### **Overview**

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004 and, as of January 1, 2015, all originating goods exports can now enter the United States and Chile duty free under the FTA.

The FTA is a comprehensive free trade agreement that has significantly liberalized trade in goods and services between the United States and Chile. The U.S. goods and services trade surplus with Chile totaled \$5.8 billion in 2017 (latest data available), compared to \$6.9 billion in the year before.

The FTA eliminates tariffs and opens markets, reduces barriers for trade in services, provides protection for intellectual property, promotes regulatory transparency, guarantees nondiscrimination in the trade of digital products, commits the Parties to maintain competition laws that prohibit anticompetitive business conduct, and requires effective enforcement of the Parties' respective labor and environmental laws. In 2018, U.S. goods exports to Chile increased by an estimated 13.4 percent to an estimated \$15.4 billion and up an estimated 468 percent since 2003 (pre-FTA).<sup>7</sup> U.S. goods imports from Chile increased by an estimated 8.9 percent to an estimated \$11.5 billion and are up an estimated 210 percent since 2003.<sup>7</sup> The U.S. goods trade surplus with Chile was an estimated \$3.9 billion in 2018.<sup>7</sup> The United States had a services trade surplus of \$2.8 billion with Chile in 2017, up 2.9 percent from 2016.

U.S. foreign direct investment in Chile (stock) was \$25.9 billion in 2017, a 10.6 percent decrease from 2016. Manufacturing, finance and insurance, and nonbank holding companies lead U.S. direct investment in Chile.

## **Elements of the United States-Chile FTA**

### *Operation of the Agreement*

The central oversight body for the FTA is the United States-Chile Free Trade Commission (FTC), comprised of the U.S. Trade Representative and Chile's Director General of International Economic Affairs, or their respective designees. In October 2018, the FTC held its 12th meeting. Both Parties recognized the need to continue dialogue regarding the implementation of Chapter 17 (Intellectual Property Rights) and reaffirmed their commitment to work together to achieve progress. The United States pressed Chile on longstanding intellectual property rights issues and agreed to maintain constant high-level communication to move these issues closer to resolution.

As part of the FTC, two FTA committees, the Committee on Technical Barriers to Trade and the Committee on Sanitary and Phytosanitary Matters, also met. The U.S.-Chile Environmental Affairs Council held their eighth meeting in September 2018. At the FTC, the United States and Chile signed a Decision to modify Annex 4.1 to maintain consistency between the Agreement, its Annexes and Appendices, and each party's tariff laws and regulations. Parties will seek to implement these modifications in 2019.

The United States and Chile plan to hold the next meeting of the FTC in 2019.

### *Labor*

In its annual report on Findings on the Worst Forms of Child Labor, released in 2018, the U.S. Department of Labor recognized Chile as having made "moderate advancement" in its efforts to eliminate the worst forms of child labor. The report also noted positive measures taken in the areas of legal framework, labor and criminal law enforcement, coordination of government efforts, government policies, and social programs.

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

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<sup>7</sup> Goods trade annualized based on January through November 2018 data.

## 5. Colombia

### Overview

The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. U.S. two-way goods trade with Colombia totaled an estimated \$28.5 billion in 2018, with U.S. goods exports to Colombia totaling an estimated \$14.8 billion.<sup>8</sup> The eighth set of annual tariff reductions under the CTPA took effect on January 1, 2019. Duties on over 80 percent of U.S. exports of consumer and industrial products to Colombia were eliminated immediately upon entry into force of the CTPA, with remaining tariffs phased out over 10 years. More than half of U.S. agricultural exports to Colombia became duty free immediately upon entry into force, with virtually all remaining tariffs to be eliminated within 15 years. Tariffs on a few most sensitive agricultural products will be phased out in 17 to 19 years. In addition, with limited exceptions, U.S. services suppliers gained access to Colombia's services market, estimated at \$172 billion in 2017 (latest data available). Colombia also agreed to important new disciplines in investment, government procurement, intellectual property rights, labor, and environmental protection.

### Elements of the United States-Colombia Trade Promotion Agreement

#### *Operation of the Agreement*

The CTPA's central oversight body is the United States-Colombia Free Trade Commission (FTC), composed of the United States Trade Representative and the Colombian Minister of Trade, Industry, and Tourism or their designees. The FTC is responsible for overseeing implementation and operation of the CTPA. The United States and Colombia held the second FTC meeting to review implementation, such as the July 2018 enactment of copyright law amendments, and operation of the CTPA, in August 2018. The CTPA Committees on Agriculture and Sanitary and Phytosanitary Measures met in 2018 as well. Also in 2018, the United States and Colombia established certain elements related to the dispute settlement mechanism established under the CTPA and concluded work to update the Agreement's rules of origin to reflect 2007, 2012, and 2017 changes to the Harmonized System (HS) nomenclature. The United States and Colombia expect to sign an FTC decision in 2019 to formalize all three sets of updates at the same time. USTR expects to hold the third FTC meeting to review implementation and operation of the CTPA in the second half of 2019.

#### *Labor*

The CTPA Labor Chapter includes commitments requiring both countries to adopt and maintain in laws and practices the fundamental labor rights as stated in the 1998 Declaration of Fundamental Principles and Rights at Work of the International Labor Organization (ILO) and not to fail to effectively enforce their labor laws or waive or derogate from those laws in a manner affecting trade or investment. The obligations of the Labor Chapter are subject to the same dispute settlement provisions as the rest of the CTPA and are subject to the same remedies.

The United States engaged with the Colombian government on labor issues throughout 2018, and supported its ongoing efforts to implement the recommendations made in the U.S. Department of Labor's (DOL) January 2017 report on the submission received in July 2016 under the Labor Chapter of the CTPA. The DOL report included 19 recommendations made to the government of Colombia on improving the labor law inspection system; improving the application and collection of fines for employers, who violate labor laws; combating abusive subcontracting and collective pacts; and improving the investigation and prosecution of cases of violence and threats against unionists.

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<sup>8</sup> Annualized based on January through November 2018 data.

In 2018, the Colombian government took some steps to address the recommendations in the DOL report, including securing convictions in nine cases of homicides of union leaders and members, which was also a key area of concern under the 2011 Colombian Action Plan Related to Labor Rights (Action Plan). In total, Colombia's judicial system has produced 43 convictions in 33 case of homicides of trade unionists that occurred between 2011 and 2017, and 1 conviction for a homicide that occurred in 2018. There are 23 ongoing trials in approximately 170 open cases. Also in 2018, the Colombian Ministry of Labor significantly advanced the implementation of an electronic case management system, which modernizes the national system for tracking and monitoring the application and collection of fines for violations of the labor code. The United States will continue to work closely with Colombia on remaining challenges, including the imposition and collection of fines for illegal subcontracting and inspections in priority sectors under the Action Plan.

In cases of serious violations by employers of workers' rights of freedom of association under Article 200 of the Colombian criminal code, the Prosecutor General's Office reported 135 case conciliations from January through October 2018. Conciliations involve voluntary agreements between workers and employers to settle alleged violations of Article 200. Hundreds of cases under Article 200 remain under investigation, and although no case has resulted in a conviction, the Prosecutor General's Office reports that there are currently 10 cases in the trial phase and prosecutors are preparing charges in an additional 98 cases.

Engagement with Colombian officials in 2018 included two meetings of the contact points under the Labor Chapter, in Bogotá in February and December, to discuss ongoing collaboration and efforts by the Colombian government to address the recommendations in the DOL report. During these visits, officials from USTR and DOL also held meetings with Colombian labor stakeholders, business representatives, and the Prosecutor General's Office. High-level engagement on labor issues also occurred during a CTPA Free Trade Commission meeting between Colombia's Vice Minister of Trade and Ambassador C.J. Mahoney, Deputy U.S. Trade Representative, in Washington, D.C. in August. In addition, during 2018, the U.S. Agency for International Development funded technical assistance in Colombia that aimed to improve the government's capacity to enforce workers' rights, as well as workers' access to information on their rights and their ability to protect and assert them.

The DOL maintained a labor attaché at the U.S. Embassy in Bogotá in 2018, to monitor and engage with Colombian officials and labor stakeholders on a daily basis to address key issues. Colombia is the only country where the DOL currently has a labor attaché, highlighting the Administration's commitment to ensuring close engagement with Colombia on labor rights.

### *Environment*

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **6. Israel**

The United States-Israel Free Trade Agreement (FTA) entered into force in 1985 and was the United States' first FTA. It continues to serve as the foundation for expanding trade and investment between the United States and Israel by reducing barriers and promoting regulatory transparency. In 2018, U.S. goods exports to Israel increased an estimated 9.3 percent to an estimated \$13.7 billion from 2017.<sup>9</sup> Since 1985, when the United States-Israel FTA came into force, U.S. exports to Israel have risen by an estimated 431 percent, although in 2018, the United States ran an estimated \$8.1 billion bilateral deficit in goods.<sup>9</sup>

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<sup>9</sup> Goods trade annualized based on January through November 2018 data.



The United States-Israel Joint Committee (JC) is the central oversight body for the FTA. At its last meeting in February 2016, the JC had explored potential new collaborative efforts to increase bilateral trade and investment. During the meeting, the United States and Israel had noted progress in addressing a number of specific standards-related and customs impediments to bilateral trade and agreed to continue supporting existing dialogues that address these issues.

Israel continues to revise its standards regime, aiming to expand significantly the recognition of standards from internationally respected standards bodies, including those of the United States. The 2014 Israeli standards law has facilitated the enhanced importation into Israel of a broad range of U.S. products, adopting over 30 international standards developed by U.S. standards-developing organizations. In 2017, the United States and Israel agreed to adopt new procedures that make it easier for exporters to submit claims for duty-free status under the FTA. These new procedures have largely been implemented.

At the February 2016 JC meeting, Israel had proposed resuming negotiations on a permanent successor agreement to the current United States-Israel Agreement on Trade in Agricultural Products (ATAP). The first round of negotiations was held in November 2018. The current ATAP is the second of two temporary ATAPs that the United States and Israel have negotiated due to a disagreement over interpretation of the FTA that arose after the Uruguay Round was concluded. The first ATAP, negotiated in 1996, allowed for limited preferential tariff treatment. The 2004 successor ATAP achieved modest additional market access for U.S. agricultural products. The 2004 ATAP was to have remained in effect only until December 2008, but the United States and Israel have extended the 2004 ATAP each year since then to permit negotiations on a successor agreement. Under the 2004 ATAP, the United States provides Israel with duty-free access to 90 percent of agricultural tariff lines, while Israel provides the United States with duty-free access to only 72 percent of agricultural tariff lines.

## **7. Jordan**

The United States-Jordan partnership remained strong in 2018. A key element of this relationship is the United States-Jordan Free Trade Agreement (FTA), which entered into force on December 17, 2001, and duties were eliminated on January 1, 2010. The United States-Jordan FTA further benefits from Qualifying Industrial Zones (QIZs), as established by Congress in 1996. The QIZ program allows products with a specified amount of Israeli content to enter the United States duty free if manufactured in Jordan, Egypt, or the West Bank and Gaza.

U.S. goods exports to Jordan were an estimated \$1.6 billion in 2018, down 15.0 percent from 2017.<sup>10</sup> QIZ products account for about one percent of Jordanian exports to the United States. The QIZ share of these exports is declining relative to the share of exports shipped to the United States under provisions of the FTA.

At the Joint Committee's most recent meeting, held in May 2016, the United States and Jordan discussed labor, agriculture, current technical barriers to agricultural trade, acceptance of the WTO Trade Facilitation Agreement, and accession to the WTO Government Procurement Agreement. The parties opened a dialogue to outline concrete steps to boost trade and investment bilaterally, as well as between Jordan and other countries in the Middle East region.

### *Labor*

The Office of the United States Trade Representative continued to monitor labor rights in Jordan pursuant to labor provisions of the FTA and continued to work with Jordan in the area of labor standards. In 2016, the

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<sup>10</sup> Goods trade annualized based on January through November 2018 data.

U.S. Department of Labor (DOL) had removed Jordanian garments from its List of Goods Produced by Child Labor or Forced Labor because there had been a significant reduction in the incidence of forced labor in Jordan's garment sector. The United States and Jordan sought to build on this success through ongoing efforts under the Implementation Plan Related to Working and Living Conditions of Workers in Jordan, signed in 2013. The Plan addresses labor concerns in Jordan's garment factories including those regarding anti-union discrimination against foreign workers, conditions of accommodations for foreign workers, and gender discrimination and harassment. In 2016, the Jordanian Ministries of Health and Labor signed an agreement that aims to ensure that labor inspections include garment dormitories, thereby addressing one of the pending commitments in the Implementation Plan. Inspections began in 2017. During 2018, the United States and Jordan continued to work towards completion of the Implementation Plan, including with Better Work Jordan supporting Ministry of Labor (MOL) inspections in garment dormitories. In December 2018, the DOL visited Jordan to press for the issuance of directives and outreach materials to migrant workers that are pending under the plan.

The Ministry of Labor is working with the DOL funded International Labor Organization (ILO) Better Work program to improve understanding of internationally recognized labor standards and the process for conducting audits in the garment sector, including by assigning labor inspectors to the project. Ongoing engagement focuses on internalizing lessons learned from Better Work to build labor inspector capacity, conducting inspections that include dormitories in the QIZs, and continuing outreach efforts to ensure that stakeholders understand their legal rights to participate in unions and enjoy workplaces free of discrimination and harassment. Jordan also worked with Better Work Jordan to ensure that factory-level audits were publicly available in 2017. In 2018, Better Work strengthened efforts aimed at sustainability with the MOL seconding 12 of its 200 labor inspectors to the program to develop internal capacity on best practices related to international standards, Jordanian labor law, factory auditing and inspection techniques.

Following the May 2016 Joint Committee meeting, the MOL and the DOL have continued to explore cooperative activities to support Jordan's efforts to improve labor law enforcement and compliance. In 2017, the DOL had provided technical assistance to the MOL to strengthen mediation capacity and improve its ability to support collective bargaining. In 2018, the DOL expanded this training to develop a train-the-trainers program within the MOL on mediation and collective bargaining and to expand MOL outreach on mediation best practices to worker and employer organizations. The DOL continued to fund the ILO in 2018 to build central and regional government capacity to address child labor.

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **8. Morocco**

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006. The FTA supports the ongoing economic and political reforms in Morocco and lays the groundwork for improved commercial opportunities for U.S. exports to Morocco in the agriculture and automotive sectors.

Since the entry into force of the FTA, two-way U.S.-Morocco trade in goods has grown from \$927 million in 2005 (the year prior to entry into force) to an estimated \$4.3 billion in 2018.<sup>11</sup> U.S. goods exports to Morocco in 2018 were an estimated \$2.8 billion, up an estimated 27 percent from the previous year. Corresponding U.S. imports from Morocco in 2018 were an estimated \$1.5 billion, up an estimated 21 percent from 2017.<sup>11</sup> Services trade in 2017 (the most recent year available) included \$634 million in exports and \$832 million in imports.

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<sup>11</sup> Goods trade annualized based on January through November 2018 data.

In 2018, the United States and Morocco followed up on discussions initiated at the fifth meeting of the FTA Joint Committee (JC) on October 18, 2017, in Washington, D.C., particularly with respect to a number of agriculture and sanitary and phytosanitary (SPS) issues (*see below and Chapter IV.G.*), geographical indications (GIs), and certain textile and apparel cases. With respect to GIs, the two sides made progress during several conversations in 2018 in enhancing their understanding of their respective positions. Especially in light of Morocco's planned implementation of a pending Morocco-European Union (EU) agreement on the protection of GIs for EU products in the Moroccan market, the United States urged Morocco to pursue transparent processes related to the protection of GIs, including access to opportunities for interested parties to oppose or seek cancellation of a GI. In response to Moroccan requests, the United States in late 2018 approved modifications of certain FTA rules of origin for textiles and apparel pursuant to Article 4.3 of the FTA.

#### *Agriculture and Sanitary and Phytosanitary*

At the United States-Morocco FTA Joint Committee and the Agriculture and SPS Subcommittee meetings held in October 2017, Morocco had signaled its willingness to resolve agricultural market access issues that had been outstanding since the FTA entered into force on January 1, 2006. As a result, the United States and Morocco negotiated export certificates for U.S. beef and poultry and opened the market for both products in 2018. Morocco also committed to accelerate the tariff phase out of approximately 40 tariff lines of wheat, beef, and poultry products in cases where Morocco was applying a lower duty to EU products. Finally, Morocco agreed to improve access to its tariff-rate quota (TRQ) for common wheat by increasing tenders and improving the administration of the TRQ. (*See also Chapter IV.G.*)

#### *Labor*

USTR and the U.S. Department of Labor continued to monitor labor rights in Morocco pursuant to labor provisions of the FTA. During 2018, Morocco continued to implement a new domestic worker law, which extends protections and benefits to domestic workers by setting a minimum wage, establishing a minimum age for employment, limiting weekly hours of work, and providing such workers with a day of rest. The law addresses an area of concern raised by the United States during the 2014 FTA Labor Subcommittee meeting. In 2018, the U.S. Department of Labor funded two projects under the FTA labor cooperation mechanism. The first, which concluded in 2018, supported the development and implementation of gender parity in employment policies and partnered with the Millennium Challenge Corporation to sustain efforts to promote gender equity in the private sector through the Ministry of Labor. The second project, awarded in 2018, will support the government's efforts to implement and enforce the new domestic worker law.

#### *Environment*

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **9. Oman**

The United States-Oman Free Trade Agreement (FTA), which entered into force on January 1, 2009, complements other U.S. FTAs in the MENA region to promote economic reform and openness throughout the region. Under the FTA, Oman provides duty-free access on all industrial and consumer products, and comprehensive obligations for services and investment. Since the entry into force of the FTA, two-way U.S.-Oman trade in goods has grown from \$2.2 million in 2008 (the year prior to entry into force) to an estimated \$3.8 billion in 2018.<sup>12</sup> In 2018, the United States exported an estimated \$2.5 billion worth of

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<sup>12</sup> Goods trade annualized based on January through November 2018 data.

goods to Oman, up 27 percent from the year before, and imported an estimated \$1.3 billion worth of goods from Oman, up 17.8 percent from 2017.<sup>13</sup>

To manage implementation of the FTA, the agreement establishes a central oversight body, the United States-Oman Joint Committee (JC), chaired jointly by USTR and Oman's Ministry of Commerce and Industry. Meetings of the JC have addressed a broad range of trade issues, including efforts to increase bilateral trade and investment levels; efforts to ensure effective implementation of the FTA's customs, investment, and services chapters; possible cooperation in the broader MENA region; and additional cooperative efforts related to labor rights and environmental protection.

### *Labor*

As a result of major labor reforms that Oman enacted in the context of entry into force of the FTA, the Oman trade union federation was formed in 2006, which allowed independent unions in Oman for the first time. Oman has since seen an increase in unionization with over 240 enterprise-level unions and several sectoral sub-federations for trade unions established, including in the oil and gas sectors. In September 2018, the government of Oman launched a new two-year Decent Work Country Program in cooperation with the International Labor Organization that would build on successes of a previous program that ended in 2016. The new program focuses on three priorities: social protection; employment, skills, and entrepreneurship development; and international labor standards and labor governance.

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **10. Panama**

### **Overview**

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. Under the TPA, tariffs on 86 percent of U.S. consumer and industrial goods exports to Panama (based on trade flows in the previous year) were eliminated upon entry into force, with any remaining tariffs phased out within 10 years. Additionally, nearly half of U.S. agricultural exports immediately became duty free, with most remaining tariffs to be phased out within 15 years. Tariffs on a few of the most sensitive agricultural products will be phased out in 18 to 20 years. Following the first tariff reduction under the TPA on October 31, 2012, subsequent tariff reductions occur on January 1 of each year; the eighth round of tariff reductions took place on January 1, 2019. The TPA also provides new access to Panama's estimated \$40 billion plus services market in 2017 (latest data available) and includes disciplines related to customs administration and trade facilitation, technical barriers to trade, government procurement, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. The United States' two-way goods trade with Panama was an estimated \$7.4 billion in 2018, with U.S. goods exports to Panama totaling an estimated \$7.4 billion.<sup>13</sup> As of 2017 (latest data available), U.S. services trade with Panama included \$1.6 billion in exports and \$1.3 billion in imports.

### **Elements of the United States-Panama TPA**

#### *Operation of the Agreement*

The TPA's central oversight body is the United States-Panama Free Trade Commission (FTC), composed of the U.S. Trade Representative and the Panamanian Minister of Trade and Industry or their designees. The FTC is responsible for overseeing implementation and operation of the TPA. The United States and

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<sup>13</sup> Goods trade annualized based on January through November 2018 data.

Panama continued to work cooperatively during 2018 to address the few remaining implementation issues. The United States and Panama last held an FTC meeting on November 22, 2016, to review progress on full implementation of the TPA. During the FTC, both partners discussed Panama's next steps on outstanding intellectual property commitments regarding Internet Service Provider Liability (Article 15.11.27) and pre-established damages (Article 15.11.8), as well as bilateral concerns related to trade in agricultural products. Both sides agreed that there has been substantial progress on implementation, resulting in new opportunities for traders and investors. Both sides agreed on next steps for ongoing issues. USTR expects to hold the third FTC meeting to review implementation of the TPA in 2019.

Following the FTC decision in December 2016 to modify the TPA's rules of origin to reflect the 2007 and 2012 changes to the Harmonized System (HS) nomenclature, the United States and Panama are working to modify the rules of origin to reflect the 2017 HS nomenclature changes.

### *Labor*

U.S. Government officials from the Department of Labor (DOL) and USTR met with officials from the Panamanian Ministry of Labor in September 2018 and discussed various labor law enforcement issues, including child labor. In addition, DOL funded four technical assistance projects to combat child labor in Panama, and the U.S. Department of State has provided ongoing engagement including through the October 2018 "Forum on Local Strategies to Reduce Child Labor in Panama."

### *Environment*

*For a discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **11. Peru**

### **Overview**

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. Customs duties for PTPA qualifying U.S. goods have been eliminated on substantially all Peruvian tariff lines. Peru will continue to reduce duties each January 1, with all remaining tariffs, which apply only to select agricultural products, to be eliminated by 2026.

The PTPA is a comprehensive free trade agreement that resulted in the significant liberalization of trade in goods and services between the United States and Peru. The U.S. goods and services trade surplus with Peru totaled \$2.5 billion in 2017 (latest data available).

The PTPA eliminates tariffs, removes barriers to U.S. goods and services, and includes important disciplines with respect to customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protections. In 2018, U.S. goods exports to Peru totaled an estimated \$9.8 billion, up an estimated 12.6 percent from the year before, while U.S. goods imports from Peru totaled an estimated \$7.9 billion, up an estimated 8.7 percent from 2017.<sup>14</sup> U.S. exports of agricultural products to Peru totaled an estimated \$1.3 billion in 2018.<sup>14</sup>

U.S. foreign direct investment in Peru (stock), primarily in the mining sector, was \$6.4 billion in 2017, a 10.9 percent increase from 2016.

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<sup>14</sup> Goods trade annualized based on January through November 2018 data.

## Elements of the PTPA

### *Operation of the Agreement*

The central oversight body for the PTPA is the United States-Peru Free Trade Commission (FTC), which supervises the implementation of the agreement. In 2018, four of the FTC's committees met: the Committee on Technical Barriers to Trade, the Committee on Sanitary and Phytosanitary Matters, the Committee on Trade Capacity Building, and the Working Group on Customs and Trade Facilitation. The United States has continued to work with Peru on logging issues under the Annex on Forest Sector Governance (Forest Annex). The Forest Annex includes concrete steps to take to strengthen forest sector governance and combat illegal logging and illegal trade in timber and wildlife products. The Forest Annex also includes monitoring tools such as a requirement that Peru conduct audits and verifications of particular producers and exporters upon request from the United States. (See *Chapter IV.D.1. for a discussion of environment related activities in 2018*).

The United States and Peru plan to hold the next meeting of the FTC in 2019.

### *Agriculture*

In November 2018, Peru's National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI) concluded a countervailing duty investigation into the export of U.S. ethanol. The United States successfully worked with U.S. industry to provide critical input for INDECOPI's investigation that mitigated the potential harm to U.S. ethanol exports to Peru. The United States is currently appealing the final determination. Peru also initiated a separate investigation into imports of U.S. corn in July 2018. The United States and U.S. industry continue to engage with Peru in this investigation. U.S. exports of corn and ethanol to Peru in 2017 were \$515 million (fifth largest export market) and \$71.5 million (seventh largest export market), respectively.

### *Labor*

Throughout 2018, the U.S. Government continued to engage with the government of Peru on the issues identified in the Department of Labor's (DOL) March 2016 report in response to a public communication under the PTPA Labor Chapter received in July 2015. The communication raised issues related to Peru's adoption and maintenance of laws and practices that protect fundamental labor rights and the effective enforcement of labor laws, particularly with regard to Peru's laws on non-traditional exports and the use of temporary contracts in the textiles sector and agricultural industry. USTR, DOL, and the Department of State continue to engage with the government of Peru to review progress on addressing the issues identified in the report. USTR and DOL held a teleconference with Peruvian government officials in November 2018. During the teleconference, Peruvian labor officials described their efforts in 2018 to improve labor law enforcement by opening two new regional inspection offices, hiring 160 new inspectors, and undertaking legal reform that increased fines for labor law violations. Peru also reported that it is in the process of hiring 80 more labor inspectors, which would bring the total to 630 inspectors, an increase of almost 40 percent since 2015. Further information on the Peru labor public communication is available at: <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>.

DOL has funded over \$23 million in programming to help improve Peru's enforcement of labor laws and compliance with the PTPA Labor Chapter. There were six technical assistance projects active in 2018, including one that supported the activities of the National Superintendence of Labor Inspection (SUNAFIL). This project's objectives were to assist the Peruvian Ministry of Labor and Promotion of Employment (MTPE) in providing support for labor inspectors, especially those newly hired by SUNAFIL. In addition, this project also focused on improving the enforcement of laws, regulations, and other legal

instruments governing and restricting the use of subcontracting or outsourcing practices and short-term employment contracts, especially in the nontraditional export sectors (*e.g.*, mining, agriculture, fishing, and textiles). The remaining projects focused on reducing child labor and forced labor, including a project that carried out an exchange program between Brazil and Peru on good practices to address forced labor. As part of the program, Brazilian and Peruvian law enforcement officials, including SUNAFIL representatives, conducted joint forced-labor inspections in Brazil and Peru, developed and piloted tools to investigate forced labor cases, and researched forced labor in domestic service, gold mining, and logging in Peru.

In its annual report on Findings on the Worst Forms of Child Labor, released in 2018, the U.S. Department of Labor recognized Peru as having made “significant advancement” in its efforts to eliminate the worst forms of child labor. Among other things, the report noted that the government increased criminal penalties for subjecting children to forced labor and achieved its longest human trafficking sentence to date, in a case involving minors. The National Labor Inspection Superintendency also opened four new inspection offices, hired 160 additional labor inspectors, added approximately \$4.9 million to its 2017 budget, and issued a protocol to strengthen child labor inspections and sanctions.

### *Environment*

In February 2018, the United States made its second request that Peru verify that exports of timber to the United States fulfilled the laws, regulations, and other Peruvian measures governing the harvest and trade of timber products. In August 2018, the Timber Committee issued a set of recommendations to address the issues identified in the February 2018 verification, many of which were actions that Peru committed to take following the 2016 verification but had yet to make substantive progress in implementing. The recommendations included strengthening Peru’s timber traceability system, taking swift action against those violating Peru’s forestry laws, and improving timely detection of illegally harvested timber.

In January 2019, the United States acted swiftly in response to Peruvian action to move OSINFOR from its position as a separate and independent entity, as required by the PTPA Forest Annex, to a subordinate position within Peru’s Ministry of Environment by requesting the first ever environment consultations under the PTPA. The United States will use the environment consultation process to resolve the matter and is committed to using all the tools available under the PTPA in order to ensure Peru’s full compliance with the Environment Chapter and Forest Annex.

In 2019, USTR and other agencies will continue to engage closely with Peru to address the range of challenges to combating illegal logging.

*For further discussion of environment related activities in 2018, see Chapter IV.D.1.*

## **12. Singapore**

The United States-Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The bilateral FTA has led to expanded trade, enhanced joint prosperity, and has strengthened broader relations for the benefit of both countries. Given Singapore’s role as the Association of Southeast Asian Nations (ASEAN) chair in 2018, U.S. engagement with Singapore focused heavily on U.S.-ASEAN initiatives on agricultural biotechnology, automobile standards, digital commerce, and electronic payment systems. Since entry into force of the FTA, the United States has maintained consistent trade surpluses in both goods and services with Singapore. In 2018, the goods surplus was an estimated \$6.0 billion, and the services surplus in 2018 was an estimated \$13.0 billion.<sup>15</sup>

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<sup>15</sup> Goods annualized based on January through November 2018 data; services annualized based on January through September 2018 data.

## D. Other Negotiating Initiatives

### 1. The Americas

#### Trade and Investment Framework Agreements and other Bilateral Trade Mechanisms

The Office of the United States Trade Representative (USTR) chairs bilateral meetings with non-FTA partners in the Americas to discuss market opening opportunities, including improving access for small and medium sized enterprises (SMEs) and resolving trade issues with those governments. The United States has Trade and Investment Framework Agreements (TIFAs) with Argentina, the Caribbean Community, and Uruguay. The United States and Paraguay signed a TIFA, but it has not yet entered into force; therefore, the Bilateral Council on Trade and Investment continues to be the primary mechanism for bilateral engagement on trade and investment issues with Paraguay. The United States and Ecuador signed a Trade and Investment Council agreement. The United States and Brazil signed the Agreement on Trade and Economic Cooperation.

In 2018, the United States continued its engagement with its non-FTA partners in the region aimed at fostering bilateral trade relations and resolving trade problems. Highlights of USTR's priority activities with these countries include:

#### *Argentina*

The United States and Argentina signed a TIFA, which established the United States-Argentina Council on Trade and Investment, in March 2016. The Council serves as a venue for engagement on a broad range of bilateral trade issues, such as market access, intellectual property rights (IPR) protection, and cooperation on shared objectives in the World Trade Organization and other multilateral fora. The second meeting of the Council was held in Washington, D.C. in October 2018. The Council in 2016 established the Innovation and Creativity Forum for Economic Development (the Forum) to discuss issues of mutual interest, including geographical indications, industrial designs, and the importance of intellectual property protections for SMEs. The third meeting of the Forum was held in May 2018 in Buenos Aires, and the fourth meeting was held via digital video conference in November 2018. The Council and the Forum is expected to meet again in 2019.

#### *Brazil*

Bilateral dialogue with Brazil is conducted through the United States-Brazil Commission on Economic and Trade Relations (the Commission), established by the Agreement on Trade and Economic Cooperation (ATEC), which was signed in 2011. The ATEC was intended to deepen U.S. engagement with Brazil and expand the trade and investment relationship on a broad range of issues, including trade facilitation, IPR and innovation, and technical barriers to trade. The most recent Commission meeting under the ATEC was held in March 2016 at the ministerial level. The next Commission meeting is expected to be held in 2019 in Brazil.

#### *Caribbean Community (CARICOM)*

On May 28, 2013, the United States and the Caribbean Community (CARICOM) updated its 1991 Trade and Investment Council Agreement with the signing of a TIFA with CARICOM countries. The last meeting under the TIFA was held in May 2016 in Washington, D.C. The next meeting is expected to be held in 2019 in the Caribbean.



The 17 CARICOM member countries and territories are beneficiaries of the Caribbean Basin Initiative (CBI), launched in 1983 through the Caribbean Basin Economic Recovery Act (CBERA). CBERA facilitates the development of stable Caribbean Basin economies by providing beneficiary countries with duty-free access to the U.S. market for many goods. The CARICOM members that receive benefits under CBERA are: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. CBERA was expanded in 2000 by the U.S.-Caribbean Basin Trade Partnership Act (CBTPA), which granted additional preferences, particularly for apparel, to eight CBI beneficiaries: Barbados, Belize, Curaçao, Guyana, Haiti, Jamaica, St. Lucia, and Trinidad and Tobago. CBTPA will expire in 2020 with renewal expected to be initiated through Congress in 2019.

CBI benefits were further expanded with the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), the HOPE II Act of 2008 (HOPE II Act), and the Haitian Economic Lift Program Act of 2010 (HELP Act), which provided Haiti preferential treatment for its textile and apparel products. In June 2015, the Trade Preferences Extension Act of 2015 (TPEA) extended trade benefits provided to Haiti in the HOPE Act, HOPE II Act, and the HELP Act until September 30, 2025. The TPEA also extended the value-added rule for apparel articles wholly assembled or knit-to-shape in Haiti until December 19, 2025.

#### *Ecuador*

The United States and Ecuador signed the United States-Ecuador Trade and Investment Council (TIC) Agreement, which established a forum for the discussion of trade and investment matters between the two governments, in 1990. The TIC was inactive during President Correa's Administration from 2009 to 2017. The second meeting of the Council was held in November 2018 in Washington, D.C., with a renewed mandate from both current administrations to deepen engagement. The meeting addressed Generalized System of Preferences (GSP) eligibility, investment priorities, intellectual property issues, agriculture issues, and information sharing on recent trade developments. The Council established six working groups: 1) intellectual property; 2) agriculture; 3) market access, customs, and trade facilitation; 4) labor; 5) environment; and, 6) investment, services, and digital trade. The next TIC meeting will be held in 2019 in Ecuador.

#### *Paraguay*

The United States and Paraguay signed in January 2017 a TIFA, which will enter into force once the parties notify each other in writing that they have completed any necessary internal procedures. After entry into force, the first meeting of the Trade and Investment Council established under the TIFA is expected to be held in Washington, D.C., in 2019. In June 2015, the United States and Paraguay signed a Memorandum of Understanding (MOU) on Intellectual Property Rights, under which Paraguay committed to take specific steps to improve its IPR protection and enforcement environment, and USTR removed Paraguay from the Special 301 Watch List. In November 2015, Paraguay hosted the twelfth meeting of the existing Bilateral Council on Trade and Investment. The United States and Paraguay discussed a broad range of bilateral trade and investment issues, including increased collaboration to expand economic opportunities for businesses and investors, implementation of the MOU on IPR, and market access issues.

#### *Uruguay*

Uruguay hosted in May 2016 the last meeting of the United States-Uruguay Trade and Investment Council under the TIFA, which was signed in 2007. The United States and Uruguay discussed a range of bilateral trade and investment issues, including trade facilitation, improving opportunities for SMEs, and market

access matters. The next meeting of the Trade and Investment Council is expected to be held in Washington, D.C. in 2019.

## 2. Europe and the Middle East

The United States uses Free Trade Agreements (FTAs), Bilateral Investment Treaties (BITs), Trade and Investment Framework Agreements (TIFAs), and other mechanisms to engage with the European Union (EU) and its 28 Member states, non-EU European countries, Russia, certain countries of western Eurasia, the Middle East, and North Africa to eliminate trade barriers, increase U.S. exports, encourage the development of intraregional economic engagement, foster partner country policies grounded in the rule of law, and, where relevant, advance countries' accessions to the World Trade Organization (WTO) (*see Chapter V.J.6. for more information on WTO accessions*).

During 2018, USTR focused on implementing a plan for engagement with the EU aimed at reducing regulatory and other barriers to U.S. exports and strengthening cooperation on global trade issues and third countries of common concern, especially China. USTR also continued to engage the United Kingdom (UK) through the U.S.-UK Trade and Investment Working Group. (*See Chapter II.B.3. for more information on the U.S.-UK Trade and Investment Working Group*). In 2018, USTR also pressed Russia to implement fully its WTO commitments and promoted policies in Eurasia to open markets to U.S. exports and to support economic diversity and independence. USTR's efforts in the Middle East and North Africa (MENA) region centered on ongoing political and economic reforms, with a view toward encouraging countries to open their markets to U.S. companies where possible.

### Deepening U.S.-EU Trade and Investment Relations

The U.S. trade and investment relationship with the EU is the largest and most complex economic relationship in the world. Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged an estimated \$5.7 billion each day of 2018.<sup>16</sup> The total stock of transatlantic investment was \$5.6 trillion in 2017 (latest data available).

On July 25, 2018, President Trump and European Commission President Juncker announced the formation of an Executive Working Group to work on a new and wide-ranging approach to eliminate tariff and non-tariff trade barriers and increase trade. The EU agreed to reduce barriers to the import of U.S. soybeans and to increase purchases of liquefied natural gas (LNG). The United States and the EU also have intensified collaboration aimed at better protecting American and European companies from the unfair trading practices of China and other countries.

President Trump and President Juncker also instructed the Executive Working Group to focus on meaningful short-term outcomes for U.S.-EU trade. In this regard, the U.S.-EU Executive Working Group is focusing on non-tariff barriers, with particular attention to technical barriers to trade.

In October 2018, USTR notified Congress that the Administration intended to enter into negotiations on a trade agreement with the EU. (*See Chapter II.B.1 for further discussion of the proposed United States-European Union Trade Agreement*".)

During 2018, the United States, the EU, and Japan cooperated closely on issues involving China, including China's policies to force technology transfer, its subsidies and support for state enterprises, and shared concerns about a number of non-market features of China's economy and policies.

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<sup>16</sup> Based on the first three quarters of 2018.

## **Preparing for the UK's Exit from the EU**

Following a national referendum in 2016, the UK notified the EU in March 2017 of its intention to leave the EU (known as “Brexit”), which began a two-year process of negotiating the terms of the UK exit from the EU. In July 2017, the United States and the UK established the U.S.-UK Trade and Investment Working Group in order to: explore ways to strengthen trade and investment ties prior to Brexit; ensure that existing U.S.-EU agreements are transitioned to U.S.-UK agreements; lay the groundwork for a potential future free trade agreement once the UK has left the EU; and, collaborate on global trade issues. The Working Group met in February, July, and November 2018.

In October 2018, USTR notified Congress that the Administration intended to enter into negotiations of a trade agreement with the UK after the UK has exited the EU. (*See Chapter II.B.3 for further discussion of the proposed United States-United Kingdom Trade Agreement.*)

## **Ongoing Engagement with Turkey and the Middle East and North Africa**

The revolutions and other changes that swept through the MENA region beginning in 2011 have provided new opportunities and posed new challenges with respect to U.S. trade and investment relations with MENA countries (especially countries in transition such as Tunisia, Morocco, Jordan, and Egypt). USTR has coordinated with other U.S. federal agencies as well as with outside experts and stakeholders in both the United States and MENA partner countries to explore prospective areas for cooperation that could yield the quickest results in terms of increased trade and investment, in addition to developing longer-term trade and investment objectives with regional trading partners.

In 2018, the United States continued to monitor, implement, and enforce existing U.S. FTAs in the region (Bahrain, Israel, Jordan, Morocco, and Oman) and pursued TIFA consultations with Algeria, Egypt, and Saudi Arabia.

The United States also pursued further engagement with the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) as a group through the U.S.-GCC Framework Agreement for Trade, Economic, Investment and Technical Cooperation. Enhanced U.S. dialogue with the GCC is aimed at ensuring that U.S. interests are fully represented as the GCC develops as a regional organization dedicated to harmonizing standards, import regulations, and conformity assessment systems among its member states.

Recognizing Turkey's continuing importance as a trade and investment partner, in 2018 the United States sought to pursue issues raised with the Turkish government in a September 2017 meeting under the bilateral TIFA process. Key issues of focus were the openness of the digital economy, intellectual property protection and enforcement, and the reduction of various market access barriers for both goods and services. Due to the prominence of broader foreign policy issues in U.S.-Turkey engagement during the year, however, progress on economic matters was limited.

## **Encouraging Predictability and Transparency as Engines of Economic Growth in Eurasia**

The countries between the EU and Russia, including those in the Caucasus, have growing economies and vibrant populations but face persistent challenges. Throughout 2018, the United States has continued to support their economic growth and integration into the liberal trading order.

The United States has pursued robust engagement with the countries on Europe's eastern periphery. In 2018, U.S. and Ukrainian government officials intensified their expert-level discussions on intellectual property rights protection and enforcement and on removing regulatory trade barriers with the aim of

increasing bilateral trade and advancing a stable and transparent investment environment. The United States also hosted the third meeting of the United States-Moldova Joint Commercial Commission during which the parties identified concrete impediments to increased economic growth and established an ambitious agenda for the coming year. In 2018, the United States hosted the second meeting of the United States-Armenia Trade and Investment Council, covering a range of potential initiatives to increase bilateral trade and investment. The United States also continues to work with Georgia on similar potential initiatives.

Bilateral engagement with Russia remained severely limited in 2018, in response to Russia's aggression in Ukraine and attempted annexation of Crimea. Nevertheless, the United States continued to oppose, where appropriate, Russia's persistent employment of protectionist trade policies. For example, the United States has continued to identify and expose the potential WTO inconsistency of Russia's protectionist trade policies and has employed various WTO mechanisms to pursue full compliance where Russia appears to have fallen short. *See USTR 2018 Report on Russia's WTO Compliance.* The United States also monitored the policies and practices of the Eurasian Economic Commission (the administrative arm of the Eurasian Economic Union, composed of Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia) to ensure compliance with WTO rules.

### **3. Japan, Republic of Korea, and the Asia-Pacific Economic Cooperation Forum**

#### **Japan**

The Administration remains committed to achieving a fair and reciprocal trading relationship with Japan, including through access for American exports to Japan's markets that addresses chronic trade barriers and trade imbalances with Japan.

Working-level meetings of the United States-Japan Economic Dialogue's trade and investment pillar were held between January and April 2018 to address non-tariff barriers to U.S. exports. Progress achieved during 2018 from these talks included the reopening of the Japanese market to U.S. lamb and goat meat exports and Japan's extension of its copyright term for all works to 70 years or life of the author plus 70 years. In April 2018, building on the progress of the Economic Dialogue, President Trump and Prime Minister Abe announced an intensified series of trade and investment discussions, led by U.S. Trade Representative Lighthizer for the United States and Toshimitsu Motegi, Japan's Economic Revitalization Minister.

Ministerial-level consultations between Ambassador Lighthizer and Minister Motegi helped lay the groundwork for a late September 2018 announcement by President Trump and Prime Minister Abe that the United States and Japan would begin negotiations for a United States-Japan Trade Agreement. The leaders agreed that the negotiations will cover goods as well as other key areas including services that can produce early achievements. They also concurred that following completion of these discussions, the United States and Japan will enter into additional negotiations on other trade and investment items. In October 2018, USTR notified Congress that the Administration intended to enter into negotiations on a trade agreement with Japan. (*See Chapter II.B.2 for further discussion of the proposed United States-Japan Trade Agreement.*)

The United States worked closely with Japan in various fora during 2018 to address trade issues of common interest, including those in third-country markets. For example, the United States and Japan have been working collaboratively as part of a plurilateral initiative to initiate WTO negotiations on digital trade, as well as within the Asia-Pacific Economic Cooperation (APEC) forum to advance various issues, including digital trade.

Throughout 2018, the United States, Japan, and the EU also coordinated efforts to address non-market economic policies and practices that harm our workers and businesses and undermine a fair and reciprocal global trading system. Ambassador Lighthizer, together with ministers from Japan and the EU, held trilateral meetings in March, May, and September 2018, during which they discussed possible measures that could be taken in the near future to address non-market oriented policies and practices, such as excess capacity and forced technology transfer, and agreed to engage in analysis, outreach, and consideration of enforcement and rule-making tools that could address these problems.

## **Republic of Korea (Korea)**

*(See Chapter II.A.2 for discussion of the United States-Korea Free Trade Agreement.)*

USTR continues to have close engagement with counterparts in the Korean government through committee meetings and working groups established under the United States-Korea Free Trade Agreement (KORUS FTA). USTR also continues to hold bilateral consultations with Korea in a variety of formats to address bilateral trade issues, as well as other emerging issues. These meetings are augmented by senior-level engagement. In 2018, the United States addressed a number of outstanding issues, including those related to automobiles, agriculture, origin verification, IT products and services, and labor.

## **APEC**

### ***Overview***

Since its founding in 1989, U.S. participation in the Asia-Pacific Economic Cooperation (APEC) forum has substantially contributed to steps that have led to lowering barriers to U.S. exports across the region.

In 2018, Papua New Guinea hosted APEC under the theme “Harnessing Inclusive Opportunities, Embracing the Digital Future.” At the November APEC Leaders and Ministers’ meetings in Port Moresby, Papua New Guinea, APEC economies reported progress and identified areas for future work such as removing barriers to trade and the digital economy, creating more transparent and open regulatory regimes, and reducing trade costs. The activities below describe the key outcomes that advance the U.S. trade and investment agenda in the region.

### ***2018 Activities***

*Digital Trade:* APEC continues to advance a U.S.-led initiative to finalize a set of building blocks to facilitate digital trade. These building blocks will promote policies to prevent barriers to digital trade that negatively affect U.S. competitiveness, as well as help APEC economies take advantage of the rapidly growing digital economy. In 2019, APEC will continue development of this initiative through policy dialogues and capacity building activities.

*Trade Facilitation:* In 2018, APEC continued to improve trade facilitation efforts and support implementation of the WTO Trade Facilitation Agreement. APEC’s work in these areas help make it significantly cheaper, easier, and faster for U.S. exporters to access markets across the Asia-Pacific region. In 2018, APEC economies participated in a number of projects, including in areas such as pre-arrival processing, advance rulings, expedited shipments, release of goods, and electronic payments, as well as improving transparency with respect to procedures, forms, and documents necessary for import, export, and transit of goods within the region. In 2019, APEC will continue to support implementation of measures to improve efficiencies and reduce costs and delays that hinder U.S. exports.

*Services:* APEC economies continue to implement the APEC Services Competitiveness Roadmap (ASCR). The ASCR sets APEC-wide and individual targets to advance services liberalization and domestic regulatory reform to be achieved by 2025. APEC is developing a services trade restrictiveness index to identify areas in which removal of restrictions can improve the overall competitiveness of services markets. This index will be compatible with similar indices prepared by organizations such as the OECD, so that comparisons can be made with non-APEC economies. APEC also developed a set of non-binding principles on domestic regulation, to help improve the transparency and due process of services licensing bodies in APEC economies.

*Good Regulatory Practices:* In 2018, APEC economies built on earlier work related to good regulatory practices (GRP), including regulatory transparency. In August 2018, the United States worked closely with Mexico and Papua New Guinea to assist with the 11th Conference on Good Regulatory Practices, which included panels on policy and regulation in the digital age, enhancing transparency through digital tools, regulation and the digital economy, formalizing international regulatory cooperation, the role of oversight bodies, GRP and inclusive growth, and regulatory reform in the digital age.

*Food and Agricultural Trade:* In 2018, the United States served as the project overseer for three projects under the APEC Food Safety Cooperation Forum, an effort that strengthens capacity in food safety. The United States organized workshops on maximum residue level (MRL) harmonization, export certificates, and dairy export certification. Also, as of 2018, two APEC economies had begun to use the APEC Model Wine Export Certificate developed by the APEC Wine Regulatory Forum in 2016. Greater use of risk-based, scientific principles for food export certificates and the model wine certificate, where appropriate, could reduce administrative burdens on producers and traders.

*Intellectual Property:* In 2018, the United States continued to use APEC to build capacity and raise standards for the protection of intellectual property rights in the Asia-Pacific region. This included U.S.-led initiatives on combating trademark-infringing and counterfeit goods, which often present threats to consumer health and safety, at the border.

*Free Trade Area of the Asia-Pacific (FTAAP):* In 2018, APEC advanced implementation of the 2016 Lima Declaration on FTAAP. In that regard, economies proposed and considered work streams in areas related to tariffs, services, investment, non-tariff measures, rules of origin, environment, transparency, and electronic commerce and digital trade. The United States introduced important topics designed to foster free and fair trade in the region, including addressing issues presented by state owned enterprises and advancing high-standard labor provisions. Work related to FTAAP can improve the ability of all APEC economies to participate in bilateral or other free trade agreements that achieve high standards by removing barriers and unfair practices while embracing more open markets.

## **4. China, Hong Kong, Taiwan, and Mongolia**

### **China**

See *USTR 2018 Report to Congress on China's WTO Compliance*.

### **United States-Hong Kong Trade Relations**

The United States continued its efforts to expand trade with Hong Kong, a Special Administrative Region of the People's Republic of China. Following a partial market expansion for U.S. beef exports to Hong Kong in 2013 and the World Organization for Animal Health's upgrade of the U.S. risk classification for bovine spongiform encephalopathy (BSE) to negligible risk that same year, Hong Kong opened its market

fully to all U.S. beef and beef products in 2014. However, issues of concern in other areas still remain. While Hong Kong generally provides robust protection and enforcement of intellectual property rights, the copyright system has not been updated, leaving the market vulnerable to digital copyright piracy. In addition, Hong Kong finalized its Code of Marketing and Quality of Formula Milk and Related Products and Food Products for Infants and Young Children in June 2017. Although this Code is voluntary, some U.S. stakeholders are concerned that it will become mandatory in practice if compliance is required by Hong Kong Hospital Authority tenders. The United States will continue to monitor this situation.

## **United States-Taiwan Trade Relations**

The United States-Taiwan Trade and Investment Framework Agreement (TIFA) Council, which meets under the auspices of the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, is the key forum for both economies to resolve and make progress on a wide range of issues affecting the United States-Taiwan trade and investment relationship. The last TIFA Council meeting was held in October 2016. Prior to this meeting, authorities from both sides convened meetings at the working group level and held expert level discussions on issues including intellectual property rights (IPR), agriculture, medical devices, and pharmaceuticals. The TIFA Council meeting itself yielded important concrete results for U.S. stakeholders. The United States welcomed efforts by Taiwan authorities to follow through on prior TIFA commitments related to IPR, including with respect to: 1) digital piracy; 2) pharmaceuticals; 3) medical devices; and, 4) registration of chemical substances. With respect to IPR, the TIFA talks took stock of progress on pharmaceutical patent protection and committed to strengthen engagement on Taiwan's IPR legislation, promote the use of legitimate educational materials, and enhance enforcement cooperation. The two sides also discussed how to deepen exchanges and cooperation in the area of transparency and agreed to continue the exchange of views on pending revisions to Taiwan's Copyright Act.

In July 2017 and September 2018, under the auspices of the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, the United States and Taiwan held follow-up meetings in which the two sides assessed the progress being made on TIFA commitments and agreed to a Digital Anti-Piracy Work Plan. During these meetings, the United States continued to express serious concerns about Taiwan's agricultural policies that are not based upon science. Priorities for the United States include removing Taiwan's bans on U.S. pork products and certain U.S. beef products produced using ractopamine and removing other barriers to U.S. beef offal products. Other key areas of focus include Taiwan's rice procurement systems, the regulatory process for setting pesticide maximum residue limits, and market access barriers facing U.S. agricultural biotechnology products and certified U.S. organic products. The United States also raised concerns regarding Taiwan's 2016 TIFA commitment to establish an effective mechanism for the early resolution of potential patent disputes for all pharmaceuticals.

The United States will continue to work to address and resolve the broad range of trade and investment issues important to U.S. stakeholders through engagement under the TIFA framework as well as through multilateral fora such as the WTO. The United States will continue to engage on agricultural issues, IPR issues such as those involving Taiwan's Copyright Act, and issues relating to transparency and predictability in pharmaceutical and medical device pricing and reimbursement. The United States also will continue to utilize the TIFA Investment Working Group for dialogue with Taiwan authorities to address a robust set of priority investment issues and to improve Taiwan's investment climate. In addition, the United States will continue to conduct exchanges under the TIFA Technical Barriers to Trade Working Group to ensure that technical regulations do not create excessive burdens for the industries that they affect, such as chemicals, cosmetics, and consumer products.

## **United States-Mongolia Trade Relations**

The United States and Mongolia renewed their engagement under the United States-Mongolia Trade and Investment Framework Agreement (TIFA) in 2015, holding a meeting in May of that year. This fifth TIFA meeting was the first one since the two sides launched negotiations over a bilateral agreement on transparency in matters relating to trade and investment in 2009. The two sides reviewed Mongolia's ongoing efforts to make the legal changes necessary for the entry into force of the bilateral transparency agreement, which was signed by the two sides in 2013 and ratified by the Mongolian parliament in 2014. The TIFA meeting also provided the opportunity to discuss recent changes to Mongolia's investment and mining laws aimed at encouraging more foreign investment into Mongolia as well as a range of investor concerns about Mongolia's investment climate.

In January 2017, the United States and Mongolia exchanged letters enabling their bilateral transparency agreement to enter into force, effective March 2017. This agreement applies to matters relating to international trade and investment and includes joint commitments to provide opportunities for public comment on proposed laws and regulations and to publish final laws and regulations. This publication commitment includes the obligation to publish final laws and regulations in English, which should make it easier for U.S. and other foreign enterprises to do business in, and invest in, Mongolia. The transparency agreement also commits the two parties to ensure that administrative agencies apply fair, impartial and reasonable procedures and that persons affected by the decisions of administrative agencies have a right to appeal those decisions. Additional commitments address the application of disciplines on bribery and corruption.

The United States will continue to work on trade and investment issues under the TIFA framework with Mongolia, and is currently exploring the timing of the next TIFA meeting. A key agenda item of the next meeting will be a review of Mongolia's implementation of the Transparency Agreement.

## **5. Southeast Asia and the Pacific**

### **Free Trade Agreements**

Throughout the year, the United States continued to monitor and enforce its Free Trade Agreements (FTAs) with Australia and Singapore. (*See Chapter II.B for additional information*).

### **Managing U.S.-Southeast Asia and Pacific Trade Relations**

Under the Trump Administration's Indo-Pacific Strategy, the United States is working with countries across Southeast Asia and the Pacific to strengthen regional trade and security. The United States stands prepared to pursue trade agreements with nations in the Indo-Pacific that want to partner with the United States and that will abide by the principles of fairness and reciprocity. In support of these objectives, the United States met throughout 2018 with countries in Southeast Asia and the Pacific to pursue trade outcomes that will increase U.S. economic growth, promote job creation in the United States, ensure reciprocity, and expand U.S. exports.

The United States currently has bilateral Trade and Investment Framework Agreements (TIFAs) with Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, New Zealand, Philippines, Thailand, and Vietnam, as well as the FTAs with Australia and Singapore.

Removing market access barriers that block U.S. exports and contribute to our trade deficits with Southeast Asian and Pacific countries was a key focus of our bilateral engagement in 2018. The United States also



sought to secure commitments to lock in existing trade advantages and prevent the adoption of laws, regulations, and policies that could undermine U.S. market access. Notable engagements include:

- With Vietnam, the United States held bilateral meetings to address issues related to motor vehicles, agriculture, electronic payments, and cybersecurity.
- With Indonesia, the United States self-initiated a review of Indonesia's Generalized System of Preferences (GSP) eligibility based on concerns related to its compliance with the GSP market access criterion and GSP services and investment criterion. This review sought to ensure the removal of market access barriers to U.S. goods and services.
- The United States has welcomed the Philippines' interest in a bilateral FTA, and in 2018 both countries discussed the deepening of the economic relationship through the TIFA. Following several months of intense engagement, USTR reached agreement with the Philippines on priority issues for U.S. stakeholders relating to agricultural tariff concessions, cold chain requirements, customs valuation, motor vehicle safety standards, electronic payment systems, and geographical indications. The U.S.-Philippines Joint Statement, released on October 22, 2018, reaffirms the success of our TIFA engagement with the Philippines and underscores the importance both countries attach to expanding the trade relationship.
- The United States worked to address priority market access issues in TIFA meetings and other engagements with nearly all other countries in Southeast Asia including Burma, Cambodia, Indonesia, Laos, Malaysia, and Thailand.
- A USTR team met with officials in Fiji and Papua New Guinea to discuss matters related to the Generalized System of Preferences (GSP).

The United States also used TIFA meetings and other mechanisms in 2018 to encourage important trade policy reforms by partners in Southeast Asia. With respect to Malaysia, the United States initiated a Special 301 Out-of-Cycle Review, to consider the extent to which Malaysia is providing adequate and effective IP protection and enforcement, particularly for patents.

### **U.S.-ASEAN Trade and Investment Framework Arrangement**

The United States continued to work with the Association of Southeast Asian Nations (ASEAN) under the auspices of the ASEAN-United States Trade and Investment Framework Arrangement to further enhance trade and investment ties between the United States and ASEAN, which collectively represents our fourth largest trading partner, to create fairer and more reciprocal trade. In 2018, the United States launched cooperation with ASEAN on agriculture biotechnology; proposed new areas of cooperation on electronic payment services and automotive standards; and continued work on establishing common approaches to digital trade, including encouraging of free flow of data and discouraging localization requirements. Working with Singapore under the Third Country Training Program, the United States also provided training on digital trade and implementation of the WTO Trade Facilitation Agreement in 2018.

## **6. Sub-Saharan Africa**

### **Overview**

Throughout 2018 USTR worked to strengthen U.S. trade and investment interests across sub-Saharan Africa. This work included: hosting the 2018 U.S.-Africa Trade and Economic Cooperation Forum, informally known as the African Growth and Opportunity Act (AGOA) Forum, in Washington, D.C.; managing the annual interagency AGOA country eligibility review to ensure that countries receiving AGOA preferences were in compliance with the statutory requirements; and working to resolve trade and investment barriers across the continent.

Total two-way goods trade with Sub-Saharan Africa was an estimated \$41 billion in 2018, exports were an estimated \$15.7 billion, up an estimated 11.9 percent from the year before, while imports were an estimated \$25.5 billion, up an estimated 2.6 percent from 2017.<sup>17</sup>

### **President Trump’s Meetings with African Leaders**

In 2018, President Trump hosted two African Leaders at the White House to discuss with each ways to strengthen our bilateral relationship: Nigerian President Muhammadu Buhari, on April 30, and Kenyan President Uhuru Kenyatta, on August 27. At the latter meeting, the two Presidents jointly announced the establishment of a U.S.-Kenya Trade and Investment Working Group. This Working Group will explore ways to deepen trade and investment ties between the two countries and to lay the groundwork for a stronger bilateral trade relationship.

### **The President’s Africa Strategy**

On December 13, 2018, National Security Advisor John Bolton announced the Trump Administration’s new Africa Strategy. Among the priorities identified under this strategy in the economic area are to: support American business to open markets on the continent; improve the business environment in promising African economies; leverage expanded and modernized development finance tools to support access to financing and provide strong alternatives to external, state-directed, predatory initiatives that come with preconditions; and use the AGOA to promote deeper trade ties with sub-Saharan African countries and prepare them for reciprocal agreements that go beyond AGOA. The Administration highlighted that supporting growth in African countries delivers mutual benefits to the United States and to our African partners.

### **USTR Outlines Model Africa FTA Initiative at AGOA Forum**

On July 11-12, 2018, U.S. Trade Representative Robert Lighthizer led the U.S. delegation to the annual AGOA Forum, which was held at the U.S. Department of State in Washington, D.C. The U.S. participants included senior government officials, members of Congress, and private sector and civil society representatives. Included on the African side were trade and commerce ministers from the AGOA-eligible countries, heads of prominent African regional economic organizations, and private sector and civil society representatives. The theme of the 2018 Forum was “Forging New Strategies for U.S.-Africa Trade and Investment.”

During the Forum, Ambassador Lighthizer outlined the Administration’s trade policy approach to Africa, and outlined a new model FTA initiative for Africa. He noted that while the Administration remains committed to the AGOA program, one-way preferences are limited in their ability to drive trade and investment. Alternatively, establishing a more stable, permanent, and mutually beneficial trade and investment framework with the United States could be transformative for Africa. Countries that enter into FTAs with the United States would secure long-term access to the U.S. market while signaling a commitment to high standards of transparency and due process that is critical to attracting business investment. Ambassador Lighthizer indicated that the most pragmatic path forward is to begin by negotiating a model FTA with a willing African partner. The ultimate objective is to have a network of agreements in place that could serve as building blocks to an eventual continental trade partnership with the United States.

Deputy U.S. Trade Representative C.J. Mahoney took advantage of other occasions during 2018 to discuss the Administration’s Africa FTA initiative as well as the African Continental Free Agreement, including in

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<sup>17</sup> Annualized based on January through November 2018 data.

a June 2018 meeting with the African Union’s Commissioner for Trade and Industry Albert Muchanga, and in a November 2018 meeting with the African Diplomatic Corps of Washington. (*For more information on the AGOA Program, see Chapter III.D.9.*)

### **Trade and Investment Hubs**

USAID maintains three Trade and Investment Hubs in sub-Saharan Africa that provide extensive support to the U.S.-Africa economic and commercial relationship: the East Africa Trade and Investment Hub in Nairobi, Kenya and the Southern Africa Trade and Investment Hub in Pretoria, South Africa. The West Africa Trade and Investment Hub, which is currently relocating from Accra, Ghana to Abuja, Nigeria, where it is expected to reopen in 2019 under a new contract. The Hubs work to boost trade and investment with and within each region, as well as to promote two-way trade with the United States under AGOA.

### **Trade-Related Memoranda of Understanding**

Since signing a Memorandum of Understanding with each of the respective governments of Cote d’Ivoire, Ghana, Mozambique, Senegal, and Zambia in 2015, USAID and USTR have undertaken activities focused on the common goals of enhancing two-way trade between the United States and these countries, increasing intra-regional trade, and improving the environment for trade and investment. These activities include implementation of the World Trade Organization’s Trade Facilitation Agreement (TFA), Agreement on Technical Barriers to Trade (TBT), and Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures. As part of these MOUs, USAID also conducts regional capacity building on customs and SPS matters through the Economic Community of West African States (ECOWAS).

In 2018, the Department of Commerce led an inter-agency process to negotiate and implement Memoranda of Understanding (MOUs) with Côte d’Ivoire, Ethiopia, Ghana, and Kenya. These MOUs call for the parties to identify priority projects in key sectors and promote collaboration between the African countries and U.S. public and private sectors. They also called upon governments to jointly identify and remove business climate constraints.

### **The Better Utilization of Investments Leading to Development (BUILD) Act**

President Trump signed the Better Utilization of Investments Leading to Development (BUILD) Act into law on October 5, 2018. This legislation will strengthen U.S. development finance capabilities by creating a new U.S. International Development Finance Corporation (IDFC), which will assume all of the current functions of the Overseas Private Investment Corporation (OPIC), and certain development finance functions of USAID. One key expected benefit of this new DFC will be to enhance trade and investment between the United States and Africa as the BUILD Act doubles OPIC’s current cap on loans, loan guarantees, political risk insurance, and investment funds. The BUILD Act also supports infrastructure projects in developing countries by permitting equity investments that will attract private sector investment, helping to promote regional value chains.

## **7. South and Central Asia**

### **India**

Two-way U.S.-India trade in goods and services in 1980 was only \$4.8 billion; it grew to an estimated \$141.6 billion in 2018<sup>18</sup> (latest data available for goods and services trade), an annual growth rate over this

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<sup>18</sup> Goods trade annualized based on January through November 2018 data; services trade annualized based on January through September 2018 data.

period of more than an estimated 9 percent. Although existing Indian trade and regulatory policies inhibit an even more robust trade and investment relationship, India's economic growth and development could support significantly more U.S. exports in the future. However, there also has been a general trend of tariff increases and implementation of trade-restrictive policies in India, which reflects an active pursuit of import substitution to support domestic industry. The United States continues to press India to make meaningful progress to resolve trade barriers and facilitate economic growth, primarily through the United States-India Trade Policy Forum (TPF). The most recent TPF, held on October 26, 2017, in Washington, D.C., yielded limited progress in these areas of concern.

In April 2018, USTR self-initiated a review of India's eligibility to receive Generalized System of Preferences (GSP) program benefits based on concerns related to its compliance with the GSP market access criterion and accepted two petitions related to the same criterion. The petitions filed by the U.S. dairy industry and the U.S. medical device industry requested a review of India's GSP benefits, given Indian trade barriers affecting U.S. exports in those sectors. India has implemented a wide array of trade-restrictive barriers that negatively affect U.S. exports to India. USTR continues to engage with the Indian government during the GSP eligibility review to resolve these market access barriers.

In addition to engagements related to the GSP review, USTR continued to press India for progress across the full range of bilateral trade issues, including intellectual property rights and market access for agriculture, non-agriculture goods, and services. These efforts included meetings, which included participation by senior-level officials from key U.S. departments and agencies. This enhanced bilateral engagement provided an opportunity to achieve meaningful results on a wide range of trade and investment issues.

### **Supporting Workers' Rights in Bangladesh**

Following the 2013 suspension of Bangladesh's GSP benefits based on shortcomings related to worker rights, USTR has dedicated significant time to working with the government of Bangladesh and other stakeholders to monitor Bangladesh's progress in addressing U.S. concerns. Since then, USTR annually has led senior delegations to Bangladesh to assess the status of efforts to address worker rights and worker safety issues. In 2018, USTR also led the U.S. delegation at a meeting of the Sustainability Compact, which includes Bangladesh, Canada, the European Union, and the International Labor Organization (ILO). Although Bangladesh made some progress on issues related to workplace safety since 2013, the government refused to renew private sector safety initiatives organized by brands and retailers in Europe and North America to oversee factory remediation. At the end of the year, one of the organizations was appealing the order to discontinue its work. Worker advocates expressed concerns that the decision by the government to reject private sector assistance from these organizations could result in renewed safety problems. The government of Bangladesh prepared various labor amendments during 2018, but stakeholders noted continued failures to enforce existing protections, particularly with respect to freedom of association and the protection of labor leaders from violent reprisals. During 2018, USTR and the U.S. Departments of Labor and State continued to monitor this issue carefully.

In September 2018, the United States and Bangladesh met in Washington, D.C. under the United States-Bangladesh Trade and Investment Cooperation Forum Agreement (TICFA). The TICFA provides a mechanism for both governments to discuss trade and investment issues and areas of cooperation, and provides an additional opportunity for the U.S. Government to provide views on Bangladeshi efforts to improve workers' safety and workers' rights.

USTR continued its efforts to strengthen respect for workers' rights in Bangladesh and address market access and other trade barriers through the TICFA. Additionally, the U.S. Department of State, the U.S. Department of Labor, and USAID continue to implement technical assistance projects aimed at addressing

the concerns that led to the suspension of GSP benefits. USTR continued to coordinate efforts to monitor progress and to work with like-minded governments and social stakeholders to advocate for continued reform and workplace safety.

### **Advancing U.S. Engagement with Central Asia**

In the World Trade Organization (WTO), the United States provided strong support for WTO Membership for the Central Asian countries, playing a critical role in Kazakhstan's accession in 2015 and Afghanistan's accession in 2016, and consulting with Uzbekistan in 2018 on its renewed interest in WTO accession.

In 2018, a United States-Central Asia Trade and Investment Framework Agreement (TIFA) Council meeting was held in Tashkent, Uzbekistan, with the five Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) participating as members, plus Afghanistan and Pakistan participating as observers. The United States continued to focus with the Central Asian countries on actions to address regional connectivity, economic cooperation, customs issues, sanitary and phytosanitary measures, standards and technical barriers to trade, intellectual property (IP) rights, worker rights, women's economic empowerment, and country-specific trade and investment issues. In 2018, the newly formed IP and women's economic empowerment working groups met for the first time. The next TIFA Council meeting is planned for the fall of 2019.

While in Kazakhstan in 2018, USTR engaged the government and other stakeholders regarding a GSP petition submitted in 2017 by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) alleging violations of internationally-recognized worker rights. USTR accepted the petition and is reviewing the situation.

USTR also actively engaged with the government of Uzbekistan to discuss longstanding concerns regarding labor and IP protection and enforcement, in hopes of deepening trade and economic engagement and addressing concerns raised under two separate GSP reviews. During 2018, USTR coordinated closely with the government of Uzbekistan, the ILO, and social stakeholders to monitor new reforms designed to end the country's endemic use of child and forced labor in the annual cotton harvest. At the end of 2018, the ILO reported continued and dramatic progress in the country's efforts to eradicate forced and child labor. By the end of 2018, Uzbekistan signed into law its accession to several key international treaties and conventions to help improve the IP legislative framework pertaining to copyrights.

After sustained pressure on Tajikistan, and almost immediately following discussion at the Central Asia TIFA, Tajikistan announced in November 2018 a decree funding and mandating the use of licensed software by the government of Tajikistan.

### **Improving Trade and Investment Relations with Sri Lanka, Nepal, and the Maldives**

Toward the end of 2018, there was considerable political turmoil in Sri Lanka resulting in the removal and subsequent reappointment of the prime minister. USTR will engage with the government of Sri Lanka through a TIFA council meeting in 2019.

Nepal is still recovering from a devastating earthquake that struck the country in 2015. Implemented in 2016, the Nepal Trade Preference Program provides duty-free treatment through December 31, 2025, for 77 types of products from Nepal, including certain carpets, headgear, shawls, and scarves. This program is designed to assist Nepal in its recovery from the earthquake. USTR hosted a United States-Nepal TIFA Council meeting in November 2018 in Washington, D.C. to discuss bilateral trade and investment concerns. The United States will continue to work with Nepal and provide technical assistance, aid its recovery, and deepen bilateral trade engagement.

In 2018, to follow up on the first ever TIFA meeting with the Maldives in 2014, USTR continued discussions on sectors of mutual interest, such as the fishing and tourism industries. With the election of a new government in 2018, USTR will engage with the Maldives on trade and investment priorities in 2019.

### **Contributing to Regional Stability**

USTR continued complementary efforts to strengthen our engagement with South and Central Asia as part of the President's South Asia Strategy to boost trade, trade-fostering investment, employment, poverty reduction, and sustainable development. Working with other U.S. agencies, USTR participated in bilateral and other high-level meetings with officials from South Asia, Afghanistan, Iraq, Pakistan, and Central Asia. Key highlights from 2018 include the following:

- Under the auspices of the United States-Afghanistan TIFA, both sides focused efforts on improving trade and investment flows, as well as the U.S. Government's continuing assistance to Afghanistan in the implementation of the obligations in its accession protocol to the WTO, which entered into force in 2016. USTR is working with Afghanistan on obtaining its full membership in the United States-Central Asia TIFA as well. This will further Afghanistan's cooperation with Central Asia and further boost its trade and economic ties with the region.
- USTR worked with Iraq to identify ways to address market access barriers to U.S. agricultural exports such as poultry, rice and wheat. USTR continues to review Iraq's eligibility for GSP benefits in response to a 2008 petition from the AFL-CIO that alleges violations of internationally recognized worker rights. Iraq implemented labor reforms that directly addressed a number of the chief complaints in the GSP petition and continued to work with stakeholders to enact additional reforms. In 2018, the AFL-CIO wrote to USTR formally withdrawing its petition against Iraq. The government of Iraq participated in a hearing held by USTR in November 2018 to outline the progress it had made on labor rights. USTR continues to engage the government of Iraq on these issues and will formally convene a TIFA council meeting in 2019.
- USTR continued to advocate for increased market access in Pakistan for U.S. beef products, distillers dried grains, soybeans, pulses, and chickpeas; enhanced engagement on intellectual property rights; and tax predictability for U.S. companies under the United States-Pakistan TIFA. The next intersessional TIFA council meeting will take place in 2019.
- With the ratification of the WTO Trade Facilitation Agreement by some Central Asian countries and Uzbekistan's interest in acceding to the WTO, the transit of goods through the region could become easier. Such efforts create opportunities for U.S. exporters providing increased market access and economies of scale. USTR continued to promote regional connectivity during bilateral and regional discussions with Central Asian countries. This remains a paramount concern, and regulatory barriers to trade remain a key issue in discussions in the coming year.

### **Communicating the Importance of Ensuring Women's Economic Empowerment through Trade and Investment in Central and South Asia**

In 2018, the United States continued to work with partner governments in the region, the private sector, think tanks, the media, and U.S. embassies to explain effectively the economic importance of empowering women entrepreneurs and business owners to better take advantage of trade and investment opportunities in the region.

# III. TRADE ENFORCEMENT ACTIVITIES

## A. Overview

The Office of the United States Trade Representative coordinates the U.S. Government 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 monitoring and investigation efforts by USTR and relevant expert agencies, including the U.S. Departments of Agriculture, Commerce, Justice, Labor, 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 Interagency Center on Trade Implementation, Monitoring, and Enforcement (ICTIME) brings together research, analytical resources, and expertise from within USTR and across the Federal Government into one office within USTR, significantly enhancing USTR's capabilities to investigate foreign trade practices that are potentially unfair or adverse to U.S. commercial interests.

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

- Asserting U.S. rights through the World Trade Organization (WTO) and the WTO bodies and committees charged with monitoring implementation and 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 to developing countries, to ensure that key agreements such as the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and,
- Promoting U.S. interests under free trade agreements (FTAs) through work programs, accelerated tariff reductions, and use or threat of use of dispute settlement mechanisms, including with respect to labor and environmental obligations.

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

### **Favorable Resolutions or 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 resolutions or 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 34 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 exemptions for certain domestically

produced aircraft; China's Demonstration Base/Common Service Platform export subsidy program; China's Automobile and Automobile Parts Export Bases prohibited subsidy program; China's value-added tax on integrated circuits; China's use of prohibited subsidies for green technologies; China's treatment of foreign financial information suppliers; 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; India's compliance regarding its patent protection; Indonesia's barriers to the importation of horticultural products (two disputes); 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.

### **Litigation Successes**

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its offensive cases to conclusion, prevailing in 48 cases as of December 2018. In 2018, the United States prevailed in a compliance challenge to the European Union's continued breach of WTO rules through the EU's subsidies to Airbus for large civil aircraft. The United States also prevailed in WTO compliance proceedings rejecting Mexico's complaint and finding that U.S. dolphin-safe labeling of tuna is WTO-consistent.

In prior years, the United States prevailed in complaints against foreign trade barriers involving: Argentina's import licensing restrictions and other trade-related requirements; 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; 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; China's claim of compliance in the dispute involving China's countervailing and antidumping duties on grain oriented flat-rolled electrical steel from the United States; China's measures affecting electronic payment services; China's countervailing and antidumping duties on broiler parts from the United States; China's countervailing and antidumping duties on automobiles from the United States; China's export restrictions on rare earths and other materials; 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 ban on poultry meat and various other U.S. agricultural products allegedly to protect against avian influenza; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's discriminatory local content requirements for solar cells and modules under its National Solar Mission (two merged complaints); India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Indonesia's barriers on the importation of horticultural products, beef, poultry, and animals; 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. USTR has 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 III.B, III.D.3., and III.D.4.*).

## **ICTIME**

On February 28, 2012, Executive Order 13601 established the Interagency Trade Enforcement Center (ITEC) to bring additional approaches to addressing unfair trade practices and foreign trade barriers, and to significantly enhance the U.S. Government’s capabilities to challenge such barriers and practices around the world. ITEC increased the efforts devoted to trade monitoring and enforcement and leveraged existing analytical resources more efficiently across the U.S. Government in support of trade monitoring and enforcement efforts.

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law. Section 604 of the law established the Interagency Center for Trade Implementation, Monitoring and Enforcement (ICTIME) in USTR to support the activities of USTR in: investigating potential disputes under the WTO and bilateral and regional trade agreements; monitoring and enforcing trade agreements to which the United States is a party; and monitoring implementation by foreign parties of trade agreements. The statute expressly provided that federal agencies may detail employees to ICTIME to support its functions, but it also provided some funding to USTR to staff ICTIME directly. To successfully transition ICTIME from the primarily detailee-supported entity to one staffed significantly by USTR employees, ICTIME continued in 2018 to implement a hiring plan, further specify needed skills, announce new positions, review and interview candidates, and train new hires to support its expanded mission within the new management structure.

In 2018, ICTIME analysts supported the development and production of a report on China’s policies and actions regarding intellectual property and technology transfer as part of a wide-ranging Section 301 investigation. ICTIME also supported an update of that Section 301 report issued later in the year. On WTO matters, ICTIME provided research and analysis in support of multiple USTR enforcement actions, including new cases involving China’s unfair technology practices, India’s prohibited export subsidies, and additional import duties imposed on the United States by a number of trading partners (Canada, China, the European Union, Mexico, Turkey and Russia). In addition, ICTIME continued to provide research and analysis in support of USTR’s ongoing WTO enforcement actions involving China’s domestic support for corn, wheat, and rice and China’s administration of tariff rate quotas on those same products; Indonesia’s restrictive import licensing on agricultural products; and India’s local content restrictions on certain solar energy products. In the WTO committee context, ICTIME provided research, analysis, and report writing in support of the U.S. Government’s first counter-notifications within the Committee on Agriculture (India, aggregate measures of support) and in conjunction with USTR’s first stand-alone statement to the General Council regarding China’s trade-disruptive economic model.

Finally, ICTIME has provided an important monitoring and analysis function to support USTR’s evaluation of various countries’ compliance with WTO findings in disputes brought by the United States. ICTIME also provided research to USTR functional and regional offices on a variety of issues. As in previous years, ICTIME has acquired translations of, and directly translated, a large number of foreign laws, regulations, and other measures related to trading partners’ adherence to international trade obligations in fulfillment of its monitoring and enforcement mission.

## **B. SECTION 301**

Section 301 of the Trade Act of 1974 (Trade Act) is designed to address foreign unfair practices affecting U.S. commerce. 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.

### **Operation of the Statute**

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

In each investigation, the Trade Representative must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, the Trade Representative must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the Trade Representative must determine whether action is appropriate and if so, what action to take.

Actions that the Trade Representative 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 the Trade Representative considers that the country fails to implement a WTO dispute panel recommendation, the Trade Representative must determine what further action to take under Section 301.

### **Developments during 2018**

#### *China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*

On August 14, 2017, the President issued a Memorandum (82 FR 39007) to the U.S. Trade Representative instructing USTR to determine, consistent with section 302(b) of the Trade Act (19 U.S.C. 2412(b)), whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development.

Pursuant to the President's Memorandum, on August 18, 2017, the Trade Representative initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) to determine whether acts, policies, and practices of the government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce.

The findings of the investigation are reflected in an extensive 200-page report, which USTR published on March 22, 2018. The findings are accessible by the public at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/record-section-301-investigation>. The findings, along with

advice from the Section 301 Committee and advisory committees, supported a determination that China's acts, policies, and practices are actionable under Section 301(b) of the Trade Act (19 U.S.C. 2411(b)). Based on this report, the Trade Representative determined the following Chinese actions are unreasonable or discriminatory and burden or restrict U.S. commerce:

1. China uses foreign ownership restrictions, such as joint venture (JV) requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies.

2. China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market based terms that favor Chinese recipients.

3. China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate the transfer of technology to Chinese companies.

4. China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.<sup>1</sup>

The Trade Representative decided that U.S. concerns with the second category of acts, policies, and practices (involving technology-licensing regulations) could be appropriately addressed through recourse to WTO dispute settlement. Accordingly, on March 23, 2018, USTR initiated a WTO dispute by requesting consultations with the government of China regarding certain specific aspects of China's technology regulations.<sup>2</sup>

With respect to the other categories of acts, policies, and practices, the Trade Representative – pursuant to the direction of the President – determined to impose additional 25 percent duties on certain Chinese products with an annual trade value of approximately \$50 billion. The additional duties were imposed in two tranches, following public comments and public hearings. Tranche 1 covered 818 tariff subheadings, with an approximate annual trade value of \$34 billion.<sup>3</sup> Tranche 2 covered 279 tariff subheadings, with an approximate annual trade value of \$16 billion.<sup>4</sup>

The Trade Representative also established processes by which U.S. stakeholders may request that particular products classified within a covered tariff subheading be excluded from the additional 25 percent ad valorem duties.<sup>5</sup> On December 21, 2018, USTR approved approximately 1,000 exclusion requests and will continue to issue decisions on pending requests on a periodic basis.<sup>6</sup>

In response to U.S. action, China imposed retaliatory tariffs on U.S. goods to further protect the unreasonable acts, policies, and practices identified in the investigation, resulting in increased harm to the U.S. economy. In accordance with the specific direction of the President,<sup>7</sup> the Trade Representative determined to modify the prior action in the investigation by imposing additional duties on products of China classified under 5,745 tariff subheadings with an approximate trade value of \$200 billion. The rate

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<sup>1</sup> 83 FR 14906 (April 6, 2018).

<sup>2</sup> *China—Certain Measures Concerning the Protection of Intellectual Property Rights* (DS542). Further developments in this WTO dispute are summarized in the WTO Disputes section of this report.

<sup>3</sup> 83 FR 28710 (June 20, 2018).

<sup>4</sup> 83 FR 40823 (August 16, 2018).

<sup>5</sup> 83 FR 32181 (July 11, 2018) and 83 FR 47236 (September 18, 2018).

<sup>6</sup> 83 FR 67463 (December 28, 2018).

<sup>7</sup> See <https://www.whitehouse.gov/briefings-statements/statementpresident-regarding-trade-china-2/>.

of the additional duty is initially 10 percent ad valorem and is scheduled to increase to 25 percent ad valorem on March 2, 2019.<sup>8</sup>

On November 21, 2018, USTR, as part of its ongoing monitoring and enforcement efforts, issued an update to the March 2018 report in the investigation. The update explained that China fundamentally had not altered its acts, policies, and practices related to technology transfer, intellectual property, and innovation, and that in certain areas, China's acts, policies, and practices had become of even greater concern.

In accordance with the outcome of a Leader's meeting on December 1, 2018, USTR is engaged in discussions with the government of China in an effort to resolve the issues covered in the investigation.

#### *European Union – Measures Concerning Meat and Meat Products (Hormones)*

The European Union (EU) prohibits imports into the EU of animals and meat from animals to which certain hormones have been administered (the "hormone ban"). In 1996, the United States initiated a WTO dispute with respect to the hormone ban. A WTO panel and the Appellate Body found that the measure was inconsistent with WTO obligations, because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the European Communities (EC), the predecessor to the EU, was to 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, a WTO arbitrator determined that the level of nullification or impairment suffered by the United States as a result of the 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 July 1999, USTR announced that the United States was acting pursuant to this authorization by initiating proceedings under Section 301 to impose 100 percent *ad valorem* duties on certain products of certain EC Member States.

In February 2005, a WTO panel was established to consider the EU's claims that it had brought its hormone ban into compliance with its WTO obligations and that the increased duties imposed by the United States were no longer authorized by the DSB. In 2008, the panel and Appellate Body confirmed that the July 1999 DSB authorization remained in effect.

In January 2009, USTR: 1) removed certain products from the 1999 list of products subject to 100 percent *ad valorem* duties; 2) imposed 100 percent *ad valorem* duties on some new products from certain EU Member States; 3) modified the coverage with respect to particular EU Member States; and, 4) raised the level of duties on one product. The trade value of the products subject to the modified list did not exceed the \$116.8 million per year authorized by the WTO.

In March 2009, USTR delayed 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 EU. 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 applicable to a reduced list of products.

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<sup>8</sup> See 83 FR 47974 (September 21, 2018) and 83 FR 65198 (December 19, 2018).

In May 2009, the United States and the EU concluded a memorandum of understanding (MOU) which, under the first phase of the MOU scheduled to conclude in August 2012, obligated the EU to open a new duty-free tariff rate quota (TRQ) for beef not produced with certain growth-promoting hormones. The United States in turn agreed not to impose duties above those in effect as of March 23, 2009.

On August 3, 2012, the United States and the EU, by mutual agreement, entered into a second phase of the MOU, to expire in one year. Under phase two, USTR terminated the remaining additional duties, and the EU expanded the TRQ from 20,000 to 45,000 metric tons.

In August 2013, the United States and the EU extended phase two for an additional two years, until August 2015. USTR has continuously monitored the operation of the TRQ.

On December 9, 2016, representatives of the U.S. beef industry requested that USTR reinstate trade action against the EU because the TRQ is not providing benefits sufficient to compensate for the harm caused by the EU's hormone ban. On December 28, 2016, USTR published a *Federal Register* notice seeking public comments on specific EU products in order to consider possible reinstatement of duties. USTR held a public hearing on February 15, 2017.

USTR is engaged in discussions with the EC on possible modifications to the operation of the TRQ to address U.S. industry concerns.

## **C. WTO DISPUTE SETTLEMENT**

In December 2018, the United States prevailed in WTO compliance proceedings relating to Mexico's dispute against U.S. dolphin-safe labeling of tuna. The compliance panel and appellate reports found that the amended dolphin-safe labeling requirements are consistent with WTO rules, terminating this dispute. In May 2018, the United States prevailed in a compliance challenge to the EU's subsidies to Airbus for large civil aircraft. The compliance panel and appellate reports found that the EU and four Member States (France, Germany, Spain, and the United Kingdom) continue to breach WTO rules by causing adverse effects. In June 2018, the United States requested that the WTO arbitrator resume its work to determine the level of countermeasures to be applied to EU imports absent a resolution of the dispute. In January 2018, the WTO Dispute Settlement Body adopted a panel report rejecting a complaint by Indonesia and finding that U.S. countervailing duties on Indonesian coated paper were not inconsistent with WTO rules.

The United States launched eight WTO disputes and pursued actions in three other proceedings in 2018. In March 2018, USTR requested WTO consultations with India on five export subsidy schemes totaling over \$7 billion annually and benefitting numerous Indian exporters, including producers of steel products, pharmaceuticals, chemicals, information technology products, textiles, and apparel. In March 2018, the United States requested WTO consultations with China to address China's discriminatory technology licensing requirements. China appears to be breaking WTO rules by denying foreign patent holders basic patent rights to stop a Chinese entity from using the technology after a licensing contract ends and by imposing mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology. In July and August 2018, USTR requested consultations with Canada, China, the EU, Mexico, Russia, and Turkey on additional duties they are each imposing on U.S. products in retaliation for U.S. duties on steel and aluminum products pursuant to Section 232 of the Trade Expansion Act of 1962.

In addition, the United States proceeded with arbitrations to determine the level of countermeasures against the EU in relation to its subsidies to Airbus for large civil aircraft; against Indonesia in relation to its import prohibitions and restrictions affecting U.S. agricultural products, including beef, fruits, vegetables, and poultry; and, against India in relation to its local content requirements for solar cells and modules.

The cases described in Chapter V.H of this report provide further detail about U.S. involvement in the WTO dispute settlement process. Further information on WTO disputes to which the United States is a party is available on the USTR website: <https://ustr.gov/issue-areas/enforcement/overview-dispute-settlement-matters>.

## **D. OTHER ACTIVITIES**

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

#### **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 (CVD) law was, in effect, the only practical mechanism for U.S. companies to address subsidized foreign competition. However, the CVD 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) and other authorities set 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 in WTO dispute settlement relating to subsidies disciplines; and leads the interagency team on matters of policy. The role of Commerce's Enforcement and Compliance (E&C) is to enforce the CVD law and, in accordance with responsibilities assigned by the Congress in the URAA, to pursue certain subsidies enforcement activities of the United States with respect to the disciplines embodied in the Subsidies Agreement. The E&C'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 2018, USTR and E&C 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 E&C officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. U.S. Government officers stationed at posts where E&C 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 CVD case or a WTO subsidies complaint. The website, accessible to the public through the SEO's website at <http://eset.trade.gov> includes 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.

### **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) duties or CVDs 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 WTO 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, E&C 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 WTO Members' administration of such actions. Information about foreign trade remedy actions affecting U.S. exports is accessible to the public through E&C's website at <http://enforcement.trade.gov/trcs/index.html>. The stationing of E&C 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, E&C promotes fair treatment, transparency, and consistency with WTO obligations through technical exchanges and other bilateral engagements.

During 2018, over 100 trade remedy actions involving exports from the United States were closely monitored, notable examples of which include: 1) (AD) China's separate investigations of sorghum and phenol, Canada's investigation of 54 inch gypsum board, and India's investigation of coated paper; 2) (CVD) Peru's separate investigations of ethanol and corn; and 3) (Safeguards) Chile's investigation of powdered milk and gouda cheese, the European Union's investigation of certain steel products, and Canada's investigation of certain steel products.

WTO Members must notify, on an ongoing basis and without delay, their preliminary and final determinations to the WTO. Twice a year, WTO Members also must 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 to the public through the [WTO's website](#).

## Disputes under Free Trade Agreements

### *NAFTA: United States – Certain Measures on Aluminum and Steel Products (Canada)*

On June 1, 2018, Canada requested NAFTA Chapter 20 consultations with respect to duties on steel and aluminum products imposed by the United States under Section 232 of the Trade Expansion Act of 1962, as amended. Canada also alleges that the Section 232 statute is “as such” inconsistent with NAFTA obligations and that Section 232 constitutes “ongoing conduct” or a “rule or norm of general and prospective application” that is inconsistent with NAFTA obligations.

### *NAFTA: United States – Certain Measures on Aluminum and Steel Products (Mexico)*

On June 7, 2018, Mexico requested NAFTA Chapter 20 consultations with respect to duties on steel and aluminum products imposed by the United States under Section 232 of the Trade Expansion Act of 1962, as amended.

### *NAFTA: United States – Solar Safeguard Measure (Canada)*

On July 23, 2018, Canada requested NAFTA Chapter 20 consultations with respect to the global safeguard measure on imports of solar products imposed by the United States under Section 201 of the Trade Act of 1974 following a determination by the U.S. International Trade Commission that increased imports of the products in question were a substantial cause of serious injury to the domestic industry producing like or directly competitive products.

## 2. Monitoring Foreign Standards-related Measures and SPS Barriers

The Trump Administration commits significant resources to identify and confront unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as from 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 health protection, safety, and the environment. Conformity assessment procedures are procedures such as testing and certification requirements used to determine if products comply with underlying standards and technical requirements.

U.S. trade agreements provide that SPS and standards-related measures enacted by U.S. trading partners must meet legitimate objectives, such as the protection of health and safety as well as the environment, and 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 engagement helps facilitate trade in safe, high-quality U.S. products. USTR, through the Trade Policy Staff Committee (TPSC), works to ensure that SPS and standards-related measures do not act as discriminatory or otherwise unwarranted restrictions on market access for U.S. exports.

USTR uses tools, including its Annual Report and the National Trade Estimate Report (NTE) Report, to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. These reports describe the actions that USTR and other agencies have taken to address the specific trade concerns identified, 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 V.E.3 and Chapter V.E.8.*). USTR also engages on these issues with U.S. trading partners through mechanisms



established by free trade agreements, such as the CAFTA-DR, and through regional and multilateral organizations, such as the APEC and the OECD.

In 2019, USTR will continue to deploy significant resources to identify and confront unjustified SPS and standards-related barriers. The 2019 NTE Report will continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during the past year, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made.

### **3. Special 301**

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act (enacted in 1994), and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242), USTR must identify those countries that deny adequate and effective protection for intellectual property (IP) rights or deny fair and equitable market access for persons that rely on IP 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” (PFC), 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 IP.

In addition, USTR has created a Special 301 “Priority Watch List” (PWL) and “Watch List” (WL). Placement of a trading partner on the PWL or WL indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons relying on IP. Countries placed on the PWL receive increased attention in bilateral discussions with the United States concerning the identified problem areas. USTR develops an action plan for each foreign country identified on the PWL for at least one year.

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

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

#### **2018 Special 301 Review Results**

On April 27, 2018, USTR announced the results of the 2018 Special 301 Review. The 2018 Special 301 Report was the result of stakeholder input and interagency consultation.

USTR requested written submissions from the public through a notice published in the *Federal Register* on December 27, 2017 (<https://www.regulations.gov>, Docket Number USTR-2017-0024). In addition, on March 8, 2018, USTR conducted a public hearing that provided the opportunity for interested persons to testify before the interagency Special 301 Subcommittee about issues relevant to the review. The hearing featured testimony from representatives of foreign governments, industry groups, academics, and nongovernmental organizations. USTR posted the [transcript of the Special 301 public hearing](#) on its website and also offered a post-hearing comment period during which hearing participants could submit additional written comments in support of, or in response to, hearing testimony. The *Federal Register*

notice for the 2018 review cycle and post hearing comment period drew submissions from 39 non-government stakeholders and 23 trading partner governments. The submissions that USTR received are available to the public online at <https://www.regulations.gov>.

For more than 25 years, the Special 301 Report has identified positive advances as well as areas of continued concern. The Report has reflected changing technologies, promoted best practices, and situated these critical issues in their policy context, underscoring the importance of IP protection and enforcement to the United States and our trading partners.

During this period, there has been significant progress in a variety of countries. The Special 301 Report has reflected important advances in many other markets over the past 28 years, including in Australia, Israel, Italy, Japan, the Philippines, Qatar, Korea, Spain, Taiwan, and Uruguay.

Considerable concerns still remain. In 2018, USTR received stakeholder input on more than 100 trading partners, but focused the review on the nominations contained in submissions that complied with the requirement in the *Federal Register* notice to identify whether a particular trading partner should be designated as PFC, or placed on the PWL or WL, or not listed in the Report, and that were filed by the deadlines provided in the notice. Following extensive research and analysis, USTR listed 12 countries on the PWL and 24 countries on the WL. Several countries, including Chile, China, India, Indonesia, Thailand, and Turkey, have been listed every year since the Report's inception. The 2018 listings were as follows:

**Priority Watch List:** Algeria; Argentina; Canada; Chile; China; Colombia; India; Indonesia; Kuwait; Russia; Ukraine; and Venezuela.

**Watch List:** Barbados; Bolivia; Brazil; Costa Rica; Dominican Republic; Ecuador; Egypt; Greece; Guatemala; Jamaica; Lebanon; Mexico; Pakistan; Peru; Romania; Saudi Arabia; Switzerland; Tajikistan; Thailand; Turkey; Turkmenistan; the United Arab Emirates; Uzbekistan; and Vietnam.

When appropriate, USTR may conduct an Out-of-Cycle Review (OCR) to encourage progress on IP issues of concern. OCRs provide an opportunity for heightened engagement with trading partners and others to address and remedy such issues. In the case of a country-specific OCR, successful resolution of identified IP concerns can lead to a change in a trading partner's status on the Special 301 list outside of the typical time frame for the annual Special 301 Report. In some cases, USTR calls for the OCR; in others, the trading partner governments can request an OCR based on projections for improvements in IP protection and enforcement. In the 2018 report, USTR announced it would conduct OCRs of PWL countries Colombia and Kuwait as well as of Malaysia, which was not listed.

USTR also conducts an OCR focused on online and physical marketplaces that are reportedly engaged in piracy and counterfeiting and have been the subject of enforcement action or that may merit further investigation for possible IP infringements. 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 (NML) 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. Since publication of the first NML, several online markets closed or saw their business models disrupted as a result of enforcement efforts. In some instances, in an effort to legitimize their overall business, companies made the decision to close down problematic aspects of their operations; others cooperated with authorities to address unauthorized conduct on their sites. Notwithstanding the progress that has occurred, online piracy and counterfeiting continue to grow, requiring robust, sustained, and coordinated responses by governments, private sector stakeholders, and consumers.

The Special 301 Review, including its country-specific and Notorious Markets OCRs, serves a critical function by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets. Special 301 promotes job creation, economic development, and many other benefits that adequate and effective IP protection and enforcement support. The Special 301 Report and NML inform the public and our trading partners and serve as a positive catalyst for change. USTR remains committed to meaningful and sustained engagement with our trading partners, with the goal of resolving these challenges. Information related to Special 301 (including transcripts and video), the NML, and USTR's overall IP efforts can be found at: <https://ustr.gov/issue-areas/intellectual-property>.

#### **4. 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 this 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.

USTR addresses these issues in its annual National Trade Estimate Report. This approach allowed USTR to describe, in one comprehensive report, all of the overlapping barriers concerning telecommunications services and goods, along with related digital trade issues.

In its 2018 Section 1377 Review, USTR focused on issues related to: limits on foreign investment; barriers to competition and licensing issues; international termination rates; satellite services; telecommunications equipment trade; and local content requirements.

#### **5. Antidumping Actions**

Under the U.S. 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 1979, the Trade and Tariff Act of 1984, the Trade and Competitiveness Act of 1988, and the 1994 Uruguay Round Agreements Act.

An antidumping investigation usually begins 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 will initiate an antidumping investigation. In special circumstances, Commerce also may self-initiate an investigation.

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, it will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries and require importers to post a cash deposit equal to the estimated weighted-average dumping margin. If Commerce’s preliminary

determination is negative, there is no suspension of liquidation of entries. However, Commerce will complete its investigation and issue a final determination.

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, then Commerce will issue an antidumping order and direct CBP to assess, upon further instruction by Commerce, antidumping duties and require cash deposits on imported goods. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded.

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.

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 and the U.S. Supreme Court. For certain investigations involving Canadian or Mexican merchandise, final determinations may be reviewed by a binational panel established under the NAFTA.

The United States initiated 34 antidumping investigations in 2018 and imposed 36 antidumping orders.

## **6. 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 United States International Trade Commission (USITC) and the U.S. Department of Commerce (Commerce) jointly administer the CVD law, and U.S. Customs and Border Protection (CBP) collects duties and enforces CVD orders on imported goods.

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 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 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 of whether a domestic industry is materially injured, threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports for which Commerce has made an affirmative 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 23 CVD investigations and imposed 18 new CVD orders in 2018.

## 7. Other Import Practices

### 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.

The U.S. 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 (all sitting commissioners). If the USITC finds a violation, it can order that imported infringing goods be excluded from entry into the United States, issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported infringing goods in the United States, or both. A limited exclusion order covers only certain infringing imports from particular sources, namely some or all of the parties who are respondents in the proceeding. A general exclusion order, on the other hand, covers certain infringing products from all sources. Cease and desist orders are generally issued when, with respect to the imported infringing products, the respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. The USITC also is authorized to issue temporary exclusion or cease and desist orders before it completes an investigation if it determines that there is reason to believe there has been a violation of Section 337. Additionally, seizure and forfeiture orders can be issued for repeat or multiple attempts to import merchandise already subject to a general or limited exclusion order. 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: 1) public health and welfare, 2) competitive conditions in the U.S. economy, 3) the production of like or directly competitive articles in the United States, and 4) U.S. consumers. USITC Section 337 determinations are subject to judicial review on the merits in the U.S. Court of Appeals for the Federal Circuit, with possible appeal to the U.S. Supreme Court.

If the USITC issues an affirmative determination and concomitant remedial order(s), it transmits the determination, order(s), and the record upon which the determination is based 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 in an amount determined by the USITC. If the President, or the USTR, exercising the functions assigned by the President, does not disapprove the USITC's determination within 60 days, the USITC's determination and order(s) become final. If the President or the USTR disapproves a determination before the end of the 60-day review period, the determination and order(s) have no force or effect as of the date the President or the USTR notifies the USITC. If the President or the USTR formally approves the determination before the end of the 60-day review period, the determination and order(s) become final on the date that the President or the USTR notifies the USITC.

During 2018, the USITC instituted 50 new Section 337 investigations and commenced 13 ancillary proceedings. The USITC also issued affirmative determinations and remedial orders in the following 15 investigations in calendar year 2018: *Certain Mirrors with Internal Illumination*, 337-TA-1055; *Certain Composite Aerogel Insulation Materials and Methods for Manufacturing*, 337-TA-1003; *Certain Mobile*

*Device Holders*, 337-TA-1028; *Certain Magnetic Data Storage Tapes and Cartridges*, 337-TA-1012; *Certain Access Control Systems*, 337-TA-1016; *Certain Arrowheads with Accurate Blades*, 337-TA-1033; *Certain Collapsible Sockets for Mobile Electronic Devices*, 337-TA-1056; *Certain Graphic Systems*, 337-TA-1044; *Certain Jump Rope Systems*, 337-TA-1108; *Certain Non-Volatile Memory Devices*, 337-TA-1046; *Certain Two-Way Radio Equipment*, 337-TA-1053; *Certain Robotic Vacuum Cleaning Devices*, 337-TA-1057; *Certain Insulated Beverage Containers*, 337-TA-1084; *Certain Fuel Pump Assemblies Having Vapor Separators*, 337-TA-1101; *Certain Self-Anchoring Beverage Containers*, 337-TA-1092. In one investigation, *Non-Volatile Memory Devices* (337-TA-1046), the parties settled during the Presidential review period and the USITC, accordingly, rescinded the remedial orders. Presidential reviews of the last three investigations (*Insulated Beverage Containers*, *Fuel Pump Assemblies*, and *Self-Anchoring Beverage Containers*) are ongoing. All other determinations and orders became final after Presidential review.

## 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.

The USITC instituted two Section 201 investigations in 2017: 1) crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products) on May 23, 2017; and 2) large residential washing machines on June 5, 2017. The ITC reached affirmative determinations of serious injury or threat of serious injury in both proceedings, and delivered its reports to the President on November 13, 2017, and December 4, 2017, respectively. On January 22, 2018, USTR announced that the President would provide relief to U.S. manufacturers and impose safeguard tariffs on imported residential washing machines and solar cells and modules based on the investigations, findings, and recommendations of the USITC.

After receiving a recommendation developed by USTR in consultation with other interested agencies, the President chose to take action by applying the following tariffs to imported solar cells and modules, with the first 2.5 gigawatts of imported solar cells exempt from the tariff each year:

Tariffs on Imported Solar Cells and Modules				
	Year 1	Year 2	Year 3	Year 4
Tariff increase	30%	25%	20%	15%

After receiving a recommendation developed by USTR in consultation with other interested agencies, the President chose to take action by applying the following tariff-rate quotas to imported residential washing machines:

Tariff-Rate Quotas on Imported Residential Washing Machines			
	Year 1	Year 2	Year 3
First 1.2 million units of imported finished washing machines	20%	18%	16%
All subsequent imports of finished washing machines	50%	45%	40%
Tariff on covered parts	50%	45%	40%
Covered parts excluded from tariff	50,000 units	70,000 units	90,000 units

U.S. law requires the exclusion of Canada or Mexico from a Section 201 action if the President determines that imports from that country do not account for a substantial share of imports and do not contribute importantly to serious injury to domestic producers. Based on the information and findings of the USITC, the President determined that Canada met these criteria with respect to the washing machine investigation, but Mexico did not. Both Mexico and Canada were included in the remedy provided for imported solar cells and modules. Consistent with the statute, the President also concluded that it was appropriate to include Korea and other U.S. free trade agreement partners in both safeguard measures.

Consistent with WTO obligations and U.S. past practice, the United States excluded from each safeguard measure all Generalized System of Preferences (GSP) beneficiary countries that account for less than three percent of total exports, except: 1) Thailand with respect to the washing machine safeguard measure and 2) Thailand and the Philippines with respect to the solar safeguard measure.

**8. Generalized System of Preferences**

The following section also serves as the annual report on enforcement eligibility criteria to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, as required by Public Law No. 115-141, division M, title V, section 501(c).

**History and Purposes**

The U.S. Generalized System of Preferences (GSP) program was initially authorized by the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a ten-year period, beginning on January 1, 1976. Congress has extended the program 14 times since. The most recent renewal, in March 2018, extended the program through December 31, 2020.

The Trump Administration has placed a significant focus on enforcing the GSP eligibility criteria and ensuring that all countries receiving GSP benefits are meeting the eligibility criteria established by Congress. These include, but are not limited to, enforcing arbitral awards in favor of U.S. citizens or corporations, respecting internationally recognized worker rights, providing the United States with equitable and reasonable market access, reducing trade-distorting investment practices, and providing adequate and effective protection of intellectual property rights. The heightened focus on enforcement provides a valuable trade policy tool to assist the United States in reaching trade policy goals to benefit U.S. producers, farmers, ranchers, and workers.

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. The GSP program helps to lower the cost of eligible imported goods for U.S. consumers and businesses, including inputs used

to manufacture goods in the United States. The GSP program also supports the creation of trade opportunities for developing countries, which provides an effective way of encouraging broad-based economic development and an important means of sustaining momentum for economic reform and liberalization in beneficiary countries.

## **Beneficiaries**

As of January 1, 2019, there were 120 designated GSP beneficiary developing countries (BDCs) and territories. Forty four countries and territories are designated least-developed beneficiary developing countries (LDBDCs) under the GSP, and are thus eligible for a broader range of duty-free benefits.

## **Enforcement of GSP Eligibility Criteria**

In 2018, the Administration implemented a multipronged strategy to enforce the GSP eligibility criteria established by Congress. This effort included: 1) assessing beneficiary countries' eligibility through a new interagency process covering all GSP countries over a three-year period to determine whether to self-initiate reviews of eligibility; 2) accepting petitions to review beneficiary countries' eligibility; 3) encouraging countries to address issues in existing GSP eligibility reviews on an expedited basis or face loss of GSP benefits; and 4) engaging with beneficiary countries that are not currently subject to an eligibility review to emphasize the need to comply with all of the GSP eligibility criteria.

### *Triennial Assessment Process*

The triennial assessment process systematically examines each GSP beneficiary country's compliance with the statutory eligibility criteria. If the assessment of a beneficiary country raises concerns regarding the country's compliance with an eligibility criterion, the Administration may self-initiate a full country practice review of that country's continued eligibility for GSP. Each year, USTR and other relevant agencies assess beneficiary countries in a particular region of the world. In 2018, USTR conducted the first round of assessments for the 25 GSP beneficiary countries in Asia and the Pacific. In 2019, USTR will conduct the second round of assessments, covering the 25 GSP beneficiary countries in the Western Hemisphere and Europe. As a result of the first round of the triennial assessment, USTR self-initiated country eligibility reviews of India and Indonesia. Additionally, USTR self-initiated a review of Turkey.

### *New Petitions For Reviews Of Country Eligibility*

USTR accepted four petitions from U.S. stakeholders based on alleged violations of the GSP eligibility criteria. These included two petitions to review India based on the market access criterion, one to review Kazakhstan based on the worker rights criterion, and one to review Thailand based on the market access criterion.

### *Engagement On Outstanding Country Practice Cases*

USTR intensified action to press countries with existing country eligibility reviews launched in prior years to address their compliance with the GSP eligibility criteria. In 2018, there were eight outstanding cases, including: reviews of Indonesia and Uzbekistan regarding intellectual property rights protection and enforcement concerns; reviews of Bolivia, Georgia, Iraq, Thailand, and Uzbekistan regarding worker rights or child labor concerns; and a review of Ecuador regarding arbitral awards. An application for new GSP benefits for Laos remained outstanding at the end of 2018, pending a finding that Laos is meeting all of the GSP eligibility criteria. For a complete list of the country practice and country eligibility petitions that remained under review as of January 2019, see: <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0>.



In 2018, USTR held public hearings on June 19, September 26, and November 29 on GSP country eligibility reviews. In total, 45 parties testified at the hearings, including the governments of each country subject to an eligibility review. In addition, USTR received 266 written submissions. Full transcripts from the hearings, as well as the submissions that USTR received, are available to the public online at: <https://www.regulations.gov>.

For each country eligibility review, USTR officials also held multiple bilateral engagements with the country's government to outline specific steps that the country could take to comply with the GSP eligibility criteria.

The President restored Argentina's GSP eligibility status, effective January 1, 2018, following resolution of certain arbitral disputes with U.S. companies, new commitments by the government of Argentina to improve market access for U.S. agricultural products, and improved protection and enforcement of intellectual property rights. Due to certain remaining intellectual property rights concerns, the restoration of GSP benefits for Argentina does not apply to all eligible products.

The President removed a portion of Ukraine's GSP benefits effective April 26, 2018, following a determination that Ukraine was not complying with the GSP intellectual property rights criterion.

#### *Engagement with other GSP beneficiary countries*

USTR emphasized to GSP beneficiary countries not currently under review the importance of complying with GSP eligibility criteria during bilateral engagements with numerous countries. Examples included Algeria, Argentina, Armenia, Bangladesh, Burma, Cambodia, Egypt, Fiji, Kosovo, Kyrgyzstan, Moldova, Mongolia, Papua New Guinea, the Philippines, and Ukraine.

### **Eligible Products**

At the end of 2018, approximately 3,500 non-import sensitive products (as defined at the HS-8 tariff level) were eligible for duty-free treatment under GSP, with an additional 1,500 products reserved for eligibility from LDBDCs only. The list of GSP-eligible products from all beneficiaries includes: certain manufactured goods and semi-manufactured goods; selected agricultural and fishery products; and many types of chemicals, minerals, and building materials that are not otherwise duty free. The products that receive preferential market access only when imported from LDBDCs include crude petroleum, certain refined petroleum products, certain chemicals, plastics, animal and plant products, prepared foods, beverages, and rum, as well as many other products. The GSP statute precludes certain import-sensitive articles from receiving GSP treatment, including textiles and apparel, watches, most footwear, certain glassware, and certain gloves and leather products.

### **Annual GSP Product Review**

Each year, USTR leads the interagency Trade Policy Staff Committee in reviewing the list of products eligible for GSP benefits and provides recommendations on appropriate actions based on statutory criteria, including exclusions from duty-free treatment of products from certain countries when they have reached certain statutory thresholds related to competitiveness ("competitive need limitations," or CNLs). The 2017-2018 Annual GSP Product Review considered whether to: 1) add new products to the list of GSP-eligible products; 2) remove products from the list of GSP-eligible products; 3) waive CNLs in individual cases; 4) reinstate ("redesignate") products that exceeded the CNL threshold in earlier years; and 5) grant CNL waivers for products below the *de minimis* limit.

For the 2017-2018 Annual GSP Product Review, USTR received petitions to add 106 products to the list of GSP-eligible products, to redesignate 46 products, to remove three products from the list of GSP-eligible products, and to waive CNLs for five products. One petition to deny a *de minimis* waiver was also received. Of these petitions, USTR accepted for review petitions to: 1) add nine products to the list of those eligible for duty-free treatment under GSP; 2) remove GSP eligibility of two products; 3) waive CNLs for five products; and, 4) redesignate eight products. In 2018, 92 products were eligible for consideration for *de minimis* waivers.

As a result of the 2017-2018 Annual GSP Product Review, the President did not add any products to GSP, and removed cherry juice from Turkey from GSP eligibility. The President denied the petition to remove non-adhesive plates and sheets from GSP for Indonesia and Thailand, so these products will continue to enter the United States duty free.

The President removed 97 products from certain countries that exceeded the CNLs, including the 92 products that were eligible for consideration for *de minimis* waivers, three products that exceeded CNLs but for which USTR did not receive petitions requesting waivers, and two products for which requested waivers were denied. The President granted CNL waivers for three products (edible bird's nests from Indonesia, lithium carbonates from Argentina, and ferrosilicon chromium from Kazakhstan). These products will continue to enter the United States duty free.

The President denied all petitions for redesignation, with the exception of ammonium perrhenate from Kazakhstan, which will once again enter the United States duty free.

#### *Value of Trade Entering the United States under the GSP program*

The most recent data show that the value of U.S. imports claimed under the GSP program during January-November 2018 was \$21.7 billion, an 11.2 percent increase over the same period in 2017. Similarly, the value of U.S. imports claimed under the GSP program for full year 2017 was \$21.3 billion, an 11.8 percent increase over the same period in 2016.

During January-November 2018, imports under GSP accounted for less than 1 percent of all U.S. imports of goods. Imports from BDCs and LDBDCs coming in under GSP accounted for 9.9 percent of total imports from those countries during the same period. Total U.S. imports of all products (both GSP eligible and non-eligible products) from GSP beneficiary countries were 9.3 percent higher, by value, during January-November 2018 than during the same period in 2017.

Top U.S. imports under the GSP program during January-November 2018, by value, were gold necklaces, ferrochromium, rubber gloves, nonalcoholic beverages, and preparations for beverages such as non-dairy coffee creamer, herbal teas, and flavored honey.

The top five GSP users in 2018 (based on January-November 2018 trade value) were, in order: India, Thailand, Brazil, Indonesia, and Turkey. LDBDCs accounted for about 5 percent (\$1.0 billion) of GSP imports led by Cambodia, Angola, Burma, Zambia, and Congo (DROC). Imports from LDBDCs during January-November 2018 were 90 percent higher than imports during the same period in 2017.

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

The African Growth and Opportunity Act (AGOA), enacted in 2000, provides eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible for duty-free access under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2018, 40 sub-Saharan

African countries were eligible for AGOA benefits. As a result of the 2018 annual AGOA eligibility review, 39 sub-Saharan African countries are eligible for AGOA benefits in 2019, following the termination of Mauritania's AGOA eligibility, effective January 1, 2019.

### *AGOA Eligibility Review*

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 legislation. These decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has continued to meet the eligibility criteria and whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, but are not limited to: 1) establishing or making continual progress in establishing a market-based economy; 2) rule of law; 3) poverty-reduction policies; 4) a system to combat corruption and bribery; and 5) protection of internationally recognized workers' rights. AGOA 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 internationally recognized human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, African governments, and other interested stakeholders. Through the AGOA eligibility review process, the annual AGOA Forum meeting, and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries in support of broad-based economic development. (*For more information on the AGOA Program, see Chapter II.D.6*). The annual review conducted in 2018 resulted in the termination of Mauritania's AGOA eligibility, effective January 1, 2019. The President determined that Mauritania is making insufficient progress toward combating forced labor, in particular the scourge of hereditary slavery. In addition, the government of Mauritania continues to restrict the ability of civil society to work freely to address anti-slavery issues.

An out-of-cycle review of Rwanda, Tanzania, and Uganda's AGOA eligibility was initiated on June 20, 2017, in response to a petition filed by the Secondary Materials and Recycled Textiles Association (SMART). The SMART petition asserts that a March 2016 decision by the East Africa Community (EAC), which includes Kenya, Rwanda, Tanzania, and Uganda, to phase in a ban on imports of used clothing and footwear is imposing significant economic hardship on the U.S. used clothing industry, and is in violation of the AGOA statutory eligibility criteria to make continual progress toward establishing a market-based economy and eliminating barriers to U.S. trade and investment. USTR determined that an out-of-cycle review of Kenya's AGOA eligibility was not warranted at that time, due to actions that Kenya took to address the concerns raised in the petition. Tanzania and Uganda undertook similar actions during the course of the out-of-cycle review to address the concerns raised in the petition. As a result of these actions, the President determined that Tanzania and Uganda are meeting AGOA's eligibility requirements. On July 30, 2018, the President determined that Rwanda was out of compliance with AGOA's eligibility requirements, and issued a proclamation suspending the application of duty-free treatment for all AGOA-eligible apparel products from Rwanda, effective July 31, 2018.

### *AGOA Utilization*

Total AGOA (including GSP) imports declined to \$11.4 billion during January-November 2018, compared to \$12.1 billion during January-November 2017, mostly due to a decrease in AGOA imports of oil (down 7.3 percent) to \$7.6 billion during January-November 2018, compared to \$8.2 billion during January-November 2017. AGOA non-oil trade declined by 2.6 percent to \$3.8 billion during January-November 2018, compared to \$3.9 billion during January-November 2017. There was a 48.6 percent decline in transportation equipment imports under AGOA to \$555.6 million during January-November 2018, from \$1.08 billion during January-November 2017, and a 19.8 percent increase in AGOA apparel trade (\$1.14 billion compared to \$947.5 million during January-November 2017).

Top U.S. imports under the AGOA program during January-November 2018, by trade value, were mineral fuels, woven apparel, motor vehicles and parts, knit apparel, and ferroalloys. During January-November 2018, based on trade value, the top five AGOA suppliers were, in order, Nigeria, South Africa, Angola, Chad, and Kenya.

## **IV. OTHER TRADE ACTIVITIES**

### **A. Manufacturing and Trade**

#### **Manufacturing Is a Key Driver of U.S. Economic Growth and U.S. Exports**

Manufacturing is a vital sector of the overall U.S. economy, with a gross domestic product (GDP) of \$2.2 trillion in 2017, comprising 11.2 percent of U.S. GDP. If the United States manufacturing sector were a country, it would be the seventh largest country in the world (excluding the United States). U.S. manufacturing real GDP and U.S. manufacturing industrial production are both at record or near record levels. The manufacturing sector added 264,000 jobs in 2018 (December 2017 to December 2018), for an average monthly change of 22,000 jobs. These build on an increase of 16,000 manufacturing jobs per month in 2017. Accordingly, the unemployment rate for manufacturing workers was under 4.0 percent for all of 2018 and ranges between 2.8 percent in December to 3.8 percent in July. Average hourly earnings of manufacturing employees were \$27.05 in 2018.

Manufacturing is a key driver of U.S. exports. U.S. manufacturing exports totaled an estimated \$1.4 trillion in 2018, and accounted for an estimated 85 percent of total U.S. goods exports to the world. The United States is the second largest country exporter of manufactured goods. U.S. manufactured goods exports have increased by an estimated 53 percent since the trough of the recession in 2009.

#### **Pursuing Fair and Reciprocal Trade**

The Administration is actively using a broad range of available trade policy tools to leverage more open markets and level the playing field for U.S. manufactured goods exports in countries around the globe. A key overarching objective guiding this work is to improve the U.S. bilateral trade balance for manufactured goods through fair and reciprocal trade.

In 2018, the Office of the United States Trade Representative (USTR) advanced American manufactured goods trade interests through active engagement in an array of trade policy initiatives and activities. Key activities to expand U.S. manufactured goods exports included actions in each of the following issue areas.

#### **United States-Mexico-Canada Agreement (USMCA)**

USTR negotiated the United States-Mexico-Canada Agreement (USMCA) to update the provisions of the North American Free Trade Agreement (NAFTA) to reflect 21st century standards and rebalance the benefits of the deal. The USMCA expands market access opportunities for U.S. manufactured goods and strengthens disciplines to address non-tariff barriers that constrain U.S. exports to Canada and Mexico. The USMCA also updates and strengthens rules of origin, as necessary, to ensure that the benefits of the agreement go to products genuinely made in the United States and North America, and to incentivize production in North America as well as specifically in the United States. In addition, the USMCA seeks to achieve greater regulatory compatibility in key manufactured goods sectors, including automobiles, pharmaceuticals, medical devices, and chemicals to reduce burdens associated with unnecessary differences in regulation between USMCA partners.

#### **United States-Korea Free Trade Agreement (KORUS)**

In 2018, USTR successfully modified and amended the United States-Korea Free Trade Agreement (KORUS) to rebalance and reduce the large U.S. trade deficit in manufactured goods, including automobiles

and automobile parts. In addition, USTR worked to resolve implementation concerns with the agreement that have hindered U.S. goods export growth and opportunities in Korea. The modifications to KORUS went into effect on January 1, 2019.

### **Bilateral Market Access Barriers**

Over the past year, USTR sought to address a broad range of manufactured goods market access barriers and non-tariff barriers through extensive engagement with our trade partners, including through formal Trade and Investment Framework Agreement (TIFA) meetings, FTA meetings, and various bilateral trade policy initiatives and activities. Among such activities in 2018 were efforts to address: Indian barriers to U.S. manufactured goods exports, including medical devices and high-technology products; barriers to U.S. automobile exports in Southeast Asia; and barriers created by a range of China’s industrial policies, such as “Made in China 2025”, which is designed to create or accelerate artificially China’s ability to become a manufacturing leader in several high technology, high value-added industries, including information technology, aviation, electric vehicles, and medical devices. USTR is utilizing the full range of U.S. trade tools to address China’s strategic plans.

### **Excess Capacity in Key Industrial Sectors**

Industrial policies in certain trading partners, particularly China, have led to growth in select industry sectors, including steel and aluminum, that is far out of line with market realities. These policies have adversely affected U.S. industry and workers as well as global trade. USTR continues to seek opportunities to work with like-minded trading partners to build international consensus on the challenges of excess capacity, including in fora such as the Global Forum on Steel Excess Capacity and the Organization for Economic Cooperation and Development (OECD) Steel Committee. While actively participating in the work of these fora, USTR has made clear to partners that the United States will not sit idly by while the effects of the excess capacity crisis imperil industries critical to our national security.

### **Strong Enforcement**

Throughout all these policy activities relating to manufacturing and trade, the Trump Administration is already aggressively standing up for American interests and protecting American economic security by taking tough enforcement action against countries that break the rules, and applying the full range of tools, including World Trade Organization (WTO) rules, negotiations, litigation, and other mechanisms under U.S. law. (*For further information see Chapter III: Trade Enforcement Activities.*)

## **B. Protecting Intellectual Property**

One of the top trade priorities for the Trump Administration is to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services and to provide adequate and effective protection and enforcement of U.S. intellectual property (IP) rights.<sup>1</sup> Toward this end, a key objective for the Administration’s trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe.

To protect U.S. innovation and employment, the Administration is prepared to call to account foreign countries and expose the laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers.<sup>2</sup>

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<sup>1</sup> Intellectual property rights include copyrights, patents, trademarks, and trade secrets.

<sup>2</sup> In 2014 (latest data available), IP-intensive industries directly or indirectly accounted for 45.5 million jobs in the United States, nearly one third of all U.S. employment.

Challenges include copyright piracy, which threatens U.S. exports in media and other creative content. U.S. innovators, including pharmaceutical manufacturers, face unbalanced patent systems and other unfair market access barriers. Counterfeit products undermine U.S. trademark rights and can also pose serious threats to consumer health and safety. According to the Organization for Economic Cooperation and Development (OECD), data on customs seizures indicates that the country whose goods are most counterfeited and pirated is the United States (almost 20 percent of total seizures around the world are of pirated and counterfeit goods whose right holders originate in the United States). Inappropriate protection of geographical indications, including the lack of transparency and due process in some systems, limits the scope of trademarks and other IP rights held by U.S. producers and imposes barriers on market access for U.S.-made goods and services that rely on the use of common names, such as “feta” cheese. In addition, the theft of trade secrets, often among a company’s core business assets and key to a company’s competitiveness, hurts American businesses, including small and medium sized enterprises (SMEs). The reach of trade secret theft into critical commercial and defense technologies poses threats to U.S. national security interests as well.

USTR deploys a wide range of bilateral and multilateral trade tools to promote strong IP laws and effective enforcement worldwide, reflecting the importance of IP and innovation to the future growth of the U.S. economy. USTR seeks strong protection and enforcement for IP rights during the negotiation, implementation, and monitoring of IP provisions of trade agreements. USTR also presses trading partners on innovation and IP issues through bilateral engagement and other means, including with Algeria, Argentina, Australia, Canada, Chile, China, Colombia, the Dominican Republic, India, Indonesia, Mexico, Moldova, Saudi Arabia, Thailand, Ukraine, the United Arab Emirates, and Vietnam. USTR also engages bilaterally and regionally with other countries through the annual “Special 301” review and Notorious Markets report (*for additional information, see Chapter III.D.3*).

To elaborate on endemic concerns in just one of these countries, China is home to widespread infringing activity, including trade secret theft, rampant online piracy and counterfeiting, and high levels of physical pirated and counterfeit exports to markets around the globe. Combined, shipments and goods coming from or through China and Hong Kong in Fiscal Year 2017 accounted for the overwhelming majority (78 percent) of all U.S. Customs and Border Protection (CBP) border seizures of intellectual property rights (IPR) infringing merchandise. China also requires that U.S. firms localize research and development activities. Structural impediments to civil and criminal IPR enforcement are also problematic, as are impediments to pharmaceutical innovation.

Finally, USTR leads multilateral engagement on IP issues in the World Trade Organization (WTO) through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council. As discussed in greater detail in Chapter V.B.6, the U.S. Government and a number of other countries maintain common positions on the subject of geographical indications—positions that help ensure that overseas markets remain open to a wide array of U.S. agricultural exports. Furthermore, the United States has helped explain the positive role of IP in promoting innovation at the 2018 WTO TRIPS Council, under the theme: The Societal Value of Intellectual Property in the New Economy. Over the course of successive meetings of the TRIPS Council, the United States and co-sponsors presented empirical data and other information on how IP protection and enforcement helps create conditions that encourage risk-taking and investments in innovations of all kinds, whether in the development of new technologies, new solutions to business challenges, new cultural and artistic expressions, or the means to distribute such works to the public. Intellectual property protection and enforcement helps to create new businesses, and expand opportunity for individuals and societies.

## Special 301

*For a discussion of Special 301, see Chapter III.D.3.*

## C. Promoting Digital Trade and Electronic Commerce

The Internet and other digital technologies play a crucial role in strengthening and supporting firms in every sector of the U.S. economy. In 2018, USTR advanced U.S. interests in robust digital trade and electronic commerce across a range of fora and worked to combat a rising tide of barriers to digital trade around the world. USTR highlighted some of those barriers in a [Digital Trade Fact Sheet](#), which was released concurrently with the release of the annual National Trade Estimate Report in March 2018.

In the United States-Mexico-Canada Agreement (USMCA), which will replace the North American Free Trade Agreement (NAFTA), USTR has concluded the most ambitious set of digital trade rules in any Free Trade Agreement (FTA), which will make this agreement a model for other bilateral and multilateral efforts moving forward. For example, USTR achieved strong rules ensuring that data can flow freely across borders without onerous and expensive localization requirements; guarantees that digital products receive duty-free, non-discriminatory treatment; provisions preventing foreign governments from requiring U.S. firms to disclose proprietary source code and algorithms; and rules ensuring that Internet platforms will not be held liable for civil, non-IPR-related harms associated with third-party content (*i.e.*, content the platform stores, processes, or transmits but does not itself develop).

At the World Trade Organization (WTO) Eleventh Ministerial Conference in December 2017, the United States was joined by 70 other Members in announcing a commitment to initiate exploratory work on negotiations on electronic commerce. Throughout 2018, USTR laid the groundwork for negotiating high-standard rules that could serve to advance a liberal global environment for digital trade and electronic commerce. At the Ministerial Conference in 2017, the United States also joined a consensus among WTO Members to continue the longstanding Work Program on Electronic Commerce and to maintain a moratorium on duties on electronic transmissions. The United States continues to work to develop support for making this moratorium permanent and binding under the WTO.

USTR raised digital trade issues in many bilateral engagements throughout 2018, including in consultations with FTA partners and formal Trade and Investment Framework Agreement (TIFA) meetings. For example, USTR raised concerns with proposals by the European Union (EU) and various EU Member States, including Italy, Spain and the United Kingdom, for new taxes on digital services revenues that appeared to target U.S. companies. USTR encouraged those countries instead to continue to work within the Organization for Economic Cooperation and Development (OECD) project on Base Erosion Profit Shifting (BEPS) to address global tax issues. Similarly, USTR took the opportunity, both in the WTO and through extensive bilateral engagement, to address numerous trade-restrictive aspects of proposed implementing decrees of cybersecurity laws in Vietnam and China and pressed Indonesia to implement amendments to a highly restrictive data localization law.

USTR continued to advocate for U.S. digital trade interests in international fora such as the G20 and the OECD. The OECD continued its focus on digital issues in 2018, and USTR remained engaged in a broad range of discussions in that forum, which is aiming for a comprehensive set of policy recommendations in 2019.



## **D. Trade and the Environment**

Over the course of 2018, the United States made significant progress on a range of trade and environment matters in multiple fora, including through multilateral, regional, and bilateral trade initiatives.

In November 2018, the United States, Mexico and Canada formally signed the United States-Mexico-Canada Agreement (USMCA), which includes the most comprehensive set of enforceable environmental obligations of any U.S. trade agreement. In negotiating the USMCA Environment Chapter, the United States modernized the existing environmental framework under the North American Agreement on Environmental Cooperation (NAAEC) by bringing the environmental obligations into the core of the new trade agreement, rather than in a side agreement, and making them fully enforceable. The USMCA addresses key environmental challenges such as illegal, unreported, and unregulated (IUU) fishing and harmful fisheries subsidies and trafficking in wildlife, timber, and fish. For the first time in a U.S. trade agreement, the USMCA also addresses other pressing environmental issues such as air quality and marine litter. In parallel with the USMCA, the United States, Mexico and Canada signed a new environmental cooperation agreement, the Agreement on Environmental Cooperation (ECA), which also updates and supersedes the NAAEC and modernizes and enhances the effectiveness of environmental cooperation between the three parties.

The United States also has continued to prioritize implementation of environmental obligations under existing free trade agreements (FTAs), including through regular meetings of the Interagency Subcommittee on FTA Environment Chapter Monitoring and Implementation and through bilateral and regional meetings of FTA environment oversight bodies. In particular, USTR was active in monitoring and enforcing the United States-Peru Trade Promotion Agreement (PTPA) and its unique Forest Annex. In February 2018, the United States invoked one of the monitoring tools provided for in the PTPA and requested that Peru verify that three timber shipments exported to the United States from Peru in 2017 complied with all applicable Peruvian laws and regulations. In addition, in January 2019, the United States acted swiftly in response to Peruvian action to move its independent forest oversight body, the Agency for the Supervision of Forest Resources and Wildlife (OSINFOR), from under Peru's Presidency of the Council of Ministers to Peru's Ministry of Environment (MINAM), by requesting the first ever environment consultations under the PTPA to discuss this important matter. The United States also continued to hold regular meetings of the environment committees established under our trade agreements to monitor and enforce the Environment Chapter obligations, including meetings with officials from Bahrain, Central America and the Dominican Republic, Chile, Colombia, Jordan, Morocco, Oman, Panama, and Singapore.

In the WTO, the United States worked to advance negotiations on a new multilateral agreement to prohibit harmful fisheries subsidies, such as those that contribute to IUU fishing, overfishing and overcapacity, and also advocated for enhanced transparency and reporting regarding existing fisheries support programs.

In 2018, the United States also continued to work with trading partners under our Trade and Investment Framework Agreements (TIFAs) on a range of trade-related environmental issues such as wildlife trafficking and IUU fishing, in particular with Indonesia and the Philippines.

### **1. Bilateral and Regional Activities**

As described below and in Chapter II of this report, USTR secured concrete achievements supporting the Administration's trade and environment objectives during 2018. USTR continued to convene meetings of the Trade Policy Staff Committee (TPSC) Subcommittee on FTA Environment Chapter Monitoring and Implementation to monitor actions taken by U.S. FTA partners, in accordance with the Subcommittee's plan for monitoring implementation of FTA environment chapter obligations. The monitoring plan forms

part of USTR's ongoing efforts to ensure that U.S. trading partners comply with their FTA environmental obligations and to monitor progress achieved.

### **United States-Mexico-Canada Agreement (USMCA)**

In November 2018, the United States, Mexico, and Canada signed the USMCA. This agreement modernizes the existing framework under the NAAEC by bringing the environmental obligations into the core of the Agreement, rather than in a side agreement, and by making them fully enforceable. The USMCA Environment Chapter includes the most comprehensive set of enforceable environmental obligations of any previous United States free trade agreement, including obligations to: combat trafficking in wildlife, timber, and fish; strengthen law enforcement networks to stem trafficking; combat illegal fishing and eliminate harmful fisheries subsidies; and address pressing environmental issues such as air quality and marine litter.

In parallel with the USMCA a new Environmental Cooperation Agreement (ECA) between the United States, Mexico, and Canada has been signed. The ECA updates and supersedes the NAAEC, supporting implementation of the environmental commitments in the USMCA and modernizing and enhancing the effectiveness of environmental cooperation between the parties. The ECA retains the Commission for Environmental Cooperation (CEC) as established under the former NAAEC. Areas of cooperation under the ECA include efforts to reduce pollution, strengthen environmental governance, conserve biological diversity, and sustainably manage natural resources.

### **United States-Bahrain Free Trade Agreement**

In 2018, U.S. Government officials and experts continued to engage with officials from Bahrain's Supreme Council for Environment to monitor implementation of the FTA Environment Chapter and to discuss areas of potential cooperation under the 2017-2021 Plan of Action, pursuant to the United States-Bahrain Memorandum of Understanding on Environmental Cooperation accompanying and supporting implementation of the Environment Chapter under the FTA. The Plan of Action identifies priority projects in areas such as improving air quality, protecting coastal environmental zones, and strengthening the capacity to protect endangered species, including through strengthened Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) implementing legislation.

### **Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)**

The United States and other Parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) continued efforts to strengthen environmental protection and implement the commitments of the CAFTA-DR Environment Chapter. The officials responsible for trade and environment under CAFTA-DR met twice in 2018 to discuss priorities for environmental cooperation funding and monitoring and implementation of Environment Chapter obligations. The Environmental Affairs Council met in June 2018 in Santo Domingo, Dominican Republic, and discussed challenges and progress in implementing the Environment Chapter obligations with a particular focus on collaboration among law enforcement agencies and institutions to combat wildlife trafficking and illegal logging. The Council also examined the role of environmental courts and tribunals in the enforcement of environmental laws and exchanged views on legislative, institutional, and procedural revisions that can help improve effective enforcement and promote high levels of environmental protection.

The Council received an update from the independent Secretariat for Environmental Matters (Secretariat), which has received 41 submissions regarding effective enforcement of environmental laws since its establishment in 2007. The Secretariat reported on the development of its fifth and six factual records, related to the construction of a cruise ship terminal in Honduras and animal welfare at a zoo in the

Dominican Republic, respectively. In 2018, the Secretariat received three new submissions from the public alleging a CAFTA-DR party's failure to effectively enforce its environmental laws. Furthermore, the Secretariat conducted outreach to inform the public about this monitoring mechanism, reaching hundreds of people, including through legal clinics to promote participation in the Secretariat submissions mechanism.

The United States continued to provide capacity-building support to CAFTA-DR partners. For example, the U.S. Government supported the planning of 17 cross-border and national enforcement operations that resulted in 461 arrests and the seizure of 4,399 specimens of fauna and 3,435 cubic meters of timber in 2018. In addition, the U.S. Government worked with the Wildlife Conservation Society (WCS) and local partners to strengthen the protection and management of 240,500 hectares of land in critical ecosystems, including Laguna del Tigre National Park in Guatemala and the Tawahka Asangni Biosphere Reserve in Honduras.

### **United States-Chile Free Trade Agreement**

The United States and Chile continued efforts to strengthen environmental protection and implement the commitments of the bilateral FTA's Environment Chapter. In 2018, marking 15 years of environmental cooperation, officials from the United States and Chile held meetings of the Environmental Affairs Council and Joint Commission on Environmental Cooperation, and approved the Work Program for 2018-2020. This new Work Program establishes priorities for cooperative activities, including strengthening effective implementation and enforcement of environmental laws and regulations, promoting conservation and inclusive management of natural resources, and promoting improved air and water quality, through the adoption of effective policies, best practices, and innovative technologies for sound natural resource management.

In 2018, the United States and Chile discussed their efforts to combat IUU fishing and marine debris as well as to enhance the management of marine and coastal protected areas. Chile also updated the United States on its efforts to strengthen its CITES legislation as part of our ongoing efforts to promote environmental protection under the bilateral FTA.

### **United States-Colombia Trade Promotion Agreement**

The United States continued to work closely with Colombia to advance the establishment of an independent Secretariat for Environmental Matters to receive and consider submissions from the public on matters regarding enforcement of environmental laws pursuant to the United States-Colombia Trade Promotion Agreement (CTPA). In July 2018, the United States and Colombia signed the Agreement Establishing a Secretariat for Environmental Enforcement Matters, which is housed by Fondo para la Accion Ambiental y la Niñez (Fondo Accion). Colombia and the United States also finalized the selection of an Executive Director to oversee the Secretariat's functions. The United States provided capacity building assistance under the United States-Colombia Environmental Cooperation Work Program to support Colombia's implementation of its environmental obligations under the CTPA, including improving enforcement of environmental laws, combatting illegal logging and mining, and supporting efforts to improve forest management and monitoring.

### **United States-Jordan Free Trade Agreement**

In 2018, USTR officials and other experts continued to engage with officials from Jordan to monitor implementation of the bilateral FTA Environment Chapter, including at a meeting in February 2018 to review the accomplishments of the 2014-2018 Environmental Work Program and to approve a new Work Program for 2018-2021. The 2018-2021 Work Program sets out activities related to effective enforcement of

environmental laws, protecting wildlife and sustainably managing ecosystems and natural resources, including by strengthening Jordan's CITES implementing legislation.

### **United States-Morocco Free Trade Agreement**

In 2018, the United States-Morocco Working Group on Environmental Cooperation convened to monitor implementation of the FTA Environment Chapter, review achievements from the 2014-2017 Plan of Action, and approve a new Plan of Action outlining areas for future environmental cooperation including on water, air, waste technology solutions, and efforts to combat environmental crimes.

The 2018-2021 Plan of Action prioritizes work to combat wildlife trafficking and illegal logging and fishing through training and consultations and aims to create opportunities for innovation and technology solutions in areas such as solid waste management, recycling, and pollution monitoring and mitigation.

### **United States-Oman Free Trade Agreement**

USTR has continued to review implementation of the U.S.-Oman FTA Environment Chapter and held bilateral meetings in Muscat in March 2018 focusing on wildlife trafficking and illegal fishing. As part of these meetings, the United States and Oman signed a new Plan of Action for 2018-2021, which sets out activities related to sustainably managing ecosystems and natural resources, combatting wildlife trafficking, and promoting environmental education, training, awareness, transparency, and public participation in environmental decision-making and enforcement.

### **United States-Panama Trade Promotion Agreement**

The United States and Panama continued efforts to strengthen environmental protection and review implementation of the Trade Promotion Agreement Environment Chapter. The Environmental Affairs Council (Council) and Environmental Cooperation Commission (Commission) met in October 2018 in Panama City, Panama, to discuss challenges and progress in implementing the Environment Chapter obligations over the course of 2018, with a particular focus on wildlife trafficking, illegal logging, IUU fishing, and conservation of wetlands. The Council approved working procedures and a 2018-2019 work program for the operation of the independent Secretariat for Environmental Enforcement Matters (Secretariat). The intent of the Secretariat is to promote public participation in the identification and resolution of environmental enforcement issues by receiving and considering submissions from the public on matters regarding enforcement of environmental laws.

The Commission discussed environmental cooperation projects completed under the Environmental Cooperation Work Program for 2014-2017 and the status of ongoing and upcoming environmental cooperation projects, including projects to address: IUU fishing and illegal logging; wildlife trafficking; environmental management at ports; air quality; environmental impact assessment; and, the adoption of cleaner production practices. The Commission also approved its second Work Program for 2018-2022, which establishes priorities for cooperative activities, including: strengthening the capacity to develop, implement, and enforce environmental laws and regulations; improving private sector environmental performance and compliance with environmental laws; and, increasing environmental education, transparency, and public participation to improve environmental protection and enforcement of environmental laws.

### **United States-Peru Trade Promotion Agreement**

The United States continued to prioritize implementation of the United-States-Peru Trade Promotion Agreement (PTPA) and Forest Annex, including by convening several meetings of the Interagency

Committee on Trade in Timber Products from Peru to discuss and monitor developments in Peru to combat illegal logging. In February 2018, USTR, on behalf of the Timber Committee, for the second time invoked the timber verification monitoring tool under the PTPA and requested that the government of Peru verify that three separate timber shipments exported from Peru to the United States complied with all applicable Peruvian laws and regulations. Peru's investigation was not able to establish the legality of the timber included in one of the shipments, and the verification highlighted that systemic challenges remain to ensuring timber legality in Peru. In August 2018, the Timber Committee issued a set of recommended actions to address the issues identified in the verification, many of which were actions that Peru committed to take following the 2016 verification request, yet had made insufficient progress in implementing. Such actions included strengthening Peru's timber traceability system, taking swift action against those violating Peru's forestry laws, and improving timely detection of illegally harvested timber. USTR and other U.S. agencies will continue to engage closely with Peru to address remaining challenges to combating illegal logging highlighted by the verifications.

In January 2019, the United States acted swiftly in response to Peruvian action to move OSINFOR from its position as a separate and independent entity, as required by the PTPA Forest Annex, to a subordinate position within Peru's Ministry of Environment by requesting the first ever environment consultations under the PTPA. The United States will use the environment consultation process to resolve the matter and is committed to using all the tools available under the PTPA in order to ensure Peru's full compliance with the Environment Chapter and Forest Annex.

In addition, the United States and Peru held multiple bilateral meetings to discuss and monitor implementation of obligations under the PTPA's Environment Chapter and Forest Annex, with broad participation from a range of government agencies and stakeholders. In February 2018, Peru and the United States convened the seventh meetings of the Environmental Affairs Council (EAC) and the Environmental Cooperation Commission (ECC) and the ninth meeting of the Sub-Committee on Forest Sector Governance in Lima (Sub-Committee). The EAC reviewed the progress Peru and the United States have made to effectively implement, and comply with, the obligations under the Environment Chapter of the PTPA, specifically focusing on efforts to improve air and water quality, combat wildlife trafficking and IUU fishing, and enforce environmental laws. The EAC also reviewed implementation of the Secretariat for Submissions on Environmental Enforcement Matters established in Article 18.8 of the PTPA. In July 2018 the Secretariat received two public submissions alleging failures to enforce environmental laws. The ECC reviewed implementation of the Environmental Cooperation Agreement and exchanged views regarding the implementation of the United States-Peru Environmental Cooperation Work Program for 2015-2018. The Parties highlighted their cooperation on small-scale gold mining, environmental monitoring and enforcement, and water management in support of the PTPA environment chapter obligations.

The bilateral Timber Sub-Committee reviewed implementation of the PTPA Annex on Forest Sector Governance (Forest Annex), including the actions that Peru committed to undertake in the November 2016 EAC Joint Statement following the results of a timber verification that was carried out earlier that year. The 2016 verification request revealed that the shipment subject to the verification was not compliant with Peru's law, regulations, and other measures on harvest and trade of timber products, and further revealed systemic challenges to combatting illegal logging. As noted above, these challenges remain largely unaddressed. The United States will continue to press Peru to implement further reforms and remains committed to vigorously enforcing the PTPA Forest Annex.

### **United States-Singapore Free Trade Agreement**

In January 2018, the United States and Singapore held a biennial review in Singapore under the Memorandum of Intent between the United States of America and the Republic of Singapore on Cooperation in Environmental Matters (MOI), which was negotiated in parallel with the United States-

Singapore Free Trade Agreement (FTA) Environment Chapter and supports implementation of the FTA. This bilateral meeting served as an important opportunity to enhance and continue the robust and longstanding bilateral relationship and strategic partnership between the United States and Singapore, and highlighted a shared commitment to environmental protection and the sustainable use of natural resources.

The two governments also reviewed accomplishments under 2016-2017 Plan of Action, including activities to combat wildlife trafficking and illegal fishing, and agreed on a new Plan of Action for 2018-2019 which sets out activities related to the (i) effective implementation and enforcement of environmental laws; (ii) conservation and sustainable use of and trade in natural resources; and, (iii) exchange of information on environmental policies, best practices, and use of innovative environmental technology and pollution management techniques.

## **2. Multilateral and Regional Fora**

### **Regional Engagement**

In the Asia-Pacific Economic Cooperation (APEC) forum, the United States worked with other Asia-Pacific economies through the Experts Group on Illegal Logging and Associated Trade (EGILAT) to improve the capacity of APEC officials to combat illegal logging and associated trade and promote the trade in legally harvested forest products within the APEC region. For example, several economies shared information on their timber legality systems, providing clarity and transparency for businesses, government, and non-government organizations (NGOs) on laws and regulations governing timber production and trade. The United States also co-sponsored a workshop to promote legal trade of wood products held in Port Moresby, Papua New Guinea in August 2018, which included government officials, NGOs, and private sector representatives from APEC economies. In addition, the United States participated in an APEC workshop in October 2018 in Mexico City aimed at facilitating trade and investment in sustainable materials management (SMM), including exchanges on effective recovery and recycling of plastics.

### **WTO and Other Multilateral Engagement**

As described in more detail in Chapter V of this report, the United States has continued to explore and advance fresh and innovative approaches to all aspects of the WTO's trade and environment work.

In particular, the focus of the WTO's trade and environment work during 2018 was on advancing the negotiations to discipline harmful fisheries subsidies and to improve rules to enhance the transparency and reporting of Members' existing subsidy programs. At the WTO's Ministerial Conference in December 2017, Members had committed to "continue to engage constructively in the fisheries subsidies negotiations, with a view to adopting, by the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU-fishing." Throughout the course of 2018, the United States participated actively in the WTO Rules Negotiating Group where the negotiations are taking place and continued to press for ambitious disciplines on fisheries subsidies, which would apply to all Members regardless of development status, in particular those that are the largest producers, exporters and subsidizers of marine wild capture fisheries.

In 2018, USTR also participated in the implementation of a number of multilateral environmental agreements (MEAs) to ensure consistency with international trade obligations, including: the CITES, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as relevant regional fisheries management organizations. For example, USTR participated in the Basel Convention's Open Ended

Working Group (OEWG) meetings in September 2018, where discussions focused on addressing plastic wastes and recyclable plastic materials that have become particularly problematic for our oceans and marine environments.

## **E. TRADE AND LABOR**

The U.S. Government engaged with trade partners on labor rights in 2018 through the formal mechanisms of trade agreements and trade preference programs, as well as through country-specific initiatives, capacity building, and technical assistance. Throughout the year, labor issues were an aspect of trade and investment negotiations and dialogue with African, Asia-Pacific, Central Asian, Latin American, and European countries, including through trade agreement mechanisms, Trade and Investment Framework Agreements (TIFAs), and multilateral fora, such as the International Labor Organization (ILO), the Asia-Pacific Economic Cooperation (APEC) Forum, the Association of Southeast Asian Nations (ASEAN), and the Organization for Economic Co-operation and Development (OECD).

The United States has used available trade policy tools to improve protections for labor rights in trading partners, including by terminating trade preference program benefits for Mauritania effective January 1, 2019 after that country made insufficient progress towards combating forced labor, and by working closely with the governments of Mexico and Honduras regarding extensive legislative reform initiatives in those countries to improve respect for labor rights. Labor reform commitments by Mexico were a critical aspect of concluding the United States-Mexico-Canada Trade Agreement (USMCA) (*for additional information, see Chapter II.A.1*).

The Administration also has supported the Trade Adjustment Assistance (TAA) program, which assists American workers adversely affected by global competition and helps to ensure that they are given the best opportunity to acquire skills and credentials to get good jobs, as an essential component of trade policy (*for additional information, see Chapter III.A.10*).

### **1. Bilateral Agreements and Preference Programs**

#### **Free Trade Agreements**

Since 2007, U.S. trade agreements have included obligations to ensure the consistency of each party's labor laws with fundamental labor rights as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. These agreements include obligations not to fail to effectively enforce each party's labor laws and not to waive or derogate from those laws in a manner affecting trade or investment. The agreements also provide for the receipt and consideration of submissions from the public on matters related to the labor chapters, which can be submitted through the Department of Labor's (DOL) Bureau of International Labor Affairs (*for additional information on public submissions and the process for filing, visit <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>*).

As part of the ongoing effort to monitor and implement existing U.S. trade agreements, the United States has worked with trading partners to advance respect for labor rights through technical cooperation and other efforts, including in the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) countries, Morocco, Jordan, Peru, Korea, Mexico, Panama, and Colombia (*for additional information, see Chapter II.B*). In 2018:

- U.S. Government officials continued to urge the government of Bahrain to address labor rights concerns related to freedom of association and employment discrimination highlighted during consultations that began in 2013 under the Labor Chapter of the United States-Bahrain Free Trade Agreement.

- U.S. Government officials continued to work closely with Jordanian officials during the year to monitor implementation of labor reforms planned under the auspices of the United States-Jordan Free Trade Agreement, particularly with respect to protections from anti-union animus, sexual harassment and discrimination in the workplace, and new procedures to oversee the health and safety of workplace dormitories.
- USTR officials met with government officials and stakeholders to follow up on the labor commitments under the United States-Colombia Trade Promotion Agreement (CTPA), and the United States-Peru Trade Promotion Agreement (PTPA). In particular, discussions were held with respect to commitments by these trading partners to protect the rights of freedom of association and collective bargaining for workers that are subcontracted or hired under temporary contracts (*for additional information see Chapter II.A.2*).
- USTR and DOL officials also met with Korean officials under the United States-Korea Free Trade Agreement (KORUS) to discuss Korea's compliance with labor rights obligations and explore avenues for collaborating to advance the objectives of the KORUS.

### **NAFTA Renegotiation**

As part of the Administration's successful effort to renegotiate the NAFTA and conclude the United States-Mexico-Canada Agreement (USMCA), USTR, the DOL and the Department of State (State) have worked closely with Mexican trade and labor officials to ensure effective implementation of a landmark constitutional reform initiative that the government of Mexico introduced in 2016 to mandate the creation of new labor courts as part of a complete overhaul of Mexico's system of labor justice administration. In 2017, Mexico's congress enacted the constitutional reforms after they were approved by a majority of Mexican states. In December 2018, Mexico introduced a comprehensive legislative package to implement the constitutional reforms. The legislation includes detailed provisions intended to address longstanding concerns regarding the approval and registration of collective bargaining agreements, as well as the voting process to decide union representation challenges. The Trump Administration also negotiated specific commitments in the USMCA Labor Chapter, some of which are included in a standalone Annex on Worker Representation in Collective Bargaining in Mexico, to ensure that Mexico enacts and implements legislation that strengthens its labor standards, bolsters its system of labor justice administration, and provides for the effective recognition of collective bargaining rights. USTR also coordinated discussions between officials from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and Mexican customs agencies on the provisions requiring NAFTA countries to implement measures to prohibit trade in goods produced by forced labor. The Administration will continue to monitor Mexico's labor reform effort, the status of the December 2018 legislative package, and its implementation to ensure that Mexico fulfills its USMCA commitments so that American workers and businesses truly benefit from the Agreement (*for additional information, see Chapter II.A.1*).

### **Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)**

In 2018, the United States continued to monitor and assess progress towards addressing the labor concerns in the Dominican Republic identified in a 2013 public report issued by the DOL. These concerns were initially raised in a public submission received in 2011. The United States has engaged with the government of the Dominican Republic as well as with the sugar industry and civil society on the concerns identified in this report, including through multiple visits to the Dominican Republic, most recently in April 2018. In May 2018, the DOL, in consultation with USTR and State, issued a public update on its findings, noting a number of positive steps taken by the government and by industry designed to address the labor issues identified in the 2013 report. The report also identified areas for additional progress. The United States continues to discuss the 2013 report's recommendations for improving labor inspections with the Ministry of Labor of the Dominican Republic (*for additional information, see Chapter II.B.3*).



In February 2015, the DOL released a report on labor issues in Honduras based on a submission by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and 26 Honduran labor unions, pursuant to the CAFTA-DR Labor Chapter. The report addressed allegations that the government of Honduras failed to effectively enforce its labor laws, and included recommendations for actions by the government of Honduras to improve enforcement efforts in the agriculture, manufacturing, and port sectors. Pursuant to the report's recommendations, in December 2015, the United States and Honduras signed a labor Monitoring and Action Plan (MAP) that includes comprehensive commitments by Honduras to address legal and regulatory frameworks for labor rights, undertake institutional improvements, intensify targeted enforcement, and improve transparency. The GOH took additional steps to implement the MAP in 2018, which were highlighted in a public update of progress issued by the DOL in October 2018 (*for additional information, see Chapter II.B.3*).

### **United-States-Colombia Trade Promotion Agreement**

In 2018, the United States worked closely with Colombia to follow up on DOL's report on a public submission under the Labor Chapter of the United States-Colombia Trade Promotion Agreement and to continue implementation of the Colombian Action Plan Related to Labor Rights (Action Plan), which focuses on improving protection of labor rights, preventing violence against trade unionists, and prosecuting perpetrators of such violence. The submission, filed in 2016, alleged that the government of Colombia failed to effectively enforce its labor laws and to adopt and maintain laws that protect fundamental labor rights. The DOL issued a public report based on its review in January 2017, which recommended undertaking consultations between the contact points designated under the Labor Chapter to address concerns raised in the report, including with respect to labor inspections and improving labor law enforcement. The DOL issued a review statement on the submission in January 2018 noting the steps the Colombian government has taken to improve labor law enforcement and address areas of concern raised in both the submission report and the 2011 Action Plan. The Ministry of Labor levied large fines against various employers found to have violated laws against illegal subcontracting (including some employers in the five priority sectors) and advanced the implementation of an electronic case management system, which modernizes the national system for tracking labor complaints and the application and collection of fines; and, the Prosecutor General's Office (Fiscalía) completed numerous conciliations in criminal cases of employers infringing on certain workers' rights. The DOL and USTR held two consultations of the contact points in Bogotá in February and December 2018. During the December trip to Colombia, USTR met with the Vice Minister of Labor, as well as other high-level government officials and various stakeholders, to discuss the progress and remaining concerns with labor law enforcement. Officials from USTR and the DOL also met with the Deputy Attorney General and her team to discuss ongoing initiatives to prosecute perpetrators of violence against trade unionists (*for additional information, see Chapter II.B.5*). USTR and DOL will continue to engage closely with the government of Colombia to ensure continued progress on labor rights issues.

### **United States-Peru Trade Promotion Agreement**

USTR and the DOL continued to engage with the government of Peru on concerns that were raised in a 2016 DOL public submission report under the United States-Peru Trade Promotion Agreement. The DOL's report on the submission recommended that the government of Peru take steps to address problems with temporary contracts in special export regimes, primarily textiles and agriculture, where there were ongoing concerns that employers use these arrangements to undermine the free exercise of labor rights. In April 2018, the DOL issued a review statement that indicated the government of Peru had taken positive steps to address some of the concerns in the submission, including by hiring over 100 new labor inspectors and opening four new regional offices for labor inspections. USTR and DOL officials held a videoconference with trade and labor officials in November 2018 to discuss Peru's efforts to increase resources for labor

inspections and enforcement initiatives in special export sectors and throughout the country (*for additional information, see Chapter II.B.10*).

### **Preference Programs and Other Bilateral Agreements**

U.S. trade preference programs, including the Generalized System of Preferences (GSP), the Africa Growth and Opportunity Act (AGOA), and trade preferences for Haiti and Nepal, require beneficiaries to meet statutory eligibility criteria pertaining to worker rights and child labor. This section describes labor engagement under these programs as well as other bilateral trade mechanisms.

During 2018, USTR implemented a new triennial assessment process of the country eligibility for all GSP beneficiaries, including eligibility criteria for worker rights. USTR assessed countries in Asia during 2018. USTR also continued its engagement with governments and stakeholders involved in ongoing GSP worker rights reviews, including Bolivia, Georgia, Iraq, Kazakhstan, Thailand, and Uzbekistan. USTR also announced it would open a new worker rights review in 2018, based on a petition submitted by the AFL-CIO, relating to worker rights in Kazakhstan. The U.S. Government has provided technical assistance to a number of countries to help them address the concerns raised under GSP worker rights reviews.

For example, the DOL provided technical assistance to Georgia during the year to help re-establish a labor inspectorate in that country and funded a labor rights program in Uzbekistan to help address forced and child labor in the cotton sector, and promote the fundamental principles and rights at work. During 2018, USTR and DOL engaged closely with both countries, noting some progress in the effort to re-establish a labor inspectorate in Georgia, and seeing firsthand the significant advances made by the government of Uzbekistan to eradicate forced child labor and combat forced adult labor in the fall cotton harvest. Following USTR and DOL's engagement with the government of Bolivia throughout 2018, the government publicly accepted and implemented a ruling by its Constitutional Court voiding a problematic child labor law and incorporating international labor standards into the domestic legal framework. In December 2018, the government formalized the legal changes by amending the law. The government of Iraq continued inclusive and constructive consultations with domestic stakeholders throughout the year to reform a trade union law, building on the recent passage of a new labor law. The new labor law allows for collective bargaining, including for workers without a union; allows workers to affiliate with a workers' organization of their choice; further limits child labor; and provides improved protections against discrimination at work and, for the first time, against sexual harassment at work. By the end of 2018, the government of Thailand had yet to enact planned reforms to its labor laws to help address concerns identified in the GSP review. Kazakhstan began consultations, during the year, with domestic stakeholders and the ILO, on reforms of its labor law following problematic amendments enacted in 2014 and the subsequent arrests of independent trade union leaders (*for additional information, see Chapter III.A.11*).

U.S. engagement with Bangladesh, which was suspended from GSP eligibility in 2013 based on worker rights concerns, continued under Bangladesh's GSP Action Plan. At the time of Bangladesh's GSP suspension, USTR provided Bangladesh with an Action Plan that could provide a basis for the restoration of benefits, if implemented adequately by the government. At the same time, the United States also joined the Sustainability Compact, a public declaration of Bangladesh's commitments that now includes the governments of Bangladesh, the European Union, the United States, Canada, and the ILO, that was substantially similar to the GSP Action Plan. In June 2018, USTR led an interagency delegation to Brussels for discussions of the multi-party Sustainability Compact, at which Compact parties and public stakeholders assessed the pace of progress towards Compact goals. Similarly, USTR led bilateral interagency discussions with Bangladesh regarding progress towards steps identified in the GSP Action Plan at the September 2018 Trade and Investment Cooperation Forum Agreement (TICFA) in Washington, D.C. During 2018, Bangladesh continued to prepare legislation that would lower the threshold for the registration of worker organizations, but had not enacted those reforms by the end of the year. Continued reports of

harassment and obstacles in the union registration process pointed to continued challenges in implementation and enforcement. USAID continued to support multiple initiatives designed to strengthen workers' ability to organize and register unions under the current legal framework, while the ILO and other donors continued to work to strengthen government capacity to register independent unions and to enforce labor protections. USTR also continued to coordinate with the two private sector safety initiatives, the Alliance and the Accord, in their efforts to ensure worker safety and factory remediation. During 2018, the last year of their initial five-year commitment, both initiatives made significant progress ensuring the safety of factories in their supply chains. However, the government did not agree to extend the registration of either organization at the end of 2018. The Alliance formally ended operations in 2018. The status of the Accord at year's end remained unclear as the organization continued to seek authority from the government to continue its work on remediation of factory safety standards (*for additional information, see Chapter III.A.11*).

The United States continued to engage with African countries on AGOA worker rights criteria through the AGOA annual eligibility review and bilateral and multilateral fora. In addition, a labor session on maximizing trade through improved workforce development and labor rights was part of the annual AGOA Forum held in Washington, D.C. in July 2018. At the close of 2018, the President announced the termination of Mauritania's AGOA eligibility, effective January 1, 2019, due to insufficient progress towards combating forced labor, particularly hereditary slavery (*for additional information, see Chapter III.A.11*).

Pursuant to requirements of the Haitian Hemispheric Opportunity through the Partnership Encouragement Act of 2008 (HOPE II), producers eligible for duty-free treatment under HOPE II must comply with core labor standards. The DOL, in consultation with USTR, is charged with publically identifying noncompliant producers on a biennial basis and providing assistance to such producers to comply with the standards. In addition, the DOL provides support to at-risk producers to help ensure that they do not fall out of compliance. A new biennial reporting period started in 2018, during which the DOL continued to provide support to at-risk producers. During the year, the DOL worked with several producers to address concerns related to industrial relations and sexual harassment in order to ensure continued compliance with HOPE II labor requirements. USTR and the DOL also continued to work closely with the government of Haiti, the ILO, and other U.S. Government agencies on implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program to monitor factories' compliance with core labor standards (*for additional information, see the 2018 USTR Annual Report on the Implementation of the TAICNAR program*).

USTR also engaged with several countries in 2018 on labor issues in the context of TIFA meetings and other bilateral trade mechanisms. For example, in November 2018, USTR and DOL officials met with the government of Nepal as part of the United States-Nepal TIFA to discuss the implementation of recent labor reforms, which are relevant to Nepal's eligibility under the Nepal Trade Preference Program. In May, USTR officials requested updates on labor law reforms during the United States-Egypt TIFA in Cairo. TIFA discussions during the year with Armenia, Algeria, and Thailand, further highlighted the importance of ensuring that labor laws fully protect internationally recognized worker rights and that government agencies have the capacity to enforce domestic labor laws. USTR also led bilateral discussions on labor rights concerns with Kazakhstan and Uzbekistan on the margins of the 2018 United States-Central Asia TIFA Council meeting.

The United States and China continued to exchange information on labor and employment issues in 2018. Throughout the year, the DOL and the government of China explored ways to improve the protection of workers' health and safety, especially in the mining sector, and the DOL also engaged directly with the Chinese coal mining industry to discuss the implementation of new standards designed to reduce workers' exposure to pneumoconiosis.

The Department of State hosted the twenty-second meeting of the United States-Vietnam Human Rights Dialogue in May 2018 in Washington, D.C., at which USTR, the DOL, and State discussed labor law reforms with Vietnam's Ministry of Labor, Invalids, and Social Affairs (MOLISA). Officials also discussed continuation of other U.S. Government-funded technical assistance projects for Vietnam to address consistency with international labor standards within its system of industrial relations more broadly. For example, the DOL is currently funding a \$4 million project to implement a New Industrial Relations Framework in Vietnam, which aims to support MOLISA in reforming laws. The project commenced activities in August 2018, and the government of Vietnam placed the revision of the Labor Code on the legislative agenda for the National Assembly for May and October 2019.

In 2018, USTR continued to coordinate U.S. Government engagement around the *Initiative to Promote Fundamental Labor Rights and Practices in Myanmar*, including through organization of the third multi-stakeholder meeting in Burma. The *Initiative*, an innovative multi-stakeholder effort launched by the government of Burma and USTR in 2014, aims to improve the respect for and protection of labor rights in Burma, with development assistance and advice from interested governments, worker organizations, business interests and civil society. In support of the *Initiative*, the DOL and State continued to implement technical assistance programs in 2018 aimed at assisting Burma's own comprehensive labor reforms and efforts to establish productive and cooperative industrial relations among social stakeholders.

## **2. International Organizations**

In 2018, the United States furthered its efforts to broaden international consensus on the relationship between trade and labor and the benefit of ensuring protection of labor rights as part of trade policy. In the Ministerial Declaration adopted during the World Trade Organization (WTO) Ministerial Conference in Singapore (1996) and reaffirmed in Ministerial Declarations adopted during Ministerial Conferences in Doha (2001) and Hong Kong (2005), WTO Members renewed their commitment to observe internationally recognized core labor standards and took note of collaboration between the WTO and the ILO Secretariats. USTR officials attended the ILO's International Labor Conference in June 2018, where various trade partner governments were called before the ILO to address gaps in implementing labor standards. USTR also met with ILO experts on labor inspection, gender, global supply chains, and migration.

The United States also continued to promote labor rights as one of the topics relevant to the effort to strengthen economic integration and to build high-quality trade agreements in the Asia-Pacific region. In APEC, the United States has continued to support inclusion by APEC economies of labor and social issues in the next generation of trade agreements. To support this goal, USTR has proposed a workshop to examine labor-related technical assistance and capacity building provisions in Regional Trade Arrangements/Free Trade Agreements. In ASEAN, USTR has engaged member states and stakeholders to promote future activities to strengthen prohibitions against human trafficking, particularly in the Southeast Asian fishing industry. USTR is supporting USAID in its significant efforts to address human trafficking in the illegal, unregulated, and unreported (IUU) fishing industry, in the context of work with ASEAN governments, industry, and other stakeholders. Through TIFAs with Southeast Asian Member States, as well as through the ASEAN Economic Ministers-United States Trade Representative (AEM-USTR) Consultations and ASEAN Senior Economic Officials-Assistant USTR (SEOMAUSTR) Consultations, USTR is exploring ways to strengthen collaboration and capacity in the region to address forced labor and human trafficking, along with protection of other fundamental labor rights. USTR continues to collaborate with the DOL and State to further these goals.

### **3. Trade Adjustment Assistance**

#### **Overview and Assistance for Workers**

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

The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015), Title IV of the Trade Preferences Extension Act of 2015 (Public Law 114-27) reauthorized the TAA Program. The TAA Program offers trade-affected workers opportunities to obtain the skills, credentials, resources and support necessary for in-demand jobs.

The TAA Program currently offers the following services to eligible workers: employment and case management services, training, out of area job search and relocation allowances, weekly income support through Trade Readjustment Allowances (TRA), ATAA/RTAA wage supplements for older workers, and a health coverage tax credit for eligible TAA recipients.

In 2018, \$667,142,000 was allocated to State Governments to fund aspects of the TAA program. This included \$397,860,000 for “Training and Other Activities”, which includes funds for training, job search allowances, relocation allowances, employment and case management services, and related state administration; \$242,600,000 for TRA benefits; and \$26,682,000 for ATAA/RTAA 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 (DOL). Three workers of a company, a company official, a union or a duly authorized representative, or the American Job Center operator or partner may file a petition with the DOL. In response to the filing, the DOL conducts an investigation to determine whether foreign trade was an important cause of the workers’ job loss or threat of job loss. If the DOL determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the firm to apply for TAA, the DOL will issue a certification. In FY 2018, an estimated 76,902 workers became eligible for the program.

The DOL administers the TAA Program through the Employment and Training Administration (ETA), with State Governments administering TAA benefits on behalf of the United States for members of TAA-certified worker groups. Once covered by a certification, individual workers apply for benefits and services through the American Job Center network. American Job Centers can be located on the Internet at <http://www.careeronestop.org/ReEmployment/>, or by calling 1-877-US2-JOBS. Most benefits and services have specific individual eligibility criteria that must be met, such as prior work history, unemployment insurance eligibility, and individual skill levels.

#### **Trade Adjustment Assistance for Farmers**

The Trade Adjustment Assistance for Farmers Program is authorized under Chapter 6 of Title II of the Trade Act of 1974, as amended, and was reauthorized by the Trade Preferences Extension Act of 2015 for FY 2015 through 2021. However, the Congress did not appropriate funding for new participants for FY 2018. As a result, the U.S. Department of Agriculture did not accept any new petitions or applications for benefits in FY 2018.

## **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). The Trade Preferences Extension Act, Title IV of the Act, entitled the "Trade Adjustment Assistance Reauthorization Act of 2015," authorizes the TAAF Program through June 30, 2022.

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 Commerce is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to EDA. EDA's regulations implementing the TAAF Program are codified at 13 CFR Part 315 and are available at: [https://www.eda.gov/pdf/EDAs\\_regs-13\\_CFR\\_Chapter\\_III.pdf](https://www.eda.gov/pdf/EDAs_regs-13_CFR_Chapter_III.pdf).

In FY 2018, EDA awarded a total of \$13 million 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 2018, EDA certified 82 petitions for eligibility and approved 98 adjustment protocols.

Additional information on the TAAF Program (including eligibility criteria and application process) is available at: <https://www.eda.gov/pdf/about/TAAF-Program-1-Page.pdf>.

## **F. SMALL AND MEDIUM-SIZED BUSINESS INITIATIVE**

USTR has implemented a Small Business Initiative to increase export opportunities for U.S. small and medium-sized enterprises (SMEs), and has expanded efforts to address the specific export challenges and priorities of SMEs and their workers in U.S. trade policy and enforcement activities. In 2018, USTR continued to engage with its interagency partners and with trading partners to develop and implement new and continuing initiatives that support small business exports.

U.S. small businesses are key engines for our economic growth, jobs, and innovation. USTR is focused on making trade work for the benefit of American SMEs, helping them take advantage of new markets abroad, access and participate in global supply chains, and support jobs at home. USTR seeks to level the playing field for American businesses by negotiating with foreign governments to open their markets and by enforcing our existing trade agreements to ensure a level playing field for U.S. workers and businesses of all sizes. USTR is working to better integrate specific SME issues and priorities into trade policy development, increase outreach to SMEs around the country, and expand collaboration and coordination with our interagency colleagues.

USTR is supporting efforts to help more SMEs reach overseas markets by improving data availability, leveraging new technology applications, and empowering local export efforts. USTR works closely with the U.S. Small Business Administration (SBA), the U.S. Department of Commerce, U.S. Department of Agriculture, and other agencies that help provide U.S. SMEs information, assistance, and counselling on specific export opportunities. In 2018, USTR undertook significant actions in support of our SME objectives.

## USTR SME-Related Trade Policy Activities

Tariff barriers, burdensome customs procedures, discriminatory or arbitrary standards, lack of transparency relating to relevant regulations, and insufficient intellectual property rights protection in foreign markets present particular challenges for U.S. SMEs selling abroad. Under the SME Initiative, USTR's small business office, regional offices, and functional offices are pursuing initiatives and advancing efforts to address these issues.

U.S. trade agreements, as well as other trade dialogues and fora, provide a critical opportunity to address specific concerns of U.S. SMEs and facilitate their participation in export markets. For example:

- The United States-Mexico-Canada Agreement (USMCA) recognizes the fundamental role of SMEs as engines of the North American economy. Mexico and Canada are the top two export destinations for U.S. SME goods. In 2016 (latest data available), nearly 82,000 U.S. SMEs exported \$51.2 billion in goods to Canada, and over 53,000 U.S. SMEs exported \$76.2 billion in goods to Mexico. For the first time, the USMCA includes a dedicated chapter on SMEs, as well as other key provisions supporting SMEs throughout the agreement. The SME chapter promotes cooperation among the Parties to increase SME trade and investment opportunities. It establishes information-sharing tools that will help SMEs better understand the benefits of the agreement and provides other information useful for SMEs doing business in the region. The chapter also establishes a committee on SME issues comprised of government officials from each country. Furthermore, the chapter launches a new framework for an ongoing SME Dialogue, which will be open to participation by SMEs, including those owned by diverse and under-represented groups. The Dialogue will enable participants to provide views and information to government officials on the implementation of the agreement, to help ensure that SMEs continue to benefit. Other provisions throughout the USMCA benefitting SMEs include customs and trade facilitation provisions to cut red tape and reduce costs and a new chapter on digital trade that contains the strongest provisions of any international agreement, including: 1) supporting Internet-enabled small businesses and electronic commerce exports; 2) protecting the intellectual property of innovators; 3) supporting cross border trade in services for small business; and 4) supporting small businesses through good regulatory practices to promote transparency and accountability when developing and implementing regulations.
- Launched in 2017, the United States-United Kingdom (UK) Trade and Investment Working Group explores ways to strengthen trade and investment ties and provide commercial continuity for U.S. and UK businesses, workers, and consumers as the UK leaves the EU. In March 2018, the United States and UK agreed to establish an ongoing U.S.-UK Small and Medium-Sized Enterprise Dialogue to promote collaboration on best practices, policies, and programs to support SME businesses and export opportunities. In 2018, three U.S.-UK SME Dialogues took place in Washington, D.C., London, and New York, bringing together hundreds of U.S. and UK SMEs with government officials from both countries to discuss ways to deepen trade and investment, identify resources to assist SMEs, and hear from SMEs on their specific challenges and opportunities when trading bilaterally. As a result of the SME Dialogues, the U.S. and UK Governments jointly released the guide to [Doing Business in the U.S. and UK: Resources for Small Business](#) as a key resource for SMEs seeking to benefit from U.S.-UK trade. The United States and UK also released IP toolkits for SMEs at: <https://www.uspto.gov/IPToolkit> and electronic commerce resource guides for SMEs at: <https://ustr.gov/sites/default/files/IssueAreas/Small-Business/SMEDoingBusinessUSandUK.pdf>.
- In February 2019, USTR published U.S. negotiating objectives for United States-United Kingdom negotiations, including SME objectives.

- In November 2018, the EU hosted the 9th U.S.-EU SME Workshop in Vienna, Austria during the Austrian presidency of the EU. The SME Workshop was convened by USTR, the U.S. Department of Commerce, and SBA on the U.S. side and the EU’s Directorate General for Trade and Directorate General for Internal Market, Industry, Entrepreneurship, and SMEs (DG-GROW) on the EU side, and included participation by U.S. SME stakeholders and members of Industry Trade Advisory Committee 9 (ITAC 9: Small and Minority Business Committee). Topics included trade barriers faced by SMEs, SME startups and international growth, and SME crowdfunding and financial technology (or “fintech”).
- In January 2019, USTR published U.S. negotiating objectives for United States-European Union negotiations, including SME objectives.
- In December 2018, USTR published U.S. negotiating objectives for the United States-Japan Trade Agreement negotiations, including SME objectives.
- In the Asia-Pacific Economic Cooperation (APEC) forum, APEC economies continue to advance initiatives to facilitate SME access to global markets, including in the digital economy, by enhancing the understanding of policy makers on the impact of forced localization requirements and blocking cross-border data flows on SMEs. The United States, through the APEC Alliance for Supply Chain Connectivity (A2C2), continued capacity building activities closely linked to the WTO’s Trade Facilitation Agreement, including assistance for economies to further simplify customs procedures and document requirements that will in turn benefit SMEs that often lack the resources necessary to navigate overly complex requirements to deliver their goods to overseas markets in the region. Economies also continue to update the APEC Trade Repository (APECTR) at <http://tr.apec.org> to help SMEs seeking information on tariff rates, customs procedures, and other information for doing business in APEC markets.
- In the WTO context, USTR is exploring the development of further work with other WTO Members on issues of interest to SME stakeholders, such as electronic commerce, transparency of regulatory processes, and implementation of trade facilitation measures.

### **USTR Interagency SME Activities**

USTR participates in the Trade Promotion Coordinating Committee’s (TPCC) Small Business Working Group, collaborating with agencies such as the U.S. Department of Commerce, SBA, the U.S. Department of State, the U.S. Export-Import Bank, and the U.S. Department of Agriculture to promote small business exports. The TPCC Small Business Working Group connects SMEs to trade information and resources to help them begin or expand their exports and take advantage of existing trade agreements. USTR is participating in the TPCC Small Business Working Group’s Digital Client Engagement (DCE) Task Force to improve interagency collaboration on digital outreach and engage potential small business exporters with online tools. USTR also participated in the USMCA Interagency Working Group convened by SBA’s Office of Advocacy under the Trade Facilitation and Trade Enforcement Act to: conduct outreach to SMEs in manufacturing, services, and agriculture and to prepare a report to Congress on the priorities, opportunities and challenges for SME exports in these markets.

### **USTR’s SME Outreach and Consultations**

In 2018, USTR participated in engagements around the country to hear from local stakeholders about the trade opportunities and challenges they face. On an interagency basis, USTR is working with the TPCC to improve trade information relevant for SMEs and highlight interagency programs to assist SMEs with their individual export needs.



USTR staff regularly consult with the Industry Trade Advisory Committee for Small and Minority Business (ITAC 9) to seek its advice and input on U.S. trade policy negotiations and initiatives, and meet frequently with individual SMEs and associations representing SME members on specific issues. USTR spoke at several SME events around the country and abroad in 2018 regarding the U.S. trade agenda, including: 1) the annual America's Small Business Development Center Conference in Washington, D.C.; 2) the Kentucky District Export Council meetings in Lexington, Kentucky and Paducah, Kentucky; 3) the Alabama International Trade Association; 4) the Export-Import Bank Regional Export Promotion Annual Conference; 5) U.S. Embassy Lisbon's International Women's Day Conference with women business owners and start-ups; 6) the National Foreign Trade Council (NFTC) Global Innovation Forum and the British-American Business Association in Washington, D.C. and New York; and 7) other events aimed at apprising small businesses of the Administration's trade agenda and encouraging them to begin or expand their exports.

## G. AGRICULTURE AND TRADE

The United States is the world's largest exporter and importer of food and agricultural products. U.S. agriculture has posted an annual trade surplus for well over 50 years. Agricultural exports support more than an estimated one million American jobs, with roughly 70 percent of these jobs in the non-farm sector, such as in processing and agricultural manufacturing. In 2017, agricultural domestic exports reached \$138 billion and created an estimated \$179 billion in additional economic activity, for a total economic output of \$317 billion.

While the United States is the fourth largest producer of food and agricultural products in the world, it is widely recognized as one of the most efficient producers. However, 2018 was a financially difficult year for America's farmers and ranchers. Low commodity prices combined with disruptions to export markets caused by unjustified, retaliatory tariffs on U.S. farm goods, resulted in an estimated farm income of \$66.3 billion (January to November 2018). With 20 percent of farm income derived from exports, opening export markets and ensuring that other countries abide by international trade obligations remains a top priority for the Administration.

### 1. Opening Export Markets for American Agriculture

Successful expansion of market opportunities abroad for U.S. food and agricultural products requires a whole-of-government approach. USTR, through the Trade Policy Staff Committee (TPSC), leads the U.S. Government's approach to develop and implement successful trade policy. U.S. regulatory agencies such as the U.S. Food and Drug Administration; U.S. Environmental Protection Agency; the Department of Commerce's National Oceanic and Atmospheric Administration; and the USDA Food Safety and Inspection Service, Animal and Plant Health Inspection Service, and Agricultural Marketing Service work together to ensure that American food and agricultural products are among the safest in the world. USTR works with USDA's Foreign Agricultural Service (FAS) and the U.S. Department of State and its embassies around the world to engage foreign governments to implement policies and regulations that are supported by science, are minimally trade distorting, and are consistent with international trade obligations.

Significant accomplishments opening and maintaining export markets in 2018 include:

**Ending Argentina's Ban on U.S. Pork, Pork Products, and Beef:** Following extensive U.S. Government engagement with Argentina led by President Trump, in 2018 Argentina opened its market to U.S. pork and pork products for the first time since 1992, and for U.S. beef for the first time since 2003. This decision

represents a potential \$10-million-per-year market for America’s pork producers, and up to \$5 million for U.S. beef.

**Ending Japan’s Ban on U.S. Lamb:** In July 2018, the Administration opened the Japanese market to U.S. exports of meat and meat products from sheep (including lamb) and goat for the first time in 14 years.

**Re-opening of Australian Market for U.S. Heat-Treated Beef:** In May 2018, after a 14-year ban, U.S. exporters gained access to Australia for U.S. exports of heat-treated beef products. The Administration continues to work to achieve access to Australia for fresh and frozen U.S. beef.

**Opening Morocco’s Market to U.S. Poultry and Beef:** In 2018, the United States and Morocco concluded the negotiations of export certificates for U.S. poultry and beef to Morocco, which opened Morocco’s market to these products. In August 2018, Morocco published the notice to importers and opened its market to U.S. poultry. On November 28, 2018, following negotiations with USTR and USDA, Morocco opened its market to high quality and standard quality beef from the United States.

**Easing of Restrictions to U.S. Turkey Exports to South Africa:** In January 2018, the United States and South Africa decided to allow the importation of U.S. turkey meat produced from turkeys grown from certain Canadian poults. South African imports of turkey meat have increased an estimated 12 percent in 2018 compared to 2017.<sup>3</sup>

**Namibia Opens Market for U.S. Poultry Meat and Poultry Products:** In May 2018, Namibia opened its poultry market to U.S. processed and unprocessed poultry products. The Namibian government also accepted regionalization in the United States in the event of highly pathogenic avian influenza (HPAI) outbreaks.

**U.S. Achieves Regionalization Agreement with Korea on HPAI:** In September 2018, the United States and Korea negotiated revised export certificates for poultry including a successfully completed protocol for Korea’s recognition of HPAI regionalization for U.S. poultry exports. In 2014, the last full year without any HPAI-related trade restrictions in place, Korea purchased \$122 million in U.S. poultry products, including eggs, making it the tenth-largest market for U.S. exporters.

**Preserving the Mexican Market for U.S. Shell Eggs:** USTR and USDA worked with the Government of Mexico to revise its new regulation on shell eggs to allow U.S. requirements for the washing of shell eggs. In 2018, the United States exported an estimated \$5.1 million of shell eggs (or more than 5.6 million dozens of eggs) to Mexico.

**U.S. Exports of Turkey to Malaysia Resume:** In September 2018, Malaysia’s Department of Veterinary Services approved a U.S. plant to export halal-certified frozen turkey to Malaysia, following a successful audit in August. This plant was the first U.S. turkey facility that was able to meet Malaysia’s strict halal requirements for animal slaughter after suspension of U.S. turkey exports to Malaysia last year. In 2016 (the last full year of approval for a U.S. plant), the United States exported approximately \$945,000 of turkey to Malaysia.

**The Philippines:** On October 22, 2018, following intensive consultations under the bilateral Trade and Investment Framework Agreement (TIFA), the United States and the Philippines announced progress on several trade issues, including four agricultural issues relating to tariff concessions, cold chain requirements, customs valuation, and geographical indications (GIs).

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<sup>3</sup> Annualized based on January through November 2018 data.

First, the Philippines recognized the U.S. interest in the extension of lowered Philippine tariff rates on certain agricultural products and committed to expeditious consideration of petitions for the extension of such rates. Second, the United States and the Philippines announced their intention to collaborate on the development of cold chain requirements and best practices in the Philippines, taking into account international guidelines and codes of practice regarding food hygiene adopted by the Codex Alimentarius Commission (Codex). Third, the Philippines confirmed its intent to enforce domestic laws, regulations, and policies, which require WTO-consistent customs valuation for duty-collection purposes. As part of this effort, the Philippine Customs Commissioner issued a directive to all Customs inspectors reiterating their obligation to comply with the existing legal requirements on customs valuation. Fourth, with respect to GIs, the Philippines committed to ensuring transparency, due process, and fairness, including by respecting prior trademark rights and not restricting the use of common names. In addition, the Philippines confirmed that it would not provide automatic GI protection, including to terms exchanged as part of a trade agreement. U.S. exports of food and agricultural products to the Philippines were valued at an estimated \$2.8 billion in 2018.<sup>4</sup>

## **2. Negotiating Trade Agreements for American Agriculture**

### **United States-Mexico-Canada Agreement**

On November 30, 2018, President Trump signed the United States-Mexico-Canada Agreement (USMCA), thereby establishing modernized and rebalanced rules of trade for North America that far surpass the NAFTA, set higher standards than the Trans-Pacific Partnership, and will better serve the interests of U.S. farmers, ranchers, businesses, and workers.

#### *Agriculture*

The North American Free Trade Agreement (NAFTA) did not provide market access for exports of U.S. dairy products into Canada. Under the USMCA, U.S. dairy products gain significant new access into the Canadian market. In addition, U.S. poultry and egg products gain improved access into Canada. In exchange, the United States will provide new access to Canada for dairy products, peanuts, processed peanut products, and a limited amount of sugar and sugar-containing products. The USMCA also includes strong rules for administration of tariff-rate quotas. All agricultural products that have zero tariffs under the NAFTA will remain at zero tariffs under the USMCA.

The USMCA requires Canada to change certain aspects of its milk-pricing policy, which is designed to decrease exports of U.S. dairy ingredients to Canada and increase Canada's exports of skim milk powder and other products to the world. The United States will carefully monitor Canada's implementation of the USMCA commitments once the Agreement is implemented. The USMCA contains other obligations to ensure the Parties avoid trade-distorting policies. Other provisions include that Canada will eliminate its discriminatory grading of U.S. wheat. Mexico agreed not to restrict market access of U.S. cheese due to the mere use of certain listed individual cheese names. The USMCA contains new and important provisions to support agricultural biotechnology in 21st century agriculture.

#### *Sanitary and Phytosanitary Measures*

The chapter on sanitary and phytosanitary (SPS) measures contains new and enforceable commitments that elaborate and expand on NAFTA and WTO obligations. The Parties will maintain their sovereign right to protect human, animal, and plant life or health, while also committing to avoid unnecessary barriers to trade. The Parties agreed to increase transparency in the development and implementation of SPS measures,

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<sup>4</sup> Annualized based on January through November 2018 data.

advance science-based decision making, and work together to enhance compatibility of SPS measures between them. Provisions enhance the processes and bases for conducting SPS audits; making equivalency and regionalization decisions; ensuring certification requirements are tied to risk; and enhancing information exchange and cooperation. The SPS Chapter also creates a new mechanism to resolve issues cooperatively by regulatory agency officials.

### **3. Bilateral and Regional Activities**

#### **United States-Argentina Trade and Investment Framework Agreement**

The United States and Argentina entered into a Trade and Investment Framework Agreement (TIFA) in March 2016. TIFA technical meetings were most recently held in Buenos Aires in October 2017 and in Washington, D.C. in October 2018. Both Council meetings were important venues for the United States to press for market access for U.S. pork and pork products (except offals) and beef products, which was ultimately granted for both product categories in November 2018. The United States also raised access for poultry products and horticultural exports to Argentina and will continue to use this venue to address barriers to exports of these products.

#### **United States-Australia Free Trade Agreement (AUSFTA)**

In 2018, following a November 2017 meeting of the AUSFTA Sanitary and Phytosanitary Committee, the United States and Australia continued to work together to make progress on the U.S. requests for pork, turkey meat, and other agricultural products. For pork, Australia asked for additional research on porcine reproductive and respiratory syndrome (PRRS), and both countries reviewed the OIE's PRRS guidance. Additionally, in 2018 USDA worked to provide data on apples to Australia while the U.S. turkey industry provided data on turkey meat. Australia is still reviewing this information. In 2019, the United States will continue to work with Australia to make progress on the U.S. requests for pork, turkey meat, and other agricultural products.

Australia's review of access for U.S. fresh and frozen beef is in its final stages. The completion of that process would give U.S. beef suppliers full access to the market.

#### **United States-Bahrain Free Trade Agreement**

In April 2018, USTR signed a Memorandum of Understanding (MOU) on Trade in Food and Agriculture Products with Bahrain. The MOU supports market certainty and enhanced cooperation on requirements for U.S. exports of food and agriculture products to Bahrain. Additionally, the MOU provides that Bahrain will continue to accept existing U.S. export certifications for food and agricultural products. It also provides for consultations to address any potential new requirements for U.S. food and agricultural exports to Bahrain. In 2018, the United States exported an estimated \$73.5 million of products covered by the MOU to Bahrain and an estimated \$2.9 billion in agriculture and fishery products to Gulf Cooperation Council (GCC) countries.<sup>5</sup> USTR continues efforts to work with the other five GCC Member States to conclude similar agreements on food safety and food standards.

#### **Dominican Republic-Central American Free Trade Agreement (CAFTA-DR)**

Agricultural export and investment opportunities with Central America and the Dominican Republic have continued to grow under the CAFTA-DR. All of the CAFTA-DR partners have committed to strengthening trade facilitation, regional supply chains, and implementation of the Agreement. Under the CAFTA-DR,

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<sup>5</sup> Annualized based on January through November 2018 data.

exports of import-sensitive agricultural products are admitted under tariff-rate quotas (TRQs). These quotas will continue to increase annually until all tariffs are eliminated by no later than 2025.

On July 24, 2017, the United States held poultry TRQ consultations and reached agreement with El Salvador, Honduras, and Nicaragua, establishing TRQs for chicken leg quarters beginning on January 1, 2018. Since that time, exports of poultry products increased an estimated 9 percent in 2018.<sup>5</sup>

Total 2018 agricultural exports to the CAFTA-DR region (WTO Ag Defined) were estimated to be over \$4 billion, up 13 percent over 2017.<sup>5</sup>

### **United States-Chile Free Trade Agreement**

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. With all tariffs phased out in January 2015, key U.S. farm products benefit from improved market access, including for pork, beef, soybeans, durum wheat, feed grains, potatoes, and processed food products such as french fries, pasta, distilled spirits, and breakfast cereals. U.S. exports of agricultural products to Chile totaled an estimated \$919 million in 2018.<sup>5</sup> Leading agricultural exports for 2018 include: poultry meat and egg products (\$101.5 million); feeds and fodders (\$103.6 million); wine and beer (\$98.8 million); pork and pork products (\$82.1 million); and, dairy products (\$71 million).<sup>5</sup> Issues impacting bilateral trade are addressed in the Agricultural and SPS Committees that were established under the FTA, as well as in the FTA Free Trade Commission, as needed. The SPS Committee most recently met in October 2018 via video conference, in the lead up to a meeting of the FTA Free Trade Commission in Washington, D.C. later that month. Issues of interest to the United States raised in the Committee included expanded access to Chile for U.S. blueberry exports from all of California and Pacific Northwest States, continued engagement on access to Chile for salmonid eggs, and collaboration with Chile under the International Plant Protection Convention to move toward electronic phytosanitary certificates.

### **United States-Egypt Trade and Investment Framework Agreement**

At the U.S.-Egypt TIFA Meeting follow-up session in May 2018, the United States raised agricultural issues related to Egyptian imports of U.S. poultry; Egyptian standards for animal drug residues in meat products; approvals for U.S. varieties of seed potatoes; and, Egypt's tariffs on U.S. apples, pears, tree nuts, and pet food. During the meeting, Egypt notified the United States that it began the process of organizing a new food safety authority under legislation passed in 2017. U.S. food safety regulatory agencies and USTR have begun work and discussions with the Egypt on the formation of the new authority and ways to ensure that regulations for food produced and imported in Egypt utilize scientific, risk-based approaches, and adhere to international standards and guidelines.

### **United States-Israel Agreement on Trade in Agricultural Products**

The United States-Israel Free Trade Agreement entered into force in 1985 and was the United States' first FTA. It continues to serve as the foundation for expanding trade and investment between the United States and Israel by reducing barriers and promoting regulatory transparency.

The FTA's Joint Committee (JC) is the central oversight body for the FTA. At the February 2016 JC meeting, Israel proposed resuming negotiations on a permanent successor agreement to the current United States-Israel Agreement on Trade in Agricultural Products (ATAP). The first round of negotiations was held in November 2018 and will continue in 2019.

In 2018, estimated U.S. agricultural exports (WTO Ag defined) to Israel totaled over \$598 million, an increase of 23 percent over 2017. Estimated top agricultural product exports were corn (\$138 million),

distiller's dried grains with solubles (DDGS) (\$50 million), corn products (\$38.2 million), and walnuts (\$31.2 million).<sup>6</sup>

### **United States-Korea Free Trade Agreement**

The U.S.-Korea Free Trade Agreement (KORUS) has been an economic boon to U.S. agricultural exporters since it entered into force in March 2012. U.S. exports of agricultural products to Korea totaled an estimated \$7.8 billion in 2018, making Korea our 5th largest agricultural export market.<sup>6</sup> Estimated leading agricultural exports include: beef and beef products (\$1.7 billion), corn and corn products (\$1.6 billion), fresh fruit (\$587 million), pork and pork products (\$596 million), and food preparations (\$416 million). Exports of U.S. beef to Korea have soared from \$539 million in 2012, when KORUS entered into force, to the record \$1.2 billion worth of exports in 2017, making Korea the second largest export destination for U.S. beef, behind only Japan. However, various issues impede the export of other U.S. agricultural products, particularly for exports of potatoes, apples, pears, and other horticultural products. The United States engages extensively with Korea on a regular bilateral basis through the WTO, and in annual meetings of the SPS and Agriculture Committees established by KORUS, in efforts to align biotechnology policies and pesticide maximum residue limits and to resolve SPS barriers to trade. The two Committees met most recently in Washington, D.C. in November 2018, and made substantive progress on a variety of these issues.

### **United States-Morocco Free Trade Agreement**

At the U.S.-Morocco FTA Joint Committee and the Agriculture and SPS Subcommittee meetings held in October 2017, Morocco signaled its willingness to resolve agricultural market access issues that had been outstanding since the FTA entered into force on January 1, 2006. As a result, the United States and Morocco negotiated export certificates for U.S. beef and poultry and opened the market for both products in 2018. Morocco also committed to accelerate the tariff phase out of approximately 40 tariff lines of wheat, beef, and poultry products in cases where Morocco was applying a lower duty to EU products. Finally, Morocco agreed to improve access to its TRQ for common wheat by increasing tenders and improving the administration of the TRQ.

### **United States-Panama Trade Promotion Agreement**

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. Under the TPA, nearly half of U.S. agricultural exports immediately became duty free, with most remaining tariffs to be phased out within 15 years. Tariffs on a few of the most sensitive agricultural products will be phased out in 18 to 20 years. Following the first tariff reduction under the TPA on October 31, 2012, subsequent tariff reductions occur on January 1 of each year; the seventh round of tariff reductions took place on January 1, 2018.

The United States and Panama continued to work cooperatively during 2018 to continue to implement the provisions of the TPA and to address issues of concern that arose during the year. Notably, a draft bill, No. 680, passed by the National Assembly of Deputies, purported to protect local agricultural production and stabilize the sector by prohibiting any imports of milk, cheese, and meats for 12 months. USTR expressed its concerns with the draft bill to Panama's president. President Varela subsequently vetoed the bill on November 20, 2018.

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<sup>6</sup> Annualized based on January through November 2018 data.

The United States estimated 2018 agricultural exports to Panama totaled over \$650 million, up 5 percent from 2017. Estimated top agriculture exported products include food preparations (\$110 million), soybeans and soy products (\$93.3 million), and corn and corn products (\$83.2 million).<sup>7</sup>

### **United States-Peru Free Trade Agreement**

The United States-Peru Free Trade Agreement (PTPA) entered into force in February 2009. More than two-thirds of current U.S. farm exports became duty-free immediately after the Agreement went into force. Tariffs on most U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 17 years. U.S. exports of agricultural products to Peru totaled an estimated \$1.3 billion in 2018.<sup>7</sup> Estimated leading agricultural exports include: corn and corn products (\$562 million), soybeans and soybean products (\$240 million), cotton and cotton products (\$102 million), wheat and milled wheat products (\$54 million), and dairy products (\$48 million). Issues impacting bilateral trade are addressed in the Agricultural and SPS Committees that were established under the PTPA, as well as in the PTPA Free Trade Commission, as needed. The Agriculture Committee meets annually and the SPS Committee meets twice per year, unless both parties agree otherwise. The SPS Committee most recently met in September 2018 in Lima. The United States received clarification from Peru on efforts to modernize its food safety system and update certificate requirements for imports from the United States in order to avoid disruptions to trade as these efforts advance. The United States also raised concerns with Peru's longstanding moratorium on the use of biotechnology for cultivation in Peru and offered technical assistance to develop a science-based regulatory framework for biotechnology as the moratorium nears its conclusion in 2021.

## **4. Cross-Cutting SPS Initiatives and Issues**

U.S. agricultural productivity and efficiency, as measured by agricultural total factor productivity, is among the highest in the world. This productivity is, in large part, determined by how well producers manage current technology. Continued adoption of technological progress by U.S. agricultural producers is, therefore, a vital element in maintaining U.S. global competitiveness. Accordingly, a cornerstone of U.S. trade policy is to promote the adoption by our trading partners of transparent, predictable and risk-appropriate regulatory approaches that are based on science. This section describes initiatives undertaken in several international and regional fora to advance this objective.

### **WTO SPS Committee**

The WTO SPS Committee provides a forum for Members to discuss specific trade concerns (STCs); to share experiences on the implementation of the SPS Agreement; and, to develop initiatives and recommendations to strengthen the implementation and operation of the SPS Agreement. The Committee meetings also provide the opportunity for informal side discussions among Members to socialize new ideas and gain support for U.S. positions. Every four years, the SPS Committee undertakes a comprehensive review of the operation and implementation of the SPS Agreement and develops recommendations to strengthen its operation and implementation in specific ways. These reviews can provide an important opportunity to step back from the day-to-day specific trade irritants and to reflect collectively on more systemic issues.

In 2018, the SPS Committee launched its Fifth Review of the operation and implementation of the SPS Agreement ([G/SPS/W/296/Rev.1](#)). To advance work under the Fifth Review, the United States has worked within several coalitions to advance U.S. agricultural trade priorities. First, the United States joined with 17 other Members on a submission containing several recommendations to advance trade facilitative work relating to the setting and adoption of pesticide residue levels ([G/SPS/W/292/Rev.4](#)). Using the fall

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<sup>7</sup> Annualized based on January through November 2018 data.

armyworm (FAW) in Sub-Saharan Africa as a case study, the United States also worked with five other Members on a joint submission to enable greater access by farmers to tools and technologies through an examination of options to streamline regulatory approaches at the national and regional level ([G/SPS/W/305](#)). The United States collaborated with the European Union and Brazil to advance implementation of obligations in the SPS Agreement on regionalization ([G/SPS/W/303](#), [G/SPS/W/298](#) and [G/SPS/W/308](#)). Lastly, the United States joined with ten African countries on a submission to strengthen coordination mechanisms on SPS issues at the national level that can enable effective engagement at the regional and international level ([G/SPS/W/297](#)). Additional details on these initiatives are provided below. Further information on the WTO SPS Committee can be found in the section of this report on WTO Committees.

### **Pesticide Maximum Residue Levels (MRLs)**

At the WTO Eleventh Ministerial Conference (MC11) held in December 2017, the United States worked with 16 other Members to issue a Joint Statement on Trade in Food and Agricultural Products ([WT/MIN\(17\)/52](#)). The Joint Statement called out the need to implement science-based regulatory approaches to enable farmers to have greater access to safe tools and technologies to support food security in the coming decades. To this end, the signatories endorsed a set of recommendations to address trade concerns relating to missing and misaligned MRLs. Building on the Joint Statement, in February 2018 the United States participated in an international discussion of trade-enabling solutions to missing MRLs. The discussion was hosted by Canada and focused on developing specific initiatives, including introducing the concept of “parallel reviews” in the Codex Committee on Pesticide Residues. Further, in June 2018, 18 Members put forward recommendations for adoption by the SPS Committee in its Fifth Review ([G/SPS/GEN/292/Rev.4](#)).

The Joint Statement also reaffirmed the central role of risk analysis to assess, manage, and communicate risks of concern in order to protect public health, while enabling the safe use of pesticides and facilitating trade in agricultural products. Throughout 2018, the Joint Statement signatories continued to advocate in the SPS Committee that all WTO Members eschew hazard-based approaches to pesticide regulation and ensure that the scientific basis of pesticide regulation is sound. To this end, the United States convened a discussion with a range of Members on the relation of the European Union’s hazard-based approach to endocrine disruptors to the obligations of the SPS Agreement to base SPS measures on risk and to the scientifically sound approach taken by Codex. In 2019, the United States intends to deepen international discussions on trade concerns of U.S. agricultural producers related to missing and withdrawn MRLs.

### **Regionalization**

Another trade policy priority for the U.S. agricultural community is to strengthen implementation of the SPS Agreement’s obligations on regionalization. A key objective is to open markets for U.S. agricultural exports through the recognition of the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in the legal, institutional and procedural frameworks of our trading partners. To advance this objective, the United States brought a successful challenge against India regarding its ban on U.S. poultry after an avian influenza outbreak. The WTO found that the Indian measures were inconsistent with Articles 6.1 and 6.2 of the SPS Agreement, because India did not recognize the concept of disease-free areas and areas of low disease prevalence through a practice of or process for receiving a claim from the United States, and did not adapt its measure to the relevant SPS characteristics of the areas based on evidence provided by the United States to objectively demonstrate its disease status. (*See Section V.H Dispute Settlement Understanding of this report for more information on the dispute, India – Measures Concerning the Importation of Certain Agricultural Products from the United States (DS430).*)



To facilitate a broader understanding of the important findings in these disputes, as well as to share successes in the practical application of IPPC and OIE standards through the establishment of regulatory frameworks and processes, in 2017 and 2018 the United States collaborated with the European Union on regionalization ([G/SPS/W/293](#) and [G/SPS/GEN/1593](#)). In response, the Committee held a thematic session in July 2017 on implementation of OIE standards on animal diseases and another in February 2018 on implementation IPPC standards on pest-free areas.

Building on the issues raised in these thematic sessions, the United States submitted a proposal under the Fifth Review urging the Committee to undertake concrete activities and more focused areas of discussion that could contribute to Members' ability and preparedness to strengthen implementation of Article 6. The proposals offered six actions to the Committee for consideration, including developing case studies of successful regionalization efforts by developing countries and intensifying peer-to-peer exchange at the regional level.

### **Agricultural Biotechnology**

U.S. farmers are among the 17 million farmers worldwide to cultivate the products of agricultural biotechnology, such as genetic engineering (GE). Despite broad scientific consensus on the safety of commercially grown GE crops as well as the benefits to consumers, farmers, and the environment, trade in the products of agricultural biotechnology continues to face significant unwarranted barriers in markets around the world. In particular, excessive delays in approvals and cultivation bans are common in many markets around the world. In the WTO, as well as other international and regional fora, the United States continues to advocate for the transparent development of risk-appropriate and science-based measures as the framework to facilitate trade and to enable improved access by agricultural producers to safe tools and technologies.

In 2018, the United States, along with Brazil, Kenya, Madagascar, Paraguay, and Uruguay, submitted a joint proposal to the SPS Committee under its Fifth Review to develop a case study on FAW, an invasive and destructive pest originating in the Americas new to Sub-Saharan Africa, as well as to India and Sri Lanka. The case study would elaborate concepts used by Members to streamline regulatory approval procedures consistent with high levels of consumer and environmental protection. Such a menu of options could then be available to national and regional authorities as they consider ways to enable greater access by their producers to tools and technologies to reduce the impact of this scourge on food security and trade. In March 2019, the SPS Committee will hold dedicated discussions of the joint proposal, including a session with national and international experts.

In addition, in 2018 the United States provided leadership in the SPS Committee on discussions on applications of precision breeding tools, such as CRISPR, for agricultural innovation. The United States worked with Argentina and other countries in meetings of the Inter-American Institute for Cooperation on Agriculture (IICA), the OECD and APEC throughout 2018 to develop an international statement. In November, Argentina, supported by the United States and 11 other Members, presented the international statement ([G/SPS/GEN/1658/Rev.3](#)) to the SPS Committee with the aim of launching a forward-looking discussion on how to support policies that enable applications of innovation, such as genome editing, to improve agricultural productivity and sustainability. The primary objective is to coordinate efforts to ensure that the regulatory approaches for techniques such as genome editing are scientifically based and internationally harmonized. In 2019, the United States expects Members to continue to exchange information and experiences on this important new topic in the Committee.

The United States continues to use the formal meetings of the SPS Committee, as well as bilateral meetings, to raise concerns on excessive delays in China's and the European Union's regulatory approval process for

biotechnology products. The United States will monitor closely developments in approvals by China and the European Union.

### **Science-Based Regulatory Approaches**

The United States continues to raise issues of concern with non-science based approaches taken by some Members. In 2018, the United States raised specific concerns at the SPS Committee related to HPAI restrictions and hazard based assessments, such as those taken by the European Union on endocrine disruptors and pesticide MRLs.

In 2019, the United States expects the SPS Committee to deepen its discussion of scientific justification in risk assessments in its Fifth Review based on a proposal by Brazil ([G/SPS/W/308](#)).

### **Codex Alimentarius Commission**

The United States has been a strong supporter of Codex, the international food safety standard-setting body under the United Nations Food and Agriculture Organization and World Health Organization (WHO), since the organization's inception in 1963. Throughout 2018, the United States maintained its leadership position in Codex by preventing countries from inserting non-science based provisions into Codex standard-setting processes and defending the autonomy of Codex against efforts by the WHO to dictate the work of Codex in directions not in keeping with the Codex dual mandate of protecting consumers and ensuring fair practices in food trade.

### **World Health Organization (WHO)**

Over the course of 2018, the United States made significant progress in engaging with the WHO and its Members to ensure that public health guidance is based on science. For example, regarding the work of the Independent High Level Commission on Non-communicable Diseases (HLC NCD), as a result of strong U.S. engagement, the HLC NCD report reflected U.S. priority elements, including the importance of engagement with the private sector to solve public health challenges. The United States also succeeded in negotiating a resolution on infant and young child nutrition that received consensus support in the World Health Assembly and pushed for the WHO to base its guidelines and recommendations on science and evidence.

## **5. Agriculture in the World Trade Organization**

### **Committee on Agriculture**

The WTO Committee on Agriculture (CoA) oversees the implementation of the Agreement on Agriculture (AoA) and provides a forum for Members to consult on matters related to provisions of the AoA. In many cases, the CoA resolves problems of implementation, permitting Members to avoid invoking dispute settlement procedures. The CoA also has responsibility for monitoring the possible negative effects of agricultural reform on least developed countries (LDC) and net food importing developing country (NFIDC) Members.

Since its inception, the CoA has proven to be a vital instrument for the United States to monitor and enforce the agricultural trade commitments undertaken by Members in the Uruguay Round. Under the AoA, Members agreed to provide notifications of progress in meeting their commitments in agriculture, and the CoA has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

### *Major Issues in 2018*

In 2018, the CoA held four formal meetings, in February, June, September, and November, to review progress on the implementation of commitments negotiated in the Uruguay Round. At the meetings, Members undertook reviews based on notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

In total, 262 notifications were subject to review during 2018, and the United States asked 140 questions (or sets of questions) to other Members. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States regularly raised points with respect to domestic support policies of other Members, including Brazil, Canada, Colombia, Ecuador, Egypt, the EU, India, the Kyrgyz Republic, Panama, the Philippines, the Russian Federation, and Thailand. In addition, the United States used the review process to question Canada's dairy and wine policies; India's export subsidies, domestic support measures, and quantitative restrictions on pulses; Brazil's Program for Product Flow (PEP–*Prêmio para Escoamento do Produto*) and Program for Producer-paid Equalization Subsidy (PEPRO–*Prêmio de Equalização pago ao Produtor*); Indonesia's import system for dairy products; Ghana's barriers to importation of poultry products; Thailand's import permit fees for meat; the Russian Federation's railway subsidies for exported grain; India's export subsidies for dairy products; and Pakistan's export subsidies for wheat.

The United States took steps to improve the transparency of Members' agricultural policies affecting trade, most notably by submitting the first-ever CoA notification under the AoA regarding another country's measures. Submitted in May 2018, this counter notification addressed India's market price support for rice and wheat. Later, in November 2018, the United States submitted another counter notification that addressed India's market price support for cotton, and another Member submitted one on India's market price support for sugar. These counter notifications spurred interventions by numerous Members and allowed for informative discussions regarding domestic support policies and commitments under the AoA. Finally, the United States encouraged countries, including China, Egypt, and Thailand, to bring their notifications up to date.

During 2018, the CoA addressed a number of other issues related to the implementation of the AoA, including convening the fifth annual dedicated discussion on export competition, as follow-up to the Bali and Nairobi Ministerial Decisions. The United States used this process to question the export credit programs of several countries, including Argentina, Brazil, Canada, China, the EU, India, Indonesia, Japan, Korea, Malaysia, the Russian Federation, Thailand, Turkey, and Vietnam; to question the agricultural exporting state trading enterprises of China, the Russian Federation and Vietnam; and to seek transparency on China's international food aid programs. In addition, the United States, along with several other Members, revised its export subsidy schedule to reflect the elimination of all export subsidies for agricultural products, as per the Nairobi Ministerial Decision. The United States participated in the ongoing review of the Bali Decision on Tariff Rate Quota Administration. The United States also engaged in the CoA's discussion of enhancing transparency and the CoA review process.

### *Prospects for 2019*

The United States will continue to make full use of the CoA to promote transparency through timely notification by Members and to enhance surveillance of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, and trade-distorting practices of WTO Members. The United States will also work with other Members as the CoA continues to implement Bali and Nairobi Ministerial Decisions. In addition, the United States will continue to work closely with the CoA Chairperson and Secretariat to find ways to improve the timeliness and completeness of notifications and

to increase the effectiveness of the Committee overall. The CoA will continue to monitor and analyze the impact of Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs in accordance with the AoA. The Committee expects to hold regular meetings in February, June, and October of 2019.

### **Committee on Agriculture, Special Session**

WTO Members agreed to initiate negotiations for continuing the agricultural trade reform process one year before the end of the Uruguay Round implementation period, *i.e.*, by the end of 1999. Talks in the Special Session of the Committee on Agriculture began in early 2000 under the original mandate of Article 20 of the AoA. At the Fourth WTO Ministerial Conference in Doha, Qatar in November 2001, the agriculture negotiations became part of the single undertaking, and negotiations in the Special Session of the Committee on Agriculture were conducted under the mandate agreed upon at Doha, which called for: “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.” This mandate, which called for ambitious results in three areas (so called “pillars”), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005. However, at the WTO’s Tenth Ministerial Conference in Nairobi, Kenya in December 2015, Members acknowledged in the Ministerial Declaration that there was no consensus to reaffirm Doha mandates. The Nairobi Ministerial package included a new decision adopted by WTO Ministers related to export competition, in which Members agreed to the elimination of all forms of export subsidies, as well as new disciplines on export financing and international food aid. At the WTO’s Eleventh Ministerial Conference, Members did not agree to a Ministerial Declaration or any decision on agriculture due to Members’ divergent views. The United States provided important leadership, calling for a reset of the agriculture negotiations in light of the fact that Members’ agriculture policies and agricultural trade had changed significantly over the previous 15 years.

#### *Major Issues in 2018*

In 2018, the United States focused agriculture discussions on efforts to improve transparency, particularly with respect to the fulfillment of notification requirements. The Chairperson of the Agriculture Negotiations held formal and informal meetings, including a series of monthly technical meetings, in order to enhance Members’ understanding of the relevant issues. The United States and other Members submitted a variety of papers, particularly in the areas of domestic support, market access, export restrictions, and agricultural safeguards. Members also engaged in technical discussions on special safeguard mechanisms, cotton trade, and public stockholding for food security. The United States continued to urge Members to approach the overall agriculture negotiations based on the need to identify the issues that farmers currently face in agricultural trade, including developments in global production and trade in agriculture over the past 15 years.

Building on the need for improved transparency of Members’ agriculture policies, the United States revised a transparency proposal presented to the General Council in 2017 with the aim of strengthening the effectiveness of the WTO review process, including with respect to commitments under the AoA. The revised proposal has gained the co-sponsorship of several Members including Argentina, Australia, Chinese Taipei, Costa Rica, the EU, and Japan.

#### *Prospects for 2019*

A major focus in 2019 will be to continue to enhance notifications and transparency to inform discussions about the problems that face agricultural trade today and to consider new ways forward in negotiations on agriculture. Members, including the United States, are expected to consider ways to make progress on

agricultural trade issues leading up to the Twelfth WTO Ministerial Conference, set to take place in Astana, Kazakhstan in July 2020.

## 6. Enforcing Trade Agreements for American Agriculture

Enforcement and monitoring cover a broad expanse of activities in support of American agriculture. Every day U.S. Government officials in Washington, D.C. and located around the world work to monitor other countries' compliance with trade obligations. Enforcement work is not just about pursuing dispute settlement at the World Trade Organization, but just as importantly involves working to have individual shipments released because of questionable inspections, to reviewing and commenting on proposed regulations that could impede trade, and advocating for elimination of unfair barriers.

When appropriate, the Administration will pursue formal dispute settlement proceedings in the WTO or under free trade agreements. In 2018, meaningful progress was made on a number of high profile and important disputes brought by the United States against other countries' unfair trade practices. These include:

- *Canada - Measures Governing the Sale of Wine in Grocery Stores* (DS531)
- *China - Domestic Support for Agricultural Producers* (DS511)
- *China - Tariff Rate Quotas for Certain Agricultural Products* (DS517)
- *China - Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States* (DS427)
- *European Union - Measures Concerning Meat and Meat Products (Hormones)* (DS26, DS48)
- *European Union - Measures Affecting the Approval and Marketing of Biotechnology Products* (DS291)
- *India - Measures Concerning the Importation of Certain Agricultural Products from the United States* (DS430)
- *Indonesia - Import Restrictions on Horticultural Products, Animals, and Animal Products* (DS455, DS465, and DS478)

*For further information on these and other WTO disputes, see Chapter III.B Section 301 and Chapter V.H Dispute Settlement Understanding.*

## H. Trade Capacity Building

Historically, the United States has provided training and technical assistance to help developing countries integrate into the global trading community. This section reports on these efforts.

### 1. The Enhanced Integrated Framework

The Enhanced Integrated Framework (EIF) is a multi-organization, multi-donor program that operates as a coordination mechanism for trade-related assistance exclusively to least-developed countries (LDCs), with the overall objective of integrating trade into national development plans and integrating LDCs into the multilateral trading system. Participating organizations include the WTO, World Bank, International Monetary Fund, United Nations Conference on Trade Development, United Nations Development Program, United Nations Industrial Development Organization, United Nations Office for Project Services, World Tourism Organization, and the International Trade Center. The mechanism incorporates a country-specific diagnostic assessment, the Diagnostic Trade Integration Study (DTIS), which aims to identify constraints to competitiveness, supply chain weaknesses, and sectors of greatest growth or export potential.

The DTIS includes an action plan, consisting of a list of priority reforms identified by the DTIS, which is offered to multilateral and bilateral donors. Project design and implementation can be accomplished through the resources of the EIF Trust Fund or through multilateral or bilateral donor programs in the field (as the United States does through its development assistance programs).

Phase One of the EIF (2009-2015) delivered 141 projects totaling \$140.7 million across 51 countries. Of these projects, 105 supported trade and development capacity while 36 aimed to help countries address supply-side constraints and to increase their ability to trade. Phase Two, which began in 2016, is intended to retain the core structure of Phase One while strengthening the EIF's efficiency and effectiveness. The United States has supported the EIF primarily through complementary bilateral assistance to EIF participating countries. The U.S. Agency for International Development (USAID) bilateral assistance to LDC participants supports initiatives both to integrate trade into national economic and development strategies and to address high priority capacity building needs designed to accelerate integration into the global trading system.

## **2. U.S. Trade-Related Assistance under the World Trade Organization Framework**

International trade can play a major role in the promotion of economic growth and the alleviation of global poverty. Trade capacity building (TCB) is intended to facilitate effective integration of developing countries into the international trading system and enable them to benefit further from global trade. The United States has historically promoted trade and economic growth in developing countries through a wide range of TCB activities. The United States also directly supports the WTO's trade-related technical assistance.

### **Global Trust Fund**

The United States has long supported the trade-related assistance activities of the WTO Secretariat through voluntary contributions to the Doha Development Agenda Global Trust Fund. Overall, the United States has contributed more than \$17 million since 2001, with an additional contribution of \$575,000 in October 2018. The United States served on the Steering Committee that evaluated WTO trade-related technical assistance from 2010 to 2015, including assistance funded by the Global Trust Fund, to assess effectiveness and efficiency.

### **WTO's Aid-for-Trade Initiative**

The WTO's 2005 Hong Kong Ministerial Declaration created a new WTO framework to discuss and prioritize Aid-for-Trade. In 2006, the Aid-for-Trade Task Force was created to operationalize Aid-for-Trade efforts and offer recommendations to improve the efficacy and efficiency of these efforts among WTO Members and other international organizations. The United States has been an active partner in the Aid-for-Trade discussion. (*For information on Aid-for-Trade, see Chapter V.J.2.*)

### **WTO and Trade Facilitation**

The United States has provided substantial assistance over the years in the areas of customs and trade facilitation, and remains committed to continued support in light of the WTO Trade Facilitation Agreement (TFA). Since the conclusion of the TFA negotiations in December 2013, U.S. assistance has helped prepare a number of countries to understand and implement the TFA. As of January 2019, USAID had supported more than 28 countries in conducting WTO Trade Facilitation Needs Assessments. Working with the Southern African Development Community, USAID assisted in creating a comprehensive trade facilitation

plan for the regional economic community. USAID provided assistance to a number of the National Trade Facilitation Committees that are required under the TFA, such as in Ghana, Guatemala, Honduras, Serbia, and Vietnam. Direct assistance in support of simplifying customs procedures also was provided in countries such as Chile, Cote d'Ivoire, Malaysia, Mozambique, Senegal, Ukraine, Vietnam, and Zambia. Several governments also have received assistance with implementing single window customs procedures throughout the Association of Southeast Asian Nations (ASEAN) and Southern Africa.

The Global Alliance for Trade Facilitation (Alliance) was launched on December 17, 2015, during the Tenth Ministerial Conference of the WTO as a unique, multi-stakeholder platform that leverages business and development expertise for commercially meaningful reforms. The United States catalyzed the creation of this initiative and was a founding donor, joined by the governments of Australia, Canada, Germany, and the United Kingdom. The Secretariat of the Alliance is hosted by the Center for International Private Enterprise, the International Chamber of Commerce, and the World Economic Forum. The Alliance aims to accelerate ambitious trade facilitation reforms for robust economic growth and poverty reduction. The Alliance's in-country projects leverage the expertise and resources of the private sector to work collaboratively with governments to support effective reforms. In its pilot phase (2015-2017), the Alliance worked in four countries: Colombia, Ghana, Kenya, and Vietnam. USAID had announced in November 2017 that the Alliance would be expanded to 20 countries, including Argentina, Brazil, and Sri Lanka.

### **WTO Accessions**

*For information on technical assistance during the WTO accession process, see Chapter V.J.6.*

## **3. TCB Initiatives for Africa**

Through bilateral and multilateral channels, the United States has invested or obligated more than \$7.1 billion in trade-related projects in sub-Saharan Africa since 2001 to spur economic growth and alleviate poverty.

### **Assistance to West African Cotton Producers**

Since 2005, the United States has mobilized its development agencies, including USAID, the U.S. Department of Agriculture (USDA), and the U.S. Trade and Development Agency, to help the West African countries of Benin, Burkina Faso, Chad, Mali, and Senegal address obstacles they face in the cotton sector. A key element in U.S. assistance to the cotton sector in West Africa has been USAID's West Africa Cotton Improvement Program (WACIP), which was implemented from December 2006 to November 2013. The program has boosted the productivity and profitability of the cotton sector in these West African countries. WACIP raised smallholder incomes and food security through increased cotton and rotational food crop yields.

With the completion of WACIP, USAID created a successor program, the C-4 Cotton Partnership (C4CP), which also aims to increase food security and incomes for cotton farmers in targeted areas of Benin, Burkina Faso, Chad and Mali (known as the four cotton-producing countries, or "C-4"). These programs were the U.S. Government's direct response to concerns raised by the C-4 at WTO meetings. The C4CP was implemented from 2014 to 2018. As a result, cotton yields have increased markedly, harmful pesticide use has been reduced, and ginning efficiency has increased overall cotton value.

The United States also provides complementary support to the cotton sector through other programs, including Millennium Challenge Corporation compacts and USDA programs such as Food for Progress, the Borlaug Programs, and the Cochran Program.

## 4. Free Trade Agreements

In addition to the WTO programs, the United States has helped U.S. FTA partners implement FTA commitments and benefit over the long term through TCB working groups and other FTA-related projects. USAID and USDA, in Washington, D.C. and through their field presence, along with a number of other U.S. Government assistance providers, actively participate in these working groups and committees so that identified TCB needs can be quickly and efficiently incorporated into ongoing regional and country assistance programs. The committees on TCB also invite non-governmental organizations, representatives from the private sector, and international institutions to join in building the trade capacity of countries in each region. The Office of the United States Trade Representative (USTR) works closely with USAID, the U.S. Department of State, and other agencies to track and guide the delivery of TCB assistance related to FTA commitments. *(For additional information, please refer to the individual country, region, labor, and environment-specific sections of this report.)*

## 5. Standards Alliance

In November 2012, the United States launched a new and unique U.S.-sponsored assistance facility called the Standards Alliance, with the goal of building capacity among developing countries to implement the WTO Agreement on Technical Barriers to Trade (TBT Agreement). The Standards Alliance, initiated as a result of collaboration between USTR and USAID, provides resources and expertise to enable developing countries to strengthen implementation of the TBT Agreement. The focus of these efforts in developing countries is shaped through an interagency process guided by USTR and USAID and includes efforts to: improve practices related to notification of technical regulations and conformity assessment procedures to the WTO, strengthen domestic practices related to adopting relevant international standards, and clarify and streamline regulatory processes for products. This program aims to reduce the costs and bureaucratic hurdles U.S. exporters face in foreign markets and increase the competitiveness of U.S. products, particularly in developing markets.

In May 2013, USAID and the American National Standards Institute (ANSI) entered into a public-private partnership. ANSI is the official U.S. representative to the International Organization for Standardization (ISO); its membership comprises numerous standards-setting organizations and companies, amongst many others. As the implementing partner of the Standards Alliance, ANSI coordinates private sector subject matter experts from its member organizations in the delivery of training and other technical exchange with eligible and interested Standards Alliance countries on international standards, best practices, and other subjects supporting implementation of the TBT Agreement. In coordination with USTR, the USAID-ANSI partnership includes activities in numerous markets representing a variety of geographical regions and levels of economic development. In consultation with Trade Policy Staff Committee member agencies and private sector experts, ANSI requested and reviewed applications for assistance based on consideration of: 1) bilateral trade opportunities, 2) available private sector expertise that may be leveraged, 3) demonstrated commitment and readiness for assistance, and 4) potential development impact. Since 2013, participating countries and regions have included: Central America (CAFTA-DR, Panama), Colombia, the East African Community, Indonesia, Mexico, Middle East/North Africa, Peru, Southern African Development Community (SADC), and developing ASEAN members. In September 2016, ANSI and USAID also finalized an expansion of the Standards Alliance to provide TBT-related assistance in five countries: Cote d'Ivoire, Ghana, Mozambique, Senegal, and Zambia, which are part of the U.S. Government's Trade Africa initiative.

The highlights of Standards Alliance programming in 2018 include:

- Good Regulatory Practices and Capacity Building Project for Colombia (January 2018)



- Textile and Apparel Training for Cote d'Ivoire and Ghana (March 2018)
- Standards in Support of Trade and Investment between the United States and Zambia (March 2018)
- Training on Good Regulatory Practices in Mozambique (May 2018)
- Presentations on International Standards and Best Practices at the African Organization for Standardization (ARSO) General Assembly (June 2018)
- Consumer Protection Workshops in West Africa: Cote d'Ivoire, Ghana, and Senegal (June 2018)
- Training on Regulatory Impact Assessment in Zambia (July 2018)
- National Enquiry Point Trainings in Cote d'Ivoire, Ghana, and Senegal (October 2018)
- Workshop on Clean Cooking Fuel Standards in Zambia (October 2018)
- Standards and Conformity Assessment Workshop in Mozambique (December 2018)
- Regulatory Coherence & Convergence Project for the Medical Device Sector in the CAFTA-DR region (December 2018)

## I. Organization for Economic Cooperation and Development

The Organization for Economic Cooperation and Development (OECD) is a grouping of economically significant countries and serves as a policy forum covering a broad spectrum of economic, social, environmental, and scientific areas, from macroeconomic analysis to education to biotechnology. Thirty-six democracies in Europe, the Americas, the Middle East, and the Pacific Rim comprise the OECD, established in 1961 and headquartered in Paris. The OECD helps countries, both OECD Members and non-Members, reap the benefits and confront the challenges of a global economy by promoting economic growth and the efficient use of global resources. A committee of Member government officials, supported by Secretariat staff, covers each substantive area. The emphasis is on discussion and peer review rather than negotiation. However, some OECD instruments, such as the Anti-Bribery Convention, are legally binding. Most OECD decisions require consensus among Member governments. The like-mindedness of the OECD's membership on the core values of democratic institutions, the rule of law, and open markets uniquely positions the OECD to serve as a valuable policy forum to address real world issues. In the past, analysis of issues in the OECD has often been instrumental in forging a consensus among OECD countries to pursue specific negotiating goals in other international fora, such as the WTO.

The United States has a longstanding interest in trade issues studied by the OECD. On trade and trade policy, the OECD engages in meaningful research and provides a forum in which OECD Members can discuss complex and sometimes difficult issues. The OECD is also active in studying the balance between domestic objectives and international trade.

### 1. Trade Committee Work Program

In 2018, the OECD Trade Committee, its subsidiary Working Party, and its joint working parties on environment and agriculture, continued to address a number of significant issues impacting trade. The Trade Committee met in March and October 2018, and its Working Party met in March, June, October, and December. The Trade Committee and its subsidiary groups paid significant attention to technology transfer; digital trade, including principles for market openness in the digital age and barriers to cross-border data flows; trade in raw materials; trade facilitation; services trade; government procurement; and, trade and investment in global value chains. The [trade page on the OECD website](#) contains up-to-date information on published analytical work and other trade-related activities.

The Trade Committee continued its analysis and work surrounding barriers affecting trade in services, including an update to the OECD's Services Trade Restrictiveness Index (STRI) and the creation of a new tool for mapping the restrictiveness of the regulatory environment for trade in digital services. Among

other activities in 2018, the Committee conducted new research into government support and trade distortions in the aluminum industry and continued work on trade policy-making in the digital economy in line with the OECD-wide horizontal project on Digital Policy. The Committee also continued its collaboration and coordination with the Investment Committee, holding the first joint meeting of the Trade and Investment Committees in more than a decade, and agreed to continue collaboration between the two bodies on work related to global value chains. The OECD Trade in Value Added (TiVA) Database was updated in 2018 and provides indicators for 36 unique industrial sectors across 64 economies over the period 2005 to 2015. Looking ahead, the Trade Committee will continue its work on trade liberalization, trade facilitation, trade in services, digital trade, export credits, barriers to trade, and trade and investment, among other areas.

The OECD Ministerial Council Meeting took place in May 2018 in Paris. Members welcomed the conclusion of Colombia's and Lithuania's accession processes and the signing of their accession agreements. USTR participated in the Trade Session of the Ministerial, which focused on international trade and investment.

## **2. Trade Committee Dialogue with Non-OECD Members**

The OECD conducts wide-ranging activities to reach out to non-Member countries, business, and civil society, in particular through its series of workshops and “Global Forum” events held around the world each year. Non-Members may participate as committee observers when Members believe that participation will be mutually beneficial. Key partners - Brazil, China, India, Indonesia, and South Africa - participate to varying degrees in OECD activities through the Enhanced Engagement program, which seeks to establish a more structured and coherent partnership, based on mutual interest, between these five major economies and OECD Members. Argentina, Brazil, and Hong Kong (China) are regular invitees to the Trade Committee and its Working Party, with Colombia and Costa Rica invited beginning in 2019 and the Russian Federation invited on an *ad hoc* basis. The OECD also carries out a number of regional and bilateral cooperation programs with non-Members.

The OECD Trade Committee continued its contacts with non-Member countries in 2018. The Committee continued its supportive efforts with G20 countries as well as major economies in Southeast Asia. Contributing to trade-related discussions at the G20 and other relevant international fora (G7, APEC, ASEAN, etc.), through the timely use of the Committee's evidence-based analysis and policy insights, remains a priority. The Trade Committee will continue to build on its relationship with Southeast Asia through means including the extension of key OECD tools and analytics to countries in Southeast Asia not already covered.

In 2018, the OECD finalized the accessions of Colombia and Lithuania to the OECD. Lithuania deposited its instrument of accession with the OECD in July 2018, becoming a full Member of the Organization at that time.

The Trade Committee also continued its dialogue with civil society and discussed aspects of its work and issues of concern with representatives of civil society, including Members of the OECD's Business and Industry Advisory Council and Trade Union Advisory Council.

### **3. Other OECD Work Related to Trade**

Representatives of the OECD Member countries meet in specialized committees to advance ideas and review progress in specific policy areas, such as economics, trade, science, employment, education, and financial markets. There are about 200 committees, working groups, and expert groups at the OECD.



# V. THE WORLD TRADE ORGANIZATION

## A. Introduction

This chapter outlines the work of the World Trade Organization (WTO) in 2018, particularly relating to implementing the results of the Eleventh Ministerial Conference (MC11) in Buenos Aires, Argentina, in December 2017. This chapter also details work of WTO Standing Committees and their subsidiary bodies, provides an overview of the implementation and enforcement of the WTO Agreement, and discusses accessions of new Members to this rules-based organization.

The WTO provides a forum for enforcing U.S. rights under the various WTO agreements to ensure that the United States receives the full benefits of WTO membership. On a day-to-day basis, the WTO operates through its more than 20 standing committees (not including numerous additional working groups, working parties, and negotiating bodies). These groups meet regularly to permit WTO Members to exchange views, work to resolve questions of Members' compliance with commitments and develop initiatives aimed at systemic improvements. They also are supposed to promote transparency in Members' trade policies, and they provide a forum for monitoring and resisting market-distorting pressures. Through discussions in these fora, Members sought detailed information on individual Members' trade policy actions and collectively considered them in light of WTO rules and their impact on individual Members and the trading system as a whole. The discussions enabled Members to assess their trade-related actions and policies in light of concerns that other Members raised and to consider and address those concerns in domestic policymaking. The United States also took advantage of opportunities in standing committees to consider how implementation of existing WTO provisions can be enhanced and to discuss areas that may hold potential for developing future rules.

In terms of WTO negotiations, Members agreed at MC11 to several important outcomes, including a Ministerial decision on fisheries subsidies; a work program on electronic commerce, including an extension of the moratorium on customs duties on electronic transmissions; and, the creation of a working party on accession for South Sudan, among others. At the end of the conference, the United States and all Members, except India, were prepared to sign a short Ministerial Declaration reaffirming the principles and objectives set out in the Marrakesh Agreement establishing the WTO. India blocked consensus due to its demands for text to be included in the Declaration regarding special and differential treatment and the conclusion of the Doha Development Agenda (DDA). The United States and others have stated clearly that Members must rethink how development is approached at the WTO and that it is time to move beyond the outdated, failed framework of the DDA. The United States also emphasized the need to improve the overall functioning of the WTO, to include implementation of existing WTO Agreements.

In 2018, the United States and other Members focused on WTO reform, with G20 Leaders expressing support for “the necessary reform of the WTO to improve its functioning.” From the United States' perspective, WTO reform must include the following components:

- **The WTO must address the unanticipated challenges of non-market economies.** The WTO's framework of rules has inadequately anticipated the disruptive impacts on global trade imposed by Members whose economies are managed principally through state direction. Current rules, combined with deeply flawed rulings by the WTO Appellate Body, leave Members with insufficient tools to address these corrosive dynamics. The United States is working with the European Union and Japan under a trilateral process to address these challenges through the development of new multilateral rules and the use of other measures.

- **WTO dispute settlement must fully respect Members' sovereign policy choices.** The WTO's dispute settlement system, particularly at the Appellate Body level, has strayed extensively from original understandings, substantially eroding the political sustainability of the current system. Across multiple Administrations, the United States has consistently urged that the dispute settlement system adhere to these original understandings.
- **WTO Members must be compelled to adhere to notification obligations.** Poor adherence to notification obligations has starved the WTO of vital information on the implementation of existing obligations and has contributed measurably to a lack of progress in negotiations. The United States has presented a proposal to impose consequences for failure to meet notification obligations and has been joined by a number of co-sponsors in support of this work. In addition, better use of WTO standing committees is necessary to improve transparency and overall implementation of WTO rules.
- **The WTO's treatment of development must be revamped to reflect current global trade realities.** While "least-developed countries" (LDCs) are defined in the WTO using the United Nations criteria, there are no WTO criteria for what constitutes a "developing country". Countries have "self-declared" as developing countries, thus availing themselves of all "special and differential" treatment afforded to developing countries under the WTO agreements as well as any new flexibilities afforded to developing countries under current or forthcoming negotiations. In practice, this means that more advanced developing countries like Brazil, China, India, and South Africa assert that they should receive the same flexibilities as Sub-Saharan African non-LDCs and South Asian non-LDCs, despite their very significant impact on the global economy. It is a challenge to find balance in the application of existing obligations and the development of new commitments when countries that some institutions categorize as high- or high-middle-income countries expect to receive the same flexibilities as low- or low-middle income countries. The United States submitted a paper in January 2019 outlining the challenges this situation presents for the WTO.

If the WTO is to reclaim its credibility as a vibrant negotiating and implementing forum, Members must begin to seriously tackle these structural reform issues facing the institution. In looking ahead to the period before the Twelfth Ministerial Conference in 2020, the United States believes that Members should begin the process of identifying opportunities to achieve accomplishments, even if incremental ones, and avoid buying into the predictable, and often risky, formula of leaving everything to a package of results for Ministerial action. The United States is working through various WTO standing committees to advance reform ideas. Whether the issue is notifications, agriculture, or the digital economy, the WTO will impress capitals and stakeholders most by simply doing rather than posturing for the next Ministerial Conference (MC).

To remain a viable institution that can fulfill all facets of its work, the WTO must focus its work on structural reform, find a means of achieving trade liberalization between Ministerial Conferences, and must adapt to address the challenges faced by traders today.

## **B. WTO Negotiating Groups**

### **1. Committee on Agriculture, Special Session**

#### **Status**

WTO Members agreed to initiate negotiations for continuing the agricultural trade reform process one year before the end of the Uruguay Round implementation period, *i.e.*, by the end of 1999. Talks in the Special Session of the Committee on Agriculture began in early 2000 under the original mandate of Article 20 of

the Agreement on Agriculture. At the Fourth WTO Ministerial Conference in Doha, Qatar in November 2001, the agriculture negotiations became part of the single undertaking, and negotiations in the Special Session of the Committee on Agriculture were conducted under the mandate agreed upon at Doha, which called for: “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.” This mandate, which called for ambitious results in three areas (so called “pillars”), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005. However, at the WTO’s Tenth Ministerial Conference in Nairobi, Kenya in December 2015, Members acknowledged in the Ministerial Declaration that there was no consensus to reaffirm Doha mandates. The Nairobi Ministerial package included a new decision adopted by WTO Ministers related to export competition, in which Members agreed to the elimination of all forms of export subsidies, as well as new disciplines on export financing and international food aid. At the WTO’s Eleventh Ministerial Conference in Buenos Aires, Argentina in December 2017, Members did not agree to a Ministerial Declaration or any decision on agriculture due to Members’ divergent views. The United States provided important leadership, calling for a reset of the agriculture negotiations in light of the fact that Members’ agriculture policies and agricultural trade had changed significantly over the previous 15 years.

### **Major Issues in 2018**

In 2018, the United States focused agriculture discussions on efforts to improve transparency, particularly with respect to the fulfillment of notification requirements. The Chairperson of the Agriculture Negotiations held formal and informal meetings, including a series of monthly technical meetings, in order to enhance Members’ understanding of the relevant issues. The United States and other Members submitted a variety of papers, particularly in the areas of domestic support, market access, export restrictions, and agricultural safeguards. Members also engaged in technical discussions on special safeguard mechanisms, cotton trade, and public stockholding for food security. The United States continued to urge Members to approach the overall agriculture negotiations based on the need to identify the issues that farmers currently face in agricultural trade, including developments in global production and trade in agriculture over the past 15 years.

Building on the need for improved transparency of Members’ agriculture policies, the United States revised a transparency proposal presented to the Council on Trade in Goods in 2017 with the aim of strengthening the effectiveness of the WTO review process, including with respect to commitments under the Agreement on Agriculture. The revised proposal has gained the cosponsorship of several Members, including: Australia, Argentina, Chinese Taipei, Costa Rica, the European Union, and Japan.

### **Prospects for 2019**

A major focus in 2019 will be to continue to enhance notifications and transparency to inform discussions about the problems that face agricultural trade today and to consider new ways forward in negotiations on agriculture. Members, including the United States, are expected to consider ways to make progress on agricultural trade issues leading up to the Twelfth WTO Ministerial Conference, set to take place in Astana, Kazakhstan in July 2020.

## **2. Council for Trade in Services, Special Session**

### **Status**

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000 pursuant to the Uruguay Round mandate of the General Agreement on Trade in Services (GATS) to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001 recognized the work already undertaken in the services negotiations and set deadlines for initial market access requests and offers. The services negotiations thus became one of the core market access pillars of the Doha Round, along with agriculture and nonagricultural goods. However, at the WTO's Tenth Ministerial Conference in Nairobi, Kenya in December 2015, Members acknowledged in the Ministerial Declaration that there was no consensus to reaffirm Doha mandates. Since then, Members have been reflecting on what is next for the services negotiations in the WTO.

### **Major Issues in 2018**

The CTS-SS met in April, July, and November of 2018. The focus of the three meetings was a submission by a group of Members proposing exploratory discussions of services market access. A number of Members stressed the importance of improving market access for services. However, other Members have expressed reservations about the new proposal for a variety of reasons, including the lack of progress on other areas under the WTO.

### **Prospects for 2019**

Consultations by the Chair on the proposal for discussions of services market access are likely to proceed incrementally during 2019, although the pace of these discussions has yet to be determined.

## **3. Negotiating Group on Non-Agricultural Market Access**

### **Status**

The U.S. Government's longstanding objective in WTO Non-Agricultural Market Access (NAMA) negotiations, which cover manufactures, mining, fuels, and fish products, has been to obtain a balanced market access package that provides new export opportunities for U.S. businesses through the liberalization of global tariffs and non-tariff barriers. Trade in industrial goods accounts for more than 90 percent of world merchandise trade<sup>1</sup> and more than 90 percent of total U.S. goods exports. Meanwhile, 50.5 percent of developing economies countries' merchandise exports went to other "developing economies" in 2016, up from 41 percent in 2005. As developing economies now buy the majority of developing economy exports, there is substantial interest in improving market access conditions among developing countries, which would also result in greater market access for U.S. manufacturers and exporters.<sup>1</sup> Yet, many emerging economies still charge very high tariffs on imported industrial goods, with ceiling tariff rates exceeding 150 percent in some cases.

The NAMA negotiations have remained at an impasse since the WTO's Eighth Ministerial Conference in Geneva in 2011. Without significant market-opening commitments from advanced developing economies, it is clear that there is little prospect for achieving robust trade liberalization for industrial goods on a multilateral basis. This reality contributed to the result at the WTO's Tenth Ministerial Conference in

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<sup>1</sup> WTO World Trade Statistical Review 2018



Nairobi, Kenya in December 2015, that Members acknowledged in the Ministerial Declaration that there was no consensus to reaffirm the Doha mandates.

### **Major Issues in 2018**

There were no meetings of the Negotiating Group on Market Access in 2018.

### **Prospects for 2019**

In 2019 the United States, jointly with other like-minded WTO Members, will seek to pursue credible approaches to broad and meaningful trade liberalization for industrial goods.

## **4. Negotiating Group on Rules**

### **Status**

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), while preserving the basic concepts, principles, and effectiveness of these Agreements and their instruments and objectives. Ministers directed that the negotiations take into account the needs of developing and least developed country Members. The Doha Round mandate also called for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: 1) the antidumping remedy, often including procedural and domestic industry injury issues potentially applicable to the countervailing duty remedy; 2) subsidies and the countervailing duty remedy, including fisheries subsidies; and 3) regional trade agreements (RTAs). Over the past years, Members have considered draft texts for antidumping, subsidies (including disciplines on fisheries subsidies), and countervailing measures, yet no consensus was reached. The most recent Chairman's report was issued in 2011.<sup>2</sup>

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing RTAs under the existing WTO provisions. To that end, the General Council in December 2006 adopted a decision for the provisional application of the "Transparency Mechanism for Regional Trade Agreements" to improve the transparency of RTAs. A total of 279 RTAs have been considered under the transparency mechanism since then. Pursuant to its mandate, in the past, the Rules Group has explored the establishment of further standards governing the relationship of RTAs to the global trading system. However, such discussions failed to produce common ground on how to clarify or improve existing RTA rules and have not been further pursued in the Rules Group.

At the WTO's Eleventh Ministerial Conference, Ministers issued a Ministerial Decision in which Members committed to "continue to engage constructively in the fisheries subsidies negotiations, with a view to adopting, by the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unreported and unregulated (IUU)-fishing."

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<sup>2</sup> TN/RL/W/252, TN/RL/253, TN/RL/W/254, all dated April 21, 2011.

## **Major Issues in 2018**

The Rules Group met a few times in 2018 regarding anti-dumping and horizontal subsidies. These meetings focused on exploring ways to revive discussions on the potential for considering proposals in these areas. Divergent approaches among Members made achieving any progress in this area difficult.

Regarding fisheries subsidies, in the first quarter of 2018, the Rules Group selected Ambassador Roberto Zapata of Mexico to chair the negotiations. Throughout 2018, the Rules Group had a rigorous schedule of meetings to discuss a draft compilation text that was developed in the lead up to the Eleventh Ministerial Conference based on the various text proposals put forward in 2017, as well as new proposals to advance the negotiations. Over the course of 2018, the Chair also organized several technical sessions and thematic discussions on issues relevant to developing disciplines on fisheries subsidies that contribute to IUU fishing, overfishing, and overcapacity, which included experts from United Nation’s Food and Agriculture Organization and other relevant international fisheries organizations. In an effort to further press delegations for new ideas and fresh thinking, the Chair also established a novel small-group process designed to give Members the opportunity to brainstorm and discuss issues in informal, small-group settings. While this small-group process yielded limited substantive progress, it did offer an opportunity for Members to meet in alternative configurations and build momentum toward achieving the Eleventh Ministerial Conference mandate. At the end of 2018, Members agreed to a rigorous fisheries subsidies “work program” for 2019, including nearly monthly Rules Group meetings between January and July.

## **Prospects for 2019**

In 2019, the United States will continue to focus on preserving the effectiveness of trade remedy rules and strengthening existing subsidies rules in a post-Doha environment. In addition, the United States will continue to support stronger disciplines and greater transparency in the WTO with respect to fisheries subsidies.

In addition, 2019 will be critically important for the work of the Rules Group in order to fulfill Ministers’ instructions to deliver an outcome on fisheries subsidies by the 2019 Ministerial Conference. The United States will continue to engage actively and constructively in the negotiations to discipline harmful fisheries subsidies, including by working with like-minded delegations to ensure that the disciplines are effective in addressing the worst forms of such subsidies and the world’s largest subsidizers and seafood producers. The United States also will continue to advocate for enhanced transparency and notification of fisheries subsidy programs, both in the SCM Committee and in the Rules Group.

Regarding RTAs, the United States will continue to advocate for increased transparency and strong substantive standards that support and advance the multilateral trading system. The Transparency Mechanism for RTAs will continue to be applied in the consideration of additional RTAs.

## **5. Dispute Settlement Body, Special Session**

### **Status**

Following the Doha Ministerial Conference in 2001, the Trade Negotiations Committee (TNC) established the Special Session of the Dispute Settlement Body (DSB-SS) to fulfill the Ministerial mandate found in paragraph 30 of the Doha Declaration, which provides: “We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far, as well as any additional proposals by Members, and aim to agree on improvements and

clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.” In July 2003, the General Council decided that: 1) the timeframe for conclusion of the negotiations on clarifications and improvements of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) would be extended by one year (*i.e.*, to aim to conclude the work by May 2004 at the latest); 2) this continued work would build on the work done to date and take into account proposals put forward by Members as well as the text put forward by the Chair of the DSB-SS; and 3) the first meeting of the DSB-SS when it resumed its work would be devoted to a discussion of conceptual ideas. Due to complexities in negotiations, deadlines were not met. In August 2004, the General Council decided that Members should continue work toward clarification and improvement of the DSU, without establishing a deadline, and these negotiations have continued since.

### **Major Issues in 2018**

The DSB-SS met twelve times during 2018. In previous phases of the review of the DSU, Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions to the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. The Chair of the review issued a Chair’s text in July 2008 “to take stock of” the work to date and to provide a basis for its continuation. In 2018, delegations continued to engage on the basis of the comments received in the previous phase, seeking to advance the work on their proposals.

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

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

### **Prospects for 2019**

In 2019, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2019.

## **6. Council for Trade-Related Aspects of Intellectual Property Rights, Special Session**

### **Status**

In 2018, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) Special Session held two brief informal consultations to exchange views regarding the negotiations on the

establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. As indicated in the prior year's report, there was no consensus heading into, or Ministerial outcome resulting from, the Eleventh WTO Ministerial Conference in December 2017. There were no material developments during 2018.

### **Major Issues in 2018**

In 2018, the United States and a group of other Members continued to maintain their position that the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits must: 1) be voluntary and have no legal effects for non-participating members; 2) be simple and transparent; 3) respect different systems of protection of geographical indications (GIs); 4) respect the principle of territoriality; 5) preserve the balance of the Uruguay Round; and 6) consistent with the mandate, be limited to the protection of wines and spirits. The United States and this group of Members (the Joint Proposal group) continued to maintain that the mandate of the TRIPS Council Special Session is clearly limited to the establishment of a system of notification and registration of GIs for wines and spirits and that discussions cannot move forward on any other basis. The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu support the Joint Proposal under which Members would voluntarily notify the WTO of their GIs for wines and spirits for incorporation into a registration system.

The EU, together with a number of other Members, continued to support their alternative proposal for a binding, multilateral system for the notification and registration of GIs for all products, not only wines and spirits, which all Members would be required to use. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would benefit from a presumption of eligibility for protection as a GI in other WTO Members. Although a third proposal, from Hong Kong, China remains on the table, this proposal has received little support.

### **Prospects for 2019**

If discussions resume in 2019, Members will discuss whether negotiations are limited to GIs for wines and spirits (the position of the Joint Proposal proponents, based on the unambiguous text of Article 23.4 of the TRIPS Agreement) or whether these negotiations should be extended to cover GIs for goods other than wines and spirits (the position of the EU and certain other WTO members). The United States will continue to aggressively oppose expanding negotiations, will continue to pursue additional support for the Joint Proposal in the coming year, and will seek a more flexible and pragmatic approach from supporters of the EU proposal.

## **7. Committee on Trade and Development, Special Session**

### **Status**

The Special Session of the Committee on Trade and Development (CTD-SS) was established by the Trade Negotiations Committee in February 2002 to review all WTO special and differential treatment (S&D) provisions with a view to improving them. Under existing S&D provisions, Members provide developing country Members with technical assistance and transitional arrangements toward implementation of WTO agreements. The provisions also enable Members to provide developing country Members with better-than-MFN access to markets.

As part of the S&D review, developing country Members submitted 88 Agreement-Specific Proposals (ASPs). Thirty-eight of these proposals were referred to other negotiating groups and WTO bodies for consideration (Category II proposals). Members reached an “in principle” agreement on draft decisions for 28 of the remaining 50 proposals at the 2003 Cancun Ministerial Conference, the so-called “Cancun 28”. Although these proposals were intended to be a part of a larger package of agreements, they were never adopted due to the breakdown of the ministerial negotiations.

At the 2005 Hong Kong Ministerial Conference, Members reached agreement on five ASPs: access to WTO waivers; coherence; duty-free and quota-free treatment (DFQF) for least-developed countries (LDCs); Trade-Related Investment Measures; and flexibility for LDCs that have difficulty implementing their WTO obligations. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration. Ministers at Hong Kong also instructed the CTD-SS to expeditiously complete the review of the outstanding ASPs and report to the General Council, with clear recommendations for a decision. With respect to the 38 Category II proposals, Ministers instructed the CTD-SS to continue to coordinate its efforts with relevant bodies to ensure that work was concluded and recommendations for a decision made to the General Council. Ministers also mandated the CTD-SS to resume work on all outstanding issues, including a proposal submitted in 2002 by the African Group to negotiate a Monitoring Mechanism for effective monitoring of S&D provisions.

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough “accounting” of the remaining ASPs, working in conjunction with the relevant Chairs of the negotiating groups and Committees to which they had been referred, but consensus could not be reached on any of them. However, discussions continued on certain proposals that were revised, and some Chairs of the negotiating bodies indicated that a number of the issues raised in the proposals formed an integral part of the ongoing negotiations.

At the Eighth Ministerial Conference in December 2011, Ministers agreed to expedite work to finalize the Monitoring Mechanism and to take stock of the Cancun 28 proposals. Members reached agreement on the establishment of the Monitoring Mechanism and adopted the corresponding text at the Ninth Ministerial Conference in December 2013. As a result, regular meetings of the newly established Monitoring Mechanisms now take place in dedicated sessions of the Committee on Trade and Development. By contrast, Members did not reach convergence on the Cancun 28, despite intensive engagement in 2013.

In July 2015, the G90 submitted new textual proposals on 25 S&D provisions. The CTD-SS worked intensively on these proposals during the fall of 2015. After numerous Members expressed concerns about the proposals, the G90 tabled 16 revised proposals in the lead up to the Tenth Ministerial Conference in Nairobi, Kenya, in December 2015. However, Members were not able to reach convergence on the revised proposals, based in part on major disagreement over whether the proposals should apply to all developing countries.

The 25 ASPs failed to garner sufficient Member support in 2016, there were divergent views among Members on whether to discuss differentiation and whether to utilize the Monitoring Mechanism, and a short discussion among Members highlighted strong disagreements regarding prospects for work in the CTD-SS without a real change in approach. In July 2017, the G90 tabled 10 ASPs as a potential deliverable at the Eleventh Ministerial Conference. Eight of the 10 proposals were essentially the same as ASPs that did not gain consensus at Tenth Ministerial Conference. The Chair held nine meetings to examine the ASPs, during which several Members repeatedly raised serious systemic concerns with the proposals. None of the ASPs were acceptable to Members.

## **Major Issues in 2018**

The Chair undertook a series of informal consultations in the first half of 2018 with Members to discuss a path forward for the CTD-SS. Members expressed disparate views, and no consensus was reached.

## **Prospects for 2019**

Discussions in the CTD-SS have revealed a profound and often contentious disagreement among Members about the relationship between trade rules and development. This disagreement is further complicated by Members' divergent views on differentiation among the developing country Members. Although this disagreement will not be resolved in the CTD-SS, it is certain to affect any attempt to undertake work in this body.

The United States continues to view the CTD's Monitoring Mechanism as a potentially useful forum for Members to raise concerns with the implementation of existing S&D provisions, as well as highlight successes. Further, the mechanism is not precluded from making recommendations to relevant WTO bodies, including recommendations that propose the initiation of negotiations aimed at improving S&D provisions.

# **C. Work Programs Established in the Doha Development Agenda**

## **1. Working Group on Trade, Debt, and Finance**

### **Status**

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

### **Major Issues in 2018**

The WGTDF met twice in 2018, in June and October. The discussion at both meetings focused on trade finance and small and medium-sized enterprises (SMEs). WTO Members welcomed the direct interaction with leaders of multilateral development banks and the Financial Stability Board, and acknowledged progress in the areas of trade finance facilitation programs, capacity building, and improving finance gap detection. Several delegations used the meetings to express the wish to discuss new methods of financing trade, such as supply chain financing and digital trade, and ways in which SMEs could be covered by future discussions on trade finance.

### **Prospects for 2019**

WGTDF Members are expected to maintain a principal focus on the trade finance aspects of the group's mandate during the course of 2019. The particular relevance of trade finance to the integration of SMEs in global trade appears to be of ongoing interest to a broad range of Members.

## **2. Working Group on Trade and Transfer of Technology**

### **Status**

During the 2001 Doha Ministerial Conference, WTO Ministers agreed to an “examination ... of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.” To fulfill that mandate, the TNC established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, and tasked the WGTTT to report on its progress. The timeline for completing this work has been subject to several extensions by Ministers.

### **Major Issues in 2018**

The WGTTT met in April, June, and October of 2018. WTO Members continued their consideration of the relationship between trade and transfer of technology. The working group heard presentations by the World Intellectual Property Organization (WIPO), the Food and Agriculture Organization (FAO), and the World Bank on work that they are doing on the relationship between trade and transfer of technology. However, there was only a low level of engagement by Members.

### **Prospects for 2019**

As of December 2018, no WGTTT meetings had yet been scheduled for 2019.

## **3. Work Program on Electronic Commerce**

### **Status**

In 2018, Members engaged in discussions of electronic commerce issues, both in the context of the Work Program on Electronic Commerce and in other fora. At the Eleventh Ministerial Conference in December 2017, 70 Members, including the United States, committed to begin work toward future WTO negotiations on trade-related aspects of electronic commerce. Throughout 2018, interested Members participated in substantive discussions of electronic commerce issues in the context of that initiative. (*Further information on that initiative can be found in Section IV.C: “Promoting Digital Trade and Electronic Commerce.”*)

### **Major Issues in 2018**

The Work Program on Electronic Commerce convened once in 2018 for a discussion on the longstanding moratorium on customs duties on electronic transmissions. Many Members, including the United States, used this meeting to express interest in ensuring the continuation of the moratorium, while some requested further study by the WTO Secretariat of the revenue implications of the moratorium for developing countries.

### **Prospects for 2019**

As of December 2018, no meetings of the Work Program on Electronic Commerce had yet been scheduled for 2019.

## D. General Council Activities

The WTO General Council is the highest level decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is expected to meet no less than once every two years.

Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreement, submit amendments to the WTO Agreement for consideration by Members, and grant waivers of obligations. The General Council or the Ministerial Conference must approve the terms for all accessions to the WTO. Technically, both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are General Council meetings that are convened for the purpose of discharging the responsibilities of the DSB and TPRB, respectively.

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee. In addition, the Committee on Trade and Environment; the Committee on Trade and Development; the Committee on Balance of Payments Restrictions; the Committee on Budget, Finance and Administration; and the Committee on Regional Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Fifth Ministerial Conference in Cancun in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups with 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 General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus building. Throughout 2018, the Chairman of the General Council, together with the WTO Director General, conducted informal consultations with large groupings comprising the Heads of Delegation of the entire WTO membership, as well as a wide variety of smaller groupings of WTO Members at various levels. The Chairman and Director General convened these consultations with a view to resolving outstanding issues on the General Council's agenda.

### Major Issues in 2018

Activities of the General Council in 2018 included the following:

- *Implementation of the Bali, Nairobi, and Buenos Aires Outcomes:* The General Council discussed the status of implementation in each area agreed at the Ninth, Tenth, and Eleventh WTO Ministerial Conferences in Bali, Nairobi, and Buenos Aires in December 2013, 2015, and 2017 respectively.
- *Date and Venue for "MC12":* In July 2018, the General Council agreed that the Twelfth Session of the WTO Ministerial Conference (MC12) would take place in Astana, Kazakhstan in early June 2020.
- *WTO Accessions:* New chairpersons were named by the General Council to lead discussions on the accessions of Algeria, the Bahamas, Bhutan, and Uzbekistan to the WTO.



- *Waivers of Obligations:* The General Council adopted decisions concerning the introduction of Harmonized System 2002, 2007, 2012, and 2017 nomenclature changes into WTO schedules of tariff concessions. The General Council also approved a waiver extension on the Kimberley Process Certification Scheme for Rough Diamonds and reviewed a number of previously agreed waivers, including the U.S. waiver related to the Caribbean Basin Economic Recovery Act. Annex III of this report contains a detailed list of Article IX waivers currently in force.
- *Trade Restrictions:* The United States initiated a discussion in the General Council on China's trade disruptive non-market economic model and its implications for the WTO.

## Prospects for 2019

In addition to its management of the WTO and oversight of implementation of the WTO Agreement, the General Council will have detailed discussions throughout the year to implement the decisions taken at the Eleventh Ministerial Conference in Buenos Aires, as well as to prepare for MC12 in Astana.

## 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, 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) and the Working Party on State Trading Enterprises.

The CTG is the central oversight body in the WTO for all agreements related to trade in goods and the forum for discussing issues and decisions that may ultimately require the attention of the General Council for resolution or a higher-level discussion, and for putting issues in a broader context of the rules and disciplines that apply to trade in goods.

### Major Issues in 2018

In 2018 the CTG held three formal meetings, in March, June, and November. The CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for raising concerns regarding actions that individual Members had taken with respect to the operation of goods-related WTO agreements. In 2018, this included extensive discussions initiated by the United States and other WTO Members on Indonesia's policies restricting imports and exports; Vietnam's policies regarding automobiles; China's trade distorting measures; and India's import restricting practices, among other serious market access issues.

Five other major issues were also discussed in 2018:

*Waivers:* In light of the introduction of Harmonized System (HS) 2002, 2007, 2012, and 2017 changes to the Schedules of Tariff Concessions, the CTG approved four collective requests for extensions of waivers related to the implementation of the Harmonized Tariff System. The CTG also approved an extension of a WTO waiver for the Kimberley Process Certification Scheme for Rough Diamonds. The CTG forwarded these approvals to the General Council for adoption.

*Brexit:* WTO Members, including the United States, expressed their systemic, commercial and technical concerns regarding the tariff rate quota (TRQ) commitments of the EU and the United Kingdom following the Brexit process.

*EU Enlargement:* In accordance with procedures under Article XXVIII:3 of the GATT 1994, the CTG considered and approved the EU's requests to extend the time period for the withdrawal of concessions regarding the 2013 enlargement to include Croatia.

*EAEU Enlargement:* In accordance with procedures under Article XXVIII:3 of the GATT 1994, the CTG considered and approved Armenia's and the Kyrgyz Republic's requests to extend the time period for the withdrawal of concessions regarding their respective accessions to the Eurasian Economic Union.

*Transparency:* It is the view of the United States that for the WTO to be successful going forward, Members will need to provide current data and up-to-date notifications. Members' failure to comply with their notification obligations under the WTO Agreement undermines the negotiating function of the WTO and the credibility of the organization. This is why the United States put forward a proposal aimed at improving Members' compliance with their notification obligations in the November 2017 meeting of the Council on Trade in Goods and, with Japan and the EU, agreed to co-sponsor an updated transparency and notification proposal for consideration at the CTG's November meeting.

## **Prospects for 2019**

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Waiver requests and goods-specific market access concerns are likely to continue to be prominent issues on the CTG agenda. Finally, the United States will continue to work with Members to advance its proposal on transparency in notifications.

# **1. Committee on Agriculture**

## **Status**

The WTO Committee on Agriculture (CoA) oversees the implementation of the Agreement on Agriculture (AoA) and provides a forum for Members to consult on matters related to provisions of the AoA. In many cases, the CoA resolves problems of implementation, permitting Members to avoid invoking dispute settlement procedures. The CoA also has responsibility for monitoring the possible negative effects of agricultural reform on least-developed countries (LDCs) and net food importing developing country (NFIDC) Members.

Since its inception, the CoA has proven to be a vital instrument for the United States to monitor and enforce the agricultural trade commitments undertaken by Members in the Uruguay Round. Under the AoA, Members agreed to provide notifications of progress in meeting their commitments in agriculture, and the CoA has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

## **Major Issues in 2018**

In 2018, the CoA held four formal meetings, in February, June, September, and November, to review progress on the implementation of commitments negotiated in the Uruguay Round. At the meetings, Members undertook reviews based on notifications by Members in the areas of market access, domestic

support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

In total, 262 notifications were subject to review during 2018, and the United States asked 140 questions (or sets of questions) to other Members. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States regularly raised points with respect to the domestic support policies of other Members, including Brazil, Canada, Colombia, Ecuador, Egypt, the EU, India, the Kyrgyz Republic, Panama, the Philippines, the Russian Federation, and Thailand. In addition, the United States used the review process to question Canada's dairy and wine policies; India's export subsidies, domestic support measures, and quantitative restrictions on pulses; Brazil's Program for Product Flow (PEP) and Program for Producer-paid Equalization Subsidy (PEPRO); Indonesia's import system for dairy products; Ghana's barriers to importation of poultry products; Thailand's import permit fees for meat; the Russian Federation's railway subsidies for exported grain; India's export subsidies for dairy products; and Pakistan's export subsidies for wheat.

The United States took steps to improve the transparency of Members' agricultural policies affecting trade, most notably by submitting the first-ever CoA notification under the AoA regarding another country's measures. Submitted in May 2018, this counter notification addressed India's market price support for rice and wheat. Later, in November 2018, the United States submitted another counter notification that addressed India's market price support for cotton, and another Member submitted one on India's market price support for sugar. These counter notifications spurred interventions by numerous Members and allowed for informative discussions regarding domestic support policies and commitments under the AoA. Finally, the United States encouraged countries, including China, Egypt, and Thailand, to bring their notifications up to date.

During 2018, the CoA addressed a number of other issues related to the implementation of the AoA, including convening the fifth annual dedicated discussion on export competition, as follow-up to the Bali and Nairobi Ministerial Decisions. The United States used this process to question the export credit programs of several countries, including: Argentina, Brazil, Canada, China, the EU, India, Indonesia, Japan, Korea, Malaysia, the Russian Federation, Thailand, Turkey, and Vietnam; to question the agricultural exporting state trading enterprises of China, the Russian Federation, and Vietnam; and to seek transparency on China's international food aid programs. In addition, the United States, along with several other Members, revised its export subsidy schedule to reflect the elimination of all export subsidies for agricultural products, per the Nairobi Ministerial Decision. The United States participated in the ongoing review of the Bali Decision on Tariff Rate Quota Administration. The United States also engaged in the CoA's discussion on enhancing transparency and the CoA review process.

### **Prospects for 2019**

The United States will continue to make full use of the CoA to promote transparency through timely notification by Members and to enhance surveillance of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, and trade-distorting practices of WTO Members. The United States will also work with other Members as the CoA continues to implement Bali and Nairobi Ministerial Decisions. In addition, the United States will continue to work closely with the CoA Chairperson and Secretariat to find ways to improve the timeliness and completeness of notifications and to increase the effectiveness of the Committee overall. The CoA will continue to monitor and analyze the impact of Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs in accordance with the AoA. The Committee expects to hold regular meetings in February, June, and October 2019.

## 2. Committee on Market Access

### Status

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

### Major Issues in 2018

In 2018 the MA Committee held two formal meetings, in April and October, and three informal sessions or consultations, to discuss the following topics: 1) ongoing and future work on WTO Members' tariff schedules to reflect changes to the HS tariff nomenclature and any other tariff modifications; 2) the WTO Integrated Data Base (IDB) and Consolidated Tariff Schedules (CTS) database; 3) Member notifications of quantitative restrictions; and, 4) other market access issues and specific trade concerns as raised by Members.

*Updates to the HS nomenclature:* The MA Committee examines issues related to the transposition and renegotiation of the schedules of Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the World Customs Organization has amended the HS tariff classification system relating to tariff nomenclature in 1996, 2002, 2007, 2012, and 2017. Using agreed examination procedures, WTO Members have the right to object to modifications in another Member's tariff schedule that result from changes in the HS nomenclature, if such modifications affect the Member's bound tariff commitments. Members may pursue unresolved objections under Article XXVIII of GATT 1994. Given the technical nature of this work, these reviews are often time-consuming, but an important aspect of enforcing WTO Members' trade commitments. The United States works closely with other Members and the WTO Secretariat to ensure that all Members' bound tariff commitments are properly reflected in their updated schedules.

The MA Committee has continued its work concerning the introduction and verification of HS2002, HS2007, and HS2012 changes to Members' WTO tariff schedules in recent years. Following a review process that took many years, the Committee finally approved China's HS2002 bound schedule in 2017, the first such update to China's WTO schedule since its accession. However, China must still submit its approved schedule to the WTO for certification in early 2019. To date, only Venezuela's HS2002 file remains outstanding.

Multilateral review of tariff schedules under the HS2007 and HS2012 procedures continued at informal Committee meetings throughout 2018. The multilateral verification process in the Committee will be ongoing through 2019. The U.S. HS2007 schedule was circulated for multilateral review, approved by the Committee, and certified in 2015. The United States submitted its draft HS2012 schedule to the WTO Secretariat in September 2017, and it is expected to be circulated for multilateral review in 2019.

In preparation for the HS2017 nomenclature changes, in 2016 the Committee adopted a decision (G/MA/W/124, G/MA/W/124/CORR.1) regarding the introduction of HS2017 changes into Members' schedules of concessions. However, that work will not commence for some time in the Committee because the Committee is in the midst of updating Members' bound commitments into HS2007 and HS2012 nomenclatures. This lag can create difficulties in determining whether Members' MFN duties, which were applied in HS2017 nomenclature beginning January 1, 2017, are consistent with their WTO bound commitments. In 2018, the United States raised these concerns at the Committee with regard to India's

decision to impose import tariffs on certain telecommunication products and Chinese duties on integrated circuits.

*Integrated Data Base (IDB):* Members are required to notify information on annual tariffs and trade data, linked at the level of tariff lines, to the IDB as a result of a General Council Decision adopted in July 1997. On the tariff side, the IDB contains MFN current bound duties and MFN current applied duties. Additional information covering preferential duties is also included if provided by Members. On the trade side, it contains value and quantity data on imports by country of origin by tariff line. The WTO Secretariat periodically reports on the status of Member submissions to the IDB, the most recent of which can be found in WTO document G/MA/IDB/2/Rev.48. The United States notifies this data in a timely fashion every year. However, several other WTO Members are not up to date in their submissions. The public can access tariff and trade data notified to the IDB through the WTO's Tariff Online Analysis (TAO) facility at <https://tariffanalysis.wto.org>. The MA Committee began an informal review of the IDB Decision in 2018, launching a discussion of whether to update the Decision to account for current data and information needs. The informal discussion of the IDB Decision will continue in 2019.

*Consolidated Tariff Schedules (CTS) Database:* The MA Committee continued work on implementing an electronic structure for tariff and trade data. The CTS database includes tariff bindings for each WTO Member that reflect its Uruguay Round tariff concessions; HS 1996, 2002, 2007, 2012, and 2017 amendments to tariff nomenclature and bindings; and, any other Member rectifications/modifications to its WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables.

*Notification Procedures for Quantitative Restrictions (QRs):* On December 1, 1995, the Council for Trade in Goods adopted a revised Decision on Notification Procedures for Quantitative Restrictions. On July 3, 2012, the Council for Trade in Goods adopted a Decision on Notification Procedures for Quantitative Restrictions (G/L/59/Rev.1), which provides that WTO Members shall make complete notifications of the quantitative restrictions (QRs) that they maintain at two-year intervals thereafter, and should notify changes to their QRs when these changes occur.

Under the revised notification procedures for quantitative restrictions, the Committee continued to examine the quantitative restrictions notifications submitted by Members (G/MA/QR/6/Rev.1). The United States most recently notified its quantitative restrictions for the 2018-2020 cycle. In 2018, the United States questioned Brazil and India's QR notifications given the existence of non-notified measures that may qualify as quantitative restrictions. The United States urged Members to comply with their QR notification commitments, as the absence of timely notifications by Members has become a concern. The United States also made a presentation at a MA Committee workshop organized by the WTO Secretariat to encourage Members, particularly developing country Members, to improve compliance with the notification obligations.

*Other Market Access Issues:* In addition to raising concerns over increased duties in India and China, the United States worked with other Members, to raise concerns in the MA Committee regarding what appear to be discriminatory duties on certain soft drinks applied by Bahrain, Saudi Arabia, and the United Arab Emirates, and new quantitative restrictions for legumes imposed by India.

## **Prospects for 2019**

The ongoing work program of the MA Committee, while highly technical, aims to ensure that all WTO Members are honoring and implementing their WTO market access commitments, and that their schedules of tariff commitments are up to date and available in electronic spreadsheet format. The committee will continue its work to finalize Members' amended schedules based on the HS2002 amendments, continue

work on the transposition of Members' tariff schedules to the HS2007 and HS2012 nomenclatures, and begin work on the HS2017 schedules.

### **3. Committee on the Application of Sanitary and Phytosanitary Measures**

#### **Status**

The Committee on the Application of Sanitary and Phytosanitary Measures (the SPS Committee) provides a forum for review of the implementation and administration of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), consultation on Members' existing and proposed SPS measures, technical assistance, other informational exchanges, and the participation of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: for food safety, the Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (OIE); and for plant health, the International Plant Protection Convention (IPPC).

The SPS Committee also discusses and provides guidelines on specific provisions of the SPS Agreement. These discussions provide an opportunity to develop procedures to assist Members in meeting specific SPS obligations. For example, the SPS Committee has issued procedures or guidelines regarding: notification of SPS measures; the "consistency" provision of Article 5.5 of the SPS Agreement; equivalence; transparency regarding the provisions for Special & Differential Treatment (S&D); and, regionalization. Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments negotiating accession to the WTO may attend Committee meetings as observers. In addition, representatives from a number of international organizations attend Committee meetings as observers on an *ad hoc* basis, including: the Food and Agriculture Organization; the World Health Organization; Codex; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture; and, the World Bank.

#### **Major Issues in 2018**

In 2018, the SPS Committee held meetings in March, July, and November. At the March meeting, Members launched the SPS Committee's Fifth Review of the implementation and operation of the SPS Agreement, including its provisions relating to risk assessment, transparency, use of international standards, equivalence, and regionalization. The United States, in collaboration with other Members, submitted proposals to strengthen implementation of the SPS Agreement, to facilitate trade and to enable greater farmer access to tools and technologies. Specifically, the U.S. proposals focused on the areas of regionalization, national SPS coordination, pesticide maximum residue levels (MRLs) and pre-market approval procedures for biotechnology products, seeds, and pesticides. Further, the United States, with a view to transparency, informed the SPS Committee of U.S. measures, both new and proposed.

The United States views these exchanges as useful, as they facilitate ongoing familiarity with the provisions of the SPS Agreement and increased recognition of the value of the SPS Committee as a forum for Members to discuss SPS-related trade issues. Many Members, including the United States, utilized these meetings to raise concerns regarding new and existing SPS measures of other Members. In 2018, the United States raised a number of specific trade concerns (STCs) with existing or proposed measures of other Members. The STCs raised by the United States include: 1) China's proposed changes relating to official certification requirements for imported food; 2) China's restrictions on U.S. poultry exports ostensibly related to highly pathogenic avian influenza (HPAI); 3) the EU's hazard-based pesticide policies, particularly its approach to assess, classify and regulate chemicals classified as endocrine disruptors and the withdrawal of corresponding EU MRLs; and, 4) delays in China's approval process for the products of biotechnology.

The United States continued to use the standing agenda item, “Monitoring the Use of International Standards”, to raise concerns with the trade consequences of the failure to use international standards. In 2018, the United States encouraged the use of the international standards to avoid burdensome requirements and unjustified trade restrictions (*e.g.*, those imposed for HPAI, Bovine Spongiform Encephalopathy or BSE, and the use of the herbicide Glyphosate). The United States also called on Members to ensure that Codex MRLs are based on science.

The SPS Committee also regularly holds thematic sessions and workshops on the margins of its formal meetings to afford the opportunity for Members to explore specific topics in-depth, including with national and international subject matter experts. In March 2018, the Committee held a thematic discussion on IPPC standards relevant to the establishment and maintenance of pest-free areas and national experiences with pest-free areas. In July 2018, the Committee held a workshop on implementation of Annex C of the SPS Agreement, as well as the relation of implementation of Annex C to that of the Trade Facilitation Agreement. In October 2018, the Committee held a thematic session on Article 4 on equivalence, with a focus on standards, guidelines or recommendations on equivalence developed by Codex, OIE and IPPC.

*Notifications:* Because it is critical for trading partners to know and understand each other’s laws and regulations, the SPS notification process, with the Committee’s consistent encouragement, is a significant mechanism in the facilitation of international trade. The process also provides a means for Members to report on determinations of equivalence and S&D. The United States made 84 SPS notifications to the WTO Secretariat in 2018, and submitted comments on 114 SPS measures notified by other Members.

### **Prospects for 2019**

The SPS Committee will hold three meetings in 2019, with informal sessions and thematic sessions anticipated to be held in advance of each meeting. In the informal and thematic sessions, Members will discuss topics submitted by Members under the Committee’s Fifth Review, with a view to formulating recommendations for adoption by the Committee, expected at the conclusion of its Fifth Review in March 2020. In March 2019, the Committee is scheduled to hold thematic sessions on the proposal on Fall Armyworm (G/SPS/W/305) put forward by Brazil, Kenya, Madagascar, Paraguay, the United States and Uruguay, as well as the proposals on equivalence (G/SPS/W/299, G/SPS/W/301, G/SPS/W/302/Rev.1) put forward by Australia, Brazil, and Canada. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The SPS Committee will continue to monitor Members’ implementation activities, and the discussion of specific trade concerns will continue to be an important part of the Committee’s activities.

In 2019, the SPS Committee will also continue to monitor the use by Members, and development by Codex, the OIE, and the IPPC, of international standards, guidelines, and recommendations.

## **4. Committee on Trade-Related Investment Measures**

### **Status**

The Agreement on Trade-Related Investment Measures (the TRIMS Agreement) prohibits investment measures that are inconsistent with national treatment obligations under Article III:4 of the GATT 1994 and reinforces the prohibitions on quantitative restrictions set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions of foreign investors, such as measures that require, or provide benefits for, the use of local inputs (local content requirements) or measures that restrict a firm’s imports to an amount related to the quantity of its exports or foreign exchange earnings (trade balancing requirements). The

Agreement includes an illustrative list of measures that are inconsistent with Articles III:4 and XI:1 of the GATT 1994.

Developments relating to the TRIMS Agreement are monitored and discussed both in the CTG and in the Committee on Trade-Related Investment Measures (TRIMS Committee). Since its establishment in 1995, the TRIMS Committee has been a forum for the United States and other Members to address concerns, gather information, and raise questions about the maintenance, introduction, or modification of trade-related investment measures by Members.

### **Major Issues in 2018**

In 2018 the TRIMS Committee held two formal meetings, in June and October, during which the United States and other Members continued to discuss particular Members' local content measures of concern to the United States. The United States explored these concerns in part by raising questions with certain countries to seek a better understanding of potentially trade-distortive local content requirements.

The United States raised one new issue in the TRIMS Committee during 2018: Indonesia's recent draft measures that would appear to require localization in the pharmaceutical sector.

Other local content measures discussed by the Committee remain in place despite, in some cases, having been raised in the Committee for several years. For example, the United States, joined by Japan, the EU, and other Members, continued to raise longstanding concerns about possible local content requirements in Indonesia's measures pertaining to 4G LTE equipment; mineral and coal mining and oil and gas exploration; and, the telecommunications sector. The United States also continued to raise concerns about localization requirements in the dairy sector in Indonesia, the information and communication technology sector in Nigeria and the pharmaceutical sector in Turkey. The United States continues to await answers to questions to the Russian Federation on programs related to SOE purchases generally, and to SOE purchases of agricultural equipment specifically, in order to determine whether these programs are conditioned on use of local content. Finally, the United States also raised concerns about a number of cybersecurity measures in China that appear to require, without justification, the acquisition of domestically produced technology and software by foreign investors.

### **Prospects for 2019**

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

## **5. Committee on Subsidies and Countervailing Measures**

### **Status**

The Subsidies and Countervailing Measures (SCM) Agreement provides rules and disciplines for the use of government subsidies and the application of remedies, through either WTO dispute settlement or countervailing duty action taken by individual WTO Members, to address subsidized trade that causes harmful commercial effects. Subsidies contingent upon export performance or the use of domestic over imported goods are prohibited. All other subsidies are permitted but are actionable (through countervailing duty or WTO dispute settlement actions) if they are (i) "specific", *i.e.*, limited to a firm, industry, or group thereof within the territory of a WTO Member, and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another Member.



## Major Issues in 2018

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two regular meetings and two special meetings in 2018, in April and October. The SCM Committee continued to review the consistency of Members' domestic laws, regulations, and actions with the SCM Agreement's requirements, as well as Members' notifications of their subsidy programs to the SCM Committee. Other items addressed in the course of the year included: 1) submission of questions under Article 25.8 to China on potential subsidies to its steel industry; 2) examination of ways to improve the timeliness and completeness of subsidy notifications; "graduation" of certain developing countries from Annex VII(b) of the SCM Agreement; 3) a third submission by the United States, EU, Japan, Mexico, and Canada on the role of below-market government financing in the creation of overcapacity in a number of industrial sectors; 4) the Eleventh Ministerial Conference re-commitment to notify fisheries subsidies, and the U.S. proposal to enhance the transparency of fisheries subsidies notifications; 5) review of the export subsidy program extension mechanism for certain small economy developing country Members; and, 6) two openings on the five-member 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: 1) new or amended countervailing duty legislation and regulations; 2) countervailing duty investigations initiated and decisions taken; and 3) Members' subsidy programs. Notifications of countervailing duty legislation and actions, as well as subsidy notifications, were reviewed and discussed by the SCM Committee at its April and October meetings.

In reviewing notified countervailing duty legislation and subsidies, SCM Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the SCM Agreement. As of October 2018, 113 WTO Members (counting the EU as a single Member) have notified their countervailing duty legislation or lack thereof, and 25 Members have so far failed to make a legislative notification.<sup>3</sup> In 2018, the SCM Committee reviewed notifications of new or amended countervailing duty laws and regulations from Afghanistan, Australia, Brazil, Cambodia, Cameroon, Canada, China, El Salvador, the EU, India, Japan, Liberia, New Zealand, and Chinese Taipei.

As for countervailing duty measures, 12 Members notified countervailing duty actions they took during the latter half of 2017, and 13 Members notified actions they took in the first half of 2018. The SCM Committee reviewed actions taken by Australia, Brazil, Canada, China, Egypt, the EU, India, Mexico, New Zealand, Pakistan, Peru, Chinese Taipei, Turkey, and the United States.

In 2018, the SCM Committee examined dozens of new and full subsidy notifications covering various time periods. Unfortunately, numerous Members have not submitted a notification in many years or have yet to make even an initial subsidy notification to the WTO, although many of them are least-developed country Members.

*Submission of questions to China under Article 25.8:* Under Article 25.1 of the SCM Agreement, Members are obligated to regularly provide a subsidy notification to the SCM Committee. The United States and other Members have repeatedly expressed deep concern about the notification record of China. The United States has submitted five "counter-notifications" of Chinese subsidy measures under Article 25.10 of the SCM Agreement. This provision states that when a Member fails to notify a subsidy, any other Member

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<sup>3</sup> These notifications do not include notifications submitted by Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, and Slovenia before these Members acceded to the European Community.

may bring the matter to the attention of the Member failing to notify. Taking all five counter-notifications into account, the United States has now counter-notified nearly 500 Chinese subsidy measures, most of which were translated and included as part of the submissions of the United States. China has included in its subsidy notifications only a small number of programs identified by the United States in its counter-notifications, and has argued that other measures counter-notified have, in fact, previously been notified or did not provide any financial support or have been terminated. However, China has refused since the first counter-notification by the United States in 2011 to engage in bilateral technical discussions to address any of these issues.

In April 2017, the United States and the EU jointly submitted Article 25.8 questions to China on potential subsidies provided to its steel industry. In prior meetings of the SCM Committee, China stated that it only provided subsidies to its steel companies under three broadly available (*i.e.*, non-specific) programs. In light of this statement, the United States, along with the EU, requested information on nearly 160 apparent subsidy programs maintained by the government of China. All of these programs were listed in the annual reports of several steel companies, under headings such as “Government Subsidies,” and many appear to meet the notification requirements set forth under Article 25 of the SCM Agreement. Given the worldwide overcapacity in the steel industry, the United States believes that it is critical for China to respond to this request for information and appropriately notify all subsidies received by its steel industry in accordance with its obligations. China has yet to fully respond, even orally, to the Article 25.8 questions submitted.

*Notification improvements:* Several years ago, the Chairman of the Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss “ways to improve the timeliness and completeness of notifications and other information flows on trade measures.” The United States fully supported the continuation of this initiative in 2018 in light of Members’ poor record in meeting their subsidy notification obligations. The United States took the initiative under this agenda item to review the subsidy notification record of several large exporters failing to provide complete and timely subsidy notifications. Of primary concern in this regard was China. The United States continues to devote significant time and resources to researching, translating, monitoring, and analyzing China’s subsidy measures and practices, such as the Made in China 2025 program. The United States also has been working with several other larger exporting countries bilaterally to assist and encourage them to meet their subsidy notification obligations. Pursuant to our efforts, the Philippines recently submitted its first notification since 1996.

In 2011, the United States submitted a specific proposal under Article 25.8 of the SCM Agreement to strengthen and improve the notification procedures of the SCM Committee. As referenced above, under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy subject to the requirement of notification. Unfortunately, many requests under Article 25.8 have not been answered or are only partially answered orally after significant delay. To address this problem, the United States proposed that the SCM Committee establish deadlines for the submission of written answers to Article 25.8 questions and include all unanswered Article 25.8 questions on the bi-annual agendas of the SCM Committee until the questions are answered.<sup>4</sup> Many Members have supported the proposal, while several other Members, such as Brazil, China, India, and South Africa have voiced concerns. In 2018, the United States continued to advocate for the proposal, after relaxing the mandatory deadlines for responding.<sup>5</sup> Notably, far fewer Members raised concerns with the revised proposal. The United States intends to push this proposal forward in 2019.

*“Graduation” from Annex VII (b) of the SCM Agreement:* Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment.

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<sup>4</sup> G/SCM/W/555; 21 October 2011.

<sup>5</sup> G/SCM/W/557/Rev.3; October 26, 2018.

Specifically, the export subsidies of these Members are not prohibited, and therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as “least-developed countries” (Annex VII(a)) as well as countries that had, at the time of the negotiation of the SCM Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).<sup>6</sup> A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. In 2001, at the WTO Fourth Ministerial Conference in Doha, decisions were made, which, *inter alia*, led to the adoption of an approach to calculate the \$1,000 threshold in constant 1990 dollars and to require that a Member be above this threshold for three consecutive years before graduation. The WTO Secretariat updated these calculations in 2018.<sup>7</sup> Importantly, these latest calculations show that India has now “graduated” from Annex VII(b) and must now terminate all of its export subsidies in all sectors.<sup>8</sup>

*Overcapacity submission:* At the spring meeting of the Subsidies Committee, a follow-up paper on the problem of overcapacity in certain sectors (*e.g.*, steel and aluminum) was submitted by the United States, Canada, the EU, Japan, and Mexico. This paper described the role of below-market financing in creating and maintaining overcapacity and discussed options for addressing this issue in the SCM Committee and through possible amendments to the SCM Agreement. It also called upon Members to heed the call of world leaders in the G20 for transparency and collective action to tackle harmful subsidies that contribute to severe overcapacity experienced in several sectors today. Prior to the fall meeting of the SCM Committee, the United States, the EU, and Japan organized a second panel discussion on this topic, which included academics and international trade lawyers. The purpose of the seminar was to have experts address the relationship between subsidies and overcapacity from different perspectives and consider how the SCM Agreement could be strengthened and improved to address the problem.

*Extension of the transition period for the phase out of export subsidies:* Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. To address the concerns of certain small economies, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the 2001 Doha Ministerial Conference to provide for facilitated annual extensions of the time available to eliminate certain notified export subsidies.<sup>9</sup> In 2007, the General Council, acting on an SCM Committee recommendation, decided to extend the application of the special procedure. An important outcome of these negotiations, upon which the United States and other developed and developing countries insisted, was that the beneficiaries must eliminate all export subsidy programs no later than 2015 and that they will have no recourse to further extensions beyond 2015. In 2018, the SCM Committee continued its efforts to ensure that all extension recipients either had terminated the programs at issue or were in the process of doing so. As agreed to by Members in 2016, the WTO Secretariat circulated a report indicating the current status of notifications and of actions reported by Members who were given extensions under Article 27.4.<sup>10</sup>

*Eleventh Ministerial Conference Re-Commitment to Notify Fisheries Subsidies and Enhanced Fisheries Subsidies Notification:* At both the spring and fall meetings, the United States and several co-sponsors called upon Members to deliver on the commitment Ministers made at the Eleventh Ministerial Conference

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<sup>6</sup> Members initially listed in Annex VII(b) were: 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.

<sup>7</sup> See G/SCM/110/Add.15.

<sup>8</sup> Excluding India, the other countries that have graduated from Annex VII(b) are: the Dominican Republic, Egypt, Guatemala, Morocco, the Philippines and Sri Lanka.

<sup>9</sup> Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under these special procedures.

<sup>10</sup> RD/SCM/29/Rev.1, April 24, 2017.

for Members to notify their fisheries subsidies pursuant to their existing obligations under Article 25.3 of the SCM Agreement. Recognizing that some Members have indicated certain difficulties in meeting their notification obligations, several concrete actions were suggested, such as enhanced training, technical assistance, and the sharing of best practices.

In light of the rapid depletion of global fisheries, the role of fishery subsidies in facilitating overfishing and overcapacity, and the difficulty of reaching agreement on stricter rules limiting fishery subsidies at the WTO, the United States also has proposed as a realistic and practical first step that WTO Members consider providing additional information (*e.g.*, information beyond that required under the SCM Agreement) when notifying their fisheries subsidies. The United States has noted that additional information regarding, for example, the health of the relevant fish stocks and the applicable management regime, could be voluntarily included in a Member's regular subsidy notification. Many Members spoke in favor of developing such an approach, while others, such as China and India, expressed reservations.

*Permanent Group of Experts:* Article 24 of the SCM Agreement directs the SCM Committee to establish a Permanent Group of Experts (PGE), “composed of five independent persons, highly qualified in the fields of subsidies and trade relations” and that “[t]he experts will be elected by the Committee and one of them will be replaced every year.” The SCM Agreement articulates three possible roles for the PGE: 1) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy within the meaning of Article 3 of the SCM Agreement; 2) to provide, at the request of the SCM Committee, an advisory opinion on the existence and nature of any subsidy; and, 3) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties.

At the beginning of 2017, the members of the Permanent Group of Experts were: Mr. Welber Barral (Brazil); Mr. Chris Parlin (United States); Mr. Subash Pillai (Malaysia); Mr. Ichiro Araki (Japan); and, Ms. Luz Elena Reyes de la Torre (Mexico). In the spring of 2017, the term of Mr. Barral expired and in the spring of 2018, the term of Mr. Chris Parlin expired. However, the SCM Committee was unable to agree on two replacements, so the two positions remained open. Therefore, at the end of 2018, the three members of the PGE were: Mr. Subash Pillai (until 2019); Mr. Ichiro Araki (until 2020); and, Ms. Luz Elena Reyes de la Torre (2021).

### **Prospects for 2019**

In 2019, the United States will follow up on the questions submitted to China on possible subsidy programs to its steel industry that China has not notified, and will continue to analyze the latest subsidy notification submitted by China, particularly China's sub-central notification and the Made in China 2025 program. More generally, the SCM Committee will continue to work in 2019 to improve the timeliness and completeness of Members' subsidy notifications, including the notification of fisheries subsidies, and, in particular, will continue to discuss the proposal made by the United States to improve and strengthen the SCM Committee's procedures under Article 25.8 of the SCM Agreement. As to the proposal to enhance the transparency of fisheries subsidies, the United States will work with like-minded Members to develop specific elements for inclusion in an enhanced fisheries subsidies notification. Finally, the subsidy notification of the United States, covering fiscal years 2016 and 2017, will be compiled in 2019 and submitted after completion.

## 6. Committee on Customs Valuation

### Status

The purpose of the Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation, referred to herein as the “Valuation Agreement”) is to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Valuation Agreement is designed to ensure that market access opportunities achieved through tariff reductions are not negated by unwarranted and unreasonable “uplifts” in the customs value of goods to which tariffs are applied. The use of arbitrary and inappropriate “uplifts” in the valuation of goods by importing countries when applying tariffs can result in an unwarranted increase, even a doubling or tripling, of effective duties.

### Major Issues in 2018

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings and two informal meetings in 2018. The Valuation Agreement also established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO), with a view to ensuring, at the technical level, uniformity in interpretation and application of the Valuation Agreement. The Technical Committee held two meetings in 2018.

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Customs Valuation Committee also 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.

No WTO Member currently maintains the S&D reservation concerning the use of minimum customs values, which is prohibited by the Valuation Agreement. However, it appears that there are Members employing this practice, which continues to create concerns for traders.

The United States has used the Customs Valuation Committee to address concerns on behalf of U.S. exporters across all sectors, including agriculture, automotive, textile, steel, and information technology, that have experienced difficulties related to the conduct of customs valuation and preshipment inspection regimes.

Achieving universal acceptance of the Valuation Agreement was an objective of the United States in the Uruguay Round. The Valuation Agreement was initially negotiated in the Tokyo Round, but until entry into force of the WTO Agreement, adherence to it was voluntary. A proper valuation methodology, avoiding arbitrary determinations or officially established minimum import prices, is essential for the realization of market access commitments. Furthermore, the implementation of the Valuation Agreement often is an initial concrete and meaningful step by developing country Members toward reforming their customs administrations, diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

An important part of the Customs Valuation Committee’s work is the examination of customs valuation legislation to implement Valuation Agreement commitments and individual Member practices. As of December 2018, 99 Members had notified their national legislation on customs valuation (these figures do not include the 28 individual EU Member States, which also are WTO Members). In addition, 68 Members have notified or updated the “Implementation and Administration of the Agreement on Customs Valuation” checklist of issues created by the Tokyo Round Committee on May 5, 1981. Thirty-six Members have not

yet made any notification of their national legislation on customs valuation. At the Committee's April and November 2018 meetings, the Committee undertook its examination of the customs valuation legislation of Bahrain, Belize, China, The Gambia, Guinea, Honduras, Kazakhstan, Malawi, Nepal, Nigeria, the Russian Federation, Rwanda, Solomon Islands, and Sri Lanka. If the Committee's examination of these Members' customs valuation legislation does not conclude in 2019 because of outstanding responses, or because Members have reverted, the examination will continue in 2020.

Working with information provided by U.S. exporters, the United States played a leading role in these examinations, submitting in some cases detailed questions as well as suggestions for improved implementation. In addition to its examination of Members' customs valuation legislation, the United States submitted, and is still awaiting replies to, questions to Indonesia and Egypt requesting notification of their respective preshipment inspection programs to the Committee.

Throughout 2018 the Customs Valuation Committee's work continued to reflect a cooperative focus among Members to ensure implementation of the Valuation Agreement. The Committee also took note of technical assistance activities carried out by the Secretariat of the WCO and its members related to customs valuation. The Committee also noted that technical assistance in the area of customs valuation is now incorporated into the WTO-wide technical assistance program, which encompasses regional activities on market access issues, including customs valuation.

### **Prospects for 2019**

The Customs Valuation Committee's work in 2019 will include reviewing the relevant implementing legislation and regulations notified by Members, and 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. In this regard, the Committee will continue to provide a forum for sustained focus on issues arising from practices of Members with regard to their implementation of the Valuation Agreement, to ensure that Members' customs valuation regimes do not use arbitrary or fictitious values, such as through the use of minimum import prices. In addition, the United States will continue to showcase the benefits of advance rulings on valuation for traders and customs administrations, including by sharing best practices and experience. Further, the United States will continue to emphasize the synergy between the Valuation Agreement and the Trade Facilitation Agreement. In particular, as part of Technical Assistance discussions in the Customs Valuation Committee, the United States intends to take part in a workshop focused on needs and challenges of implementation of the Valuation Agreement for developing countries.

## **7. Committee on Rules of Origin**

### **Status**

The Agreement on Rules of Origin (ROO Agreement) provides for increased transparency, predictability, and consistency in both the preparation and application of rules of origin. The ROO Agreement provides important disciplines for conducting preferential and non-preferential origin regimes, such as the obligation on Members to provide, upon request of a trader, an assessment of the origin their authorities would accord to a good within 150 days of that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program to develop harmonized rules of origin for non-preferential trade. The Harmonization Work Program (HWP) has been more complex than initially envisioned under the ROO Agreement, which provided for the work to be completed within three years after its commencement in July 1995. The HWP continued throughout 2018 and will continue into 2019.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which held meetings in April and October of 2018. The Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin along with relevant judicial decisions and administrative rulings of general application. The ROO Agreement also established a Technical Committee under the auspices of the World Customs Organization to assist in the HWP.

### **Major Issues in 2018**

As of December 2018, 108 Members have notified the WTO concerning non-preferential rules of origin. In these notifications, 49 Members notified that they apply non-preferential rules of origin, and 57 Members notified that they did not have a non-preferential rule of origin regime. Thirty-two Members have not notified non-preferential rules of origin. All WTO Members have notified the WTO, either through the ROO Committee or other WTO bodies, that they apply at least one set of preferential rules of origin.

The ROO Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the ROO Committee has been active in its review of the ROO Agreement's implementation. Virtually all issues and concerns cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that are not transparent, allow discrimination, and lack predictability. The ROO Committee has given substantial attention to the implementation of the ROO Agreement's disciplines related to transparency.

The ongoing HWP has attracted significant attention and resources from WTO Members, but work has stalled.

U.S. proposals for the HWP have been developed based on a Section 332 (19 U.S.C. § 1332) study, which was conducted by the U.S. International Trade Commission pursuant to a request by USTR. The U.S. proposals reflect input received from ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations in the ROO Committee. Representatives from several U.S. Government agencies remain engaged in the HWP, including: USTR; U.S. Customs and Border Protection of the U.S. Department of Homeland Security; the U.S. Department of Commerce; and, the U.S. Department of Agriculture.

While the ROO Committee has made some progress towards establishing harmonized non-preferential rules of origin since the start of the HWP, a number of fundamental issues remain. These issues concern: 1) the product specific rules related to the 94 core policy issues identified by the HWP (such as for agricultural and industrial goods); 2) the absence of a common understanding of the scope of the prospective obligation to apply the harmonized non-preferential rules of origin equally for all purposes; and, 3) the growing concern among Members that the final result of the HWP negotiations would not meet the objectives of the HWP set forth in Article 9 of the ROO Agreement. In 2007, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the aforementioned issues.

At both the April 2018 and the October 2018 meetings, the ROO Committee held dedicated discussions on preferential rules of origin for LDCs, in light of the outcomes of the 2013 and 2015 Ministerial Decisions on this issue.

### **Prospects for 2019**

The Committee will continue to discuss the future organization of the Committee's work and divergences in Members' views of how to continue the HWP. In accordance with the decision taken by the General

Council in July 2007, and subject to future guidance from the General Council, the ROO Committee will continue to focus on technical issues, including the technical aspects of the overall architecture of the HWP product specific rules, through informal consultations. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these issues. The Committee also will continue its review of the Nairobi Decision on Preferential Rules of Origin for Least Developed Countries.

## 8. Committee on Technical Barriers to Trade

### Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary standards and mandatory technical regulations for products and the procedures (such as testing or certification) used to determine whether a particular product meets such voluntary standards or technical regulations (conformity assessment procedures). One of the main objectives of the TBT Agreement is to prevent the use of regulations as unnecessary barriers to trade while ensuring that Members retain the right to regulate, *inter alia*, for the protection of health, safety, or the environment, at the levels they consider appropriate.

The TBT Agreement applies to industrial as well as agricultural products, although it does not apply to SPS measures or specifications for government procurement, which are covered under separate agreements. The TBT Agreement's rules help to distinguish legitimate standards, conformity assessment procedures, and technical regulations from protectionist measures and other measures that act as unnecessary obstacles to trade. For example, the TBT Agreement requires Members to apply standards, technical regulations, and conformity assessment procedures in a nondiscriminatory fashion and, in particular, requires that technical regulations be no more trade restrictive than necessary to meet a legitimate objective, and be based on relevant international standards except where international standards would be ineffective or inappropriate in fulfilling a legitimate objective.

The Committee on Technical Barriers to Trade (the TBT Committee) serves as a forum for consultation on issues associated with implementing and administering the TBT Agreement. The TBT Committee is composed of representatives of each WTO Member and provides an opportunity for Members to discuss concerns about specific standards, technical regulations, and conformity assessment procedures that a Member proposes or maintains. The TBT Committee also allows Members to discuss systemic issues affecting implementation of the TBT Agreement (*e.g.*, transparency, use of good regulatory practices, regulatory cooperation), and to exchange information on Members' practices related to implementing the TBT Agreement and relevant international developments.

*Transparency:* The TBT Agreement requires each Member to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on its standards, technical requirements, and conformity assessment procedures, or making the appropriate referral. The TBT Agreement also requires Members to notify proposed technical regulations and conformity assessment procedures and to take comments received from other Members into account. These obligations provide a key benefit to the public. Through the U.S. Government's implementation of these obligations, the public is able to obtain information on proposed technical regulations and conformity assessment procedures of other WTO Members and to provide written comments for consideration on those proposals before they are finalized.

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point for purposes of the TBT Agreement. (NIST can be contacted via e-mail at [usatbtep@nist.gov](mailto:usatbtep@nist.gov) or [notifyus@nist.gov](mailto:notifyus@nist.gov) or via the Internet at <http://www.nist.gov/notifyus>). The inquiry point responds to requests for information



concerning Federal and State standards; technical regulations; and, conformity assessment procedures, as well as, voluntary standards and conformity assessment procedures developed or adopted by nongovernmental bodies. Upon request, NIST will provide copies of notifications of proposed technical regulations and conformity assessment procedures that other Members have made under the TBT Agreement, as well as contact information for other Members' TBT inquiry points. NIST maintains the "Notify U.S. Service" through which U.S. entities receive, via e-mail, WTO notifications of proposed or revised domestic and foreign technical regulations and conformity assessment procedures for manufactured products. U.S. entities can access the services through the website: <https://www.nist/notifyus>. NIST refers requests for information concerning SPS measures to the U.S. Department of Agriculture, which is the U.S. inquiry point pursuant to the SPS Agreement.

The opportunity provided by the TBT Agreement, for interested parties in the United States to influence the development of proposed technical regulations and conformity assessment procedures being developed by other Members by allowing them to provide written comments on proposed measures and submit them through the U.S. inquiry point, helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve its operation occur as part of the triennial review process, as discussed below. Obligations, such as the prohibition on discrimination and the requirement that technical regulations not be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

The TBT Committee also plays an important monitoring and oversight role. It has served as a constructive forum for discussing and resolving issues and avoiding disputes. Since its inception, an increasing number of Members, including developing countries, have used the Committee to highlight trade problems.

Article 15.4 of the TBT Agreement requires the Committee to review the operation and implementation of the TBT Agreement every three years. Eight such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13, G/TBT/19, G/TBT/26, G/TBT/32, G/TBT/37, and G/TBT/41), the most recent in 2018. From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling, good regulatory practice, international standards, and regulatory cooperation.

### **Major Issues in 2018**

The TBT Committee met three times in 2018, March, June, and November. At these meetings, Members made statements informing the Committee of measures they had taken to implement the TBT Agreement and to administer measures in compliance with the Agreement. Members also used Committee meetings to raise concerns about specific technical regulations, standards, or conformity assessment procedures that have been proposed or adopted by other Members. Measures garnering significant Committee attention included: nutrition labeling requirements for food (Canada, India, Indonesia, Peru, and Uruguay); regulations on alcoholic beverages (Brazil, Ireland, Mexico, Nigeria, Thailand, and Vietnam); continued concern regarding regulations for registration of chemicals (the EU and Korea); the development of China-specific standards in the information technology sphere and standards for materials for recycled goods; Vietnam's automobile and cybersecurity regulations; testing procedures for toys (Brazil, Eurasian Economic Commission, and Indonesia); and the EU's proposal to regulate potential endocrine disruptors.

The Eighth Triennial Review of the Operation and Implementation of the TBT Agreement concluded November 15. Members plan to implement the recommendations by November 2020. Twenty written proposals from 13 Members address issues regarding the following themes: good regulatory practices

(GRP), technical regulations, conformity assessment procedures, standards, transparency, technical assistance, and the operation of the committee.

- With a view to furthering work in the area of conformity assessment, the Committee plans to initiate work on developing non-prescriptive, practical guidelines to support regulators in the choice and design of appropriate and proportionate conformity assessment procedures. In parallel, the Committee will hold thematic sessions on risk assessment, post market controls and other premarket controls, certificates of free sale, the development of National Quality Infrastructure (NQI), and the use of international and regional conformity assessment systems.
- The Committee agreed to dedicate the first thematic session of the TBT Committee annually to GRP, with the March 2019 session focus on internal coordination and other administrative mechanisms. With regard to Regulatory Impact Assessment (RIA), Members are encouraged to hyperlink studies to the relevant TBT notification or publish on a publically accessible website any subsequent assessments in the national language.
- With respect to furthering work on technical regulations, the Committee agreed to hold a discussion on mandatory marking and labeling requirements on products, including on a sectoral basis, as appropriate.
- On Standards, the Committee will hold a thematic session on incorporating standards by reference in regulations with a view to discussing and possibly collecting best practices on referencing standards. A workshop will be held on the role of gender in standards development.
- In regard to Transparency, the Committee agreed to the following:
  - For the functioning of enquiry points, the Committee will update national inquiry point information with the Secretariat, and will hold the 9<sup>th</sup> Special meeting on Procedures for Information Exchange, including discussion of the e-Ping tool or other early warning systems.
  - The Committee will discuss good practices for domestic coordination and engagement with regulators, including sharing information about how Members effectively communicate with regulatory agencies to ensure that all relevant notifications are made.
  - Regarding the use of online tools, the Committee will discuss how to improve the use of the TBT Committee's Information Management System (IMS) to better reflect the status of specific trade concerns raised in the Committee.
  - For the adoption of final texts, the Committee will revise the notification templates for addenda so that Members have the ability to indicate when the measure entered or will enter into force, and to provide where the final text can be found, including a website address.
- With respect to Technical Assistance, the Committee will develop a guide on good practices for preparing a comment on a WTO notified technical regulation or conformity assessment procedure. In addition, the Secretariat will provide a presentation on the feasibility of expanding the Standards and Trade Development Facility (STDF) or setting up a separate and dedicated TBT development facility.
- With respect to the Operation of the Committee, the Members agreed to notify specific trade concerns (STCs) to the TBT Committee twenty calendar days prior to convening the TBT Committee. In addition, the Committee will now separate STCs on the agenda based on whether they are proposed or final, and whether they are first time or recurring concerns.

The complete outcomes of the Eighth Triennial Review may be found in document series G/TBT/41. Similarly, meeting minutes from all three 2018 TBT session may be found in document series G/TBT/M/74, G/TBT/M/75, and G/TBT/M/76. ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

## **Prospects for 2019**

In 2019, the TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The United States will continue efforts to resolve specific trade concerns, and implement the Eighth Triennial Review of the TBT Agreement.

## **9. Committee on Antidumping Practices**

### **Status**

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) sets forth detailed rules and disciplines prescribing the manner and basis on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Antidumping Agreement is overseen by the Committee on Antidumping Practices (the Antidumping Committee), which operates in conjunction with two subsidiary bodies: the Working Group on Implementation (the Working Group) and the Informal Group on Anticircumvention (the Informal Group).

The Antidumping Committee is supposed to be a venue for reviewing Members' compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experiences with respect to Members' application of antidumping remedies.

The Working Group is an active body, which focuses on practical issues and concerns relating to implementation. The activities of the Working Group are designed to permit Members to develop a better understanding of their respective policies and practices for implementing the provisions of the Antidumping Agreement based on discussion of relevant topics and papers submitted by Members on specific topics. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for consideration. To date, the Antidumping Committee has adopted Working Group recommendations on the following five antidumping topics: 1) the period of data collection for antidumping investigations; 2) the timing of notifications under Article 5.5; 3) the contents of preliminary determinations; 4) the time period to be considered in making a determination of negligible imports for purposes of Article 5.8; and, 5) an indicative list of elements relevant to a decision on a request for extension of time to provide information pursuant to Articles 6.1 and 6.1.1.

The Working Group has drawn a high level of participation by Members, in particular capital-based experts and officials of antidumping administering authorities. Since the inception of the Working Group, the United States has submitted papers on most topics and has been an active participant at all meetings. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Antidumping Agreement's provisions and exploring options for improving practices among antidumping administrators.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established

the Informal Group. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision by Ministers.

## **Major Issues in 2018**

In 2018, the Antidumping Committee held meetings in April and October. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Antidumping Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2018.

*Notification and Review of Antidumping Legislation:* To date, 80 Members have notified that they currently have antidumping legislation in place, and 38 Members have notified that they maintain no such legislation. In 2018, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Afghanistan, Australia, Brazil, Cambodia, Canada, China, the EU, Japan, Liberia, and Chinese Taipei. Several Members, including the United States, were active in formulating written questions and in making follow up inquiries at the Antidumping Committee meetings.

*Notification and Review of Antidumping Actions:* In 2018, 44 Members notified that they had taken antidumping actions during the latter half of 2017, while 40 Members reported having taken actions in the first half of 2018. Members identified these actions, as well as outstanding antidumping measures currently maintained by Members, in semi-annual reports submitted for the Antidumping Committee's review and discussion. The semi-annual reports for the second half of 2017 were issued in document series "G/ADP/N/308/..." and the semi-annual reports for the first half of 2018 were issued in document series "G/ADP/N/314/..." At its April and October 2018 meetings, the Antidumping Committee also reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

*Other Business:* During the April 2018 meeting of the Antidumping Committee, Peru made a statement regarding Brazil's investigation on imports of biaxially-oriented polyethylene terephthalate (PET) from Peru and Bahrain. Brazil made comments.

During the October 2018 meeting of the Antidumping Committee, the Chair made a brief statement regarding the dissemination of documents to delegations.

*Working Group on Implementation:* Beginning in 2003, the Working Group has held discussions on several agreed topics, including: 1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; 2) foreign exchange fluctuations under Article 2.4.1; 3) conduct of verifications under Article 6.7; 4) judicial, arbitral, or administrative reviews under Article 13; and, 5) price undercutting by dumped imports. In 2009, the Working Group agreed to include the following additional topics for discussion: 1) constructed export prices; 2) other known causes of injury; 3) threat of material injury; 4) accuracy and adequacy of evidence to justify the initiation of an investigation; and, 5) the determination of the likelihood of continuation or recurrence of dumping and injury in sunset reviews. The discussions in the Working Group on all of these topics have focused on submissions by Members describing their own practice.

In 2018 the Working Group held meetings in April and October. At the April 2018 meeting, the Working Group discussed the issues of determination of costs and profits in dumping margin calculations, and the

methodologies for calculating export price. A representative from South Africa served as a discussant and several Members, including the United States, made informal presentations.

For the October 2018 meeting, the Working Group discussed methodologies to determine the likelihood of continuation or recurrence of dumping and injury in sunset reviews, and institutional structures of the investigating authorities. A representative from South Africa served as the discussant, and several Members, including the United States, made informal presentations.

*Informal Group on Anticircumvention:* In 2018 the Informal Group held meetings in April and October. At the April 2018 meeting, India provided a detailed explanation of its anti-circumvention law and practice. The Informal Group engaged in an active question and answer session afterwards.

At the October 2018 meeting, Canada provided a detailed explanation of its new anti-circumvention proceeding. The Informal Group engaged in an active question and answer session afterwards.

## **Prospects for 2019**

Work will proceed in 2019 on the areas that the Antidumping Committee and the Working Group addressed in 2018, and the Informal Group will continue to meet on relevant topics as the Members deem appropriate. 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 review process is supposed to ensure that Members' antidumping laws are properly drafted and implemented. Since notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members, which should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2019. The semi-annual reports are accessible to the general public on the WTO website. This transparency promotes improved public knowledge and appreciation of the trends and focus of all WTO Members' antidumping actions.

Discussions in the Working Group will continue to play an important role as more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in the technical issues related to understanding how Members implement these rules when administering their laws pursuant to the Antidumping Agreement. For these reasons, the United States will continue to use the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws as written, but also the operational practices that Members employ to implement them. In 2019, the Working Group will continue the topic-centered discussion approach for upcoming meetings and discuss and select topics accordingly.

The work of the Informal Group also will continue in 2019 according to the framework for discussion on which Members have agreed.

## **10. Committee on Import Licensing**

### **Status**

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with

the mutually agreed rules on import licensing procedures. The Import Licensing Committee normally meets twice a year to review information on import licensing submitted by WTO Members in accordance with the obligations set out in the Import Licensing Agreement. The Committee also serves as a forum for Members to submit questions on the licensing regimes of other Members, whether or not those regimes have been notified to the Committee, and to address specific observations and complaints concerning Members' licensing systems. The Committee activities are not intended to substitute for dispute settlement procedures; rather, they offer Members an opportunity to focus multilateral attention on licensing measures and procedures that they find problematic, to receive information on specific issues and to clarify problems, and possibly to resolve concerns.

## Major Issues in 2018

In 2018, the Import Licensing Committee held its meetings in April and October. In accordance with Articles 1.4(a), 5.4, and 8.2(b) of the Import Licensing Agreement and procedures agreed to by the Committee, all Members, upon joining the WTO, must notify the publication sources for their laws, regulations, and administrative procedures relevant to import licensing. Any subsequent changes to these measures must also be published and notified. Since the entry into force of the WTO Agreement, 141 Members<sup>11</sup> have notified the Committee of their measures or publications under these provisions. During the review period, the Committee reviewed 16 notifications from the following 10 Members: Botswana; Ecuador; the EU; India; Israel; Liechtenstein; Macao, China; Paraguay; Switzerland; and Ukraine. These notifications can be found in document series G/LIC/N/1/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

With regard to notifications of new import licensing procedures or changes in such procedures (required by Articles 5.1 through 5.4 of the Agreement), the Committee reviewed 20 notifications relating to the institution of new import licensing procedures or changes in these procedures from 10 Members: Argentina; Canada; the EU; Indonesia; Israel; Japan; Paraguay; the former Yugoslav Republic of Macedonia; Chinese Taipei; and Ukraine. These notifications can be found in document series G/LIC/N/2/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

Article 7.3 of the Import Licensing Agreement requires all Members to provide replies to the annual Questionnaire on Import Licensing Procedures; Committee procedures set a deadline of September 30 each year for Members to submit replies. Not all Members provide replies each year; however, since the entry into force of the WTO Agreement, 112 Members have provided replies under this provision. The number of Members submitting replies to the annual Questionnaire has increased from 11 Members in 1995, when the WTO was established, to 33 Members in 2018. Replies to the Questionnaire, including the U.S. replies (G/LIC/N/3/USA/14), are notified to the WTO and may be found in document series G/LIC/N/3/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)). (Other notifications made under the Import Licensing Agreement also may be found in this document series).

In 2018, the United States used the Import Licensing Committee to gather information and to discuss import licensing measures applied to its trade by other Members. In 2018, the United States raised concerns about the import licensing procedures of: Indonesia (cell phones, handheld computers, and tablets, as well as milk supply and circulation); India (boric acid); China (certain recoverable wastes and recovered materials); and, Vietnam (encryption devices). Written questions from Members and replies to those questions submitted to the Committee concerning notifications and import licensing procedures may be found in document series G/LIC/Q/- ([http://www.wto.org/english/res\\_e/res\\_e.htm](http://www.wto.org/english/res_e/res_e.htm)).

*Notifications and Other Documentation:* The United States continues to work within the Committee to seek to enhance Members' efforts to comply with the Agreement's notification requirements. In 2018, one

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<sup>11</sup> The EU and its Member States counted as one Member for purposes of this notification.

informal meeting was held on improving transparency and streamlining the notification procedures and templates. At the informal meeting, the Secretariat introduced a new WTO import licensing website/database (<https://importlicensing.wto.org>) developed by the WTO's Market Access Division, with technical support from the Information Technology and Support Division. The objective in developing the website was to improve transparency, to consolidate information on import licensing as provided in Members' notifications, and to provide a more user-friendly platform for Members to obtain specific information otherwise scattered across numerous notifications.

With a view to address the capacity constraints of some Members in fulfilling their notification obligations under the Import Licensing Agreement, the second workshop on import licensing was organized by the Secretariat in April 2018. Thirty Members participated in this workshop. Additionally, Egypt and Paraguay requested national workshops on import licensing, which were held jointly by the Secretariat and the host governments.

### **Prospects for 2019**

The administration of import licensing procedures continues to be a significant topic of discussion in the day-to-day implementation of Members' WTO obligations. The use of such measures to monitor and to regulate imports has increased. Import licensing also remains a factor in the administration of tariff-rate quotas and the application of safeguard measures, technical regulations, and sanitary and phytosanitary requirements. The proliferation of import licensing requirements is a continuing source of concern, as many such requirements appear to be administered in a manner that restricts trade. The United States will continue to advocate for increased transparency and proper use of import licensing procedures, as well as to closely monitor licensing procedures to ensure that the procedures do not, in themselves, restrict imports in a manner inconsistent with Members' WTO obligations. The United States also expects to be active in the examination of the current notification procedures and templates, with a view towards ensuring that all of the substantive information as required by the Import Licensing Agreement can be efficiently provided.

## **11. Committee on Safeguards**

### **Status**

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

The Safeguards Agreement requires Members to notify the Safeguards Committee of their laws, regulations, and administrative procedures relating to safeguard measures. It also requires Members to notify the Safeguards Committee of various safeguards actions, such as: 1) the initiation of an investigatory process; 2) a finding by a Member's investigating authority of serious injury or threat thereof caused by increased imports; 3) the taking of a decision to apply or extend a safeguard measure; and 4) the proposed application of a provisional safeguard measure.

## Major Issues in 2018

The Safeguards Committee held two regular meetings in April and October 2018.

During its two meetings in 2018, the Safeguards Committee continued its review of Members' laws, regulations, and administrative procedures based on notifications required under Article 12.6 of the Safeguards Agreement. The Safeguards Committee reviewed the national legislation of Brazil, Cambodia, Canada, China, and Liberia.

The Safeguards Committee reviewed Article 12.1(a) notifications regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, or the initiation of a review process relating to the extension of an existing measure, from the following Members: Canada on Certain Steel Products; Chile on Powdered Milk and Gouda Cheese; Costa Rica on Bars and Rods of Steel for Concrete Reinforcement; Eurasian Economic Union member states on Certain Flat-Rolled Steel Products; EU on Certain Steel Products; Indonesia on Ceramic Flags and Paving, Hearth or Wall Tiles, and Ceramic Mosaic Cubes and the Like, and Aluminum Foil; Madagascar on Pasta and Blankets and Travelling Rugs; Morocco on Coated Wood and Board, Cold-Rolled Sheets and Plated or Coated Sheets, and Wire Rods and Reinforcing Bars; Philippines on Cement; South Africa on Other Screws Fully Threaded with Hexagon Heads Made of Steel; Thailand on Hot-Rolled Steel Products with Certain Amounts of Alloying Elements, and Non-Alloy Hot-Rolled Steel Flat Products in Coils and Not in Coils; and, Turkey on Wallpaper and Similar Wallcoverings, and Iron and Steel Products.

The Safeguards Committee reviewed Article 12.1(b) notifications regarding a finding of serious injury or threat thereof caused by increased imports from the following Members: China on Sugar; Gulf Cooperation Council member states on Prepared Additives for Cements, Mortars or Concretes (Chemical Plasticizers); India on Solar Cells Whether or Not Assembled in Modules or Panels; Indonesia on I and H Sections of Other Alloy Steel, and Ceramic Flags and Paving, Hearth or Wall Tiles, and Ceramic Mosaic Cubes and the Like; Ukraine on Sulfuric Acid and Oleum; the United States on Large Residential Washers, and Crystalline Silicon Photovoltaic Cells; and Vietnam on Mineral or Chemical Fertilizers.

The Safeguards Committee also reviewed Article 12.1(c) notifications regarding a decision to apply or extend a safeguard measure from the following Members: China on Sugar; Gulf Cooperation Council member states on Flat-Rolled Products of Iron or Non-Alloy Steel; India on Solar Cells Whether or Not Assembled in Modules or Panels; Indonesia on I and H Sections of Other Alloy Steel, and Ceramic Flags and Paving, Hearth or Wall Tiles, and Ceramic Mosaic Cubes and the Like; Thailand on Hot-Rolled Steel Products with Certain Amounts of Alloying Elements; Turkey on Polyethylene Terephthalate, and Wallpaper and Similar Wallcoverings; Ukraine on Sulfuric Acid; the United States on Large Residential Washers, and Crystalline Silicon Photovoltaic Cells; and, Vietnam on Mineral or Chemical Fertilizers.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: Canada on Certain Steel Products; EU on Certain Steel Products; India on Solar Cells Whether or Not Assembled in Modules or Panels; South Africa on Other Screws Fully Threaded with Hexagon Heads Made of Steel; and, Turkey on Pneumatic Tyres, and Iron and Steel Products.

The Safeguards Committee received notifications of the termination of a safeguard investigation with no definitive safeguard measure imposed, or the expiration or termination of a definitive safeguard measure, from Turkey on Pneumatic Tyres.

Also, at the meeting in April, the Safeguards Committee separately discussed the status of a safeguard investigation by Ukraine, as well as the treatment of developing countries and notifications pertaining to



Article 9 of the WTO Agreement on Safeguards. At that same meeting, the Friends of Safeguards Procedures (FSP), a 12 delegation group of WTO Members, including the United States, organized an informal discussion group. The informal discussion group consisted of presentations by various WTO Members on notifications under Article 12 and reports of findings and public disclosure

Also at both the April and October meetings, the Safeguards Committee separately discussed U.S. security measures on steel and aluminum imports imposed for national security purposes, the addition of certain information into the annual report, and a request by Thailand submitted under Article 13.1(e) of the WTO Agreement on Safeguards concerning the suspension of concession by Turkey. A factual report was submitted by the chair to the WTO Council on Trade in Goods after the October meeting.

Finally, at the Safeguards Committee meeting in October, two Members (one of which was the United States) raised under Other Business concerns regarding an investigation conducted by Chile on powdered milk and gouda cheese. In addition, four Members raised concerns regarding an investigation conducted by Canada on certain steel products. The chair also separately announced wanting to hold an informal meeting to discuss notifications provided by Members in an attempt to identify best practices.

### **Prospects for 2019**

The Safeguards Committee's work in 2019 will continue to focus on the review of safeguard actions that have been notified to the Safeguards Committee and on the review of notifications of any new or amended safeguards legislation. The United States will also work on its own, as well as with the FSP, to continue to address systemic issues of concern with safeguard proceedings as issues arise.

## **12. Committee on Trade Facilitation**

### **Status**

The Trade Facilitation Agreement (TFA) entered into force on February 22, 2017, in accordance with Article X of the WTO Agreement, upon the ratification by two thirds (118 Members) of the WTO. As of January 2019, 141 of the 164 WTO Members have ratified the TFA. The TFA establishes transparent and predictable multilateral trade rules under the WTO to reduce opaque customs and border procedures and unwarranted delays at the border. Burdensome red tape and delays can add costs that are the equivalent of significant tariffs and are often cited by U.S. exporters as barriers to trade.

The TFA brings improved transparency and an enhanced rules-based approach to border regimes, and is an important element of broader domestic strategies of many WTO Members to increase economic output and attract greater investment. The TFA also provides new opportunities to address factors holding back increased regional integration and south-south trade. Implementation of the TFA is expected to bring particular benefits to small and medium-sized businesses, enabling them to increase participation in the global trading system.

### **Major Issues in 2018**

Upon entry into force, a WTO Committee on Trade Facilitation (TFC) was established as provided for in Article 23.1 of the TFA. The TFC met several times in different formats in 2018. In March 2018, Members took part in an open-ended consultation on next steps for the Committee work on trade facilitation. That was followed by a regular Committee session in May 2018, which had two main agenda items: notification under Articles 15 and 16 and the transparency notifications in Section I; and, experience sharing focused on National Trade Facilitation Committees, transit, and implementation experience. In addition, the

Committee held a dedicated session on assistance and capacity building in line with Article 21.4 of the TFA. Discussed at this session were: experiences and challenges, review of the support available, review of donor notifications as set forth in article 22 of the TFA, and review of the operation of article 21.2.

At the June 2018 meeting, Members addressed matters relating to implementation and administration, including notifications under Articles 15 and 16; the transparency notifications in Section I of the TFA; and, experience sharing focused on regional approaches to trade facilitation and Article 2 of the TFA. The TFC met again in October 2018, and the agenda included notifications under Article 15 and 16; transparency notifications in Section I; Article 22 notifications; and, the status of the ratification and notification process. The agenda also included a discussion on the separation of the Trade Facilitation Agreement Facility and the Committee on Trade Facilitation, as well as experience sharing on transit, single window, and advance rulings.

Substantial capacity building assistance is provided for trade facilitation. The WTO and multilateral and bilateral assistance organizations like the U.S. Agency for International Development (USAID) have undertaken training programs with developing country Members to help them assess their individual situations regarding capacity and make progress in implementing the provisions of the TFA. Further, to help developing countries and LDCs implement the TFA, the United States, along with five other donors, has been delivering TFA assistance through the Global Alliance for Trade Facilitation (GATF). The GATF is a new multi-donor model of assistance that partners with the private sector to support rapid and full implementation of the TFA. In addition to support provided by the United States, Australia, Canada, Denmark, Germany, and the United Kingdom, the partnership is supported by a Secretariat created by the World Economic Forum, the International Chamber of Commerce, the Center for International Private Enterprise, and by private sector representatives and others who are contributing their expertise and resources for this mission.

### **Prospects for 2019**

In 2019, the TFC is expected to meet at least three times, with the first meeting expected in February 2019. Standing agenda items for the TFC will continue to include an update on ratifications and Member notifications. The TFA text includes specific deadlines for notifications under Section II of the TFA, which provides the flexibilities for developing countries to Schedule commitments in Categories A, B, or C and self-declare timelines for implementation.

In addition, the TFC will take up best practices and experience-sharing among Members for implementing the TFA. Finally, Members will have a meeting dedicated to technical assistance and capacity building, as required by the TFA.

During 2019, the United States expects continued focus on ensuring that developing country Members seeking to obtain technical assistance for implementation of provisions of the TFA are matched with donors and that technical assistance projects are prioritized and funded.

## **13. Working Party on State Trading Enterprises**

### **Status**

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principles of nondiscriminatory treatment, and make purchases or sales solely in accordance with commercial considerations. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding)

defines a state trading enterprise for the purposes of providing a notification. Members are required to submit new and full notifications to the Working Party on State Trading Enterprises (WP-STE) for review every two years.

The WP-STE was established in 1995 to review, *inter alia*, Member notifications of STEs and the coverage of STEs that are notified, and to develop an illustrative list of relationships between Members and their STEs and the kinds of activities engaged in by these enterprises.

### **Major Issues in 2018**

The WP-STE held two formal meetings, on May 31, 2018 and October 19, 2018. During the period of review, the WP-STE reviewed new and full notifications from the following Members: Argentina; Barbados; Brazil; Burundi; Canada; China; Ecuador; El Salvador; EU; Hong Kong, China; Iceland; Indonesia; Israel; Japan; Kazakhstan; Korea; Liechtenstein; Macao; Mali; the Former Yugoslav Republic of Macedonia; New Zealand; Nicaragua; Norway; Peru; Philippines; Saudi Arabia; Singapore; South Africa; Switzerland; Thailand; and, the United States. It also returned to the previously reviewed notifications of China, India, New Zealand, and Vietnam.

During the WP-STE's meetings, the following agenda items were taken up: 1) Continued Non-Notification of STEs by the Russian Federation (item requested by the EU and the United States); 2) Continued Non-Notification of STEs by the United Arab Emirates (item requested by the United States); 3) Non-Notification of STEs by China (item requested by the United States); and, 4) Non-Notification of STEs by the Philippines (item requested by the United States).

### **Prospects for 2019**

The WP-STE will continue its review of new notifications and its examination of how to improve Member compliance with STE notification obligations to enhance the transparency of STEs. The WP-STE is formally scheduled to meet in April and October 2019. Also, the United States will continue to work with other WTO Members on the Russia, China, and United Arab Emirates notification issues.

## **F. Council on Trade-Related Aspects of Intellectual Property Rights**

### **Status**

The WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council monitors the 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 sets minimum standards of protection for copyrights and related rights, trademarks, geographical indications (GIs), industrial designs, patents, integrated circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights (IPR) through civil actions for infringement, actions at the border and, at least with respect to copyright piracy and trademark counterfeiting, in criminal actions.

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

Developed Members were required to fully implement the obligations of the TRIPS Agreement by January 1, 1996, and developing country Members generally had to achieve full implementation by January 1, 2000. LDC Members have had their transition period for full implementation of the TRIPS Agreement extended to July 1, 2021. The extension of this deadline provides, as before, that “This Decision is without prejudice to the Decision of the Council for TRIPS of June 27, 2002, on ‘Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with respect to Pharmaceutical Products’ (IP/C/25), and to the right of Least-Developed Country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement.” On November 6, 2015, the TRIPS Council extended the transition period for LDC Members to implement Sections 5 and 7 of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and recommended waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals also until January 1, 2033, which was adopted by the WTO General Council on November 30, 2015. On January 23, 2017, following the ratification notifications of two-thirds of Members, an amendment of the TRIPS Agreement entered in force. The amendment implements the 2005 WTO General Council decision to amend the TRIPS Agreement and allows pharmaceutical products made under compulsory licenses to be exported to countries lacking production capacity. In September 2018, Members agreed to grant permanent observer status to the Gulf Cooperation Council.

### **Major Issues in 2018**

In 2018, the TRIPS Council held three formal meetings. In addition to its continuing work on reviewing the implementation of the Agreement, the TRIPS Council focused on the role that intellectual property (IP) plays in promoting innovation, under agenda items co-sponsored by the United States and other WTO Members. The TRIPS Council also continued its consideration of the relationship of the TRIPS Agreement to the Convention on Biological Diversity of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health, and of technology transfer and technical cooperation. This year, Members, including Bolivia, Brazil, Chile and South Africa, sponsored discussion of several subject matter areas under continued theme of “Intellectual Property and the Public Interest”.

*Intellectual Property and Innovation:* At the February, June, and November 2018 TRIPS Council meetings, the United States co-sponsored agenda items on the role that IP plays in promoting innovation under the year-long theme of “The Societal Value of Intellectual Property in the New Economy.” Over the course of the three meetings, the United States and co-sponsors presented empirical data and other information on how IP protection and enforcement help create conditions that encourage risk-taking and investments in innovations of all kinds, whether in the development of new technologies, new solutions to business challenges, new cultural and artistic expressions, and the means to distribute such works to the public. Intellectual property protection and enforcement help to create new businesses, and expand opportunity for individuals and societies.

In February 2018, the United States cosponsored an agenda item arising under the year-long theme, addressing the sub-theme “IP-Intensive Industries and Their Economic Impact on Society”. It focused on how the protection and enforcement of IPR help create conditions that permit and encourage individuals and businesses to experiment with new approaches and solutions, which benefit society as a whole. At the macroeconomic level, adequate IPR protection and enforcement, by empowering experimentation whether in the arts, business, or technology, help unshackle latent human potential to address the world’s many challenges, contributing to long term economic growth and development as well as a better life for our citizens. IPR-intensive industries generate jobs directly, as well as indirectly, via industries that supply goods and services to those IPR-intensive industries. IPR-intensive industries also pay significantly higher wages than other industries, and help artists and creators to receive remuneration for their work. The product innovation it encompasses fuels the introduction of novel goods, services and techniques, across a range of fields, including the environment, education and rural development. These benefits result in a

higher real standard of living, measured by GDP. IPR-intensive industries have been found to be integral to growth in GDP, employment, and trade. Furthermore, recent empirical data indicate that the contribution of these industries to the modern economy has grown significantly over the last decade in the digital era. As a result, IPR-intensive industries appear to have coped better with economic crisis than the economy as a whole, which is another indicator of the added value of IPR intensive industries. A diverse set of Members shared empirical data on national experiences and examples of “IP-Intensive Industries and Their Economic Impact on Society”.

In June 2018, the United States cosponsored a second agenda item under the year-long theme: “IP Improving Lives.” The discussion centered on how the intellectual property frameworks promote and protect the expression of new ideas and inventions, incentivize and foster ingenuity and follow-on innovation worldwide, and enable cross-border collaboration, trade and engagement in global value chains. In so doing, intellectual property frameworks improve lives through social and economic growth and advancement, including in sectors such as education and training, creative works, health, the environment and transportation. As addressed at the session, new technologies and vibrant creative endeavors are contributing to better outcomes for individuals and societies around the world while increasing the quality of life. Intellectual property systems have a critical role to play in these positive advances. For instance, patent, regulatory data, and trade secret protections provide innovative risk takers with the confidence needed to devote what may be years and millions of dollars into an endeavor that may or may not produce a return on investment. Copyright can serve as an engine for creativity, cultural preservation, and cross-border cultural exchange. Through advances in technologies, it has never been easier for societies around the world to interact, share music, movies, or writings, and lend their expertise to solve pressing problems far from home. The interventions of the United States and other Member States explored important contributions that innovations and content from these industries provide to societies and individuals around the world.

In November 2018, the United States co-sponsored a third agenda item under the year-long theme: “Intellectual Property and New Business: An Examination Of The Role Of Intellectual Property In Fostering New Business Benefits Taking From A Broad And Comprehensive Perspective”. Recent economic literature underlines the importance of the private sector, responsible for an estimated 90 percent of employment, and its substantial economic, social, and developmental impact in low- and middle-income countries. It can be crucial for governments to implement effective policy and business regulation reforms in both lower and higher income countries to boost the private sector’s performance. It should be recognized that the private sector is increasingly moving towards having knowledge and technology as its main product and service, and that such is the case not only in developed countries, which in recent decades have also been moving quickly towards a knowledge-based economy. Several recent reports indicate that knowledge is the main driver of economic growth and, in fact, intangible assets or knowledge-based capital play an important role in the current economy. Intellectual property serves as a catalyst for the growth of new businesses, which often have limited assets and largely depend on their innovative capacity and human capital to start performing in the market. In this context, IP rights emerge as a useful tool for entering and surviving in the marketplace as well as for obtaining a competitive edge, facilitating the emergence of new industries and specialization in value chains. Intellectual property also can play a key role in overcoming financing constraints well known to young entrepreneurs. Recent economic literature demonstrates that patents function as a mechanism for credibly publicizing information for external investors. A start-up’s patenting activities can positively shape an investor’s estimates of the firm’s future value. Additionally, in the current knowledge-driven, private sector-oriented economies, a venture’s range of intangible assets are frequently more important than its tangible ones. Appropriately protecting those intangible assets may therefore be a fundamental prerequisite for markets being able to function today. To create a secure national and international business environment, therefore, special focus should be put on making IPR available and providing adequate remedies for when they are infringed. Deputy USTR and Chief of Mission, Geneva,

Dennis Shea delivered the U.S. intervention under this agenda item, joining interventions from diverse Member States on the same theme.

In addition to its work in formal TRIPS Council sessions, the United States co-sponsored a side event at the WTO on the margins of the November Council meeting that brought together panelists from academia, WIPO, and SMEs. The speakers addressed current questions, including on the macroeconomics of IP as well as on-the-ground, practical effects, including the economic impact of IPR-intensive industries to the development of economies; the role of international arrangements and cooperation in the area of trade in innovative goods and services that contribute to improving quality of life; and IP as a necessary ingredient for new businesses in the knowledge-economy. The speakers addressed the economic data points on IP, including developing country economic perspectives and innovators that have relied on IP to produce game-changing technology, ultimately exploring the value of IP through cultural, societal, and economic perspectives.

*Review of Developing Country Members' TRIPS Agreement Implementation:* During 2018, the TRIPS Council continued to conduct ongoing reviews of developing country Members' and newly acceded Members' implementation of the TRIPS Agreement and to provide assistance to developing country Members in implementing the Agreement. The United States continued to press for full implementation of the TRIPS Agreement by developing country Members and actively participated during the reviews of legislation by highlighting specific concerns regarding individual Members' implementation of the Agreement's obligations.

*TRIPS-related WTO Dispute Settlement Cases:* In March 2018, the United States initiated a dispute under the TRIPS Agreement against China. (For further details, see Chapter V.H.)

In April 2007, the United States had initiated WTO dispute settlement proceedings over deficiencies in China's legal regime for the protection and enforcement of IPR by requesting consultations with China. The Panel circulated its report on January 26, 2009. The Panel found that China's denial of copyright protection to works that did not meet China's content review standards was inconsistent with the TRIPS Agreement. The Panel also found it inconsistent with the TRIPS Agreement for China to provide for simple removal of an infringing trademark as the only precondition for the sale at public auction of counterfeit goods seized by Chinese customs authorities.

With respect to the U.S. claim regarding thresholds in China's law that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties, the panel clarified that China must provide for criminal procedures and penalties to be applied to willful trademark counterfeiting and copyright piracy on a commercial scale. The Panel agreed with the United States that Article 61 of the TRIPS Agreement requires China not to set its thresholds for prosecution of piracy and counterfeiting so high as to ignore the realities of the commercial marketplace. The Panel did find, however, that it needed more evidence in order to decide whether the actual thresholds for prosecution in China's criminal law are so high as to allow commercial-scale counterfeiting and piracy to occur without the possibility of criminal prosecution. The DSB adopted the panel report on March 20, 2009, and China made a number of changes to its legal regime. The United States continues to monitor China's compliance with the DSB recommendations and rulings.

The United States also continues to monitor EU compliance with a 2005 ruling of the DSB that the EU's regulation on food-related GIs was inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

The United States also continues to monitor WTO Members' implementation of their TRIPS Agreement obligations and will consider the further use of the WTO dispute settlement mechanism as appropriate.

*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 for consideration at the fall TRIPS Council meeting in November 2018 (see IP/C/W/647<sup>12</sup>).

*Implementation of Article 66.2:* Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to LDC Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation-related Issues and Concerns, and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation. Developed country Members are required to provide detailed reports every third year, with annual updates, on these incentives. In October 2018, the United States provided an updated report on specific U.S. Government institutions and incentives (see IP/C/W/646<sup>13</sup>).

*Implementation of the TRIPS Agreement by LDCs:* On June 11, 2013, the TRIPS Council reached consensus on a decision to extend the transition period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members. Under this decision, LDCs are not required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4, and 5, until July 1, 2021, or until such a date on which they cease to be a LDC Member, whichever date is earlier. On November 6, 2015, the TRIPS Council reached consensus to extend the transition period for LDC Members to implement Sections 5 and 7 of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and reached consensus to recommend waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals also until January 1, 2033, which the WTO General Council adopted on November 30, 2015.

*Non-Violation and Situation Complaints:* On November 23, 2015, the TRIPS Council had reached agreement to extend the moratorium on non-violation and situation complaints under the TRIPS Agreement for two years until the next WTO Ministerial Conference in 2017. The moratorium was originally introduced in Article 64 of the TRIPS Agreement, for a period of five years following the entry into force of the WTO Agreement (*i.e.*, until December 31, 1999). The moratorium had been referred to and extended in several WTO Ministerial Conference documents. In 2017, the TRIPS Council continued its intensified discussions on this issue, including on the basis of a communication by the United States to the Council outlining the U.S. position on non-violation and situation complaints. This communication (document number [IP/C/W/599](#)<sup>14</sup>) addressed the relevant TRIPS Agreement provisions, WTO and GATT disputes,

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<sup>12</sup>

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f647%22+OR+%22IP%2fC%2fW%2f647%2f\\*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE\\_S\\_S001&ActiveTabIndex=0&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f647%22+OR+%22IP%2fC%2fW%2f647%2f*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE_S_S001&ActiveTabIndex=0&languageUIChanged=true#)

<sup>13</sup>

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f646%22+OR+%22IP%2fC%2fW%2f646%2f\\*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE\\_S\\_S001&ActiveTabIndex=0&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f646%22+OR+%22IP%2fC%2fW%2f646%2f*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE_S_S001&ActiveTabIndex=0&languageUIChanged=true#)

<sup>14</sup>

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f599%22+OR+%22IP%2fC%2fW%2f599%2f\\*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE\\_S\\_S001&ActiveTabIndex=0&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22IP%2fC%2fW%2f599%22+OR+%22IP%2fC%2fW%2f599%2f*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerstrictionDateFrom=&DerstrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE_S_S001&ActiveTabIndex=0&languageUIChanged=true#)

and provided responses to issues raised by other WTO Members. Members agreed to extend the moratorium for an additional two years, most recently during the Eleventh WTO Ministerial Conference in December 2017.

## **Prospects for 2019**

In 2019, the TRIPS Council will continue to focus on IP and innovation as well as its built-in agenda, on the relationship between the TRIPS Agreement and the Convention on Biological Diversity, on traditional knowledge and folklore, as well as on enforcement and other relevant new developments.

U.S. objectives for 2019 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue with WTO Members, including regarding the technical assistance and capacity-related needs of developing countries, and especially LDCs, in connection with TRIPS Agreement implementation;
- continue to encourage a fact-based discussion within the TRIPS Council regarding TRIPS Agreement provisions and defend against Members seeking to use the TRIPS Council as a forum to criticize robust IP protection and enforcement;
- ensure that provisions of the TRIPS Agreement are not weakened;
- continue to advance discussions on IP and innovation, including through data-driven discussions on IPR that promote concrete outcomes; and,
- intensify discussions within the TRIPS Council on the application of non-violation and situation complaints under the TRIPS Agreement.

## **G. Council for Trade in Services**

### **Status**

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. This includes a technical review of GATS Article XX.2 provisions; review of waivers from specific commitments pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the WTO; a periodic review of developments in the air transport sector; the transitional review mechanism under Section 18 of China's Protocol of Accession; implementation of GATS Article VII; a review of Article II exemptions (to most-favored nation treatment); and notifications made to the General Council pursuant to GATS Articles III.3, V.5, V.7, and VII.4. Four subsidiary bodies report to the CTS: The Committee on Specific Commitments, the Committee on Trade in Financial Services, the Working Party on Domestic Regulation, and the Working Party on GATS Rules.

### **Major Issues in 2018**

The CTS met several times during 2018, receiving a number of notifications pursuant to GATS Article III:3 (transparency) and GATS Article V:7 (economic integration). The operationalization of the LDC services waiver was discussed. A total of 24 Members, including the United States, have submitted notifications to date under this process.

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tryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerestrictionDateFrom=&DerestrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE\_S\_S001&ActiveTabIndex=0&languageUIChanged=true#.



The Council sponsored a workshop on mode 4 (the presence of persons of one WTO member in the territory of another WTO Member for the purpose of providing a service) on October 10, 2018. Members were generally appreciative of the event, which they found informative and useful.

Many delegations to the Council welcomed the Ministerial Decision on the Work Programme on Electronic Commerce adopted at the Eleventh Ministerial Conference. Members, including the United States, briefed the Council on technical assistance being carried out in this area. Members identified a number of issues that they deemed essential for consideration under the Work Programme. However, no consensus was reached on how to proceed.

At the request of the United States and Japan, the Council discussed cybersecurity measures of China and Vietnam. Several Members joined the discussion to express concern about such measures and their potentially adverse effect on trade.

### **Prospects for 2019**

The CTS will continue discussions related to its mandated reviews and various notifications related to GATS implementation, as well as other topics raised by Members.

## **1. Committee on Trade in Financial Services**

### **Status**

The Committee on Trade in Financial Services (CTFS) provides a forum for Members to explore financial services market access and regulatory issues, including implementation of existing trade commitments.

### **Major Issues in 2018**

The CTFS did not meet during 2018.

### **Prospects for 2019**

As of December 2018, no meetings of the CTFS have been scheduled during 2019, and the future focus of the Committee is not clear.

## **2. Working Party on Domestic Regulation**

### **Status**

GATS Article VI:4 on Domestic Regulation provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. In May 1999, the CTS established the Working Party on Domestic Regulation (WPDR), which took on the mandate of GATS VI:4.

### **Major Issues in 2018**

The WPDR met only once, in December 2018, to allow India to present a new proposal for disciplines on domestic regulations. There was little discussion of this proposal, as Members had little time to review it.

However, a group of Members met throughout 2018 in informal open-ended sessions outside the WPDR to continue discussion of GATS Article VI.4, based upon the *Joint Ministerial Statement on Services Domestic Regulations* (WTO document [WT/MIN\(17\)/61](#)) and the accompanying text (WTO document [WT/MIN\(17\)/7/rev.2](#)). Although not a signatory to the joint ministerial statement, the United States has participated in these informal open-ended sessions with the goal of ensuring that any resulting text is consistent with U.S. policy objectives, including respecting the right of WTO Members to regulate, as recognized in the GATS.

### **Prospects for 2019**

As of December 2018, no meetings of the WPDR have been scheduled during 2019. Discussion is likely to continue during 2019 on the basis of text being discussed in the informal open-ended sessions.

## **3. Working Party on GATS Rules**

### **Status**

The Working Party on GATS Rules (WPGR) provides a forum to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, and subsidies under GATS Articles X, XIII and XV, respectively.

### **Major Issues in 2018**

The WPGR did not meet during 2018. The last meeting of the WPGR was held in 2016.

### **Prospects for 2019**

As of December 2018, no meetings of the WPGR have been scheduled for 2019, and the future focus of the Committee is not clear.

## **4. Committee on Specific Commitments**

### **Status**

The Committee on Specific Commitments (CSC) examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees the application of the procedures for the modification of schedules under GATS Article XXI. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral committee, which is currently the case for all sectors except financial services.

### **Major Issues in 2018**

The CSC did not meet during 2018.

### **Prospects for 2019**

As of December 2018, no meetings of the CSC have been scheduled for 2019, and the future focus of the Committee is not clear.

## H. Dispute Settlement Understanding

### Status

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

The DSU is administered by the Dispute Settlement Body (DSB), which consists of representatives of the entire membership of the WTO and is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB, and authorize retaliation. The DSB makes all its decisions by consensus unless the WTO Agreement provides otherwise.

### Major Issues in 2018

The DSB met 20 times in 2018 to oversee disputes, to address issues such as U.S. systemic concerns with Appellate Body overreaching and proposals to appoint members to the Appellate Body, and to consider proposed additions to the roster of governmental and nongovernmental 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 nongovernmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating candidates’ qualifications and encouraging the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2018, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

Pursuant to the requirements of the Uruguay Round Agreements Act (URAA), the present WTO panel roster appears in the background information in Annex III. 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 to these Rules in 2018.

The Rules of Conduct elaborate on the ethical standards built into the DSU to maintain the integrity, impartiality, and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect

conflicts of interest prior to their involvement in the proceedings and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts.

The Rules of Conduct also provide parties an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by the U.S. Congress in section 123(c) of the URAA, which directed USTR to seek conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also: (1) arbitrators; (2) experts participating in the dispute settlement mechanism (*e.g.*, the Permanent Group of Experts under the SCM Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; and (4) the 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*

In 2018, the United States made a series of statements at DSB meetings explaining that, for more than 15 years and across multiple U.S. Administrations, the United States has been raising serious concerns with the Appellate Body's disregard for the rules set by WTO Members and adding to or diminishing rights or obligations under the WTO Agreement.<sup>15</sup> Many WTO Members share these concerns, whether on the mandatory 90-day deadline for appeals, review of panel findings on domestic law, issuing advisory opinions on issues not necessary to resolve a dispute, the treatment of Appellate Body reports as precedent, or persons serving on appeals after their term has ended. The United States has also explained that if WTO Members support a rules-based trading system, then the Appellate Body must follow the rules to which WTO Members agreed in 1995.

For many years, the United States and other WTO Members have also been sounding the alarm about the Appellate Body in areas as varied as subsidies, antidumping and countervailing duties, standards under the TBT Agreement, and safeguards. Such overreach restricts the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices. The United States shares the view that it is “the collective responsibility of all Members to ensure the proper functioning of the WTO dispute settlement system, including the Appellate Body.”<sup>16</sup>

As a result, the United States was not prepared to agree to launch the process to fill vacancies on the WTO Appellate Body without WTO Members engaging with and addressing these critical issues.

In 2018, six appellate reports were issued in the following disputes: (1) a challenge by the EU to Russia's anti-dumping duties on automobiles; (2) a challenge by the United States to EU subsidies to large civil aircraft; (3) a challenge by Pakistan to EU countervailing duties on polyethylene terephthalate (PET); (4) challenges by Chinese Taipei and Vietnam to Indonesia's safeguard on iron or steel products; (5) challenges by the EU and Japan to certain Brazil taxes; and (6) a challenge by Mexico to U.S. dolphin-safe labeling requirements for tuna products. In the disputes in which it was not a party, the United States participated as a third party.

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<sup>15</sup> See, *e.g.*, Minutes of the DSB meeting held on Aug. 27, 2018 (WT/DSB/M/417).

<sup>16</sup> See WT/GC/W/754.

## *Dispute Settlement Activity in 2018*

During the DSB's first 23 years in operation, WTO Members filed 574 requests for consultations (25 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, 14 in 2007, 19 in 2008, 14 in 2009, 17 in 2010, 8 in 2011, 27 in 2012, 17 in 2013, 14 in 2014, 13 in 2015, 16 in 2016, 18 in 2017, and 39 in 2018). During that period, the United States filed 120 complaints against other Members' measures and received 148 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints. A number of disputes commenced in earlier years remained active in 2018. What follows is a description of those disputes in which the United States was a complainant or defendant during the past year.

### **Prospects for 2019**

The United States has used the opportunity of the ongoing review to seek improvements in the dispute settlement system, including greater transparency. In 2019, the United States expects the DSB to continue to focus on the administration of the dispute settlement process in the context of individual disputes. The United States will continue to raise its systemic concerns with Appellate Body overreaching and press for WTO Members to take responsibility to ensure the WTO dispute settlement system operates as intended and agreed in the DSU. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. Participants will continue to consider reform proposals in 2019.

### **Disputes Brought by the United States**

In 2018, 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 2018 where the United States was a complainant (listed alphabetically by responding party, and then chronologically).

#### *Argentina — Measures Affecting the Importation of Goods (DS444)*

On August 21, 2012, the United States requested consultations with Argentina regarding certain measures affecting the importation of goods into Argentina. These measures include the broad use of non-transparent and discretionary import licensing requirements that have the effect of restricting U.S. exports as well as burdensome trade balancing commitments that Argentina requires as a condition for authorization to import goods.

In conjunction with licensing requirements, Argentina adopted informal trade balancing requirements and other schemes, whereby companies seeking to obtain authorization to import products must agree to export goods of an equal or greater value, make investments in Argentina, lower prices of imported goods, and/or refrain from repatriating profits.

Through these measures, the United States was concerned that Argentina was acting inconsistently with its WTO obligations, including with Article XI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), which generally prohibits restrictions on imports of goods, including those made effective through import licenses. The United States was also concerned the measures breached various provisions of the *Agreement on Import Licensing Procedures*, which contains requirements related to the administrative procedures used to implement import licensing regimes.

The United States and Argentina held consultations on September 20 and 21, 2012, but these consultations failed to resolve the dispute. On December 17, 2012, the United States, together with the European Union and Japan, requested the WTO to establish a dispute settlement panel to examine Argentina's import

restrictions, and a panel was established on January 28, 2013. The Director General composed the panel as follows: Ms. Leora Blumberg, Chair; and Ms. Claudia Orozco and Mr. Graham Sampson, Members.

Argentina repealed its product-specific non-automatic import licenses, which had been the subject of consultations and the U.S. panel request on January 25, 2013. However, it continued to maintain a discretionary non-automatic import licensing requirement applicable to all goods imported into Argentina, as well as informal trade balancing and similar requirements.

On August 22, 2014, the Panel issued its report. The Panel found Argentina's import licensing requirement and its trade balancing requirements to be inconsistent with Article XI of the GATT 1994.

Following Argentina's appeal in September 2014, the Appellate Body issued its report on January 15, 2015. In its report, the Appellate Body rejected Argentina's arguments, upholding the Panel's findings that Argentina's import licensing requirement and trade balancing requirements are inconsistent with Article XI of the GATT 1994. On January 26, 2015, the DSB adopted the panel and Appellate Body reports.

At the DSB meeting held on February 23, 2015, Argentina informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respects its WTO obligations and that it would need a reasonable period of time (RPT) to do so. The United States and Argentina agreed that the RPT would be 11 months and 5 days, ending on December 31, 2015. Since December 2015, Argentina has issued modified import licensing requirements. The United States has significant questions about how the adoption of these measures could serve to bring Argentina's import licensing measures into compliance with its WTO obligations, and the United States is working to address these concerns.

#### *Canada — Measures Governing the Sale of Wine in Grocery Stores (Second Complaint) (DS531)*

On January 18, 2017, the United States requested consultations with Canada regarding measures maintained by the Canadian province of British Columbia ("BC") governing the sale of wine in grocery stores. The WTO Secretariat entitled that dispute *Canada — Measures Governing the Sale of Wine in Grocery Stores* and assigned it the dispute number DS520. The United States and Canada held consultations on April 21, 2017. On October 2, 2017, the United States filed a second request for consultations with Canada regarding the same matter and identified successor laws and regulations that entered into force subsequent to the original request for consultations. The United States and Canada held consultations on October 25, 2017.

The BC wine measures discriminate on their face against imported wine by allowing only BC wine to be sold on regular grocery store shelves while imported wine may be sold in grocery stores only through a so-called "store within a store." These measures are inconsistent with Canada's obligations pursuant to Article III:4 of the GATT 1994, because they are laws, regulations, or requirements affecting the internal sale, offering for sale, purchase, or distribution of wine and fail to accord products imported into Canada treatment no less favorable than that accorded to like products of Canadian origin.

At the U.S. request, the WTO established a panel to examine the U.S. complaints on July 20, 2018. On November 30, 2018, the United States and Canada signed a side letter as part of the United States-Mexico-Canada Agreement in which Canada committed to—by November 1, 2019—that BC modifies the measures identified in the U.S. panel request, so as to ensure that treatment of U.S. goods is consistent with WTO obligations. The United States agreed to pause the WTO dispute until November 1, 2019.

#### *Canada – Additional Duties on Certain Products from the United States (DS557)*

On July 16, 2018, the United States requested consultations with Canada with respect to its imposition of additional duties on certain products originating in the United States. Canada imposed the additional duties

in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The U.S. consultations request alleges that the additional duties contravene Canada's obligations under the WTO Agreement because they (1) fail to extend to U.S. products an advantage, favor, privilege or immunity granted by Canada to products originating in the territory of other WTO Members; (2) accord less favorable treatment to products originating in the United States; and (3) impose duties in excess of those set forth in Canada's schedule.

The United States held consultations with Canada on October 3, 2018, but these consultations did not resolve the dispute. At the U.S. request, the WTO established a panel to examine the matter on November 21, 2018.

*China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (DS363)*

On April 10, 2007, the United States requested consultations with China regarding certain measures related to the import and/or distribution of imported films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications). On July 10, 2007, the United States requested supplemental consultations with China regarding certain measures pertaining to the distribution of imported films for theatrical release and sound recordings.

Specifically, the United States was concerned that certain Chinese measures: (1) restricted trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual home entertainment products, sound recordings, and publications; and (2) restricted market access for, or discriminated against, imported films for theatrical release and sound recordings in physical form, and foreign service providers seeking to engage in the distribution of certain publications, audiovisual home entertainment products, and sound recordings. The Chinese measures at issue appeared to be inconsistent with several WTO provisions, including provisions in the GATT 1994 and GATS, as well as specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on June 5-6, 2007 and July 31, 2007. At the U.S. request, the WTO established a panel on November 27, 2007, to examine the U.S. complaint. On March 27, 2008, the Director General composed the panel as follows: Mr. Florentino P. Feliciano, Chair; and Mr. Juan Antonio Dorantes and Mr. Christian Häberli, Members.

The report of the panel was circulated to WTO Members and made public on August 12, 2009. In the final report, the panel made three critical sets of findings. First, the panel found that China's restrictions on foreign invested enterprises (and in some cases foreign individuals) from importing films for theatrical release, audiovisual home entertainment products, sound recordings, and publications are inconsistent with China's trading rights commitments as set forth in China's protocol of accession to the WTO. The panel also found that China's restrictions on the right to import these products are not justified by Article XX(a) of the GATT 1994. Second, the panel found that China's prohibitions and discriminatory restrictions on foreign owned or controlled enterprises seeking to distribute publications and audiovisual home entertainment products and sound recordings over the Internet are inconsistent with China's obligations under the GATS. Third, the panel also found that China's treatment of imported publications is inconsistent with the national treatment obligation in Article III: 4 of the GATT 1994.

In September 2009, China filed a notice of appeal to the WTO Appellate Body, appealing certain of the panel's findings, and the United States filed a cross appeal on one aspect of the panel's analysis of China's defense under GATT Article XX(a). On December 21, 2009, the Appellate Body issued its report. The

Appellate Body rejected each of China's claims on appeal. The Appellate Body also found that the Panel had erred in the aspect of the analysis that the United States had appealed. The DSB adopted the Appellate Body and panel reports on January 19, 2010. On July 12, 2010, the United States and China notified the DSB that they had agreed on a 14 month period of time for implementation, to end on March 19, 2011.

China subsequently issued several revised measures, and repealed other measures, relating to the market access restrictions on books, newspapers, journals, DVDs, and music. As China acknowledged, however, it did not issue any measures addressing theatrical films. Instead, China proposed bilateral discussions with the United States in order to seek an alternative solution. The United States and China reached agreement in February 2012 on a Memorandum of Understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year and substantial additional revenue for foreign film producers. The MOU is currently being reviewed to discuss additional compensation for the United States.

#### *China – Measures Relating to the Exportation of Various Raw Materials (DS394)*

On June 23, 2009, the United States requested consultations with China regarding China's export restraints on a number of important raw materials. The materials at issue are: bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc. These materials are inputs for numerous downstream products in the steel, aluminum, and chemical sectors.

The United States challenged China's export restraints on these raw materials as inconsistent with several WTO provisions, including provisions in the GATT 1994, as well as specific commitments made by China in its WTO accession agreement. Specifically, the United States challenged certain Chinese measures that impose: (1) quantitative restrictions in the form of quotas on exports of bauxite, coke, fluorspar, silicon carbide, and zinc ores and concentrates, as well as certain intermediate products incorporating some of these inputs; and (2) export duties on several raw materials. The United States also challenged other related export restraints, including export licensing restrictions, minimum export price requirements, and requirements to pay certain charges before certain products can be exported, as well as China's failure to publish relevant measures.

The United States and China held consultations on July 30 and September 1 and 2, 2009, but did not resolve the dispute. The EU and Mexico also requested and held consultations with China on these measures. On November 19, 2009, the EU and Mexico joined the United States in requesting the establishment of a panel, and on December 21, 2009, the WTO established a single panel to examine all three complaints. On March 29, 2010, the Director General composed the panel as follows: Mr. Elbio Rosselli, Chair; Ms. Dell Higgie and Mr. Nugroho Wisnumurti, Members.

The panel's final report was circulated to Members on July 5, 2011. The panel found that the export duties and export quotas imposed by China on various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc constitute a breach of WTO rules and that China failed to justify those measures as legitimate conservation measures, environmental protection measures, or short supply measures. The panel also found China's imposition of minimum export price, export licensing, and export quota administration requirements on these materials, as well as China's failure to publish certain measures related to these requirements inconsistent with WTO rules.

On January 30, 2012, the Appellate Body issued a report affirming the panel's findings on all significant claims. In particular, the Appellate Body confirmed that: (1) China may not seek to justify its imposition of export duties as environmental or conservation measures; (2) China failed to demonstrate that certain of its export quotas were justified as measures for preventing or relieving a critical shortage; and (3) the Panel correctly made recommendations for China to bring its measures into conformity with its WTO obligations.



The Appellate Body also found that the panel erred in making findings related to licensing and administration claims, declaring those findings moot, and erred in its legal interpretation of one element of the exception set forth in Article XX(g) of the GATT 1994.

The DSB adopted the Appellate Body report, and the panel report as modified by the Appellate Body report, on February 22, 2012. The United States, the EU, Mexico, and China agreed that China would have until December 31, 2012, to comply with the rulings and recommendations.

At the conclusion of the RPT for China to comply, it appeared that China had eliminated the export duties and export quotas on the products at issue in this dispute, as of January 1, 2013. However, China maintains export licensing requirements for a number of the products. The United States continues to monitor actions by China that might operate to restrict exports of raw materials at issue in this dispute.

#### *China – Certain Measures Affecting Electronic Payment Services (DS413)*

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

EPS provide the essential architecture for card-based electronic payment transactions, and EPS are supplied through complex electronic networks that streamline and process transactions and offer an efficient and reliable means to facilitate the movement of funds from the cardholders purchasing goods or services to the individuals or businesses that supply them. EPS consist of a network, rules and procedures, and operating system that allow cardholders' banks to pay merchants' banks the amounts they are owed. EPS suppliers receive, check and transmit the information that processors need to conduct the transactions. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable net payment flows among the institutions involved in card-based electronic transactions. The best known EPS suppliers are credit and debit card companies based in the United States.

China instituted and maintains measures that operate to block foreign EPS suppliers, including U.S. suppliers, from supplying these services, and that discriminate against foreign suppliers at every stage of a card-based electronic payment transaction. The United States challenged China's measures affecting EPS suppliers as inconsistent with China's national treatment and market access commitments under the GATS.

The United States and China held consultations on October 27 and 28, 2010, but these consultations did not resolve the dispute. At the U.S. request, on March 25, 2011, the WTO established a panel to examine the U.S. complaint. On July 4, 2011, the Director General composed the panel as follows: Mr. Virachai Plasai, Chair; and Ms. Elaine Feldman and Mr. Martín Redrado, Members.

The Panel circulated its report on July 16, 2012. China did not appeal the Panel's findings, and the Panel Report was adopted by the DSB on August 31, 2012.

The United States prevailed on significant threshold issues, including:

- EPS is a single service (or EPS are integrated services) and each element of EPS is necessary for a payment card transaction to occur;

- EPS is properly classified under the same subsector, item (viii) of the GATS Annex on Financial Services, which appears as subsector (d) of China’s Schedule (All payment and money transmission services, including credit, charge, and debit cards) as the United States argued, and no element of EPS is classified as falling in item (xiv) of the GATS Annex on Financial Services (settlement and clearing of financial assets, including securities, derivative products, and other negotiable instruments), as China argued and for which China has no WTO commitments;
- In addition to the “four-party” model of EPS (*e.g.*, Visa and MasterCard), the “three-party” model (*e.g.*, American Express) and other variations, and third party issuer processor and merchant processors also are covered by subsector (d) of China’s Schedule.

With respect to the U.S. GATS national treatment claims, the Panel found the following violations:

- China imposes requirements on issuers of payment cards that payment cards issued in China bear the “Yin Lian/UnionPay logo,” and therefore China requires issuers to become members of the China Union Pay (CUP) network; that the cards they issue in China meet certain uniform business specifications and technical standards; and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;
- China imposes requirements that all terminals (ATMs, merchant processing devices, and point of sale (POS) terminals) in China that are part of the national card inter-bank processing network be capable of accepting all payment cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;
- China imposes requirements on acquirers (those institutions that acquire payment card transactions and that maintain relationships with merchants) to post the Yin Lian/UnionPay logo, and furthermore, China imposes requirements that acquirers join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability, and that terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers.

With respect to the U.S. GATS market access claims, the Panel found that China’s requirements related to certain Hong Kong and Macau transactions are inconsistent with Article XVI: 2(a) of the GATS because, contrary to China’s Sector 7B (d) mode 3 market access commitments, China maintains a limitation on the number of service suppliers in the form of a monopoly.

The United States and China agreed that a RPT for China to implement the DSB recommendations and rulings would be 11 months from the date of adoption of the recommendations and rulings, that is, until July 31, 2013.

In April 2015, the State Council of China issued a formal decision announcing that China’s market would be open to foreign suppliers that seek to provide EPS for domestic currency payment card transactions. The People’s Bank of China followed this in July 2015 by publishing a draft licensing regulation for public comment. This draft licensing regulation was finalized in June 2016. However, to date no foreign EPS supplier is permitted to operate in the domestic Chinese market. The United States has urged China to ensure that approvals for foreign EPS suppliers to operate in China occur without delay, in accordance with China’s WTO obligations, and continues to monitor the situation closely.

*China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS431)*

On March 13, 2012, the United States requested consultations with China regarding China's export restraints on rare earths, tungsten, and molybdenum. These materials are vital inputs in the manufacture of electronics, automobiles, steel, petroleum products, and a variety of chemicals that are used to produce both everyday items and highly sophisticated, technologically advanced products, such as hybrid vehicle batteries, wind turbines, and energy efficient lighting.

The United States challenged China's export restraints on these materials as inconsistent with several WTO provisions, including provisions in the GATT 1994, as well as specific commitments made by China in its WTO accession agreement. Specifically, the United States challenged: (1) China's quantitative restrictions in the form of quotas on exports of rare earth, tungsten, and molybdenum ores and concentrates, as well as certain intermediate products incorporating some of these inputs; (2) China's export duties on rare earths, tungsten, and molybdenum; and (3) China's other export restraints on these materials, including prior export performance and minimum capital requirements.

The United States, together with the EU and Japan, held consultations with China on April 25-26, 2012, but the consultations did not resolve the dispute.

On June 29, 2012, the EU and Japan joined the United States in requesting the establishment of a panel, and on July 23, 2012, the WTO DSB established a single panel to examine all three complaints. On September 24, 2012, the Director General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair; Mr. Hugo Cayrús and Mr. Darlington Mwape, members. The panel held its meetings with the parties on February 26-28, 2013, and June 18-19, 2013.

On March 26, 2014, the panel circulated its report. The panel found that the export quotas and export duties imposed by China on various forms of rare earths, tungsten, and molybdenum constitute a breach of WTO rules and that China failed to justify those measures as legitimate conservation measures or environmental protection measures, respectively. The panel also found China's imposition of prior export performance and minimum capital requirements inconsistent with WTO rules.

On August 7, 2014, the Appellate Body issued a report affirming the panel's findings on all significant claims. In particular, the Appellate Body confirmed that China may not seek to justify its imposition of export duties as environmental measures. The Appellate Body also confirmed, while modifying some of the panel's original reasoning that China had failed to demonstrate that its export quotas were justified as measures for conserving exhaustible natural resources.

On August 29, 2014, the DSB adopted the panel and Appellate Body reports. In September 2014, China announced its intention to implement the DSB recommendations and rulings in the dispute, and stated that it would need a RPT in which to do so. The United States, the EU, Japan, and China agreed that China would have until May 2, 2015, to comply with the recommendations and rulings.

China announced that it had eliminated its export quotas on the products at issue in this dispute as of January 1, 2015, and its export duties as of May 1, 2015.

China maintains export licensing requirements for these products, however. Accordingly, the United States continues to monitor actions by China that might operate to restrict exports of the materials at issue in this dispute.

*China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States (DS427)*

On September 27, 2009, China’s Ministry of Commerce (MOFCOM) initiated antidumping and countervailing duty investigations of imports of chicken broiler products from the United States. On September 26, 2010 and August 30, 2010, China imposed antidumping and countervailing duties, respectively. The United States’ review of MOFCOM’s determinations sustaining antidumping and countervailing duties indicated that China was acting inconsistently with numerous WTO obligations, such as abiding by applicable procedures and legal standards, including by finding injury to China’s domestic industry without objectively examining the evidence, by improperly calculating dumping margins and subsidization rates, and by failing to adhere to various transparency and due process requirements. On September 20, 2011, the United States filed a request for consultations challenging China’s antidumping and countervailing duties.

The United States and China held consultations on October 28, 2011, but were unable to resolve the dispute. At the request of the United States, the WTO established a panel on January 20, 2012, to examine the U.S. complaint. On May 24, 2012, the WTO Director General composed the panel as follows: Mr. Faizullah Khilji, Chair; and Mr. Serge Fréchette and Ms. Claudia Orozco, Members. The Panel held its meetings with the parties on September 27-28, 2012, and December 4-5, 2012.

The Panel’s report, which upheld nearly all the claims brought by the United States, was circulated on August 2, 2013. In particular, the Panel found MOFCOM’s substantive determinations and procedural conduct in levying the duties was inconsistent with China’s WTO obligations. With respect to the substantive errors, the Panel’s report found China breached its obligations by:

- Levying countervailing duties on U.S. producers in excess of the amount of subsidization;
- Relying on flawed price comparisons for its determination that China’s domestic industry had suffered injury;
- Unjustifiably declining to use the books and records of two major U.S. producers in calculating their costs of production; failing to consider any of the alternative allocation methodologies presented by U.S. producers and instead using a weight-based methodology resulting in high dumping margins; improperly allocating distinct processing costs to other products inflating dumping margins; and allocating one producer’s costs in producing non-exported products to exported products creating an inflated dumping margin;
- Improperly calculating the “all others” dumping margin and subsidy rates.

With respect to the procedural failings, the Panel found that China breached its WTO obligations by:

- Denying a hearing request during the investigation;
- Failing to require the Chinese industry to provide non-confidential summaries of information it provided to MOFCOM;
- Failing to disclose essential facts to U.S. companies including how their dumping margins were calculated.

The DSB adopted the panel report on September 25, 2013. On December 19, 2013, the United States and China agreed that China would have until July 9, 2014 to comply with the panel's findings.

MOFCOM announced on December 25, 2014, that it was initiating a reinvestigation of U.S. producers in response to the panel report. MOFCOM released re-determinations on July 8, 2014, that maintained recalculated duties on U.S. broiler products.

The United States considered that China failed to bring its measures into compliance with WTO rules, and on May 10, 2016, requested consultations. At the U.S. request, the WTO established a compliance panel on July 18, 2016, to examine the U.S. complaint. The panel circulated its report on January 18, 2018. The Panel found that China continued to breach its WTO obligations by:

- Continuing to levy countervailing duties on U.S. producers in excess of the amount of subsidization;
- Continuing to rely on flawed price comparisons for its determination that China's domestic industry had suffered injury;
- Continuing to not properly allocate costs in calculating U.S. producers' cost of production while declining to use the books and records of two major U.S. producers in calculating costs of production;
- Improperly resorting to facts available for a U.S. respondent that had submitted appropriate and verifiable data.

With respect to the procedural failings, the Panel found that China continued to breach its WTO obligations by:

- Failing to provide U.S. respondents with notice of information that MOFCOM required from China's domestic industry;
- Failing to provide U.S. respondents with timely opportunities to see requests for information made by MOFCOM.

The DSB adopted the compliance panel report on February 28, 2018. China agreed to remove the antidumping and countervailing duties that were subject to the dispute.

#### *China – Certain Measures Affecting the Automobile and Automobile-Parts Industries (DS450)*

On September 17, 2012, the United States requested consultations with China concerning China's automobile and automobile parts "export base" program. Under this program, China appears to provide extensive subsidies to automobile and automobile parts exporting enterprises located in designated regions known as "export bases." It appears that China is providing these subsidies in contravention of its obligation under Article 3 of the SCM Agreement, which prohibits the provision of subsidies contingent upon export performance. China also appears to have failed to comply with various transparency related obligations, including its obligation to notify the challenged subsidies as required by the SCM Agreement, to publish the measures at issue in an official journal, and to translate the measures into one or more of the official languages of the WTO as required by China's Protocol of Accession.

The United States and China held consultations in November 2012. After consultations, China removed or did not renew key provisions. The United States continues to monitor China's actions with respect to the matters at issue in this dispute.

### *China – Measures Related to Demonstration Bases and Common Service Platform Programs (DS489)*

On February 11, 2015, the United States requested consultations regarding China’s “Demonstration Bases-Common Service Platform” export subsidy program. Under this program, China appears to provide prohibited export subsidies through “Common Service Platforms” to manufacturers and producers across seven economic sectors and dozens of sub-sectors located in more than 150 industrial clusters, known as “Demonstration Bases.”

Pursuant to this Demonstration Bases-Common Service Platform program, China provides free and discounted services as well as cash grants and other incentives to enterprises that meet export performance criteria and are located in 179 Demonstration Bases throughout China. Each of these Demonstration Bases is comprised of enterprises from one of seven sectors: (1) textiles, apparel, and footwear; (2) advanced materials and metals (including specialty steel, titanium, and aluminum products); (3) light industry; (4) specialty chemicals; (5) medical products; (6) hardware and building materials; and (7) agriculture. China maintains and operates this extensive program through over 150 central government and sub-central government measures throughout China.

The United States held consultations with China on March 13 and April 1-2, 2015. At the U.S. request, the WTO on April 22, 2015, established a panel to examine the U.S. complaint. The United States and China held additional consultations following the establishment of the panel and reached agreement in April 2016 on a Memorandum of Understanding (MOU). Pursuant to the MOU, China agreed to terminate the export subsidies it had provided through the Demonstration Bases-Common Service Platform program. The United States continues to monitor China’s actions with respect to its compliance with the terms of the MOU.

### *China – Tax Measures Concerning Certain Domestically Produced Aircraft (DS501)*

On December 8, 2015, the United States requested consultations with China concerning its measures providing tax advantages in relation to the sale of certain domestically produced aircraft in China. It appears that China exempts the sale of certain domestically produced aircraft from China’s value-added tax (VAT), while imported aircraft continue to be subject to the VAT. The aircraft subject to the exemptions appear to include general aviation, regional, and agricultural aircraft. China has also failed to publish the measures that establish these exemptions.

These measures appear to be inconsistent with Articles III:2 and III:4 of the GATT 1994. China also appears to have acted inconsistently with its obligations under Article X:1 of the GATT 1994, as well as a number of specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on January 29, 2016. Following consultations, the United States confirmed that China rescinded the discriminatory tax exemptions at issue, and the United States made those relevant measures public.

### *China – Export Duties on Certain Raw Materials (DS508)*

On July 13, 2016, and July 19, 2016, the United States requested consultations with China regarding China’s restraints on the exportation of antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum, and tin. These materials are critical to the production of downstream products made in the United States in industries including aerospace, automotive, construction, electronics, and steel.

The United States challenged China’s export restraints on these materials as inconsistent with several WTO provisions, including provisions in the GATT 1994, as well as specific commitments made by China in its

WTO accession agreement. The export restraints include export quotas, export duties, and additional requirements that impose restrictions on the trading rights of enterprises seeking to export various forms of the materials, such as prior export performance requirements.

The United States, together with the EU, held consultations with China on September 8-9, 2016. Consultations did not resolve the dispute.

At the U.S. request, the WTO established a panel on November 8, 2016. In light of Chinese actions to cease to apply the export duties and quotas in 2017, the United States is continuing to monitor China's actions.

#### *China – Domestic Supports for Agricultural Producers (DS511)*

On September 13, 2016, the United States requested consultations with China concerning China's provision of domestic support in favor of agricultural producers, in particular, to those producing wheat, Indica rice, Japonica rice, and corn. It appears that China's level of domestic support is in excess of its commitment level of *nil* specified in Section I of Part IV of China's Schedule CLII because, for example, China provides domestic support in excess of its product-specific *de minimis* level of 8.5 percent for each of wheat, Indica rice, Japonica rice, and corn.

China's level of domestic support appears to be inconsistent with Articles 3.2, 6.3, and 7.2(b) of the Agriculture Agreement. The parties consulted on this matter on October 20, 2016, but the consultations did not resolve the dispute.

At the U.S. request, the WTO established a panel on January 25, 2017, to examine the U.S. complaint. Australia, Brazil, Canada, Colombia, Ecuador, Egypt, El Salvador, the European Union, Guatemala, India, Indonesia, Israel, Japan, Kazakhstan, Korea, Norway, Pakistan, Paraguay, Philippines, Russia, Saudi Arabia, Singapore, Chinese Taipei, Thailand, Turkey, Ukraine, and Vietnam reserved their rights to participate in panel proceedings as third parties. On June 24, 2017, the parties agreed to compose the Panel as follows: Mr. Gudmundur Helgason as Chair; and Mr. Juan Antonio Dorantes Sánchez, Member, and Ms. Elaine Feldman as Members. Panel proceedings are ongoing, and the Panel is expected to circulate the final report in 2019.

#### *China — Administration of Tariff-Rate Quotas for Certain Agricultural Products (DS517)*

On December 15, 2016, the United States requested consultations with China regarding the administration of tariff-rate quotas for certain agricultural products, namely, wheat, corn, and rice.

The measures identified in the request establish a system by which the National Development and Reform Commission (NDRC) annually allocates quota to eligible enterprises, and reallocates quota returned unused, based on eligibility requirements and allocation principles that are not clearly specified. The tariff-rate quotas for these commodities have under filled, even in years where market conditions would suggest demand for imports. China's administration of these tariff-rate quotas inhibits the filling of the tariff-rate quotas, restricting opportunities for U.S. and other trading partners to export wheat, corn, and rice to China.

China is acting inconsistently with the commitments in its Accession Protocol, in which China agreed to ensure that the tariff-rate quotas were administered on a transparent, predictable, uniform, fair, and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preference and end-user demand; and that would not inhibit the filling of each tariff-rate quota. China's administration is inconsistent with Article XIII:3(b) of the General Agreement on Tariffs and Trade of 1994 (GATT 1994) because China fails

to provide public notice of quantities permitted to be imported and changes to quantities permitted to be imported under each TRQ. China's administration is inconsistent with Article XI:1 of the GATT 1994, which generally prohibits restrictions on imports of goods other than duties, taxes, or other charges. Finally, China's administration is inconsistent with Article X:3(a) of the GATT 1994 because China does not administer its tariff-rate quotas in a reasonable manner.

On February 9, 2017, the United States and China held consultations in Geneva. The European Union, Canada, Australia, and Thailand requested to join the consultations, but China denied the third parties' requests.

The consultations failed to resolve the U.S. concerns, and at the U.S. request, the WTO established a panel on September 22, 2017. Australia, Brazil, Canada, Ecuador, the European Union, Guatemala, India, Indonesia, Japan, Kazakhstan, Korea, Norway, Russia, Singapore, Chinese Taipei, Ukraine and Vietnam reserved third party rights. The Panel was composed on February 22, 2018, as follows: Mr. Mateo Diego-Fernandez as Chair; and Mr. Stefan H. Johannesson and Mr. Esteban B. Conejos, Jr. as Members. Panel proceedings are ongoing, and the panel is expected to circulate its report in 2019.

#### *China – Subsidies to Producers of Primary Aluminum (DS519)*

On January 12, 2017, the United States requested consultations with China concerning apparent subsidies that China provides to certain producers of primary aluminum in China. China appears to provide subsidies through artificially cheap loans from banks and through artificially low-priced inputs for aluminum production, such as coal, electricity, and alumina.

The United States is concerned that China's subsidies appear to be causing or threatening to cause serious prejudice to the interests of the United States through displacement or impedance of U.S. imports into China and third country markets, significant price undercutting, price suppression, price depression or lost sales in a given market, or through an increase in Chinese world market share. In particular, under Article 5(c) of the SCM Agreement, WTO Members have agreed that subsidies should not cause "serious prejudice" to the interests of other WTO Members.

#### *China – Certain Measures Concerning the Protection of Intellectual Property Rights (DS542)*

On March 23, 2018, the United States requested consultations with China concerning China's discriminatory technology licensing requirements. The U.S. consultations request details how China breaches WTO rules by denying foreign patent holders, including U.S. companies, basic patent rights to stop a Chinese entity from using the technology after a licensing contract ends. China also breaks WTO rules by imposing mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology. These Chinese policies hurt innovators in the United States and worldwide by interfering with the ability of foreign technology holders to set market-based terms in licensing and other technology-related contracts.

In July 2018, the United States consulted with China, with Japan and the EU joining the consultations, but the consultations did not resolve the dispute.

At the U.S. request, the WTO established a panel on November 21, 2018, to examine the U.S. complaint.

#### *China – Additional Duties on Certain Products from the United States (DS558)*

On July 16, 2018, the United States requested consultations with China with respect to its imposition of additional duties on certain products originating in the United States. China imposed the additional duties



in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The U.S. consultations request alleges that the additional duties contravene China's obligations under the WTO Agreement because they: (1) fail to extend to U.S. products an advantage, favor, privilege or immunity granted by China to products originating in the territory of other WTO Members; (2) accord less favorable treatment to products originating in the United States; and (3) impose duties in excess of those set forth in China's schedule.

The United States held consultations with China on August 29, 2018, but these consultations did not resolve the dispute. At the U.S. request, on November 21, 2018, the WTO established a panel to examine the U.S. complaint.

*European Union – Measures concerning meat and meat products (hormones) (DS26, 48)*

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. The panel found that the EU ban is inconsistent with the EU's obligations under the SPS Agreement, and that the ban is not based on science, a risk assessment, or relevant international standards.

Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that, while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case, the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU. The value of the suspension of concessions represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be \$116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$116.8 million.

On November 3, 2003, the EU notified the WTO that it had amended its hormones ban. On November 8, 2004, the EU requested consultations with respect to "the United States" continued suspension of concessions and other obligations under the covered agreements" in the EU-Hormones dispute. The Appellate Body issued its report in the *U.S. – Continued Suspension (WT/DS320)* dispute on October 16, 2008.

On October 31, 2008, USTR announced that it was considering changes to the list of EU products on which 100 percent *ad valorem* duties had been imposed in 1999. A modified list of EU products was announced by USTR on January 15, 2009.

On December 22, 2008, the EU requested consultations with the United States and Canada pursuant to Articles 4 and 21.5 of the DSU, regarding the EU's implementation of the DSB's recommendations and rulings in the EU-Hormones dispute. In its consultations request, the EU stated that it considered that it has brought into compliance the measures found inconsistent in EU-Hormones by, among other things, adopting its revised ban in 2003. Consultations took place in February 2009.

Pursuant to a Memorandum of Understanding (MOU) between the United States and the EU, further litigation in the EU-Hormones compliance proceeding has been suspended.

In 2016 industry representatives requested that the U.S. reinstate suspension of concessions, as authorized by the DSB. USTR accordingly initiated proceedings under Section 306 of the Trade Act.

*(For additional information on the U.S. suspension of concessions and the MOU, please see the discussion of the associated Section 301 investigation in section III.B of this report.)*

#### *European Union – Measures affecting the approval and marketing of biotechnology products (DS291)*

Since the late 1990s, the EU has pursued policies that undermine agricultural biotechnology and trade in biotechnological foods. After approving a number of biotechnological products through October 1998, the EU adopted an across-the-board moratorium under which no further biotechnology applications were allowed to reach final approval. In addition, six Member States (Austria, France, Germany, Greece, Italy, and Luxemburg) adopted unjustified bans on certain biotechnological crops that had been approved by the EU prior to the adoption of the moratorium. These measures have caused a growing portion of U.S. agricultural exports to be excluded from EU markets and unfairly cast concerns about biotechnology products around the world, particularly in developing countries.

On May 13, 2003, the United States filed a consultation request with respect to: (1) the EU's moratorium on all new biotechnology approvals; (2) delays in the processing of specific biotech product applications; and (3) the product-specific bans adopted by six EU Member States (Austria, France, Germany, Greece, Italy, and Luxembourg). The United States requested the establishment of a panel on August 7, 2003. Argentina and Canada submitted similar consultation and panel requests. On August 29, 2003, the DSB established a panel to consider the claims of the United States, Argentina, and Canada. On March 4, 2003, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

The panel issued its report on September 29, 2006. The panel agreed with the United States, Argentina, and Canada that the disputed measures of the EU, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the SPS Agreement. In particular:

- The panel found that the EU adopted a *de facto*, across-the-board moratorium on the final approval of biotechnological products, starting in 1999 up through the time the panel was established in August 2003;
- The panel found that the EU had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in “undue delays” in violation of the EU’s obligations under the SPS Agreement;
- The panel identified specific, WTO inconsistent “undue delays” with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request;
- The panel upheld the United States’ claims that, in light of positive safety assessments issued by the EU’s own scientists, the bans adopted by six EU Member States on products approved in the EU prior to the moratorium were not supported by scientific evidence, and were thus inconsistent with WTO rules.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EU notified the DSB that the EU intended to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a RPT for implementation. On June 21, 2006, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU on a one-year period of time for implementation, to end on November 21, 2007. On November 21, 2007, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU to extend the implementation period to January 11, 2008.

On January 17, 2008, the United States submitted a request for authorization to suspend concessions and other obligations with respect to the EU under the covered agreements at an annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the EU's failure to bring measures concerning the approval and marketing of biotechnology products into compliance with the recommendations and rulings of the DSB. On February 6, 2008, the EU objected under Article 22.6 of the DSU, claiming that the level of suspension proposed by the United States was not equivalent to the level of nullification or impairment, referring the matter to arbitration. The EU and the United States mutually agreed to suspend the Article 22.6 arbitration proceedings on February 18, 2008.

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

#### *European Union and certain Member States – Measures affecting trade in large civil aircraft (DS316)*

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

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

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

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

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

- Some of the launch aid provided for the A380, Airbus's newest and largest aircraft, was contingent on exports and, therefore, a prohibited subsidy;
- Several instances in which German and French government entities created infrastructure for Airbus were subsidies because the infrastructure was not general, and the price charged to Airbus for use resulted in less than adequate remuneration to the government;
- Several government equity infusions into the Airbus companies were subsidies because they were on more favorable terms than available in the market;
- Several EU and Member State research programs provided grants to Airbus to develop technologies used in its aircraft;
- These subsidies caused adverse effects to the interests of the United States in the form of lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Korea, Mexico, Singapore, and Chinese Taipei.

The EU filed a notice of appeal on July 21, 2010. The WTO Appellate Body conducted an initial hearing on August 3, 2010, to discuss procedural issues related to the need to protect business confidential information and highly sensitive business information and issued additional working procedures to that end on August 10, 2010. The Appellate Body held two hearings on the issues raised in the EU's appeal of the Panel's findings of WTO inconsistent subsidization of Airbus. The first hearing, held November 11-17, 2010, addressed issues associated with the main subsidy to Airbus, launch aid, and the other subsidies challenged by the United States. The second hearing held December 9-14, 2010, focused on the Panel's findings that the European subsidies caused serious prejudice to the interests of the United States in the form of lost sales and declining market share in the EU and other third country markets. On May 18, 2011, the Appellate Body issued its report. The Appellate Body affirmed the Panel's central findings that European government launch aid had been used to support the creation of every model of large civil aircraft produced by Airbus. The Appellate Body also confirmed that launch aid and other challenged subsidies to Airbus have directly resulted in Boeing losing sales involving purchases of Airbus aircraft by EasyJet, Air Berlin, Czech Airlines, Air Asia, Iberia, South African Airways, Thai Airways International, Singapore Airlines, Emirates Airlines, and Qantas, as well as lost market share, with Airbus gaining market share in the EU and in third country markets, including China and South Korea, at the expense of Boeing. The Appellate Body also found that the Panel applied the wrong standard for evaluating whether subsidies are export subsidies, and that the Panel record did not have enough information to allow application of the correct standard.

On December 1, 2011, the EU provided a notification in which it claimed to have complied with the DSB recommendations and rulings. On December 9, 2011, the United States requested consultations regarding the notification and also requested authorization from the DSB to impose countermeasures. The United States and the EU held consultations on January 13, 2012. On December 22, 2011, the EU objected to the level of suspension of concessions requested by the United States, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. On January 19, 2012, the United States and the EU requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

On March 30, 2012, in light of the parties' disagreement over whether the EU had complied with the DSB's recommendations and rulings, the United States requested that the DSB refer the matter to the original Panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on April 13, 2012. On April 25, 2012, the compliance Panel was composed with the members of the original Panel: Mr. Carlos Pérez del Castillo, Chair; Mr. John Adank and Mr. Thinus Jacobsz, Members.

The parties filed submissions in the compliance proceeding in late 2012, and the compliance Panel held a meeting with the parties on April 16-17, 2013.

On September 22, 2016, the report of the Article 21.5 Panel was circulated to the Members. The panel found that the EU breached Articles 5(c) and 6.3(a), (b), and (c) of the SCM agreement, and that the EU and certain Member States failed to comply with the DSB recommendations under Article 7.8 of the SCM Agreement to “take appropriate steps to remove the adverse effects or ... withdraw the subsidy.”

Significant findings by the compliance panel against the EU include:

- 34 out of 36 alleged compliance “steps” notified by the EU did not amount to “actions” with respect to the subsidies provided to the Airbus or the adverse effects that those subsidies were to have caused in the original proceeding;
- As a result, the EU failed to withdraw the subsidies, as recommended by the DSB;
- Those subsidies were a genuine and substantial cause of lost sales to U.S. aircraft, and displacement and impedance of exports of U.S. aircraft to Australia, China, India, Korea, Singapore, and the United Arab Emirates.

On October 13, 2016, the EU notified the DSB of its decision to appeal certain issues of law and legal interpretations developed by the compliance panel. The Division hearing the appeal is Ricardo Ramirez-Hernandez (Chair), Peter van den Bossche and Ujal Singh Bhatia.

The parties and third parties filed written submissions in December 2016 and January 2017. The Appellate Body Division held substantive oral hearings with the parties and third parties from May 2-5, 2017, and from September 26-29, 2017.

On May 15, 2018, the Appellate Body issued its report. The Appellate Body confirmed that the EU and certain EU member States failed to comply with the earlier WTO determination finding launch aid inconsistent with their WTO obligations. The Appellate Body further confirmed that almost \$5 billion in new launch aid for the A350 XWB was WTO-inconsistent. The Appellate Body found that the WTO-inconsistent subsidies continue to cause significant lost sales of Boeing aircraft in the twin-aisle and very large aircraft markets, and that these subsidies impede exports of Boeing 747 aircraft to numerous geographic markets. The Appellate Body also found that, due to the passage of time, the EU no longer needed to take action regarding some of the earlier (*i.e.*, pre-A380) launch aid subsidies previously found to be WTO-inconsistent.

On July 13, 2018, at the request of the United States, the arbitration regarding the level of countermeasures (suspended in January 2012) was resumed. The arbitration proceedings are ongoing, and the arbitral decision is expected in 2019.

On May 17, 2018, the EU represented to the DSB that it had taken new steps to achieve compliance with its WTO obligations. However, following consultations, the United States did not agree that the EU had achieved compliance. At the request of the EU, the WTO established a second compliance panel on August 27, 2018. The second compliance panel proceedings are ongoing, and the second compliance panel has indicated that it does not expect to issue a decision before the end of 2019.

*European Union – Additional Duties on Certain Products from the United States (DS559)*

On July 16, 2018, the United States requested consultations with the European Union (EU) with respect to its imposition of additional duties on certain products originating in the United States. The EU imposed the additional duties in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The U.S. consultations request alleges that the additional duties contravene the EU's obligations under the WTO Agreement because they: (1) fail to extend to U.S. products an advantage, favor, privilege or immunity granted by the EU to products originating in the territory of other WTO Members; (2) accord less favorable treatment to products originating in the United States; and (3) impose duties in excess of those set forth in the EU's schedule.

The United States held consultations with the EU on August 28, 2018, but these consultations did not resolve the dispute. At the U.S. request, the WTO established a panel to examine the U.S. complaint on November 21, 2018.

*India – Measures Concerning the Importation of Certain Agricultural Products from the United States (DS430)*

On March 6, 2012, the United States requested consultations with India regarding its import prohibitions on various agricultural products from the United States. India asserts these import prohibitions are necessary to prevent the entry of avian influenza into India. However, the United States has not had an outbreak of highly pathogenic avian influenza since 2004. With respect to low pathogenic avian influenza (LPAI), the only kind of avian influenza found in the United States since 2004, international standards do not support the imposition of import prohibitions, including the type maintained by India. The United States considers that India's restrictions are inconsistent with numerous provisions of the SPS Agreement, including Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 7, and Annex B, and Articles I and XI of GATT 1994.

The United States and India held consultations on April 16-17, 2012, but were unable to resolve the dispute. At the U.S. request, the WTO established a panel to examine the U.S. complaint on June 25, 2012. On February 18, 2014, the WTO Director General composed the Panel as follows: Mr. Stuart Harbinson as Chair; and Ms. Delilah Cabb and Mr. Didrik Tønseth, Members. The panel held meetings with the Parties on July 24-25, 2013 and December 16-17, 2013.

The Panel issued its report on October 14, 2014. In its report, the panel found in favor of the United States. Specifically, the Panel found that India's restrictions breach its WTO obligations because they: are not based on international standards or a risk assessment that takes into account available scientific evidence; arbitrarily discriminate against U.S. products because India blocks imports while not similarly blocking domestic products; constitute a disguised restriction on international trade; are more trade restrictive than necessary since India could reasonably adopt international standards for the control of avian influenza instead of imposing an import ban; fail to recognize the concept of disease free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined; and were not properly notified in a manner that would allow the United States and other WTO Members to comment on India's restrictions before they went into effect. India filed its notice of appeal on January 26, 2015.

On 4 June 2015, the Appellate Body issued its report in this dispute, upholding the Panel's findings that India's restrictions: are not based on international standards or a risk assessment that takes into account available scientific evidence; arbitrarily discriminate against U.S. products because India blocks imports while not similarly blocking domestic products; are more trade restrictive than necessary since India could reasonably adopt international standards for the control of avian influenza instead of imposing an import

ban; and fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined.

On July 13, 2015, India informed the DSB that it intended to implement the DSB's recommendations and rulings and would need a RPT to do so. On December 8, 2015, the United States and India agreed that the RPT would be 12 months, ending on June 19, 2016.

On July 7, 2016, the United States requested the authorization of the DSB to suspend concessions or other obligations pursuant to Article 22.2 of the DSU. India objected to the request, referring the matter to arbitration. The Arbitrator was composed by the original panel panelists. The arbitration proceedings remain ongoing.

On April 6, 2017, India requested the establishment of a compliance panel. India asserted that it had enacted a revised avian influenza measure that complied with India's WTO obligations. The compliance panel was composed by the original panelists. The compliance panel proceeds are ongoing.

In 2018, the United States and India on several occasions postponed both the release of the Arbitrator's decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding while the two sides discuss potential resolution of the dispute. In March 2018, the United States and India agreed to veterinary export certificates for the shipment to India of U.S. poultry and poultry products.

#### *India – Solar Local Content I / II (DS456)*

In February 2013, the United States requested WTO consultations with India concerning domestic-content requirements for participation in an Indian solar power generation program known as the National Solar Mission (NSM). Under Phase I of the NSM, which India initiated in 2010, India provided guaranteed long-term payments to solar power developers contingent on the purchase and use of solar cells and solar modules of domestic origin. India continued to impose domestic content requirements for solar cells and modules under Phase II of the NSM, which India launched in October 2013. In March 2014, the United States held consultations with India on Phase II of the NSM. In April 2014, after two rounds of unsuccessful consultations with India, the United States requested that the WTO DSB establish a dispute settlement panel. In May 2014, the DSB established a WTO panel to examine India's domestic content requirements under its NSM program. On September 24, 2014, the parties agreed to compose the Panel as follows: Mr. David Walker as Chair; and Mr. Pornchai Danvivathana and Mr. Marco Tulio Molina Tejada, Members. The Panel held meetings with the Parties on February 3-4, 2015, and April 28-29, 2015.

The Panel issued its final public report on February 24, 2016, finding in favor of the United States on all claims. The Panel found that India's domestic content requirements under its National Solar Mission are inconsistent with India's national treatment obligations under Article III:4 of the GATT 1994, and Article 2.1 of the Agreement on Trade-related Investment Measures (TRIMS Agreement). Because an Indian solar power developer may bid for and maintain certain power generation contracts only by using domestically produced equipment, and not by using imported equipment, India's requirements accord "less favorable" treatment to imported solar cells and modules than that accorded to like products of Indian origin. India appealed this decision to the WTO Appellate Body on April 20, 2016. The Appellate Body issued its report on September 16, 2016. The Appellate Body affirmed the Panel's finding that India's domestic content requirements (DCR measures) under its National Solar Mission are inconsistent with India's national treatment obligations under Article III:4 of the GATT 1994 and Article 2.1 of the TRIMS Agreement. The Appellate Body also affirmed that Panel's rejection of India's defensive claims under Articles III:8(a), XX(j) and XX(d) of the GATT 1994.

The DSB adopted the panel and Appellate Body reports during a special meeting of the DSB on October 14, 2016. At that meeting, India informed the DSB that India intended to implement the DSB's recommendations and rulings in a manner that respects its WTO obligations, and that it would need an RPT to do so. India and the United States agreed that India would complete implementation of the DSB recommendations and rulings by December 14, 2017.

On December 14, 2017 India submitted a status report to DSB indicating that India had implemented the rulings and recommendations of the DSB. On December 19, 2017 the United States requested authorization from the DSB to suspend trade concessions under Article 22.2 of the DSU on grounds that India had not, in fact, brought its measures into conformity with WTO rules. India objected to the United States' request on January 3, 2018, referring the matter to arbitration.

On January 23, 2018, India requested the establishment of a compliance panel under Article 21.5 of the DSU to determine whether the measures that India has purportedly taken to comply the recommendations and rulings of the DSB are consistent with WTO rules. At its meeting on February 28, 2018, the DSB agreed to establish a compliance panel.

#### *India – Export Related Measures (DS541)*

On March 14, 2018, the United States requested consultations with India concerning certain Indian measures relating to export subsidy programs including: (1) the Export Oriented Units Scheme and sector specific schemes, including Electronics Hardware Technology Parks Scheme; (2) the Merchandise Exports from India Scheme; (3) the Export Promotion Capital Goods Scheme; (4) Special Economic Zones, and; (5) a duty-free imports for exporters program. The United States alleges that these programs are inconsistent with Articles 3.1(a) and 3.2 of the Agreement on Subsidies and Countervailing Measures because they provide prohibited subsidies contingent upon export performance. Consultations were held on April 11, 2018, but failed to resolve the dispute.

At the U.S. request, the WTO on May 28, 2018, a panel to examine the U.S. complaint. Panel proceedings are ongoing.

#### *Indonesia – Import Restrictions on Horticultural Products, Animals, and Animal Products (DS455, DS465 and DS478)*

On May 8, 2014, the United States, joined by New Zealand, requested consultations with Indonesia concerning certain measures affecting the importation of horticultural products, animals, and animal products into Indonesia. The measures on which consultations were requested include Indonesia's import licensing regimes for horticultural products and for animals and animal products, as well as certain prohibitions and restrictions that Indonesia imposes through these regimes.

The United States had previously requested consultations on prior versions of Indonesia's import licensing regimes governing the importation of horticultural products and animals and animal products, including the regime established in 2012. The United States was concerned about these regimes and certain measures imposed through them and, on January 10, 2013, requested consultations with Indonesia. Indonesia subsequently amended or replaced its import licensing regulations changing their structure and requirements. The United States requested consultations again, this time joined by New Zealand, on August 30, 2013. Indonesia again amended its import licensing regimes shortly thereafter, and the consultation request in the current dispute (DS478) followed.

The United States was concerned that Indonesia, through its import licensing regimes, imposes numerous prohibitions and restrictions on the importation of covered products, including: 1) prohibiting the



importation of certain products altogether; 2) imposing strict application windows and validity periods for import permits; 3) restricting the type, quantity, and country of origin of products that may be imported; 4) requiring that importers actually import a certain percentage of the volume of products allowed under their permits; 5) restricting the uses for which products may be imported; 6) imposing local content requirements; 7) restricting imports on a seasonal basis; and 8) setting a “reference price” below which products may not be imported. The Indonesian measures at issue appeared to be inconsistent with several WTO provisions, including Article XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement.

The United States and New Zealand held consultations with Indonesia on June 19, 2014, but these consultations failed to resolve the dispute. On March 18, 2015, the United States, together with New Zealand, requested the WTO to establish a dispute settlement panel to examine Indonesia’s import restrictions. A panel was established on May 20, 2015. The Director General Composed the panel as follows: Mr. Christian Espinoza Cañizares, Chair; and Mr. Gudmundur Helgason and Ms. Angela Maria Orozco Gómez, Members. The panel held meetings with the Parties on February 1-2, 2016 and April 13-14, 2016.

The Panel circulated its report on December 22, 2016. The Panel found that all of Indonesia’s import restricting measures for horticultural products and animal products are inconsistent with Article XI:1 of the GATT 1994. The Panel also found that Indonesia has failed to demonstrate that the challenged measures are justified under any general exception available under the GATT 1994. Indonesia appealed the Panel’s report to on February 17, 2017. An appellate report was issued on November 9, 2017, affirming the finding of the Panel that all of Indonesia’s measures are inconsistent with Article XI:1 of the GATT 1994 and that Indonesia had not established an affirmative defense with respect to any measure.

The WTO adopted the appellate report and the Panel report on November 22, 2017. A WTO arbitrator set the reasonable period of time for Indonesia to bring its measures into compliance with WTO rules to expire on July 22, 2018. On August 2, 2018, the United States requested WTO authorization to suspend concessions of other obligations pursuant to Article 22.2 of the DSU. On August 14, 2018, Indonesia objected to the United States’ proposed level of suspension of concessions pursuant to Article 22.6 of the DSU, referring the matter to arbitration.

#### *Mexico – Additional Duties on Certain Products from the United States (DS560)*

On July 16, 2018, the United States requested consultations with Mexico with respect to its imposition of increased duties on certain products originating in the United States. Mexico increased the duties in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The U.S. consultations request alleges that the increased duties contravene Mexico’s obligations under the WTO Agreement because they fail to extend to U.S. products an advantage, favor, privilege or immunity granted by Mexico to products originating in the territory of other WTO Members.

The United States held consultations with Mexico on September 27, 2018, but these consultations did not resolve the dispute. At the U.S. request, the WTO established a panel to examine the U.S. complaint on November 21, 2018.

#### *Russia – Additional Duties on Certain Products from the United States (DS566)*

On July 16, 2018, the United States requested consultations with Russia with respect to its imposition of additional duties on certain products originating in the United States. Russia imposed the additional duties in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The

U.S. consultations request alleges that the additional duties contravene Russia's obligations under the WTO Agreement because they 1) fail to extend to U.S. products an advantage, favor, privilege or immunity granted by Russia to products originating in the territory of other WTO Members; 2) accord less favorable treatment to products originating in the United States; and 3) impose duties in excess of those set forth in Russia's schedule.

The United States held consultations with Russia on August 28, 2018, but these consultations did not resolve the dispute. At the U.S. request, the WTO established a panel to examine the U.S. complaint on November 21, 2018.

#### *Turkey – Additional Duties on Certain Products from the United States (DS561)*

On July 16, 2018, the United States requested consultations with Turkey with respect to its imposition of additional duties on certain products originating in the United States. Turkey imposed the additional duties in retaliation for the action the President took under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The U.S. consultations request alleges that the additional duties contravene Turkey's obligations under the WTO Agreement because they 1) fail to extend to U.S. products an advantage, favor, privilege or immunity granted by Turkey to products originating in the territory of other WTO Members; 2) accord less favorable treatment to products originating in the United States; and 3) impose duties in excess of those set forth in Turkey's schedule.

The United States held consultations with Turkey on August 29, 2018, as well as supplemental consultations on November 14, 2018, regarding an amendment to Turkey's measure imposing the additional duties. These consultations, however, did not resolve the dispute. The United States has requested the WTO to establish a panel to examine U.S. complaint.

### **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 2016 for disputes in which the United States was a responding party (listed by DS number).

#### *United States – Section 110(5) of the Copyright Act (DS160)*

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States was in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; and Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The Panel issued its final report on June 15, 2000, and found that one of the two exemptions provided by section 110(5) is inconsistent with the U.S. WTO obligations. The Panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the period of time to be given the United States to implement the Panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend

the deadline until the earlier of the end of the then current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits to the EU as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case was \$1.1 million per year. On January 7, 2002, the EU sought authorization from the DSB to suspend its obligations *vis-à-vis* the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration.

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

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

#### *United States – Section 211 Omnibus Appropriations Act (DS176)*

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the consistency of Section 211 with the TRIPS Agreement and requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU, the WTO Director General composed the panel on October 26, 2000. The Director General composed the panel as follows: Mr. Wade Armstrong, Chair; and Mr. François Dessemontet and Mr. Armand de Mestral, Members. The Panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002.

The Appellate Body reversed the Panel's one finding against the United States and upheld the Panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The Panel and Appellate Body reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to implement the recommendations and rulings. The RPT for implementation ended on June 30, 2005. On June 30, 2005, the United States and the EU agreed that the EU would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

In January 2016, the United States notified the EU of positive developments that resolved a longstanding issue of concern to the EU and others, which helped moved this dispute into a more cooperative phase.

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

Japan alleged that the U.S. Department of Commerce and the U.S. International Trade Commission's preliminary and final determinations in their antidumping investigations of certain hot-rolled steel products from Japan issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 2000, the Director General composed the panel as follows: Mr. Harsha V. Singh, Chair; and 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, Commerce issued a new final determination in the hot-rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. The RPT ended on July 31, 2005. With respect to the outstanding implementation issue, on July 7, 2005, the United States and Japan agreed that Japan would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

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

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, South Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23, 2001. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair; and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

The Panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the Panel found that the CDSOA constitutes a specific action against dumping and subsidies and, therefore, is inconsistent with the Antidumping and SCM Agreements as well as Article VI of the GATT 1994. The Panel also found that the CDSOA distorts the standing determination conducted by Commerce and, therefore, is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts Commerce's consideration of price undertakings (agreements to settle antidumping and countervailing duty investigations). The Panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the Panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Antidumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the Panel's adverse findings on October 1, 2002.

The Appellate Body issued its report on January 16, 2003, upholding the Panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the Panel's finding on standing. The DSB adopted the Panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the Antidumping Agreement, the SCM Agreement, and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

On January 15, 2004, eight complaining parties (Brazil, Canada, Chile, the EU, India, Japan, South Korea, and Mexico) requested WTO authorization to retaliate. The remaining three complaining parties (Australia, Indonesia, and Thailand) agreed to extend to December 27, 2004, the period of time in which the United States had to comply with the WTO rulings and recommendations in this dispute. On January 23, 2004, the United States objected to the requests from the eight complaining parties to retaliate, thereby referring the matter to arbitration. On August 31, 2004, the Arbitrators issued their awards in each of the eight arbitrations. They determined that each complaining party could retaliate, on a yearly basis, covering the total value of trade not exceeding, in U.S. dollars, the amount resulting from the following equation: amount of disbursements under CDSOA for the most recent year for which data are available relating to antidumping or countervailing duties paid on imports from each party at that time, as published by the U.S. authorities, multiplied by 0.72.

Based on requests from Brazil, the EU, India, Japan, South Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004. On December 23, 2004, January 7, 2005 and January 11, 2005, the United States reached agreements with Australia, Thailand, and Indonesia that these three complaining parties would not request authorization to suspend concessions at that time: and that the United States would not object to a future request on grounds of lack of timeliness.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from 9 percent to 30 percent on a list of U.S. products. On September 1, 2005, Japan began imposing additional duties of 15 percent on a list of U.S. products.

On February 8, 2006, U.S. President George W. Bush signed the Deficit Reduction Act into law. That Act included a provision repealing the CDSOA. Certain of the complaining parties nevertheless continued to impose retaliatory measures because they considered that the Deficit Reduction Act failed to bring the United States into immediate compliance. Thus, on May 1, 2006, the EU renewed its retaliatory measure and added eight products to the list of targeted imports. Japan renewed its retaliatory measure on September 1, 2006, retaining the same list of targeted imports. Mexico adopted a new retaliatory measure on September 14, 2006, imposing duties of 110 percent on certain dairy products through October 31, 2006. Since that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

On May 7, 2018, the EU notified the DSB that it would maintain unchanged the list of products subject to retaliation, and would decrease the duty on those products from 4.3 percent to 0.3 percent. On November

9, 2018, Japan notified the DSB that it would continue its non-application of retaliatory measures for the coming year.

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

On March 13, 2003, Antigua and Barbuda (Antigua) requested consultations regarding its claim that U.S. Federal, State, and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003.

Antigua requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of Antigua, the WTO Director General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chair; and Mr. Virachai Plasai and Mr. Richard Plender, Members. The Panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. Federal laws (18 U.S.C. §§ 1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several Panel findings. The Appellate Body overturned the Panel's findings regarding the state statutes, and found that the three U.S. Federal gambling laws at issue "fall within the scope of 'public morals' and/or 'public order'" under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needed to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the Panel and Appellate Body reports on April 20, 2005. On May 19, 2005, the United States stated its intention to implement the DSB recommendations and rulings. On August 19, 2005, an Article 21.3(c) arbitrator determined that the RPT for implementation would expire on April 3, 2006.

At the DSB meeting of April 21, 2006, the United States informed the DSB that the United States was in compliance with the recommendations and rulings of the DSB in the dispute. On June 8, 2006, Antigua requested consultations with the United States regarding U.S. compliance with the DSB recommendations and rulings. The parties held consultations on June 26, 2006. On July 5, 2006, Antigua requested the DSB to establish a panel pursuant to Article 21.5 of the DSU, and a panel was established on July 19, 2006. The chair of the original panel and one of the panelists were unavailable to serve. The parties agreed on their replacements, and the panel was composed as follows: Mr. Lars Anell, Chair; and Mr. Mathias Francke and Mr. Virachai Plasai, Members. The report of the Article 21.5 Panel, which was circulated on March 30, 2007, found that the United States had not complied with the recommendations and rulings of the DSB in this dispute.

On May 4, 2007, the United States initiated the procedure provided for under Article XXI of the GATS to modify the schedule of U.S. commitments so as to reflect the original U.S. intent of excluding gambling and betting services.

The DSB adopted the report of the Article 21.5 panel on May 22, 2007. On June 21, 2007, Antigua submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua under the GATS and the TRIPS Agreement. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration was carried out by the three panelists who served on the Article 21.5 Panel.

On December 21, 2007, the Article 22.6 arbitration award was circulated. The arbitrator concluded that Antigua's annual level of nullification or impairment of benefits is \$21 million, and that Antigua may request authorization from the DSB to suspend its obligations under the TRIPS Agreement in this amount. On December 6, 2012, Antigua submitted a request under Article 22.7 of the DSU for authorization to suspend concessions or other obligations under the TRIPS Agreement consistent with the award of the Arbitrator. At the DSB meeting of January 28, 2013, the DSB authorized Antigua to suspend concessions or other obligations under the TRIPS Agreement consistent with the award of the Arbitrator.

During 2007 and early 2008, the United States reached agreement with every WTO Member, aside from Antigua, that had pursued a claim of interest in the GATS Article XXI process of modifying the U.S. schedule of GATS commitments so as to exclude gambling and betting services. Antigua and the United States have continued in their efforts to achieve a mutually agreeable resolution to this matter.

#### *United States – Subsidies on large civil aircraft (DS317)*

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

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

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

#### *United States – Subsidies on large civil aircraft (Second Complaint) (DS353)*

On June 27, 2005, the EU filed a second request for consultations regarding large civil aircraft subsidies allegedly applied by the United States. The section above on *United States – Subsidies on large civil aircraft (DS317)* discusses developments with regard to the dispute arising from the initial request for consultations. The June 2005 request covered many of the measures in the initial consultations, as well as many additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On November 22, 2006, the Deputy Director General composed the panel as follows: Mr. Crawford Falconer, Chair; and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members.

The Panel granted the parties' request to open the substantive meetings with the parties to the public via a screening of a videotape of the public session. The sessions of the Panel meeting that involved business confidential information and the Panel's meeting with third parties were closed to the public.

On March 31, 2011, the Panel circulated its report with the following findings:

Findings against the EU

- Most of the NASA research spending challenged by the EU did not go to Boeing;
- Most of the U.S. Department of Defense (DoD) research payments to Boeing were not subsidies or did not cause adverse effects to Airbus;
- Treatment of patent rights under U.S. Government contracts is not a subsidy specific to the aircraft industry;
- Treatment of certain overhead expenses in U.S. Government contracts is not a subsidy;
- Washington State infrastructure and plant location incentives were not a subsidy or did not cause adverse effects;
- Commerce research programs were not a subsidy specific to the aircraft industry;
- The U.S. Department of Labor payments to Edmonds Community College in Snohomish County, Washington, were not specific subsidies;
- Kansas and Illinois tax programs were not subsidies or did not cause adverse effects;
- The Foreign Sales Corporation/Extraterritorial Income tax measures were a WTO inconsistent subsidy, but as the United States removed the subsidy in 2006, there was no need for any further recommendation;

Findings against the United States

- NASA research programs conferred a subsidy to Boeing of \$2.6 billion that caused adverse effects to Airbus;
- Tax programs and other incentives offered by the State of Washington and some of its municipalities conferred a subsidy of \$16 million that caused adverse effects to Airbus;
- Certain types of research projects funded under the U.S. Department of Defense's Manufacturing Technology and Dual Use Science and Technology programs were a subsidy to Boeing of approximately \$112 million that caused adverse effects to Airbus.

On April 1, 2011, the EU filed a notice of appeal on certain findings, and on April 28, 2011, the United States filed a notice of other appeal. The Appellate Body held hearings on August 16-19, 2011, and October 11 through 14, 2011. On March 12, 2012, the Appellate Body circulated its report with the following findings:

- The Panel erred in its analysis of whether NASA and DoD research funding was a subsidy. However, the Appellate Body affirmed the Panel's subsidy finding with regard to NASA research funding and DoD research funding through assistance instruments on other grounds. The Appellate Body declared the Panel's findings with regard to DoD procurement contracts moot, but made no further findings.



- The Panel correctly found that NASA and DoD rules regarding the allocation of patent rights were not, on their face, specific subsidies. The Appellate Body found that Panel should have addressed the EU allegations of de facto specificity, but was unable to complete the Panel’s analysis of this issue.
- The Panel correctly found that Washington State tax measures and industrial revenue bonds issued by the City of Wichita were subsidies.
- The Panel erred in concluding that the WTO DSB was not obligated to initiate information-gathering procedures requested by the EU, but this error did not require any modification in the panel’s ultimate findings.
- The Panel correctly concluded that NASA research funding and DoD funding of research through assistance instruments caused adverse effects to Airbus.
- The Panel erred in analyzing the effects of the Wichita industrial revenue bonds separately from other tax measures. The Appellate Body grouped the Wichita measure with the other tax benefits.
- The Panel erred in concluding that Washington State tax benefits, in tandem with FSC/ETI tax benefits, caused lost sales, lost market share, and price depression of the Airbus A320 and A340 product lines. The Appellate Body found that the evidence before it justified a finding of lost sales only in two instances, involving 50 A320 airplanes.

On March 23, 2012, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on April 13, 2012, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On September 23, 2012, the United States notified the DSB that it has brought the challenged measures into compliance with the recommendations and rulings of the DSB.

On September 25, 2012, the EU requested consultations regarding the U.S. notification. The United States and the EU held consultations on October 10, 2012. On October 11, 2012, the EU requested that the DSB refer the matter to the original Panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on October 23, 2012. On October 30, 2012, the compliance Panel was composed with the members of the original Panel: Mr. Crawford Falconer, Chair; and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members. The compliance Panel held a meeting with the parties on October 29-31, 2013.

The compliance Panel circulated its report on June 9, 2017, with the following findings:

#### Findings against the EU

- The EU alleged that DoD provided Boeing with funding and other resources worth \$2.9 billion to conduct research that assisted Boeing’s development of large civil aircraft. The Panel rejected most of the EU claims for procedural reasons. It found that the remaining claims were worth only \$41 million, that most of those programs were not subsidies. The Panel subsequently found that the DoD funding found to constitute subsidies did not cause adverse effects to Airbus.
- The Panel found that NASA R&D programs were subsidies, but only conferred benefits of approximately \$158 million. It found that these subsidies did not cause adverse effects to Airbus.
- The EU alleged that the Federal Aviation Administration (“FAA”) provided funding and resources worth \$28 million to Boeing. The Panel found that the FAA program in question was a subsidy, and

agreed that it was worth \$28 million. However, it found that these subsidies did not cause adverse effects to Airbus.

- The EU alleged that Boeing received \$51 million in tax benefits from 2007 through 2014 under the FSC/ETI program that Congress discontinued in 2006. The Panel found that there was no evidence that Boeing benefitted this program in the 2007-2014 period.
- The EU asserted that the City of Wichita issued “industrial revenue bonds” in a way that gave Boeing tax subsidies. The Panel found that this program was a subsidy, but that it did not constitute a WTO breach because it was not “specific,” *i.e.*, targeted toward particular entities or industries.
- The EU brought claims with respect to a number of Washington State programs. The Panel rejected one of the EU claims for procedural reasons. The Panel found that all of the remaining programs were subsidies. However, with one exception, the Panel found that these programs did not cause any adverse effects to Airbus.
- The EU alleged that several South Carolina programs worth a total of \$1.7 billion caused adverse effects to Airbus. The Panel found that all but three of these programs either were not subsidies or were not “specific,” *i.e.*, did not involve the type of targeting needed to establish a WTO breach. Although it found that three South Carolina programs, worth a total of \$78 million, were subsidies, the Panel concluded that they did not cause adverse effects to Airbus.

#### Findings against the United States

- The EU argued that Washington State’s adjustment to its Business and Occupation (“B&O”) tax applicable to aerospace manufacturing foregoes revenue that could otherwise be collected from Boeing, making it a subsidy for WTO purposes. The Panel found that this program confers a subsidy on Boeing, worth an average value of \$100-\$110 million per year during the period of review. The Panel further found that these subsidies cause adverse effects, but only with respect to certain sales of the Airbus A320 aircraft.

On June 29, 2017, the EU filed a notice of appeal on certain findings, and the United States filed a notice of other appeal on August 10, 2017. The Division assigned to hear the appeal consists of Mr. Peter Van den Bossche (Presiding Member), Mr. Thomas R. Graham, and Mr. Shree B.C. Servansing. The appellate proceedings are ongoing, and a report is expected in 2019.

On September 27, 2012, the EU requested authorization from the DSB to impose countermeasures. On October 22, 2012, the United States objected to the level of suspension of concessions requested by the EU, referring the matter to arbitration pursuant to Article 22.6 of the DSU. On November 27, 2012, the United States and the EU each requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

#### *United States – Measures Concerning the Importation, Marketing, and Sale of Tuna and Tuna Products (WT/DS381)*

On October 24, 2008, Mexico requested consultations regarding U.S. dolphin-safe labeling provisions for tuna and tuna products. These provisions prohibit labeling tuna and tuna products as dolphin-safe unless they meet certain conditions, including not being produced by intentionally setting purse-seine nets on dolphins, a technique Mexico uses to catch tuna in the Eastern Tropical Pacific Ocean. Mexico challenged three legal instruments: (1) the Dolphin Protection Consumer Information Act (19 U.S.C. § 1385); (2)

certain dolphin-safe labeling regulations (50 C.F.R. §§ 216.91-92); and (3) the Ninth Circuit decision in *Earth Island v. Hogarth*, 494 F.3d. 757 (Ninth Cir. 2007). On April 20, 2009, at Mexico's request, the DSB established a WTO panel. Mexico alleged that the U.S. measure accords imports of tuna and tuna products from Mexico less favorable treatment than like products of national origin and like products originating in other countries and fails to immediately and unconditionally accord imports of tuna and tuna products from Mexico an advantage, favor, privilege, or immunity granted to like products of other countries. Mexico further alleged that the U.S. measure creates unnecessary obstacles to trade and are not based on relevant international standards. Mexico alleged that the U.S. measure is inconsistent with Articles I and III of the GATT 1994 and Article 2 of the TBT Agreement.

On December 14, 2009, the Panel was composed by the Director-General to include Mr. Mario Matus, Chair, Ms. Elizabeth Chelliah, and Mr. Franz Perrez. The Panel issued its interim report on May 5, 2011, and its final report to the parties on July 8, 2011. The final report was circulated to Members and the public on September 15, 2011.

The Panel found the U.S. dolphin-safe provisions are technical regulations within the meaning of Annex 1.1 of the TBT Agreement, are not inconsistent with Article 2.1 of the TBT Agreement because they do not afford less favorable treatment to Mexican tuna products; are inconsistent with Article 2.2 of the TBT Agreement because they are more trade restrictive than necessary to achieve their objectives; and are not inconsistent with Article 2.4 of the TBT Agreement, because the alternative measure put forth by Mexico would not be an effective means of achieving the objective of the U.S. measure. The Panel exercised judicial economy with respect to the GATT 1994 claims in light of its findings under Article 2.1 of the TBT Agreement.

The United States appealed aspects of the report on January 20, 2012, and Mexico appealed aspects of the report on January 25, 2012. The Appellate Body circulated its report on May 16, 2012. In its key findings, the Appellate Body rejected the U.S. appeal and upheld the Panel's finding that the measure at issue is a technical regulation; agreed with Mexico's appeal and overturned the Panel's finding that the U.S. measure is consistent with the national treatment provisions of Article 2.1 of the TBT Agreement; agreed with the U.S. appeal and overturned the Panel's finding that the measure at issue is more trade restrictive than necessary under Article 2.2 of the TBT Agreement; and agreed with the U.S. appeal and overturned the Panel's finding that the Agreement on the International Dolphin Conservation Program (AIDCP) is a relevant international standard within the meaning of Article 2.4 of the TBT Agreement.

On June 13, 2012, the DSB adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. On September 17, 2012, the United States and Mexico notified the DSB that they agreed on a RPT for the United States to implement the recommendations and rulings of the DSB, ending on July 13, 2013.

On July 23, 2013, the United States announced that it had fully complied with the DSB's recommendations and rulings through a final rule of the National Oceanic and Atmospheric Administration (NOAA) that came into effect on July 13, 2013. The final rule enhances the documentary requirements for certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught outside the Eastern Tropical Pacific.

On November 25, 2013, Mexico requested that the DSB establish a compliance panel to determine whether the U.S. dolphin-safe labeling provisions, as amended by the new final rule, are consistent with U.S. WTO obligations. At its meeting on January, 22 2014, the DSB referred the matter to the original Panel, and on January 27, 2014 the Panel was composed with the members of the original Panel. Mexico has claimed that the U.S. dolphin-safe labeling provisions are inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994.

The Panel met with the parties on August 19-21, 2014. The Panel issued its report on April 14, 2015. In its report, the Panel found that the amended dolphin-safe labeling measure was inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994 and, although the measure was preliminarily justified under Article XX(g) of the GATT 1994, was not applied consistently with the Article XX chapeau.

The United States appealed aspects of the compliance panel's report on June 5, 2015, and Mexico appealed aspects of the report on June 10, 2015. The Appellate Body circulated its report on November 20, 2015. The Appellate Body found that the compliance panel had erred in its analytical approach to the amended measure, and it reversed the Panel's findings as to the measure's consistency with the covered agreements as to the eligibility criteria, the certification requirements, and the tracking and verification requirements. The Appellate Body found, however, that because the compliance panel had not made a proper factual assessment of the matter, the Appellate Body could not complete the analysis and made no findings as to those three regulatory distinctions under either Article 2.1 of the TBT Agreement or Article XX of the GATT 1994. The Appellate Body also found that analysis of other aspects of the measure did not depend on factual findings and that these aspects rendered the measure inconsistent with Article 2.1 of the TBT Agreement and Article XX of the GATT 1994.

On March 10, 2016, Mexico sought authorization to suspend concessions or other obligations under the covered agreements. The United States objected to Mexico's proposed level of suspension of concessions or other obligations on March 22, 2016, which referred the matter to arbitration pursuant to Article 22.6 of the DSU. The arbitrator held a meeting with the parties on October 25-26, 2016. The arbitrator's award, circulated on April 25, 2017, found that the level of nullification and impairment suffered by Mexico as a result of the U.S. measure as it existed at the end of the RPT, was \$163.23 million per year. On May 22, 2017, Mexico requested and received authorization from the DSB to suspend concessions consistent with the arbitrator's award. Mexico has not, thus far, suspended concessions pursuant to this authorization.

On March 22, 2016, NOAA promulgated an interim final rule amending the U.S. dolphin safe labeling measure, and, on April 11, 2016, the United States requested that the DSB establish a compliance panel to determine whether the U.S. dolphin-safe labeling provisions, as amended by the new final rule, are consistent with U.S. WTO obligations. The DSB referred the matter to the original panel at its meeting on May 9, 2016. On May 27, 2016, the compliance panel was composed, including a new chairperson, Mr. Stefan Johannesson, due to the unavailability of the original chairperson. On June 9, 2016, Mexico also requested the establishment of a compliance panel pursuant to Article 21.5 of the DSU. At its meeting on June 22, 2016, the DSB referred the matter to the same panel as the other compliance proceeding. The schedules of the two proceedings were harmonized.

The Panels circulated their reports on October 26, 2017. The Panels agreed with the United States that, while the dolphin safe labeling measure, as amended by the 2016 Interim Final Rule, results in a detrimental impact on Mexican tuna product, it does not unjustifiably discriminate against Mexican tuna product because its labeling requirements are calibrated to the risks to dolphins arising from the use of different fishing methods in different areas of the oceans. Consequently, the Panels found that the measure is consistent with Article 2.1 of the TBT Agreement and, although inconsistent with Articles I:1 and III:4 of the GATT 1994, is justified under Article XX because it is preliminarily justified under subparagraph (g) and applied consistently with the chapeau. Thus, the Panels found that the U.S. measure was consistent with the relevant U.S. WTO obligations.

Mexico appealed aspects of the compliance Panels' reports on December 1, 2017, and the appellate report was circulated on December 14, 2018. The report upheld all aspects of the Panels' legal and factual analysis that Mexico appealed, including the Panels' findings that the dolphin safe labeling measure was not

inconsistent with Article 2.1 of the TBT Agreement, and was justified under Article XX of the GATT 1994. The rejection of Mexico's non-compliance claims brings this dispute to an end.

*United States – Certain Country of Origin Labeling (COOL) Requirements (Canada) (DS384)*

On December 1, 2008, Canada requested consultations with the United States regarding U.S. mandatory country of origin labeling (COOL) provisions. Canada requested supplemental consultations with the United States regarding this matter on May 7, 2009. Canada challenged the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the USDA Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the USDA Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture. These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.

Canada alleged that the COOL requirements were inconsistent with Articles III:4, IX:2, IX:4, and X:3(a) of the GATT 1994, Articles 2.1, 2.2, and 2.4 of the TBT Agreement, or in the alternative, Articles 2, 5, and 7 of the SPS Agreement, and Articles 2(b), 2(c), 2(e), and 2(j) of the Agreement on Rules of Origin. Canada asserted that these violations nullified or impaired the benefits accruing to Canada under those Agreements and further appeared to nullify or impair the benefits accruing to Canada within the meaning of GATT 1994 Article XXIII:1(b).

Consultations were held on December 16, 2008, and supplemental consultations were held on June 5, 2009. On October 7, 2009, Canada requested the establishment of a panel, and on November 19, 2009, the DSB established a single panel to examine both this dispute and Mexico's dispute regarding COOL (see WT/DS386). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The Panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breached TBT Article 2.1 because it afforded Canadian livestock less favorable treatment than it afforded U.S. livestock. With respect to Article 2.2 of the TBT Agreement, the Panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the Panel found that the COOL measure breached TBT Article 2.2 because it failed to fulfill its legitimate objective of providing consumer information on origin with respect to meat products. The Panel also found that the Vilsack Letter breached GATT Article X:3 because it did not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the Panel's findings on Article 2.1 and 2.2. On March 28, 2012, Canada appealed certain aspects of the Panel's Article 2.2 analysis, the Panel's failure to make a finding on its claim under Articles III:4 of the GATT 1994, and made a conditional appeal on its claim under Article XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the Panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the Panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the Panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the Panel's finding that the COOL measure had a disparate impact on Canadian livestock. However, the Appellate Body reasoned that the analysis could not end there, but that the Panel should have

analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that this was not the case, as the COOL measure imposed costs that were disproportionate to the information conveyed by the labels. Having upheld the Panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Canada's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the RPT for the United States to comply with the DSB recommendations and rulings was 10 months, ending on May 23, 2013.

On May 24, 2013, the United States announced that it had fully implemented the DSB's recommendations and rulings through a new final rule issued by USDA on May 23, 2013. The final rule modified the labeling provisions for muscle cut covered commodities to require the origin designations to include information about where each of the production steps (*i.e.*, born, raised, slaughtered) occurred and removes the allowance for commingling.

On September 25, 2013, at the request of Canada, the DSB referred the matter raised by Canada in its panel request to a compliance panel to determine whether the COOL program, as amended by the May 23 final rule, was consistent with U.S. WTO obligations. Canada made claims under Articles 2.1 and 2.2 of the TBT Agreement and Articles III:4 and XXIII:1(b) of the GATT 1994.

On October 20, 2014, the compliance Panel circulated its final report. The Panel found that the amended COOL measure was inconsistent with Article 2.1 of the TBT Agreement because it accorded imported Canadian livestock treatment less favorable than that accorded to like domestic livestock. In particular, the Panel found that this was so because the measure resulted in a detrimental impact on the competitive opportunities of Canadian livestock, and this detrimental impact did not stem exclusively from a legitimate regulatory distinction. The Panel further found that Canada had not made a *prima facie* case that the amended COOL measure was more trade restrictive than necessary and, therefore, inconsistent with Article 2.2 of the TBT Agreement. With respect to the GATT 1994 claims, the Panel found that the amended COOL measure violated Article III:4 of the GATT 1994, because it had a detrimental impact on the competitive opportunities of imported Canadian livestock, and thus accorded "less favourable treatment" to imported products. In light of this finding, the Panel exercised judicial economy with regard to Canada's non-violation claim under Article XXIII:1(b) of the GATT 1994.

On November 28, 2014, the United States filed its notice of appeal, and on December 5, 2014, the United States filed its appellant submission. The United States appealed the Panel's findings on Article 2.1 of the TBT Agreement and on Article III:4 of the GATT 1994. The United States also challenged the Panel's failure to address the availability of the exceptions provided for in Article XX of the GATT 1994. On December 12, 2014, Canada appealed other of the Panel's findings.

On May 18, 2015, the Appellate Body circulated its report. The Appellate Body upheld the compliance Panel's findings with respect to Article 2.1 of the TBT Agreement. In particular, it maintained the compliance Panel's conclusions with respect to the alleged lack of accuracy of the labels; the burdens imposed by "heightened" recordkeeping and verification requirements; and the relevance of exemptions from the labeling requirements. The Appellate Body also upheld the compliance Panel's ultimate determination with respect to Article 2.2 of the TBT Agreement.

On June 4, 2015, Canada sought authorization to suspend concessions under the covered agreements. On June 16, 2015, the United States objected to the level of suspension of concessions or obligations sought by Canada, thus referring the matter to arbitration pursuant to Article 22.6 of the DSU. On December 7, 2015, the decision by the Arbitrator was circulated to Members. In considering the level of nullification or impairment of the benefits accruing to Canada, the Arbitrator rejected requests to consider the domestic

effect of the amended COOL measure on Canadian prices, and instead focused on the trade impact of the amended COOL measure. The Arbitrator found that the level of nullification or impairment attributable to the amended COOL measure was CAD 1,054,729 million annually. On December 21, 2015, the DSB granted authorization to Canada to suspend concessions consistent with the award of the Arbitrator, and pursuant to the DSU, the authorization shall be equivalent to the level of nullification or impairment.

On December 18, 2015, the President signed legislation repealing the country of origin labeling requirement for beef and pork. This action withdrew the measure at issue, thus bringing the United States into compliance with the WTO's recommendations and rulings.

#### *United States – Certain Country of Origin Labeling (COOL) Requirements (Mexico) (DS386)*

On December 17, 2008, Mexico requested consultations regarding U.S. mandatory country of origin labeling (COOL) provisions. Mexico requested supplemental consultations with the United States regarding this matter on May 7, 2009. Mexico challenged the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the USDA Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the USDA Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture. These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.

Mexico alleged that the COOL requirements are inconsistent with Articles III:4, IX:2, IX:4, and X:3(a) of the GATT 1994, Articles 2.1, 2.2, 2.4, 12.1, and 12.3 of the TBT Agreement, or in the alternative, Articles 2, 5, and 7 of the SPS Agreement, and Articles 2(b), 2(c), and 2(e), of the Agreement on Rules of Origin. Mexico asserted that these violations nullify or impair the benefits accruing to Mexico under those Agreements and further appeared to nullify or impair the benefits accruing to Mexico within the meaning of GATT 1994 Article XXIII:1(b).

Consultations were held on February 27, 2009, and supplemental consultations were held on June 5, 2009. On October 9, 2009, Mexico requested the establishment of a panel in this dispute, and November 19, 2009, the DSB established a single panel to examine both this dispute and Canada's dispute regarding COOL (see WT/DS384). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The Panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breached TBT Article 2.1 because it afforded Mexican livestock less favorable treatment than it afforded U.S. livestock. Under TBT Article 2.2, the Panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the Panel found that the COOL measure breached TBT Article 2.2 because it failed to fulfill its legitimate objective of providing consumer information on origin with respect to meat products.

The Panel rejected Mexico's claim under TBT Article 2.4 that the United States was required to base origin under the COOL measure on the principle of substantial transformation, concluding that using this principle would be an ineffective and inappropriate means to fulfill the legitimate U.S. objective of providing consumers with information about the origin of the meat products they buy. The Panel also rejected Mexico's claims under TBT Articles 12.1 and 12.3, concluding that the United States did not fail to take account of Mexico's needs as a developing country Member.

Finally, the Panel found that the Vilsack Letter breached GATT Article X:3 because it did not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the Panel's findings on Article 2.1 and 2.2. On March 28, 2012, Mexico appealed certain aspects of the Panel's Article 2.2 analysis and made a conditional appeal on its claims under Articles III:4 and XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the Panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the Panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the Panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the Panel's finding that the COOL measure has a disparate impact on Mexican livestock. However, the Appellate Body reasoned that the analysis could not end there but that the Panel should have analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that the COOL measure did not as it imposed costs that are disproportionate to the information conveyed by the labels. Having upheld the Panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Mexico's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the RPT for the United States to comply with the DSB recommendations and rulings was 10 months, ending on May 23, 2013.

On May 24, 2013, the United States announced that it had fully implemented the DSB's recommendations and rulings through a new final rule issued by USDA on May 23, 2013. The final rule modifies the labeling provisions for muscle cut covered commodities to require the origin designations to include information about where each of the production steps (*i.e.*, born, raised, slaughtered) occurred and removes the allowance for commingling.

On September 25, 2013, at the request of Mexico, the DSB referred the matter raised by Mexico in its panel request to a compliance Panel to determine whether the COOL program, as amended by the May 23 final rule, was consistent with U.S. WTO obligations. Mexico made claims under Articles 2.1 and 2.2 of the TBT Agreement and Articles III:4 and XXIII:1(b) of the GATT 1994.

On October 20, 2014, the compliance Panel circulated its final report. The Panel found that the amended COOL measure was inconsistent with Article 2.1 of the TBT Agreement because it accorded imported Mexican livestock treatment less favorable than that accorded to like domestic livestock. In particular, the Panel found that this was so because the measure resulted in a detrimental impact on the competitive opportunities of Mexican livestock, and this detrimental impact did not stem exclusively from a legitimate regulatory distinction. The Panel further found that Mexico had not made a *prima facie* case that the amended COOL measure was more trade restrictive than necessary and, therefore, inconsistent with Article 2.2 of the TBT Agreement. With respect to the GATT 1994 claims, the Panel found that the amended COOL measure violated Article III:4 of the GATT 1994 because it had a detrimental impact on the competitive opportunities of imported Mexican livestock, and thus accorded "less favourable treatment" to domestic products. In light of this finding, the Panel exercised judicial economy with regard to Mexico's non-violation claim under Article XXIII:1(b) of the GATT 1994.

On November 28, 2014, the United States filed its notice of appeal, and on December 5, 2014, the United States filed its appellant submission. The United States appealed the Panels' findings on Article 2.1 of the TBT Agreement and on Article III:4 of the GATT 1994. The United States also challenged the Panel's



failure to address the availability of the exceptions provided for in Article XX of the GATT 1994. On December 12, 2014, Mexico appealed additional Panel findings.

On May 18, 2015, the Appellate Body released its report. The Appellate Body upheld the compliance Panel's findings with respect to Article 2.1 of the TBT Agreement. In particular, it maintained the compliance Panel's conclusions with respect to the accuracy of the labels, the burdens imposed by recordkeeping and verification requirements, and the impact of exemptions. The Appellate Body also upheld the compliance Panel's ultimate determination with respect to Article 2.2 of the TBT Agreement. However, in the context of Article 2.2, the Appellate Body found that the compliance Panel should have completed its analysis regarding the "gravity of the consequences of non-fulfilment," noting that difficulties and imprecision that arise in this analysis do not excuse the Panel from reaching an overall conclusions.

On June 4, 2015, Mexico sought authorization to suspend certain concessions and other obligations under the covered agreements. On June 12, 2015, Mexico revised the amount of suspension of concessions sought. Mexico removed this item from the agenda of the DSB meeting on June 17, 2015, and submitted a revised request for authorization from the DSB. On June 22, 2015, the United States objected to the level of suspension of concessions or obligations sought by Mexico, thus referring the matter to arbitration pursuant to Article 22.6 of the DSU. On December 7, 2015, the decision by the Arbitrator was circulated to Members. In considering the level of nullification or impairment of the benefits accruing to Mexico, the Arbitrator rejected requests to consider the domestic effect of the amended COOL measure on Mexican prices, and instead focused on the trade impact of the amended COOL measure. The Arbitrator found that the level of nullification or impairment attributable to the amended COOL measure was \$227,758 million annually. On December 21, 2015, the DSB granted authorization to Mexico to suspend concessions consistent with the award of the Arbitrator, and pursuant to the DSU, the authorization shall be equivalent to the level of nullification or impairment.

On December 18, 2015, the President signed legislation repealing the country of origin labeling requirement for beef and pork. This action withdrew the measure at issue, thus bringing the United States into compliance with the WTO's recommendations and rulings.

*United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*

On April 24, 2012, India requested consultations concerning countervailing measures on certain hot-rolled carbon steel flat products from India. India challenged the Tariff Act of 1930, in particular: sections 771(7)(G) regarding accumulation of imports for purposes of an injury determination and 776(b) regarding the use of "facts available." India also challenged Title 19 of the Code of Federal Regulations, sections 351.308 regarding "facts available" and 351.511(a)(2)(i)-(iv), which relates to Commerce's calculation of benchmarks. In addition, India challenged the application of these and other measures in Commerce's countervailing duty determinations and the U.S. International Trade Commission's injury determination. Specifically, India argued that these determinations were inconsistent with Articles I and IV of the GATT 1994 and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22, and 32 of the SCM Agreement. The DSB established a panel to examine the matter on August 31, 2012. The panel was composed by the Director General on February 18, 2013, as follows: Mr. Hugh McPhail, Chair; Mr. Anthony Abad and Mr. Hanspeter Tschaeni, Members.

The Panel met with the parties on July 9-10, 2013, and on October 8-9, 2013. The Panel circulated its report on July 14, 2014. The Panel rejected India's claims against the U.S. statutes and regulations concerning facts available and benchmarks under Articles 12.7 and 14(d) of the SCM Agreement, respectively, but found that the U.S. statute governing accumulation was inconsistent with Article 15 of the SCM Agreement because it required the accumulation of both dumped and subsidized imports in the context

of countervailing investigations. Consequently, the Panel also found that the U.S. International Trade Commission's injury determination breached U.S. obligations under Article 15.

The Panel rejected India's challenges under Article 1.1(a)(1) of the SCM Agreement to Commerce's "public body" findings in two instances, as well as most of India's claims with respect to Commerce's application of facts available under Article 12.7 in the determination at issue. The Panel also rejected most of India's claims against Commerce's specificity determinations under Article 2.1, and its calculation of certain benchmarks used in the proceedings under Article 14(d). The Panel found that Commerce's determination that certain low-interest loans constituted "direct transfers" of funds was consistent with Article 1.1(a)(1), but that Commerce's determination that a captive mining program constituted a financial contribution was not consistent with Article 1.1(a). Finally, the Panel found that Commerce did not act inconsistently with Articles 11, 13, 21 and 22 of the SCM Agreement when it analyzed new subsidy allegations in the context of review proceedings.

On August 8, 2014, India appealed the Panel's findings; on August 13, 2014, the United States also appealed certain of the Panel's findings. The Appellate Body released its report on December 8, 2014.

The Appellate Body upheld the Panel's findings regarding the U.S. benchmarks regulation, but found that certain instances of Commerce's application of these regulations were inconsistent with Article 14(d). The Appellate Body also upheld the Panel's findings regarding accumulation, finding that the application of the U.S. statute in the injury determination at issue was inconsistent with Article 15 of the SCM Agreement, and that the U.S. statute was inconsistent with that provision, although on different grounds than those found by the Panel. The Appellate Body rejected India's interpretation of "public body" under Article 1.1(a)(1), but reversed the Panel's finding that Commerce acted consistently in making the public body determination at issue on appeal. Regarding specificity, the Appellate Body rejected each of India's appeals under Article 2.1(c), as it did with respect to India's challenge to the Panel's finding under Article 1.1(a)(1)(i) relating to "direct transfers of funds." The Appellate Body also reversed the Panel's finding that Commerce had acted inconsistently with Article 1.1(a)(1)(iii) in finding that captive mining program constituted a provision of goods. Finally, the Appellate Body upheld the Panel's rejection of India's claims under Articles 11, 13 and 21 regarding new subsidy allegations. The Appellate Body reversed the Panel's findings under Article 22 of the SCM Agreement, but was unable to complete the analysis. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on December 19, 2014.

At the DSB meeting held on January 16, 2015, the United States notified the DSB of its intention to comply with the recommendations and rulings and indicated it would need a RPT to do so. On March 24, 2015, the United States and India informed the DSB that they had agreed on a RPT of 15 months, ending on March 19, 2016. At the United States' request, India then agreed to a 30 day extension to April 18, 2016.

On March 7, 2016, the U.S. International Trade Commission issued a Section 129 determination in the hot-rolled steel from India countervailing duty (CVD) proceeding to comply with the findings of the Appellate Body. On March 18, 2016, the U.S. Department of Commerce issued its preliminary determination memos in the Section 129 proceedings, and on April 14, 2016, the U.S. Department of Commerce issued its final Section 129 determinations. On April 22, 2016, the United States informed the DSB that it had complied with the recommendations and rulings in this dispute.

On June 5, 2017, India requested consultations regarding the U.S. implementation, and on March 28, 2018, India requested the establishment of a compliance panel. On May 31, 2018, the Panel was composed of the original panel members. The compliance panel proceedings are ongoing.

*United States — Countervailing Duty Measures on Certain Products from China (DS437)*

On May 25, 2012, China requested consultations regarding numerous U.S. countervailing duty determinations in which the U.S. Department of Commerce had determined that various Chinese state-owned enterprises were “public bodies” under Article 1.1(a)(1) of the SCM Agreement, with a view towards extending the Appellate Body’s analysis in DS379 to those determinations. China challenged various other aspects of these investigations as well, including but not limited to Commerce’s calculation of benchmarks, initiation standard, determination of specificity of the subsidies, use of facts available, and finding that export restraints were a countervailable subsidy.

Consultations were held in July 2012, and a panel was established in September 2012. The Panel was composed by the Director-General on November 26, 2012, as follows: Mr. Mario Matus, Chair; Mr. Scott Gallacher and Mr. Hugo Perezcano Díaz, Members. The Panel met with the parties on April 30-May 1, 2013, and on June 18-19, 2013. The panel circulated its report on July 14, 2014. The Panel found that Commerce’s determinations in 12 investigations that certain state-owned enterprises were “public bodies” were inconsistent with Article 1.1(a)(1) of the SCM Agreement, based on the Appellate Body’s analysis in DS379. However, the Panel found in favor of the United States with respect to China’s claims regarding Commerce’s calculation of benchmarks, initiation of investigations, and use of facts available, and the Panel upheld most of Commerce’s specificity determinations. The Panel also found that China established that Commerce acted inconsistently with Article 11.3 of the SCM Agreement by initiating countervailing duty investigations of export restraints.

On August 22, 2014, China appealed the Panel’s findings regarding Commerce’s calculation of benchmarks, specificity determinations, and use of facts available. On August 27, 2014, the United States appealed the Panel’s finding that a section of China’s panel request setting forth claims related to Commerce’s use of facts available was within the panel’s terms of reference. The Appellate Body held a hearing in Geneva on October 16-17, 2014, with Ujal Singh Battia and Seung Wha Chang as Members, and Peter Van den Bossche as Chairman.

On December 18, 2014, the Appellate Body circulated its report. On benchmarks, the Appellate Body reversed the Panel and found that Commerce’s determination to use out-of-country benchmarks in four countervailing duty investigations was inconsistent with Articles 1.1(b) and 14(d) of the SCM Agreement. On specificity, the Appellate Body rejected one of China’s claims with respect to the order of analysis in *de facto* specificity determinations. However, the Appellate Body reversed the Panel’s findings that Commerce did not act inconsistently with Article 2.1 when it failed to identify the “jurisdiction of the granting authority” and “subsidy programme” before finding the subsidy specific. On facts available, the Appellate Body accepted China’s claim that the Panel’s findings regarding facts available were inconsistent with Article 11 of the DSU, and reversed the Panel’s finding that Commerce’s application of facts available was not inconsistent with Article 12.7 of the SCM Agreement. Lastly, the Appellate Body rejected the U.S. appeal of the Panel’s finding that China’s panel request failed to meet the requirement of Article 6.2 of the DSU to present an adequate summary of the legal basis of its claim sufficient to present the problem clearly.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on January 16, 2015. In a letter dated February 13, 2015, the United States notified the DSB of its intention to comply with its WTO obligations and indicated it would need a RPT to do so.

On June 26, 2015, China requested that the RPT be determined through arbitration pursuant to Article 21.3(c) of the DSU. On July 17, 2015, the Director General appointed Mr. Georges M. Abi-Saab as the arbitrator. On October 9, 2015, the arbitrator issued his award, deciding that the RPT would be 14 months and 16 days, ending on April 1, 2016.

Commerce subsequently issued redeterminations in 15 separate countervailing duty investigations and with respect to one “as such” finding of the DSB. Commerce implemented these determinations on April 1, 2016, and May 26, 2016. On June 22, 2016, the United States notified the DSB that it had brought the challenged measures into compliance with the recommendations and rulings of the DSB.

On May 13, 2016, China requested consultations regarding the U.S. implementation. The United States and China held consultations on May 27, 2016. On July 8, 2016, China requested that the DSB refer the matter to the original Panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on July 21, 2016. On October 5, 2016, the compliance Panel was composed with one member of the original Panel: Mr. Hugo Perezcano Diaz, Chair; and with two additional panelists selected to replace unavailable members of the original panel: Mr. Luis Catibayan and Mr. Thinus Jacobsz, Members. The compliance Panel circulated its report on March 21, 2018. The compliance Panel found that Commerce’s redeterminations that certain state-owned enterprises were “public bodies” were not inconsistent with Article 1.1(a)(1) of the SCM Agreement, and Commerce’s Public Bodies Memorandum is not inconsistent with the SCM Agreement, “as such”. The compliance Panel also upheld Commerce’s redetermination concerning regional specificity. However, the compliance Panel found in favor of China with respect to China’s claims regarding Commerce’s calculation of benchmarks and its input specificity analysis.

On April 27, 2018, the United States appealed certain findings of the compliance Panel regarding the Public Bodies Memorandum, Commerce’s benchmark and input specificity redeterminations, and whether certain Commerce determinations were within the compliance Panel’s terms of reference. On May 2, 2018, China appealed certain findings of the compliance Panel regarding Commerce’s redeterminations that certain state-owned enterprises were “public bodies”, the Public Bodies Memorandum, and the legal interpretation of Articles 1.1(b) and 14(d) of the SCM Agreement. The appellate proceedings are ongoing.

*United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464)*

On August 29, 2013, the United States received from Korea a request for consultations pertaining to antidumping and countervailing duty measures imposed by the United States pursuant to final determinations issued by Commerce following antidumping and countervailing duty investigations regarding large residential washers (washers) from Korea. Korea claimed that Commerce’s determinations, as well as certain methodologies used by Commerce, were inconsistent with U.S. commitments and obligations under Articles 1, 2, 2.1, 2.4, 2.4.2, 5.8, 9.3, 9.4, 9.5, 11, and 18.4 of the AD Agreement, Articles 1.1, 1.2, 2.1, 2.2, 10, 14, and 19.4 of the SCM Agreement; Articles VI, VI:1, VI:2, and VI:3 of the GATT 1994; and Article XVI:4 of the WTO Agreement. Specifically, Korea challenged Commerce’s alleged use of “zeroing” and application of the second sentence of Article 2.4.2 of the AD Agreement, as applied in the washers antidumping investigation and “as such.” Korea also challenged Commerce’s determinations in the washers countervailing duty investigation that Article 10(1)(3) of Korea’s Restriction of Special Taxation Act (RSTA) is a subsidy that is specific within the meaning of Article 2.1 of the SCM Agreement, Commerce’s determination of the amount of subsidy benefit received by a respondent under Article 10(1)(3) of the RSTA, Commerce’s determination that Article 26 of the RSTA is a regionally specific subsidy, and Commerce’s imposition of countervailing duties on one respondent that were attributable to tax credits that the respondent received for investments that it made under Article 26 of the RSTA.

The United States and Korea held consultations on October 3, 2013. On December 5, 2013, Korea requested that the DSB establish a panel. On January 22, 2014, a panel was established. On June 20, 2014, the Director General composed the panel as follows: Ms. Claudia Orozco, Chair; and Mr. Mazhar Bangash and Mr. Hanspeter Tschaeni, Members. The panel held meetings with the parties on March 10-11, 2015, and on May 20-21, 2015.

The panel circulated its report on March 11, 2016. The panel found that aspects of Commerce's antidumping determination were inconsistent with the second sentence of Article 2.4.2 of the AD Agreement, including the determination to apply an alternative, average-to-transaction comparison methodology and the application of that methodology to all transactions rather than just to so-called pattern transactions. The panel rejected other claims asserted by Korea, including Korea's argument that Commerce acted inconsistently with Article 2.4.2 by determining the existence of a pattern exclusively on the basis of quantitative criteria.

The panel found that aspects of Commerce's differential pricing methodology are inconsistent "as such" with the second sentence of Article 2.4.2 of the AD Agreement. The panel also found that the United States' use of zeroing when applying the average-to-transaction comparison methodology is inconsistent with the second sentence of Article 2.4.2 and Article 2.4, both "as such" and as applied in the washers antidumping investigation.

In addition, the panel made several findings on the CVD issues raised by Korea. The Panel found that Commerce's disproportionality analysis, in its original and remand determinations, was inconsistent with Article 2.1(c) of the SCM Agreement. But the panel rejected Korea's remaining claims – *i.e.*, its claim that Commerce's regional specificity determination was inconsistent with Article 2.2 of the SCM Agreement, and its claims concerning the proper quantification of subsidy ratios.

On April 19, 2016, the United States appealed certain of the panel's findings. Korea filed another appeal on April 25, 2016. The oral hearing in the appeal was held on June 20-21, 2016, in Geneva.

On September 7, 2016, the Appellate Body circulated its report. The Appellate Body upheld several of the panel's findings under the AD Agreement, including the panel's finding that the average-to-transaction comparison methodology should be applied only to so-called pattern transactions, the panel's finding that the use of zeroing is inconsistent with the second sentence of Article 2.4.2 and Article 2.4, both "as such" and as applied, and the panel's finding that the differential pricing methodology is inconsistent "as such" with the second sentence of Article 2.4.2 of the AD Agreement. The Appellate Body reversed other findings made by the panel. For instance, the Appellate Body found that an investigating authority must assess the price differences at issue on both a quantitative and qualitative basis, and the Appellate Body mooted the panel's finding concerning systemic disregarding, finding instead that the combined application of comparison methodologies is impermissible. With respect to the CVD issues, the Appellate Body upheld the panel's rejection of Korea's regional specificity claim, but found that certain aspects of Commerce's calculation of subsidy rates were inconsistent with Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994.

On September 26, 2016, the DSB adopted the panel and Appellate Body reports. On October 26, 2016, the United States stated that it intends to implement the recommendations of the DSB in this dispute in a manner that respects U.S. WTO obligations, and that it will need a reasonable period of time in which to do so. On April 13, 2017, an Article 21.3(c) arbitrator determined that the RPT for implementation would expire on December 26, 2017.

On January 11, 2018, Korea requested authorization to suspend concessions and other obligations pursuant to Article 22.2 of the DSU. On January 19, 2018, the United States objected to Korea's request, referring the matter to arbitration. On February 6, 2018, the WTO notified the parties that the arbitration would be carried out by the original panelists: Ms. Claudia Orozco, Chair; and Mr. Mazhar Bangash and Mr. Hanspeter Tschaeni, Members. The arbitral proceedings are ongoing. The arbitrator is expected to circulate a decision in 2019.

*United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)*

On December 3, 2013, the United States received from China a request for consultations pertaining to antidumping measures imposed by the United States pursuant to final determinations issued by Commerce following antidumping investigations regarding a number of products from China, including certain coated paper suitable for high-quality print graphics using sheet-fed presses, certain oil country tubular goods, high pressure steel cylinders, polyethylene terephthalate film, sheet, and strip; aluminum extrusions; certain frozen and canned warm water shrimp; certain new pneumatic off-the-road tires; crystalline silicon photovoltaic cells, whether or not assembled into modules; diamond sawblades and parts thereof; multilayered wood flooring; narrow woven ribbons with woven selvage; polyethylene retail carrier bags; and wooden bedroom furniture. China claimed that Commerce's determinations, as well as certain methodologies used by Commerce, are inconsistent with U.S. obligations under Articles 2.4.2, 6.1, 6.8, 6.10, 9.2, 9.3, 9.4, and Annex II of the AD Agreement; and Article VI:2 of the GATT 1994. Specifically, China challenges Commerce's application in certain investigations and administrative reviews of a "targeted dumping methodology," "zeroing" in connection with such methodology, a "single rate presumption for non-market economies," and a "NME-wide methodology" including certain "features". China also challenges a "single rate presumption" and the use of "adverse facts available" "as such."

The United States and China held consultations on January 23, 2014. On February 13, 2014, China requested that the DSB establish a panel, and a panel was established on March 26, 2014. On August 28, 2014, the Director General composed the panel as follows: Mr. José Pérez Gabilondo, Chair; and Ms. Beatriz Leycegui Gardoqui and Ms. Enie Neri de Ross, Members. The panel held meetings with the parties on July 14-16, 2015, and on November 17-19, 2015.

The panel circulated its report on October 19, 2016. The panel found that a number of aspects of the "targeted dumping methodology" applied by Commerce in three challenged investigations were not inconsistent with the requirements of the AD Agreement, including certain quantitative aspects of Commerce's methodology. However, the Panel found fault with other aspects of Commerce's methodology and with Commerce's explanation of why resort to the alternative methodology was necessary. The panel also found that Commerce's application of the alternative methodology to all sales, rather than only to so-called pattern sales, and Commerce's use of "zeroing" in connection with the alternative methodology, were inconsistent with the second sentence of Article 2.4.2 of the AD Agreement. The panel found that Commerce's use of a rebuttable presumption that all producers and exporters in China comprise a single entity under common government control – the China-government entity – to which a single antidumping margin is assigned, both as used in specific proceedings and generally, is inconsistent with certain obligations in the WTO Antidumping Agreement concerning when exporters and producers are entitled to a unique antidumping margin or rate. Finally, the Panel agreed with the United States that China had not established that Commerce has a general norm whereby it uses adverse inferences to pick information that is adverse to the interests of the China-government entity in calculating its antidumping margin or rate. The panel also decided to exercise judicial economy with respect to the information Commerce utilized in particular proceedings.

On November 18, 2016, China appealed certain of the panel's findings regarding Commerce's "targeted dumping methodology," use of "adverse facts available," and the "single rate presumption." The Appellate Body held a hearing in Geneva on February 27-28, 2017, and issued a report on May 11, 2017. The Appellate Body rejected virtually all of China's claims on appeal and did not make any additional findings of inconsistency against the United States.

On May 22, 2017, the DSB adopted the panel and Appellate Body reports. On June 19, 2017, the United States stated that it intends to implement the recommendations of the DSB in this dispute in a manner that

respects U.S. WTO obligations, and that it will need a reasonable period of time in which to do so. On October 17, 2017, China requested that an Article 21.3(c) arbitrator determine the RPT for implementation. The Arbitrator determined the reasonable period of time to be 15 months, expiring on August 22, 2018.

On September 9, 2018, China requested authorization to suspend concessions and other obligations pursuant to Article 22.2 of the DSU. On September 19, 2018, the United States objected to China's request, referring the matter to arbitration. On October 5, 2018, the WTO notified the parties that the arbitration would be carried out by the original panelists: Mr. José Pérez Gabilondo, Chair; and Ms. Beatriz Leycegui Gardoqui and Ms. Enie Neri de Ross, Members. The arbitral proceedings are ongoing. The arbitrator is expected to circulate a decision in 2019.

#### *United States – Anti-Dumping Measures on Oil Country Tubular Goods from Korea (DS488)*

On December 22, 2014, the United States received from Korea a request for consultations pertaining to antidumping duties imposed on oil country tubular goods from Korea. Korea claimed that the calculation by Commerce of the constructed value profit rate for Korean respondents was inconsistent with U.S. obligations under Articles 2.2, 2.2.2, 2.4, 6.2, 6.4, 6.9, and 12.2.2 of the Antidumping Agreement and Articles I and X:3 of the GATT 1994. Korea also claimed that Commerce's decision regarding the affiliation of a certain Korean respondent to a supplier, and the effects of that decision, was inconsistent with Articles 2.2.1.1 and 2.3 of the Antidumping Agreement and that its selection of two mandatory respondents was inconsistent with Article 6.10, including Articles 6.10.1 and 6.10.2. Korea further claimed that Commerce's methodology for disregarding a respondent's exports to third-country markets was inconsistent "as such" and "as applied" in the investigation at issue with Article 2.2 of the Antidumping Agreement.

The United States and Korea held consultations on January 21, 2015. On February 23, Korea requested the establishment of a panel. The DSB established a panel on March 25, 2015, and the Parties agreed to the composition of the panel on July 13 as follows: Mr. John Adank, Chair; and Mr. Abd El Rahman Ezz El Din Fawzy and Mr. Gustav Brink, Members. Subsequently, Mr. Adank withdrew as Chair prior to the second substantive meeting of the Panel, and the Parties agreed that Mr. Crawford Falconer would replace Mr. Adank as Chair. The panel met with the parties on July 20-21, 2016, and November 1-2, 2016.

The panel circulated its report on November 14, 2017. The panel found that the United States had acted inconsistently with the chapeau of Article 2.2.2 of the Antidumping Agreement because Commerce did not determine profit for constructed value based on actual data pertaining to sales of the like product in the home market. The panel also found that the United States had acted inconsistently with Articles 2.2.2(i) and (iii) because Commerce relied on a narrow definition of the "same general category of products" in concluding it could not determine profit under Article 2.2.2(i) and in concluding that it could not calculate a profit cap under Article 2.2.2(iii). The panel further found that the United States had acted inconsistently with Article 2.2.2(iii) because Commerce failed to calculate and apply a profit cap. The panel exercised judicial economy with respect to Korea's claims that the United States acted inconsistently with the chapeau of Article 2.2.2 because Commerce did not determine profit for constructed value based on actual data pertaining to sales of the like product in third-country markets and with respect to Articles 1 and 9.3 as a consequence of substantive violations of Articles 2.2.2, 2.2.2(i), and 2.2.2(iii). Finally, the panel found two of Korea's claims with respect to profit for constructed value to be outside its terms of reference, specifically its claim that the United States had violated Article 2.2.2(iii) because Commerce had determined the profit rate based on a certain company's financial statements and its claim that the United States had violated Article X.3(a) of the GATT 1994, because Commerce had purportedly acted contrary to its agency practice of determining profit.

The panel otherwise rejected the remaining claims asserted by Korea with respect to the investigation at issue, including claims regarding the use of constructed export price and the selection of costs for calculation of constructed normal value; found such claims to be outside its terms of reference; or exercised judicial discretion. For example, the panel specifically found that Korea failed to demonstrate that the United States acted inconsistently with Articles 6.10 and 6.10.2 of the Antidumping Agreement in its selection of mandatory respondents. The panel also specifically rejected Korea's claims that Commerce's methodology for disregarding a respondent's exports to third-country markets was inconsistent "as such" and "as applied" in the investigation with Article 2.2 of the Antidumping Agreement. Finally, the panel exercised judicial economy with respect to Korea's claim that the United States had acted inconsistently with Article 2.4.

On January 12, 2018, the DSB adopted the panel report in this dispute. On February 26, 2018, the United States and Korea informed the DSB that they had agreed that the reasonable period of time to implement the DSB's recommendations and rulings would be 12 months, expiring on January 12, 2019. On November 23, 2018, Commerce published a notice in the Federal Register commencing a proceeding to gather information, analyze record evidence, and consider the determinations which would be necessary to bring its measures into conformity with the DSB recommendations and rulings.

*United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia (DS491)*

On March 13, 2015, Indonesia requested consultations concerning antidumping and countervailing duty measures pertaining to certain coated paper suitable for high-quality print graphics using sheet-fed presses. Indonesia alleged inconsistencies with Article VI of the GATT 1994, Articles 1, 3.5, 3.7, and 3.8 of the Antidumping Agreement and Articles 2.1, 12.7, 10, 14(d), 15.5, 15.7, and 15.8 of the SCM Agreement.

With respect to the countervailing duty measures, Indonesia challenged Commerce's determinations that Indonesia's provision of standing timber, log export ban, and debt forgiveness programs are countervailable subsidies. Indonesia claimed that Commerce determined both that the standing timber was provided for less than adequate remuneration and that the log export ban distorted prices without factoring in prevailing market conditions. Indonesia also alleged, in regards to all three subsidies, that Commerce failed to examine whether there was a plan or scheme in place sufficient to constitute a "subsidy programme" within the meaning of the SCM Agreement. Indonesia further claimed that Commerce did not identify whether each subsidy was "specific to an enterprise ... within the jurisdiction of the granting authority," as required by the SCM Agreement. In addition, Indonesia challenged Commerce's facts-available determination in which it concluded that the government of Indonesia forgave debt.

With respect to both the antidumping and countervailing duty measures, Indonesia alleged that the U.S. International Trade Commission threat of injury determination breached both the AD Agreement and SCM Agreement because: it relied on allegation, conjecture, and remote possibility; was not based on a change in circumstances that was clearly foreseen and imminent; and, showed no causal relationship between the subject imports and the threat of injury to the domestic industry.

Indonesia also raised an "as such" claim with respect to 19 U.S.C. § 1677(11) (B). Indonesia contended that, with respect to threat of injury cases, the law does not consider or exercise "special care" as a result of the requirement that a tie vote be treated as an affirmative U.S. International Trade Commission determination.

Consultations between Indonesia and the United States took place in Geneva on June 25, 2015. A panel was established on September 28, 2015, and on February 4, 2016, the Director-General composed the panel as follows: Mr. Hanspeter Tschani, Chair; and Mr. Martin Garcia and Ms. Enie Neri de Ross, Members.



The panel held its first substantive meeting with the parties, in Geneva, on December 6-7, 2016. The panel held its second substantive meeting with the parties, in Geneva, on March 28-29, 2017. On December 6, 2017, the Panel circulated its report to the Members. The report rejected all of Indonesia's claims. The WTO adopted the panel report on January 22, 2018, bringing this dispute to an end.

*United States — Measures Concerning Non-Immigrant Visas (DS503)*

On March 3, 2016, India requested consultations with the United States regarding certain measures relating to: (1) fees for the L-1 and H-1B categories of non-immigrant visas, under which the United States permits the temporary entry of foreign workers that meet certain criteria; and (2) an alleged U.S. commitment to issue a certain amount of H-1B visas to nationals of Singapore and Chile on an annual basis. India's request alleges that these measures are inconsistent with Articles II, III:3, IV:1, V:4, VI:1, XVI, XVII, and XX of the GATS; and paragraphs three and four of the GATS Annex on the Movement of Natural Persons Supplying Services. Consultations between India and the United States took place in Geneva on May 11-12, 2016.

*United States – Countervailing Measures on Supercalendered Paper from Canada (DS505)*

On March 30, 2016, Canada requested consultations with the United States to consider claims related to U.S. countervailing duties on supercalendered paper from Canada (Investigation C-122-854). Consultations between the United States and Canada took place in Washington, D.C. on May 4, 2016.

On June 9, 2016, Canada requested the establishment of a panel challenging certain actions of the U.S. Department of Commerce with respect to the countervailing duty investigation and final determination, the countervailing duty order, and an expedited review of that order. The panel request also presented claims with respect to alleged U.S. "ongoing conduct" or, in the alternative, a purported rule or norm, with respect to the application of facts available in relation to subsidies discovered during the course of a countervailing duty investigation.

Canada alleged that the U.S. measures at issue were inconsistent with obligations under Articles 1.1(a)(1), 1.1(b), 2, 10, 11.1, 11.2, 11.3, 11.6, 12.1, 12.2, 12.3, 12.7, 12.8, 14, 14(d), 19.1, 19.3, 19.4, 22.3, 22.5, and 32.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement); and Article VI:3 of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

A panel was established on July 21, 2016. On August 31, 2016, the Panel was composed by the Director-General to include: Mr. Paul O'Connor, Chair; and Mr. David Evans and Mr. Colin McCarthy, Members. The panel met with the parties on March 21-22, 2017 and on June 13-14, 2017. The panel report was circulated on July 5, 2018. The panel report, among other things, upheld Canada's claims with respect to the U.S. Department of Commerce treatment of subsidies that exporters refused to disclose in response to Commerce questionnaires, but which Commerce subsequently discovered during the course of the countervailing duty investigation. The U.S. Department of Commerce terminated the countervailing duties on July 5, 2018.

On August 27, 2018, the United States appealed the Panel's findings related to the treatment of undisclosed subsidies discovered during the course of a countervailing duty investigation. The appellate proceedings are ongoing.

*United States – Certain Measures Relating to the Renewable Energy Sector (DS510)*

On September 9, 2016, India requested WTO consultations regarding alleged domestic content requirement and subsidy measures maintained under renewable energy programs in the states of Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware, and Minnesota.

India's request alleges the U.S.-state measures are inconsistent with: Articles III:4, XVI:1, and XVI:4 of the GATT 1994; Article 2.1 of the TRIMS Agreement; and, Articles 3.1(b), 3.2, 5(a), 5(c), 6.3(a), 6.3(c), and 25 of the SCM Agreement. Consultations between India and the United States took place in Geneva on November 16-17, 2016.

A panel was established in on March 21, 2017. On April 11, 2018, India requested the Director-General to compose the panel. On April 21, 2018 the Panel was composed by the Director-General to include: Mr. Alberto Juan Dumont, Chair; and Ms. Penelope Jane Ridings and Mr. Miguel Rodriguez Mendoza, Members. Panel proceedings are ongoing.

*United States – Countervailing Measures on Cold- and Hot-Rolled Steel Flat Products from Brazil (DS514)*

On November 11, 2016, Brazil requested consultations concerning countervailing duty measures pertaining to cold- and hot-rolled steel flat products from Brazil. Brazil alleges inconsistencies with: Article VI of the GATT 1994; and Articles 1, 2, 10, 11 (in particular, Articles 11.2, 11.3, 11.4, and 11.9), 12 (in particular, Articles 12.3, 12.5, and 12.7), 14, 15, 16, 17, 19, and 32.1, and Annexes II and III of the SCM Agreement.

Brazil characterizes its claims as claims related to the procedures applied in the countervailing duty investigations, claims related to the determinations of injury and domestic industry, claims related to the characterization of certain measures as countervailable subsidies, and claims related to the calculation and determination of the subsidy margins for certain tax legislation and loans. With respect to the procedures, Brazil alleges that the United States initiated countervailing duty investigations in the absence of sufficient evidence and inappropriately drew adverse inferences or relied upon adverse facts available. With respect to the determination of injury and domestic industry, Brazil claims that it is not clear that the decision on injury was based on positive evidence or an objective examination of the facts, and that the domestic industry definition did not refer to the domestic producers as a whole. With respect to the characterization of certain measures as countervailable subsidies, Brazil alleges that the United States failed to demonstrate: that certain legislation (related to the "IPI" (tax on industrialized products) levels for capital goods, the integrated drawback scheme, the *ex-tarifario*, the "REINTEGRA," the payroll tax exemption, and the FINAME and "Desenvolve Bahia") entailed a financial contribution and conferred a benefit within the meaning of the SCM Agreement; that the United States failed to demonstrate that the tax legislation is specific within the meaning of the SCM Agreement; and that, with regard to FINAME, the United States failed to demonstrate that the loans conferred a benefit and were specific within the meaning of the SCM Agreement. Finally, with respect to the calculation and determination of subsidy margins for tax legislation and loans, Brazil alleges that the subsidies were calculated in excess of the actual benefit provided, because the benchmarks used were flawed.

The parties consulted on this matter on December 19, 2016.

*United States – Measures Related to Price Comparison Methodologies (DS515)*

On December 12, 2016, China requested consultations with the United States regarding its use of a non-market economy (NME) methodology in the context of antidumping investigations involving Chinese producers. In its request, China asserts that WTO Members were required to terminate the use of an NME

methodology by December 11, 2016, and thereafter apply the provisions of the AD Agreement and the GATT 1994 to determine normal value.

Specifically, China alleges that the following “measures” are inconsistent with Articles 2.1, 2.2, 9.2, 18.1, and 18.4 of the Antidumping Agreement and Articles I:1, VI:1, and VI:2 of GATT 1994:

- Sections 771(18) and 773 of the Tariff Act of 1930, as amended;
- Part 351.408 of Commerce’s regulations, 19 C.F.R. § 351.408;
- Commerce’s 2006 determination that China is a “non-market economy” for purposes of the Tariff Act of 1930, as amended;
- The failure of the United States, by way of omission, to revoke the 2006 determination or otherwise modify its laws with respect to antidumping investigations and reviews of Chinese products initiated and/or resulting in preliminary or final determinations after December 11, 2016.

China also challenged Section 773(e) of the Tariff Act of 1930 – the constructed value provision that applies to market economies – to the extent that it permits the use of “surrogate values.” Consultations took place on February 7-8, 2017, in Geneva.

China requested supplemental consultations on November 3, 2017, which took place on January 4, 2018, in Geneva. As part of its supplemental consultations request, China further alleged that certain of the following “measures” were also inconsistent with: Articles 2.1, 2.2, 5.2, 5.3, 7.1(ii), 9.2, 9.3, 11.1, 11.2, 11.3, 18.1, and 18.4 of the Antidumping Agreement; Articles I:1, VI:1, and VI:2 of GATT 1994; and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization:

- Commerce’s 2017 determination that China is a “non-market economy” for purposes of the Tariff Act of 1930, as amended;
- The policy or practice of using surrogate values to determine normal value in both original and administrative review determinations in antidumping proceedings involving Chinese products, whether that conduct is pursuant to Section 773(c) of the Tariff Act, Section 773(e), or any other provision of U.S. law;
- Certain named Commerce final determinations of normal value in antidumping investigations or administrative reviews of Chinese imports made subsequent to December 11, 2016, which were based on the use of “surrogate values”;
- Commerce’s preliminary affirmative determinations in *Certain Hardwood Plywood Products From the People's Republic of China* (June 23, 2017); *Certain Aluminum Foil From the People's Republic of China* (October 26, 2017); and *Carton-Closing Staples from the People's Republic of China* (October 27, 2017);
- Certain named Commerce final determinations in sunset reviews in which Commerce relied on margins of dumping calculated on the basis of “surrogate values”;
- The policy or practice of making final determinations in sunset reviews of antidumping orders applicable to Chinese products relying on margins of dumping calculated on the basis of surrogate

values, whether pursuant to Section 773(c) of the Tariff Act of 1930, Section 773(e), or any other provision of U.S. law;

- The failure of Commerce, by way of omission, to conduct “reviews based on changed circumstances” pursuant to Section 751(b) of the Tariff Act in the antidumping investigations of Chinese products, by virtue of the expiration of Section 15(a)(ii) of China’s Accession Protocol.

China further added that the “measures at issue are “not justifiable” under the second Supplementary Provision of Article VI:1 of GATT 1994, as referenced in Article 2.7 of the Antidumping Agreement.

*United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey (DS523)*

On March 8, 2017, Turkey requested consultations concerning countervailing duty measures imposed by the United States pursuant to four final countervailing duty determinations issued by Commerce pertaining to certain pipe and tubes products. Turkey alleges inconsistencies with Articles 1.1(a)(1), 1.1(b), 2.1(c), 2.4, 10, 12.7, 14(d), 15.3, 19.4, and 32.1 of the SCM Agreement; and Article VI:3 of the GATT 1994.

Turkey challenges the application of measures in four final countervailing duty determinations with respect to the provision of hot-rolled steel for less than adequate remuneration. Specifically, Turkey challenges Commerce’s “public bodies” determination, use of facts available, and determination of specificity of the subsidy program. Turkey also challenges Commerce’s calculation of benchmarks, both as applied and “as such.” With respect to injury, Turkey challenges the U.S. International Trade Commission’s “practice” of cross-cumulating imports, as well as the application of that practice in the underlying determinations.

Consultations between the United States and Turkey took place in Geneva on April 28, 2017. A panel was established on June 19, 2017, and on September 14, 2017, the Director-General composed the panel as follows: Mr. Guillermo Valles, Chair; and Ms. Luz Elena Reyes de la Torre and Mr. Jose Antonio de la Puente Leon, Members.

The panel circulated its report on December 18, 2018. With respect to public body, the panel found that the Commerce acted inconsistently with Article 1.1(a)(1) by failing to apply the standard set out previously by the Appellate Body, and failing to establish based on record evidence that the relevant entities were public bodies. With respect to benchmarks as such, the panel rejected Turkey’s claims that Commerce has a practice of rejecting in-country benchmarks solely based on majority or substantial government ownership or control of the market. For benchmarks as applied, the panel declined to make a finding under Article 14(d) of the SCM Agreement because the relevant determination had ceased to have legal effect prior to the panel’s establishment. With respect to specificity, the panel found that Commerce acted inconsistently with Articles 2.1(c) and 2.4 of the SCM Agreement by failing to identify and clearly substantiate the existence of a subsidy program, and failing to take into account the extent of diversification of Turkey’s economy and the length of time in which the program had been in place. With respect to facts available, the panel found the U.S. Department of Commerce acted inconsistently with Article 12.7 of the SCM Agreement by failing to do a comparative process of reasoning and evaluation before selecting from the facts available in certain circumstances. With respect to injury, the panel found that Article 15.3 of the SCM Agreement does not permit the U.S. International Trade Commission (USITC) to assess cumulatively the effects of imports not subject to countervailing duty investigations with the effects of imports subject to countervailing duty investigations. The panel thus found cross-cumulation by the USITC, both in the original investigations at issue and as a practice, to be inconsistent with Article 15.3. With respect to cross-cumulation in sunset reviews, the panel found the USITC did not act inconsistently with Article 15.3 of the SCM Agreement, either “as such” or in connection with the sunset review at issue.

*United States – Countervailing Measures on Softwood Lumber from Canada (DS533)*

On November 28, 2017, the United States received from Canada a request for consultations pertaining to the final determination issued by Commerce following a countervailing duty investigation regarding softwood lumber from Canada. Canada claimed that Commerce’s determination is inconsistent with U.S. commitments and obligations under Articles 1.1(a), 1.1(b), 2.1(a), 2.1(b), 10, 11.2, 11.3, 14(d), 19.1, 19.3, 19.4, 21.1, 21.2, 32.1, and 32.5 of the SCM Agreement; and Article VI:3 of the GATT 1994. Specifically, Canada challenged Commerce’s determinations regarding benchmarks for stumpage, log export permitting processes, and non-stumpage programs.

The United States and Canada held consultations on January 17, 2018. At Canada’s request, the WTO established a panel on April 9, 2018. On July 6, 2018, the Director General composed the panel as follows: Ms. Enie Neri de Ross, Chair; and Mr. Gustav Brink and Mr. Alberto Trejos, Members. The panel proceedings are ongoing.

*United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada (DS534)*

On November 28, 2017, the United States received from Canada a request for consultations pertaining to the final determination issued by Commerce following an antidumping investigation regarding softwood lumber from Canada. Canada claimed that Commerce’s determination is inconsistent with U.S. commitments and obligations under Articles 1, 2.1, 2.4, and 2.4.2 of the AD Agreement; and Articles VI:1 and VI:2 of the GATT 1994. Specifically, Canada challenged Commerce’s application of a differential pricing methodology, including the United States’ use of zeroing when applying the average-to-transaction comparison methodology.

The United States and Canada held consultations on January 17, 2018. At Canada’s request, the WTO established a panel on April 9, 2018. On May 22, 2018, the Director General composed the panel as follows: Mr. Thinus Jacobsz, Chair; and Ms. María Valeria Raiteri and Mr. Guillermo Valles, Members. The panel proceedings are ongoing.

*United States – Certain Systemic Trade Remedies Measures from Canada (DS535)*

On December 20, 2017, Canada requested consultations with the United States concerning certain laws, regulations and practices that Canada claims are maintained by the U.S. in its AD and CVD proceedings. Specifically, Canada alleges that the United States: (1) fails to implement WTO-inconsistent findings by liquidating final duties in excess of WTO-consistent rates, and failing to refund cash deposits collected in excess of WTO-consistent rates; (2) retroactively collects provisional AD and CVD duties following preliminary affirmative critical circumstances determinations; (3) treats export controls as a financial contribution and improperly initiates investigations into and/or imposes duties; (4) improperly calculates the benefit in determining whether there is a provision of goods for less than adequate remuneration; (5) effectively closes the evidentiary record before the preliminary determination and fails to exercise its discretion to accept additional factual information; and, (6) creates an institutional bias in favor of affirmative results in injury, threat of injury, or material retardation when the commissioners of the U.S. International Trade Commission are evenly divided on whether a determination should be affirmative or negative.

Canada claims these alleged measures are inconsistent with Articles VI (in particular, VI:2 and VI:3) and X:3(a) of the GATT 1994; Articles 1, 3.1, 6 (in particular, 6.1, 6.2, and 6.9), 7 (in particular, 7.4 and 7.5), 9 (in particular, 9.2, 9.3, 9.3.1, and 9.4), 10 (in particular, 10.1 and 10.6), 11 (in particular 11.1 and 11.2), 18 (in particular, 18.1 and 18.4) of the AD Agreement; Articles 1 (in particular, 1.1(a) and 1.1(b)), 10, 11

(in particular, 11.2, 11.3, and 11.6), 12 (in particular, 12.1 and 12.8), 14(d), 15.1, 17 (in particular, 17.3, 17.4, and 17.5), 19 (in particular, 19.1, 19.3 and 19.4), 20 (in particular, 20.1 and 20.6), 21 (in particular, 21.1 and 21.2), and 32 (in particular, 32.1 and 32.5) of the SCM Agreement; and Articles 21.1 and 21.3 of the DSU.

Consultations between the United States and Canada took place on February 6, 2018.

*United States — Anti-Dumping Measures on Fish Fillets from Vietnam (DS536)*

On January 8, 2018, Vietnam requested consultations concerning anti-dumping measures on fish fillets from Vietnam. Vietnam claimed that Commerce's determinations, as well as certain methodologies used by Commerce, are inconsistent with U.S. obligations under Articles 1, 2.1, 2.4, 2.4.2, 6, 9, 11, 17.6, and Annex II of the AD Agreement; Articles I:1, VI:1, VI:2, and X:3(a) of the GATT 1994; and Vietnam's Protocol of Accession. The United States and Vietnam held consultations on March 1, 2018, but were unable to resolve the dispute. On June 8, 2018, Vietnam requested the establishment of a panel. The DSB established a panel on July 20, 2018. On December 3, 2018, the WTO Director General composed the panel as follows: Mr. José Alfredo Graça Lima, Chair; and Mr. Shahid Bashir and Mr. Greg Weppner, Members. The panel proceedings are ongoing.

*United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available (DS539)*

In February 2018, Korea requested WTO dispute settlement consultations regarding the U.S. Department of Commerce's use of facts available in certain antidumping and countervailing duty measures against Korea, and certain laws, regulations, and other measures maintained by the United States with respect to the use of facts available in antidumping and countervailing duty proceedings. The United States and Korea held consultations in March 2018, but those consultations failed to resolve the dispute. On April 27, 2018, Korea requested the establishment of a panel. On May 28, 2018, the DSB established a panel. Following agreement of the parties, a panel was composed on December 5, 2018, as follows: Ms. Marta Calmon Lemme, Chair; and Ms. Leora Blumberg and Mr. Matthew Kennedy, Members. The panel proceedings are ongoing.

*United States – Certain Measures Concerning Pangasius Seafood Products from Vietnam (DS540)*

On February 22, 2018, Vietnam requested consultations concerning certain sanitary and phytosanitary measures related to the importation of *Pangasius* seafood and seafood products into the United States. Vietnam claimed that the Department of Agriculture's rules regarding the importation of *Pangasius* seafood into the United States are inconsistent with U.S. obligations under Articles 2.2, 2.3, 4.1, 5.1, 5.3, 5.6, 8 and Annex C of the SPS Agreement; and Articles I:1 and XI.1 of the GATT 1994. The United States and Vietnam held consultations on May 2, 2018.

*United States – Tariff Measures on Certain Goods from China (DS543)*

On April 4, 2018, China requested consultations with the United States concerning certain tariff measures on Chinese goods that the United States might implement under Section 301-310 of the U.S. Trade Act of 1974. China alleged that the tariff measures are inconsistent with U.S. commitments and obligations under the Articles I:1, II:1(a), and II:1(b) of the GATT 1994 and Article 23 of the DSU. On July 6, July 16, and September 18, respectively, China requested additional consultations regarding tariff measures imposed under Section 301 that supplemented its original consultations request of April 4, 2018. The United States and China held consultations in Geneva on August 28 and October 22, 2018.

On December 6, 2018 China requested the establishment of a panel.

*United States – Certain Measures on Steel and Aluminum Products (DS544)*

On April 5, 2018, China requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. China claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and China held consultations on July 19, 2018, but the consultations failed to resolve the dispute. At China's request, the WTO established a panel on November 21, 2018.

*United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (DS545)*

On May 14, 2018, Korea requested consultations with the United States concerning a safeguard measure imposed by the United States on imports of certain crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products, such as modules. Korea claimed that the measure appears to be inconsistent with Articles 1, 2.1, 3.1, 3.2, 4.1, 4.2, 5.1, 5.2, 7.1, 7.4, 8.1, 12.1, 12.2, and 12.3 of the Agreement on Safeguards; and Articles II:1, X:3, XIII, and XIX:1(a) of the GATT 1994. China, the European Union, Malaysia, and Thailand requested to join the consultations, and the United States accepted each request. Consultations were held on June 26, 2018.

At Korea's request, the WTO established a panel on September 26, 2018.

*United States – Safeguard Measure on Imports of Large Residential Washers (DS546)*

On May 14, 2018, Korea requested consultations with the United States concerning a safeguard measure imposed by the United States on imports of large residential washers. Korea claimed that the measure appears to be inconsistent with Articles 1, 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 7.1, 7.4, 8.1, 12.1, 12.2, and 12.3 of the Agreement on Safeguards; and Articles I:1, II, X:3 and XIX:1(a) of the GATT 1994. Thailand requested to join consultations, and the United States accepted Thailand's request. Consultations were held on June 26, 2018.

At Korea's request, the WTO established a panel on September 26, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS547)*

On May 18, 2018, India requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. India claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and India held consultations on July 20, 2018, but the consultations failed to resolve the dispute. At India's request, the WTO established a panel on December 4, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS548)*

On June 1, 2018, the European Union requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. The European Union claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and the European Union held consultations on July 19, 2018, but the consultations failed to resolve the dispute. At the EU's request, the WTO established a panel on November 21, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS550)*

On June 1, 2018, Canada requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Canada claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Canada held consultations on July 20, 2018, but the consultations failed to resolve the dispute. At Canada's request, the WTO established a panel on November 21, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS551)*

On June 5, 2018, Mexico requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Mexico claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Mexico held consultations on July 20, 2018, but the consultations failed to resolve the dispute. At Mexico's request, the WTO established a panel on November 21, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS552)*

On June 13, 2018, Norway requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Norway claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Norway did not hold consultations. At Norway's request, the WTO established a panel on November 21, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS554)*

On June 29, 2018, Russia requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Russia claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Russia held consultations on August 30, 2018, but the consultations failed to resolve the dispute. At Russia's request, the WTO established a panel on November 21, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS556)*

On July 9, 2018, Switzerland requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Switzerland claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Switzerland held consultations on August 30, 2018, but the consultations failed to resolve the dispute. At Switzerland's request, the WTO established a panel on December 4, 2018.

*United States — Certain Measures Related to Renewable Energy (DS563)*

On August 2018, China requested consultations with the United States concerning certain measures adopted and maintained in the states of Washington, California, and Michigan in relation to alleged subsidies or domestic content requirements in the energy sector. China alleges that the measures appear to be inconsistent with U.S. obligations under Articles 3.1(b) and 3.2 of the SCM Agreement, Articles 2.1 and



2.2 of the TRIMS Agreement, and Article III:4 of the GATT 1994. The United States and China held consultations in Geneva on October 23, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS564)*

On August 15, 2018, Turkey requested consultations concerning certain duties that the United States had imposed under Section 232 of the Trade Expansion Act of 1962, as amended, on imports of steel and aluminum products that threaten to impair U.S. national security. Turkey claimed that imposition of the duties breached various provisions of the GATT 1994, and the Agreement on Safeguards. The United States and Turkey held consultations on October 10, 2018, but the consultations failed to resolve the dispute. At Turkey's request, the WTO established a panel on November 21, 2018.

*United States – Tariff Measures on Certain Goods from China II (DS565)*

On August 23, 2018, China requested consultations with the United States concerning certain tariff measures on Chinese goods that the United States might implement under Section 301-310 of the U.S. Trade Act of 1974. China alleges that the tariff measures are inconsistent with United States' commitments and obligations under Articles I:1, II:1(a), and II:1(b) of the GATT 1994 and Article 23 of the DSU. The United States and China held consultations in Geneva on October 22, 2018.

## **I. Trade Policy Review Body**

### **Status**

The Trade Policy Review Body (TPRB) is the subsidiary body of the General Council, created by the *Marrakesh Agreement Establishing the WTO*, to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines domestic trade policies of each Member on a schedule designed to review the policies of the full WTO Membership on a timetable determined by trade volume. The express purpose of the review process is to strengthen Members' adherence to WTO provisions and to contribute to the smoother functioning of the WTO. Moreover, the review mechanism serves as a valuable resource for improving the transparency of Members' trade and investment regimes. Members continue to value the review process, because it informs each government's own trade policy formulation and coordination.

The Member under review works closely with the WTO Secretariat to provide pertinent information for the process. The Secretariat produces an independent report on the trade policies and practices of the Member under review. Accompanying the Secretariat's report is the Member's own report. In a TPRB session, the WTO Membership discusses these reports together, and the Member under review addresses issues raised in the reports and answers questions about its trade policies and practices. Reports cover the range of WTO agreements—including those relating to goods, services, and intellectual property—and are available to the public on the WTO's website at <http://www.wto.org>. Documents are filed on the website's "Documents Online" database under the document symbol "WT/TPR."

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

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

## **Major Issues in 2018**

During 2018, the United States underwent its 14th Trade Policy Review—more than any other Member—and used the opportunity to reaffirm the United States' commitment to reform the global trading system in ways that lead to fairer outcomes for U.S. workers and businesses, and more efficient markets for countries around the world. The TPRB also reviewed the trade regimes of 17 other Members: Armenia; China; Chinese Taipei; Colombia; Egypt; The Gambia; Guinea; Hong Kong, China; Israel; Malaysia; Mauritania; Montenegro; Nepal; Norway; Philippines; Uruguay; and Vanuatu.

Since its inception in 1989 to the end of 2018, the TPRB has conducted 485 reviews. The reviews have covered 155 of 164 Members in total. Of the 36 LDC Members of the WTO, the TPRB had reviewed 32 by the end of 2018. Members not yet reviewed by the end of 2018 are: Afghanistan; Cuba; Kazakhstan; Lao PDR; Liberia; Samoa; Seychelles; Tajikistan; and Yemen.

While each review highlights the specific issues and measures concerning the individual Member, common themes that typically emerge during the course of the reviews include:

- transparency in policy making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO agreements (including acceptance and implementation of the WTO TFA);
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including the differences between applied and bound rates;
- customs valuation and customs clearance procedures;
- the use of trade remedy measures such as antidumping and countervailing duties;
- technical regulations and standards and their alignment with international standards;
- sanitary and phytosanitary measures;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- trade-related investment policy issues;
- sectoral trade policy issues, particularly liberalization in agriculture and certain services sectors; and,
- technical assistance in implementing the WTO agreements and experience with Aid for Trade, and the Enhanced Integrated Framework.

## **Prospects for 2019**

The TPRM will continue to be an important tool for monitoring Members' compliance with WTO commitments and forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. For 2019, the proposed program of reviews is: Bangladesh; Canada; Costa Rica; the members of the East African Community (EAC)—Burundi, Kenya, Rwanda, Tanzania, and Uganda; Ecuador; Nicaragua; Papua New Guinea; Samoa; Suriname; The Former Yugoslav Republic of Macedonia; and Trinidad and Tobago.

## **J. Other General Council Bodies and Activities**

### **1. Committee on Trade and Environment**

#### **Status**

The WTO General Council created the Committee on Trade and Environment (CTE) on January 31, 1995, pursuant to the Marrakesh Ministerial Decision on Trade and Environment. Since then, the CTE has discussed a broad range of important trade and environment issues. These issues include: market access associated with environmental measures; the TRIPS Agreement and the environment; labeling for environmental purposes; and capacity-building and environmental reviews, among others.

#### **Major Issues in 2018**

In 2018, the CTE met twice, in June and November. The June session was chaired by the Permanent Representative of Indonesia. The November session was chaired by the Permanent Representative of Hong Kong, China, who was elected as a temporary chair.

Both meetings of the CTE covered a range of trade and environment issues, including fisheries and ocean health; circular economy and sustainable materials management (in particular with respect to plastics management); wildlife trade; and environmental provisions in regional trade agreements. Across this range of issues, WTO Members provided updates on their respective policies and programs. Additionally, several international organizations, including the Organization for Economic Cooperation and Development, the International Maritime Organization, the Convention on International Trade in Endangered Species, and the Food and Agriculture Organization, briefed the CTE on recent activities. The Secretariat also provided an update of the Environmental Database (EDB) and demonstrated a new online platform for WTO Members, a recent upgrade that improves database accessibility for Members. The EDB contains all environment-related notifications submitted by WTO Members as well as environmental measures and policies mentioned in the Trade Policy Reviews of WTO Members and is updated on an annual basis.

#### **Prospects for 2019**

The United States will participate in the CTE, and will continue to explore fresh and innovative approaches to challenging trade and environment issues.

### **2. Committee on Trade and Development**

#### **Status**

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT 1947's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. Since the launch of the Doha Development Round, Members have established four additional CTD subgroups: a Subcommittee on Least-Developed Countries; a Dedicated Session on Small Economies; a Dedicated Session on Regional Trade Agreements; a Dedicated Session on Preferential Trade Arrangements; and a Dedicated Session on the Monitoring Mechanism.

The CTD addresses trade issues of interest to Members with a particular emphasis on the operation of the “Enabling Clause” (the 1979 Decision on Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries). In this context, the CTD focuses on the Generalized System of Preferences programs, the Global System of Trade Preferences among developing country Members,

and regional integration efforts among developing country Members. In addition, the CTD focuses on issues related to the fuller integration of all developing country Members into the international trading system, technical cooperation and training, trade in commodities, market access in products of interest to developing countries, and the special concerns of least-developed countries (LDCs), landlocked developing countries, and small economies.

The CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development. Since the initiation of the Doha Development Agenda (DDA), the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as transparency in preferential trade agreements, expanding trade in products of interest to developing country Members, the WTO's technical assistance and capacity building activities, and an overall assessment of the DDA and goals of sustainable development. As directed in the 2005 Hong Kong Ministerial Declaration, the CTD also conducts annual reviews of steps taken by WTO Members to implement the decision on providing Duty-Free and Quota-Free (DFQF) market access to the LDCs.

Work in the Subcommittee on Least-Developed Countries, as well as the Dedicated Sessions on Small Economies and Regional Trade Arrangements, has included review of market access challenges related to exports of LDCs; LDC accessions to the WTO; trade-related needs of small, vulnerable economies, including island and landlocked states; and, review of regional trade arrangements notified under the Enabling Clause.

The Monitoring Mechanism was established in 2013 at the Ninth Ministerial Conference (WT/MIN(13)/W/17) and serves as a focal point within the WTO to analyze and review the implementation of special and differential treatment provisions. The Monitoring Mechanism operates on the basis of submissions by Members. To date, no submissions have been made.

### **Major Issues in 2018**

The CTD in regular session held three formal sessions in April, July, and November 2018. Activities of the CTD and its subsidiary bodies in 2018 included:

- *Focused Work on Trade and Development:* At the Eighth Ministerial Conference of the WTO, “Ministers reaffirm[ed] that development is a core element of the WTO’s work. They also reaffirm[ed] the positive link between trade and development and call[ed] for focused work in the Committee on Trade and Development” (WT/MIN(11)/11). In 2018, Members maintained divergent views on long-standing proposals for work to be considered under the MC8 mandate.
- *Promoting Transparency:* During CTD regular sessions, the United States continued its ongoing efforts to promote greater transparency in the WTO and pressed Members for timely notifications of regional trade agreements (RTAs) and to do so consistent with the obligations set forth under the Enabling Clause. The United States submitted a written communication to the CTD in February 2018 seeking clarification and additional transparency from Latin American Members regarding RTAs in the region that have not been notified.
- *Technical Cooperation and Training:* At the CTD Regular Session in July, the Committee took note of the 2017 Annual Report on Technical Assistance and Training (WT/COMTD/W/235). The consultant’s report presented 28 recommendations directed to WTO Members and senior WTO management, which fed into discussion of the development of the next Biennial Technical Assistance and Training Plan for 2018-2019. One half of the 28 recommendations have been implemented; more than a quarter of the remaining recommendations are in process. According to the report, 261 activities were undertaken by the Secretariat in 2017, a slight decrease from the previous year. Overall,

approximately 18,200 participants were trained during the year, a decrease of two percent compared to 2016.

- *Duty Free, Quota Free Market Access for LDCs:* The decision taken at the Hong Kong Ministerial Conference on DFQF market access for LDCs remains a standing item on the CTD’s agenda. A number of Members shared information on the steps they are taking to provide DFQF market access to the products of LDCs, including in respect of preferential rules of origin.
- *Dedicated Session on Small Economies:* The Dedicated Session on Small Economies held two formal meetings, in June and November, to discuss the work program on small economies entitled, “Challenges and Opportunities experienced by Small Economies in their Efforts to Reduce Trade Costs, Particularly in the Area of Trade Facilitation.” Several Members made presentations on how they were addressing particular challenges in the area, and representatives from the WTO, the United Nations Conference on Trade and Development, and the Enhanced Integrated Framework made presentations on trade costs, as well as trends in digital connectivity.
- *Aid for Trade:* The CTD held three sessions on Aid for Trade in 2018, in February (reconvened in April), July, and November. The 2018-2019 Aid-for-Trade Work Program, entitled “Supporting Economic Diversification and Empowerment for Inclusive, Sustainable Development through Aid for Trade,” was agreed in the CTD and noted by the General Council, paving the way for the Seventh Global Review, to take place at the WTO in July 2019.
- *LDC Subcommittee:* The Subcommittee on Least-Developed Countries held three meetings, in May, September, and October. During those meetings, Members considered market access for LDCs and trends in LDC trade, trade-related technical assistance, and accession of LDCs.
- *Dedicated Session on Regional Trade Agreements:* The Dedicated Session met in November to consider two agreements notified under the Enabling Clause. These were the Partial Scope Agreement between Panama and the Dominican Republic, and the Arab Mediterranean Free Trade Agreement between Egypt, Jordan, Morocco, and Tunisia.
- *Dedicated Session on Preferential Trade Arrangements:* The Dedicated Session met once in April to consider the trade preferences of the United States for Nepal, which were put into place to assist Nepal in its recovery from a devastating earthquake and its aftershocks in 2015.
- *Template for notifying changes to regional trade agreements:* The Committee on Regional Trade Agreements developed a template to notify changes to an existing RTA and recommend its adoption by the Council for Trade in Goods, the Council for Trade in Services, and the CTD. The CTD adopted the template at its November meeting.

## **Prospects for 2019**

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including technical assistance and market access. It is anticipated that efforts to identify “focused work” will continue, taking into consideration the relevant sections of the applicable ministerial declarations. Members will also continue to work with the Secretariat in dedicated sessions to identify the challenges and opportunities experienced by small economies when linking into global value chains. In addition, the CTD’s examination of RTAs between developing country Members will continue as new RTAs are notified to the WTO. Work will continue on implementing the Transparency Mechanism for

Preferential Trade Arrangements. The implementation of the Monitoring Mechanism will also continue in dedicated sessions of the CTD.

### **3. Committee on Balance-of-Payments Restrictions**

#### **Status**

The Uruguay Round Understanding on Balance-of-Payments (BOP) clarified GATT disciplines on balance-of-payments-related trade measures. The Committee on Balance-of-Payments Restrictions works closely with the International Monetary Fund (IMF) in conducting consultations on balance of payments issues. Full consultations involve examining a Member's trade restrictions and BOP situation, while simplified consultations provide for more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in its BOP.

#### **Major Issues in 2018**

No WTO Members attempted to use GATT disciplines as a justification for balance-of-payments-related trade measures in 2018. As a result, the Committee did not meet other than to approve a chairperson and adopt its annual report.

#### **Prospects for 2019**

The Balance-of-Payments Committee will continue to monitor balance-of-payment issues of WTO Members on an ongoing basis. The United States expects the Committee to continue to ensure that balance-of-payments provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

### **4. Committee on Budget, Finance and Administration**

#### **Status**

The Committee on Budget, Finance and Administration (the Budget Committee) is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for Members' approval. The Budget Committee meets throughout the year to address the financial requirements of the WTO. The budget process in the WTO operates on a biennial basis; the WTO is currently in the eighth consecutive year of zero nominal growth budgets. As is the practice in the WTO, decisions on budgetary issues are taken by consensus. The United States is an active participant in the Budget Committee.

In the WTO, the assessed contribution of each Member is based on the share of that Member's trade in goods, services, and intellectual property. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. For the 2018 budget, the U.S. assessed contribution was 11.38 percent of the total budget assessment, or CHF 22,251,810 (about \$22 million) (*details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget are provided in Annex III*).

#### **Major Issues in 2018**

The Committee held six formal meetings throughout 2018 and submitted related reports to the General Council. The Committee obtained and reviewed on a quarterly basis reports on the financial and budgetary situation of the WTO, the arrears of contributions from Members and Observers, the WTO Pension Plan,

WTO risk management and internal oversight activities, and the financial situation due to negative interest impact. The Committee reviewed and took note of the annual report on diversity in the WTO Secretariat, the 2017 Report of the Office of Internal Oversight, the WTO Strategic Facilities Plan, and the Human Resources annual report on grading structure and promotions.

### **Prospects for 2019**

The Committee's work in 2019 will be dominated by the preparation of a biennial budget for the 2020-2021 period.

## **5. Committee on Regional Trade Agreements**

### **Status**

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party.

The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established in the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system. Prior to 1996, these reviews were typically conducted by a “working party” formed to review a specific agreement.

GATT Article XXIV is the principal provision governing free trade areas (FTAs), customs unions (CUs), and interim agreements leading to an FTA or CU concerning goods. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the “Enabling Clause,” provides a basis for certain agreements between or among developing country Members, also concerning trade in goods. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV of GATT 1994; and Articles V and V *bis* of the GATS, which govern services and labor markets integration agreements. FTAs and CUs are authorized departures from the principle of MFN treatment, if relevant requirements are met.

### **Major Issues in 2018**

As of December 31, 2018, 486 regional trade agreements (RTAs) have been notified to the GATT or WTO, of which 291 are in force (142 covering goods only, one covering services only, and 148 covering goods and services). RTAs include bilateral or plurilateral free trade agreements (FTAs), customs unions, and services agreements covered under GATS Articles V and V *bis*.

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs. The main features of the mechanism, agreed upon in the Negotiating Group on Rules, include: 1) the early announcement of any RTA guidelines regarding the notification of RTAs; 2) the preparation by the WTO Secretariat, on its own responsibility and in full consultation with the parties, of a factual presentation on each notified RTA to assist Members in their consideration of the notified RTA; 3) timeframes associated with the consideration of RTAs; 4) provisions regarding subsequent notification and reporting with respect to notified RTAs; 5) technical support for developing countries; and, 6) a division of work between the CRTA, entrusted to implement the mechanism *vis-à-vis* RTAs falling under Article XXIV of GATT 1994 and Article V of the GATS, and the Committee on Trade and Development (CTD), entrusted to do the same for RTAs falling under the Enabling Clause.

Since the implementation of the transparency mechanism in 2007, 279 agreements, counting goods and services notifications separately, have been considered (16 factual presentations representing 24 notifications in 2018). Of these agreements, 269 have been reviewed in the CRTA and 10 in the CTD. Factual presentations for two additional agreements (reflecting four notifications) were circulated to Members but not considered in 2018.

Under the transparency mechanism, the WTO Secretariat was tasked to establish and maintain an updated electronic database on individual RTAs. The database was launched in January 2009 and includes extensive information, all of which is available to the public. The RTAs database may be accessed at: <http://rtais.wto.org>.

### **Prospects for 2019**

Four sessions of the CRTA are foreseen in 2019. The United States will continue to push other Members to comply with WTO transparency obligations applicable to their RTAs.

## **6. Accessions to the World Trade Organization**

### **Status**

There are 22 applicants for WTO Membership. Of these 22 applicants,<sup>17</sup> 11 were engaged in the WTO accession process at some point during 2018. Six applicants provided the technical inputs necessary to convene formal meetings of their respective Working Parties (WP). The WP for The Bahamas convened in September; the WP for Belarus met in May; the WP for Bosnia and Herzegovina convened in February; and the WP for Comoros met in March. In February, Iraq submitted to the WP a revised Memorandum of Foreign Trade Regime (MFTR), which is required to begin the accession process, and it received comments and questions from WP Members in March. In December, South Sudan submitted to the WP the first draft of its MFTR.

As of the end of 2018, four applicants (Ethiopia, Serbia, Sudan, and Uzbekistan) appeared to be taking steps internally to restart work on their accession processes. Azerbaijan was focused on bilateral market access negotiations with select WP Members.

Of the remaining 11 WTO accession applicants, five (Equatorial Guinea, Libya, Sao Tome and Principe, Somalia, and Syria) had not submitted the initial documents describing their respective foreign trade regimes as of the end of 2018. As a result, negotiations on their accessions had not commenced. Accession negotiations with the other six applicants (Algeria, Andorra, Bhutan, Iran, Lebanon, and Timor-Leste) remained dormant in 2018.

### *Background*

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as Article XII of the WTO Agreement provides. The accession process, with its emphasis on the implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for the adoption of policies and practices that encourage trade and investment and promote growth and development.

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<sup>17</sup> Accession Working Parties have been established for Algeria, Andorra, Azerbaijan, the Bahamas, Belarus, Bhutan\*, Bosnia and Herzegovina, Comoros\*, Equatorial Guinea, Ethiopia\*, Iran, Iraq, Lebanon, Libya, Sao Tome and Principe\*, Serbia, Somalia\*, South Sudan\*, Sudan\*, Syria, Timor-Leste\*, and Uzbekistan. (The eight countries marked with an asterisk are LDCs.)



In a typical accession negotiation, a government writes to the WTO Director General seeking accession to the WTO. This application is circulated to WTO Members and placed on the agenda of the next meeting of the WTO General Council, which establishes a WP composed of all interested WTO Members to review the applicant's trade regime, conduct the negotiations, and make a recommendation to the General Council on the application. To initiate negotiations on the terms of its WTO Membership, the applicant then provides an initial description of its trade practices (the MFTR) and responds to questions and comments submitted by Members on that document. The WTO Secretariat schedules a first meeting of the WP and subsequent meetings as justified by new developments and documentation. The number of WP meetings needed to complete the negotiations, as well as the overall length of the accession process, largely depends on the speed with which the applicant addresses the issues identified by WP Members and moves to conclude bilateral negotiations to liberalize trade through specific commitments on market access for goods and services, based on requests from WP Members. In addition, applicants are expected to make necessary legislative changes to implement WTO institutional and regulatory requirements and to eliminate existing WTO-inconsistent measures. Almost all "developed country" accession applicants, and many "developing country" accession applicants, take all of these actions on WTO rules prior to conclusion of the accession negotiations.<sup>18</sup>

At the conclusion of its work, the WP adopts the documents recording the agreed results of the negotiations (the "terms of accession" for the applicant developed with WP Members in bilateral and multilateral negotiations) and transmits them with its recommendation for approval to the General Council or to the Ministerial Conference. These terms, *i.e.*, the accession "package," consist of the "Report of the Working Party" and "Protocol of Accession," consolidated schedules of specific commitments on market access for goods and services, and agriculture schedules that include commitments on export subsidies and domestic supports. After General Council or Ministerial Conference approval, accession applicants submit the package to their domestic authorities for acceptance (ratification).<sup>19</sup> Thirty days after the WTO receives the applicant's instrument accepting the terms of accession, the applicant becomes a WTO Member.

Undertaking accession negotiations is a serious decision for any country. Applicants already committed to economic reform based on market-oriented policies, or that demonstrate a strong interest in using WTO provisions as the basis for their trade regimes, usually are the most successful in moving their accession towards completion (*e.g.*, by submitting usable documentation, market access offers, and legislation for WP review on a timely basis). Thus, the pace of the accession process generally depends on the applicant.

The accession process requires attention and active engagement from both applicants and WTO Members. Importantly, the accession process ensures that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure market access opportunities from acceding countries, to work with accession applicants towards full implementation of WTO obligations, and to address outstanding trade issues covered by the WTO in a multilateral context.

*U.S. Leadership and Technical Assistance:* The United States has traditionally taken a leadership role in all aspects of the accession negotiations, including in the bilateral, plurilateral, and multilateral aspects of the negotiations. The U.S. objectives are to ensure that the applicant fully implements WTO provisions when it becomes a Member, to encourage trade liberalization in developing and transforming economies,

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<sup>18</sup> As outlined below, negotiations with applicants designated as "least developed" by the United Nations are subject to special guidelines. Select transitional periods may be negotiated, if necessary, with LDC applicants that request them and can justify their necessity.

<sup>19</sup> The WP decision to adopt the accession package is by "consensus," *i.e.*, without objection by any WP Member. While there are provisions in the WTO Agreement for the Ministerial Conference or General Council to approve accessions by an affirmative vote of two-thirds of all Members, in practice, the Ministerial Conference or General Council approve the terms of accession by consensus.

and to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also has provided 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. The U.S. Agency for International Development (USAID), the USDA, the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce, and the U.S. Trade and Development Agency have provided this assistance on behalf of the United States.

The U.S. assistance can include providing short term technical expertise focused on specific issues (*e.g.*, customs procedures, intellectual property rights protection, or sanitary and phytosanitary matters and technical barriers to trade), or a WTO expert in residence in the acceding country or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States at one time or another, including Afghanistan, Albania, Armenia, Bulgaria, Cape Verde, Croatia, Estonia, Georgia, Jordan, Kazakhstan, Kyrgyz Republic, Latvia, Laos, Liberia, Lithuania, Macedonia, Moldova, Montenegro, Nepal, Russian Federation, Tajikistan, Ukraine, Vietnam, and Yemen. The United States provided resident experts for most of these countries for some portion of the accession process.

Among current accession applicants, Algeria, Azerbaijan, Belarus, Bosnia and Herzegovina, Ethiopia, Iraq, Lebanon, Serbia, and Uzbekistan have received U.S. technical assistance in their accession processes. In addition, Afghanistan, Georgia, Kazakhstan, the Kyrgyz Republic, Tajikistan, and Ukraine continue to receive assistance with implementing their membership commitments.

### **LDC Accessions**

WTO Members are committed to facilitating the accession processes of LDCs and to making WTO accession more accessible to these applicants. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries in response to the WTO General Council Decision on Accessions of Least Developed Countries (WT/L/508) adopted at the end of 2002, and in its addendum, adopted in July 2012 by the General Council.<sup>20</sup> The expanded guidelines established by these documents include provisions under the following pillars: 1) Benchmarks on Goods Concessions; 2) Benchmarks on Services Commitments; 3) Transparency in Accession Negotiations; 4) Special and Differential (S&D) Treatment and Transition Periods; and, 5) Technical Assistance. Points 1) and 2) establish that market access negotiations for the WTO accession of LDCs are to be guided by special principles and benchmarks more appropriate to the development level of LDC applicants. The transparency provisions confirm evolving practice in LDC accessions for the use of the good offices of the Chairperson of the Sub-Committee on LDCs, as well as the Chairpersons of the LDCs' Accession Working Parties to assist the conclusion of the accession process for LDCs. S&D treatment and technical assistance provisions of the guidelines also confirm the need for restraint and the use of transitional provisions when constructing market access commitments, as well as the utility for detailed action plans for transitional implementation of WTO provisions in specific instances. Further, the guidelines confirm the need for enhanced technical assistance and capacity building in LDC accessions.

The United States and other developed country WTO Members support both the 2002 and the 2012 Decisions on LDC Accessions, adhering to the guidelines established by these documents in formulating more flexible negotiating positions on market access and WTO implementation commitments for LDCs. The purpose of the guidelines is to ensure that LDCs are prepared for the responsibilities of WTO Membership by promoting use of technical assistance, structuring transitional periods with action plans, and, in general, making extra efforts to facilitate LDC integration into the trading system. The guidelines will continue to maintain the WTO accession process for LDCs as a tool for economic development,

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<sup>20</sup> WT/L/508 and WT/L/508/Add.1.

incorporating the applicant's own development program and schedule for receiving technical assistance into an action plan for progressive implementation of WTO rules.

### **Major Issues in 2018**

Four formal WP meetings were held in 2018, one for each of the following countries: The Bahamas; Belarus; Bosnia and Herzegovina; and, Comoros.

#### *The Bahamas*

After a long dormancy, The Bahamas returned to the WTO accession process in September 2018, when the WP met for the third time. The Bahamas responded to Members' questions in December. The accession process is at an early stage, but additional work is expected in 2019, including a WP meeting during the first quarter.

#### *Belarus*

Belarus formally reengaged in the accession process in 2017 for the first time since 2005. Its WP has since met three times, most recently in May 2018. WP Members and Belarus have begun to focus on a significant number of key issues, and further work is expected in 2019, including a WP meeting during the first quarter.

#### *Bosnia and Herzegovina*

The WP for the accession of Bosnia and Herzegovina (BiH) met in February 2018, for the first time in nearly five years. BiH continues to discuss several rules issues with individual Members, seeking to make progress while BiH advances bilateral negotiations with WP Members on market access. In July, the United States and BiH successfully concluded their bilateral negotiations on market access. As of the end of 2018, BiH was continuing to negotiate market access with only one remaining WP Member.

#### *Comoros*

Comoros' WP was established in October 2007 and has met four times, in December 2016, in June and October 2017, and in March 2018. Following a pause due to constitutional referendum in mid-2018, Comoros is expected to resume work to address issues in several key areas identified by Members of the WP. Comoros also has made good progress in its bilateral negotiations on goods and services market access.

### **Prospects for 2019**

Several applicants are expected to actively engage in the accession process in 2019. Bosnia and Herzegovina's accession process is advanced and could finish relatively quickly once its outstanding market access negotiation is concluded. The Bahamas, Belarus, Comoros, Ethiopia, South Sudan, Sudan, and Uzbekistan are expected to submit substantive inputs to their respective Working Parties.

## **K. Plurilateral Agreements**

### **1. Committee on Trade in Civil Aircraft**

#### **Status**

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of four WTO plurilateral agreements (along with the Agreement on Government Procurement, the Information Technology Agreement (ITA 1996), and the Expansion of the Information Technology Agreement (ITA Expansion 2015)) that are in force only for those WTO Members who have accepted it.<sup>21</sup>

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, engines, flight simulators, and related parts and components, and to provide these benefits on a nondiscriminatory basis to other signatories. In addition, the Signatories have agreed provisionally to provide duty-free treatment for ground maintenance simulators, although this item is not covered under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free-market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

There are currently 32 Signatories to the Aircraft Agreement: Albania, Canada, the EU and its 28 Member States<sup>22</sup> (the following 20 EU Member States are also Signatories to the Aircraft Agreement in their own right: Austria, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain, Sweden, and the United Kingdom), Egypt, Georgia, Japan, Macau, Montenegro, Norway, Switzerland, Chinese Taipei, and the United States. WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, Mauritius, Nigeria, Oman, the Russian Federation, Saudi Arabia, Singapore, South Korea, Sri Lanka, Chinese Taipei, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, and Ukraine. The International Monetary Fund and the United Nations Conference on Trade and Development are also observers.

The Committee on Trade in Civil Aircraft (Aircraft Committee), permanently established under the Aircraft Agreement, provides the Signatories an opportunity to consult on the operation of the Aircraft Agreement, to propose amendments to the Agreement, and to resolve any disputes.

#### **Major Issues in 2018**

The Aircraft Committee held one informal meeting on March 14, 2018 and one regular meeting on October 29, 2018. At the regular meeting, the Committee discussed the implementation of the Protocol adopted in November 2015 that updated the product list of the Civil Aircraft Agreement to be compatible with the 2007 version of the Harmonized System, as well as further updated the aviation products list covered by the Agreement to align with more recent updates to the Harmonized System. The Chair stated that he would organize informal consultations in due course.

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<sup>21</sup> Additional information on this agreement can be found on the WTO's website at: [http://www.wto.org/english/tratop\\_e/civair\\_e/civair\\_e.htm](http://www.wto.org/english/tratop_e/civair_e/civair_e.htm).

<sup>22</sup> Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.

## Prospects for 2019

The Aircraft Committee agreed to hold its next regular meeting in October or November 2019. The United States will continue to encourage recently acceded WTO Members to become Signatories pursuant to their respective protocols of accession, and will continue to encourage current Committee observers and other WTO Members to become Signatories to the Aircraft Agreement.

## 2. Committee on Government Procurement

### Status

#### *Membership*

The WTO Agreement on Government Procurement (GPA) is a plurilateral agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to it.

Forty-seven WTO Members are parties to the GPA: Armenia; Canada; the EU and its 28 Member States<sup>23</sup>; Hong Kong, China; Iceland; Israel; Japan; South Korea; Liechtenstein; Moldova; Montenegro; the Netherlands with respect to Aruba; New Zealand; Norway; Singapore; South Korea, Switzerland; Chinese Taipei; Ukraine; and the United States (collectively the GPA Parties).

As of the end of 2018, eleven Members were in the process of acceding to the GPA: Albania; Australia; China; Georgia; Jordan; the Kyrgyz Republic; Oman; the Republic of Macedonia; the Russian Federation; Tajikistan; and the United Kingdom. Five additional Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Afghanistan, Kazakhstan, Mongolia, Saudi Arabia, and Seychelles.

#### *Australia*

Australia was officially invited to join the GPA on October 17, 2018. Australia has 12 months to deposit its instrument of acceptance. Thirty days after doing so Australia will become a GPA party.

#### *China*

When China joined the WTO in 2001, it committed to commence negotiations to join the GPA "as soon as possible." China submitted its application for accession to the GPA and its Initial Appendix I Offer on December 28, 2007. The United States submitted its Initial Request for improvements in China's Initial Offer in May 2008. China submitted its first revised offer in July 2010. The United States submitted its second request for improvements in China's revised offer in September 2010. China also submitted its responses to the Checklist of Issues for Provision of Information Relating to Accession in September 2008.

In April 2010, the United States submitted questions to China on its responses to the Checklist of Issues. China replied to U.S. questions in October 2010. On November 30, 2011, China submitted its second Revised Offer, which included several sub-central entities. On July 3, 2012, the United States submitted its third request for improvements in China's offer. On November 29, 2012, China submitted its third

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<sup>23</sup> Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom.

revised offer. On December 30, 2013, China submitted its fourth revised offer, which included lower thresholds, increased coverage of sub-central entities, and improvements in other areas.

On December 22, 2014, China submitted its fifth revised offer. The offer was not commensurate with the coverage provided by the United States and other GPA Parties. In 2018, the United States and China held bilateral discussions on China's accession, but China had submitted no new offer as of December 2018.

### *Kyrgyz Republic*

The Kyrgyz Republic's accession to the GPA, which had been inactive since 2003, moved forward in 2009 when it submitted updated responses to the Checklist of Issues. In January 2016, the Kyrgyz Republic circulated its newly revised Law on Public Procurement and submitted a "revised initial offer". The Kyrgyz Republic followed up with its second revised offer on May 26, 2016. The United States submitted comments on the Kyrgyz Republic's revised offer and comments on the Kyrgyz revised Law on Public Procurement in June 2016. The Kyrgyz Republic tabled its third revised offer in October 2016 that addressed most GPA Parties' requests for improvements. The United States provided comments on the third revised offer in February 2017. In June 2017, the Kyrgyz Republic submitted responses to the U.S. questions on the third revised offer and submitted updated responses to the Checklist of Issues. In June 2018, the Kyrgyz Republic tabled a fourth revised offer. The United States continues to engage with the Kyrgyz Republic on the remaining outstanding issues and will continue to review the Kyrgyz Republic's procurement procedures to ensure consistency with WTO GPA obligations.

### *Republic of Macedonia*

As part of its 2002 WTO accession, the Republic of Macedonia committed to commence negotiations to join the GPA. The Republic of Macedonia applied for GPA accession and submitted its draft procurement law and replies to the Check List of Issues in March 2017. The United States submitted comments on both the draft procurement law and the Check List of Issues in June 2017. The Republic of Macedonia submitted an initial offer on February 26, 2018. The United States submitted comments on the initial offer in June 2018. The United States met with the Republic of Macedonia in 2018. The United States will continue to engage with the Republic of Macedonia on outstanding issues related to initial offer and draft procurement law.

### *Russia*

In its WTO Protocol of Accession, the Russian Federation committed to request observer status in the GPA and to begin negotiations to join the GPA within four years of its WTO accession. The Russian Federation became a GPA observer on May 29, 2013, and informed the GPA Parties on August 19, 2016, of its intent to initiate negotiations to join the GPA. The Russian Federation submitted its initial market access offer on June 7, 2017. The Russian Federation submitted its response to the Checklist of Issues in January 2018. The United States submitted comments on both Russia's initial offer and Russia's responses to the Checklist. In October 2018, the Russian Federation provided responses to both U.S. questions on the initial offer and the response to the Checklist. The United States held two bilateral discussions with the Russian Federation on its accession in 2018. The United States will continue to work with the Russian Federation on its accession but has made clear that significant improvements are needed to the market access offer and important changes to Russia's procurement system are necessary before the Russian Federation would be in a position to join the GPA.

## *Tajikistan*

Consistent with Tajikistan's commitment to initiate GPA accession negotiations, made in the course of its accession to the WTO in March 2013, Tajikistan applied for accession to the GPA and submitted its initial offer in February 2015. The United States submitted a request for improvement to Tajikistan's initial offer in May 2015. In February 2016, Tajikistan submitted its replies to the Checklist of Issues and a revised market access offer. In March 2016, the United States submitted comments on Tajikistan's revised offer. Tajikistan submitted its second revised offer in June 2016. In August 2016, the United States submitted comments on Tajikistan's draft public procurement law and replies to the Checklist of Issues. Tajikistan circulated its third revised offer in October 2016. In February 2017, the United States circulated comments on the third revised offer and Tajikistan circulated its fourth revised offer. In March 2017, the United States circulated comments on the fourth revised offer. The United States continues to engage with Tajikistan on the remaining outstanding issues and will continue to review Tajikistan's procurement procedures to ensure consistency with WTO GPA obligations.

## *United Kingdom*

The United Kingdom currently remains covered by the GPA as a Member State of the EU. The United Kingdom is scheduled to withdraw from the EU at the end of March 2019. In June 2018, the European Union circulated the United Kingdom's initial market access offer and replies to the Checklist of Issues. Since then, the UK accession negotiation has proceeded quickly. In July 2018, the United States submitted comments on both the initial offer and on the response to the Checklist of Issues. In August 2018, the United Kingdom submitted responses to U.S. comments. In September 2018, the United States submitted follow up comments on both the offer and Checklist of Issues. In October 2018, the United Kingdom submitted both responses to U.S. follow up comments and a final offer. In November 2018, GPA Parties indicated support for the UK's final offer and asked the WTO Secretariat to draft a committee decision formally inviting the United Kingdom to join the GPA.

## *Observers*

Thirty-two WTO Members have observer status in the GPA Committee: Afghanistan, Albania, Argentina, Australia, Bahrain, Belarus (approved in 2018), Brazil, Cameroon, Chile, China, Colombia, Costa Rica, Georgia, India, Indonesia, Jordan, Kazakhstan, the Kyrgyz Republic, Malaysia, Mongolia, Oman, Pakistan, Panama, the Republic of Macedonia, the Russian Federation, Saudi Arabia, Seychelles, Sri Lanka, Tajikistan, Thailand, Turkey, and Viet Nam. Four intergovernmental organizations, the International Monetary Fund, International Trade Centre, the Organization for Economic Cooperation and Development, and the United Nations Conference on Trade and Development also have observer status.

## *Revised GPA*

On December 15, 2011, the GPA Parties reached agreement on the conclusion of negotiations, which had been conducted over more than a decade, to revise the GPA. The outcome included a revision of the text of the GPA to streamline and clarify its obligations, to incorporate flexibilities that reflect modern procurement practices, and to facilitate its implementation. The revised GPA also significantly expanded the procurement covered under the GPA.

As part of the GPA package, the GPA Parties adopted a set of Future Work Programs to be undertaken by the GPA Committee following the entry into force of the revised GPA. These include programs related to: 1) the treatment of small and medium-sized enterprises; 2) sustainable procurement; 3) the collection and dissemination of statistical data; 4) exclusions and restrictions in GPA Parties' Annexes; and, 5) safety standards in international procurement. The GPA Committee also has approved a decision relating to the

use of electronic means to fulfill notification requirements under Articles XIX and XXII of the revised GPA.

The revised GPA entered into force on April 6, 2014 after 10 Parties, two-thirds of the Parties<sup>24</sup> to the GPA at that time, deposited their instruments of acceptance. By November 2017, 14 Parties had deposited their instruments of acceptance. Only Switzerland has yet to deposit its instrument of acceptance. U.S. obligations to Switzerland are covered by the 1994 GPA.

## **Major Issues in 2018**

During 2017, the GPA Committee held four formal and informal meetings (in March, June, October, and November) focused on accessions and Work Programs. The GPA Committee held further discussions at the informal meetings on the accessions to the GPA of Australia, China, the Kyrgyz Republic, the Republic of Macedonia, the Russian Federation, Tajikistan, and the United Kingdom.

Australia was formally invited to join the GPA in October 2018. The United Kingdom initiated its accession by tabling its initial offer and its response to the Checklist of Issues. The Russian Federation tabled its response to the Checklist of Issues. The Republic of Macedonia tabled both its initial offer and its response to the Checklist of Issues.

The GPA Committee accelerated its implementation of the four (of five) Work Programs that were adopted as part of the revised GPA covering: small and medium enterprises, sustainable procurement, the collection and reporting of statistical data, and exclusions and restrictions in Parties' Annexes. The GPA Committee specifically established three Work Programs to facilitate the implementation of the GPA and inform any future negotiations.

### *Collection and Dissemination of Statistical Data*

As chair for the work program on collection and dissemination of statistical data, the United States hosted small group meetings on the margins of the GPA committee meetings in March and June in 2018. Statistical issues discussed included classification systems of goods and services, tracking country of origin of goods and services, procurements exclude from GPA coverage, multi-year contracts, sub-central statistics, and statistical information made available online.

### *Treatment of Small and Medium Sized Enterprises*

In 2018 Parties continued work aimed at identifying practices that promote and facilitate the participation of small- and medium-sized enterprises in government procurement.

### *Sustainable Procurement*

In 2018, Parties continued to work towards identifying measures and policies that are considered to be sustainable procurement practiced in a manner consistent both with the principle of "best value for money" and with the Parties' international trade obligations.

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<sup>24</sup> On April 6, 2014 the 15 Parties to the GPA were: Armenia; Canada; the EU (and its 28 Member States -- Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom); Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; Chinese Taipei; and the United States.



## Prospects for 2019

Australia will deposit its instrument and formally join the GPA. The United Kingdom may be formally invited to join the GPA in its own right depending upon the Brexit discussions.

The GPA Committee will continue to work to advance GPA accessions, in particular, of China, the Kyrgyz Republic, the Republic of Macedonia, the Russian Federation, and Tajikistan. The GPA Committee will continue its work on implementing the Work Programs.

## 3. The Information Technology Agreement and the Expansion of Trade in Information Technology Products

### Status

The ITA<sup>25</sup> is a plurilateral agreement to eliminate tariffs on certain information and communications technology (ICT) products. The ITA covers a wide range of ICT products, including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. To date, 82 WTO Members are ITA participants. Among these 82 ITA participants, however, Morocco has yet to submit the formal documentation to implement its ITA commitments, and El Salvador has indicated that implementation would begin after the completion of domestic legal procedural requirements.

In 2012, a subset of ITA participants launched negotiations to expand significantly the product coverage of the ITA. Those negotiations were concluded in 2015, and participants began implementation of their tariff commitments, as elaborated below.

### Major Issues in 2018

#### *Continued Implementation of The Expansion of Trade in Information Technology Products*

In 2018, the Parties continued to implement ITA Expansion.<sup>26</sup> Under the agreement, each Party agreed to implement its initial tariff reductions for covered products beginning on July 1, 2016, subject to completion of its domestic procedural requirements. The second set of reductions took place on July 1, 2017. The third set of reductions took place on July 1, 2018. The majority of Parties, including key U.S. export markets, such as China, Korea, and the EU, have completed implementation of their initial tariff reductions and have put in place procedures to make subsequent reductions as called for in ITA Expansion. In addition, the majority of Parties have submitted, in accordance with the relevant WTO procedures,<sup>27</sup> modifications to their WTO tariff schedules of concessions, which will incorporate these duty-free tariff commitments into their overall WTO tariff commitments.

The WTO estimates that ITA Expansion will eliminate tariffs on roughly \$1.3 trillion in annual global trade of ICT products, which industry estimates will increase annual global gross domestic product by an estimated \$190 billion. With implementation of ITA Expansion, over \$180 billion in annual American technology exports will no longer face burdensome tariffs in key markets around the globe.

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<sup>25</sup> More formally known as the “WTO Ministerial Declaration on Trade in Information Technology Products” (WT/MIN(96)/16).

<sup>26</sup> “Declaration on the Expansion of Trade in Information Technology Products” (WT/L/956).

<sup>27</sup> The relevant procedures are detailed in the “Decision on 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions” (BISD 27S/25).

## *ITA Committee*

The ITA established the Committee of Participants on the Expansion of Trade in Information Technology Products (the ITA Committee) to carry out the provisions of the ITA, among which are to review the current product coverage with a view to incorporate additional products and to consider any divergence among ITA participants in classifying ITA products. The ITA Committee does not cover the ITA Expansion agreement; however, ITA Expansion Parties met periodically in 2018 and provided regular updates to the ITA Committee on the status of implementation. ITA Expansion contains a clause through which the Parties review ITA Expansion product coverage.

The ITA Committee held two formal meetings in May and October 2018.<sup>28</sup> In those meetings, the ITA Committee continued its deliberations on the Non-Tariff Measures (NTMs) Work Program. With regard to its work on the Electro-Magnetic Compatibility/Electro-Magnetic Interference (EMC/EMI) Pilot Project, the ITA Committee took note that 33 ITA participants (including the EU as one participant) have provided survey responses to the ITA Committee, and encouraged those that had not provided the information to do so without further delay. In considering ways to advance and expand its work on NTMs beyond EMC/EMI, the ITA Committee continues to discuss the main issues raised by Members, including transparency, standards for recognition of test results, and electronic-labeling. In addition, the United States, along with numerous other WTO Members, raised two tariff-related implementation issues concerning India and China at the May and October meetings of the Committee.

The ITA Committee also continued a discussion of classification divergences on certain ITA products. These discussions are aimed at eliminating differences in the way ITA participants classify ITA products in their national tariff schedules. In 2013, the ITA Committee adopted a decision to endorse the classification of 18 ITA Attachment B items in the Harmonized System (HS) 1996 nomenclature. For the 37 remaining items listed in Attachment B, or identified as “for Attachment B” in section 2 of Attachment A, the ITA Committee agreed on a Decision for the HS 2007 classification of 15 additional items.<sup>29</sup> The WTO Secretariat prepared and circulated a list of these remaining 22 items and their possible classification in HS2007 nomenclature. ITA participants are required to indicate those items for which their classification diverges from the list prepared by the Secretariat; if an ITA participant’s classification differs, then it must identify the HS2007 sub-heading (*i.e.*, HS 6-digit level) under which it classifies the Attachment B product in question. After receiving responses from ITA participants, the WTO Secretariat compiled and circulated the answers to the ITA Committee.<sup>30</sup> On that basis, ITA participants are able to assess the next steps to reduce any remaining divergences in the classification of such ITA products.

### **Prospects for 2019**

With respect to implementation of ITA Expansion, the Parties will continue to implement tariff reductions, take the steps necessary to bind these tariff commitments in accordance with WTO procedures, and review ITA Expansion product coverage.

The ITA Committee will continue its on-going work to reduce divergences in the classification of products covered by the ITA as well as continue to examine non-tariff measures that impact the sector. The next meeting of the ITA Committee will be held in the first quarter of 2019.

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<sup>28</sup> The minutes of these Committee meetings are contained in WTO Documents G/IT/M/68 and G/IT/M/69 (not yet released)

<sup>29</sup> The ITA Committee Decision is contained in WTO Document G/IT/29.

<sup>30</sup> The comments on the additional items are contained in WTO Document G/IT/W/40 and its addenda and supplements.

# VI. TRADE POLICY DEVELOPMENT

## A. Policy Coordination

The Office of the United States Trade Representative (USTR) has primary responsibility, with the advice of the interagency trade policy organization, for developing and coordinating the implementation of U.S. trade policy, including on commodity matters (*e.g.*, coffee and rubber) and, to the extent they are related to trade, direct investment matters. Under the Trade Expansion Act of 1962, the U.S. Congress established an interagency trade policy mechanism to assist with the implementation of these responsibilities. This organization, as it has evolved, consists of three tiers of committees that constitute the principal mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), both administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups central to this process. The TPSC is the first-line operating group, with representation at the senior civil servant level. Supporting the TPSC are over 90 subcommittees responsible for specialized issues. The TPSC regularly seeks advice from the public on policy decisions and negotiations through *Federal Register* notices and public hearings. In 2018, the TPSC held 14 public hearings. These covered a Section 201 Investigation (January 2018); the Special 301 Review (February 2018); the China Section 301 Investigation (May, July, and August 2018); the Generalized System of Preferences (GSP) product and country eligibility reviews (June, July, September, and November 2018); the African Growth and Opportunity Act (AGOA) annual country eligibility review (August 2018); China's Compliance with its WTO Commitments (October 2018); Russia's Implementation of the WTO Commitments (October 2018); Negotiating Objectives for a United States-Japan Trade Agreement (December 2018); and Negotiating Objectives for a United States-European Union Trade Agreement (December 2018).

Through the interagency process, USTR requests input and analysis from members of the appropriate TPSC subcommittee or task force. The conclusions and recommendations of the subcommittee or task force are presented to the full TPSC and serve as the basis for reaching interagency consensus. In cases where the TPSC does not reach agreement on a topic, or if the issue under consideration involves particularly significant policy questions, the TPSC refers the issue to the TPRG (whose membership is at the Deputy USTR/Under Secretary level), or to Cabinet Principals.

The member agencies of the TPSC and the TPRG are: USTR; the U.S. Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, Health and Human Services, and Homeland Security; the Environmental Protection Agency; the Office of Management and Budget; the Council of Economic Advisers; the Council on Environmental Quality; the U.S. Agency for International Development; the Small Business Administration; the National Economic Council; and the National Security Council. The U.S. International Trade Commission is a nonvoting member of the TPSC and an observer at TPRG meetings. USTR may invite representatives of other agencies to attend meetings depending on the specific issues discussed.

## B. Public Input and Transparency

Reflecting Congressional direction, and to draw advice from the widest array of stakeholders including business, labor, agriculture, civil society, and the general public, USTR has broadened opportunities for public input and worked to ensure the transparency of trade policy through various initiatives carried out by USTR's Office of Intergovernmental Affairs and Public Engagement (IAPE).

IAPE works with USTR's Offices of Public and Media Affairs and Congressional Affairs, coordinating with the agency's 13 regional and functional offices, the Office of WTO and Multilateral Affairs, Office of General Counsel, and the Office of Trade Policy and Economics to ensure that timely trade information is available to the public and disseminated widely to stakeholders. This is accomplished in part via USTR's interactive website; online postings of *Federal Register* notices soliciting public comment and input and publicizing public hearings held by the Trade Policy Staff Committee (TPSC); offering opportunities for public comment and interaction with negotiators during trade negotiations; managing the agency's outreach and engagement to a diverse set of all stakeholder sectors including state and local governments, business and trade associations, small and medium-sized businesses, agriculture groups, environmental organizations, industry groups, labor unions, consumer advocacy groups, non-governmental organizations, academia, think tanks, and others; providing regular data updates to help the public understand and evaluate the role of trade; and participating in discussions of trade policy at major domestic trade events and academic conferences. In addition to public outreach, IAPE is responsible for administering USTR's statutory advisory committee system, created by the U.S. Congress under the Trade Act of 1974, as amended, as well as facilitating consultations with state and local governments regarding the President's trade priorities and the status of current trade negotiations which may impact them or touch upon state and local government policies. Each of these elements is discussed in turn below.

## 1. Transparency Guidelines and Chief Transparency Officer

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 set a goal of improving Congressional oversight of negotiations and enforcement, encouraging public participation in policymaking, broadening stakeholder access and input, and ensuring senior-level institutional attention to transparency across the range of USTR work. These included:

- *Chief Transparency Officer:* The Act directed the U.S. Trade Representative to appoint a senior agency official to serve as Chief Transparency Officer, charged with taking concrete steps to increase transparency in trade negotiations, engage with the public, and consult with Congress on transparency policy. The Obama Administration named the General Counsel as Chief Transparency Officer.

As part of the Trump Administration's goals for raising the stature and accountability of the position, the U.S. Trade Representative has designated Ambassador C.J. Mahoney, Deputy United States Trade Representative for Investment, Services, Labor, Environment, Africa, China, and the Western Hemisphere, as Chief Transparency Officer. By elevating the CTO to a presidentially appointed, Senate confirmed post, the Administration is promoting stronger accountability and facilitating closer coordination with Congress.

- *Consultation with Congress:* To broaden access to negotiating texts and further encourage Congressional participation, USTR provides access to U.S. text proposals and consolidated text of agreements under negotiation to professional staff of the Committees on Finance and Ways and Means with an appropriate security clearance, to professional staff from other Committees interested in reviewing text relevant to that Committee's jurisdiction, to personal office staffers with appropriate clearance of a member of the Committees on Finance and Ways and Means, and to personal office staff with appropriate clearance accompanying his or her Member of Congress. Any member of the House or Senate Advisory Group on Negotiations, or any member designated a congressional advisor on trade policy and negotiations by the Speaker of the House or the President *pro tempore* of the Senate (in both cases after consultation with the Chairman and Ranking member of the appropriate committees of jurisdiction) will be accredited to negotiating rounds.

- *Public Engagement:* USTR also provides access for the public and interested stakeholders to policymaking including regular release of information on the schedules of negotiating rounds, publishing summaries of negotiating objectives issued at least 30 days before initiating negotiations for a trade agreement, updating negotiating objectives during negotiations, publication of *Federal Register* notices for each agreement under consideration, public hearings on negotiations and other trade priorities; regular public events during negotiations, in which stakeholders and the public can meet directly with USTR negotiators directly involved in particular agreements; and other means.

## 2. Public Outreach

### *Federal Register* Notices Seeking Public Input/Comments and Public Hearings

In 2018, USTR published approximately 55 *Federal Register* notices to solicit public comment on negotiations and policy decisions on a wide range of issues, including the annual Special 301 review including the Out-of-Cycle Review of Notorious Markets, NAFTA, the United States-Mexico-Canada Agreement, China 301 Investigation, Section 201 Washers, Section 201 Solar, KORUS and other topics. Public comments received in response to *Federal Register* Notices are available for inspection online at <http://www.regulations.gov>.

USTR also held public hearings regarding a variety of trade policy initiatives, including unprecedented public hearings on the United States-Mexico-Canada Agreement, China 301 Investigation, Section 201 Washers, Section 201 Solar, KORUS amendments, the Special 301 review, and other topics. These hearings were web-cast live, and the submissions of all parties posted online.

### Open Door Policy

USTR officials, including the U.S. Trade Representative, and professional staff from regional, functional, and multilateral offices as well as IAPE, conduct outreach with a broad array of stakeholders, including agricultural commodity groups and farm associations, labor unions, environmental organizations, consumer groups, large and small businesses, trade associations, consumer advocacy groups, faith groups, development and poverty relief organizations, other public interest groups, state and local governments, NGOs, think tanks, and academics to discuss specific trade policy issues, subject to negotiator availability and scheduling.

## 3. The Trade Advisory Committee System

The trade advisory committee system, established by the U.S. Congress by statute in 1974, was created to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests. Substantially broadened and reformed over the subsequent four decades, the system remains in the 21st century a central means of ensuring that USTR's senior officers and line negotiators receive ideas, input, and critiques from a wide range of public interests. The system now consists of 26 advisory committees, with a total membership of up to approximately 700 advisors. Advisory committee members represent the full span of interests, including: manufacturing; agriculture; digital trade; intellectual property; services; small businesses; labor; environmental, consumer and public health organizations; and state and local governments. USTR manages the advisory committee system, in collaboration with the U.S. Departments of Agriculture, Commerce, and Labor, to ensure compliance with legal requirements. The advisory committee system is organized into three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); five policy advisory committees, dealing with environment, labor, agriculture, Africa, and state and local governments; and 20 technical advisory committees in the areas of industry (ITACs) and agriculture (ATACs).

The trade advisory committees provide information and advice on U.S. negotiating objectives, the operation of trade agreements, and other matters arising in connection with the development, implementation, and administration of U.S. trade policy. Additional information on the advisory committees can be found on the USTR website at <https://ustr.gov/about-us/advisory-committees>.

In cooperation with the other agencies served by the advisory committees, USTR continues to look for ways to broaden the participation on committees to include a more diverse group of stakeholders and to represent new interests and fresh perspectives, and USTR continues exploring ways to expand representation while ensuring the committees remain effective.

Recommendations for candidates for committee membership are collected from a number of sources, including associations and organizations, publications, other Federal agencies, responses to *Federal Register* notices, and self-nominated individuals who have demonstrated an interest in, and knowledge of, U.S. trade policy. Membership selection is based on qualifications, diversity of sectors represented and geography, and the needs of the specific committee to maintain a balance of the perspectives represented. Committee members are required to have a security clearance in order to serve and have access to confidential trade documents on a secure encrypted website. Committees meet regularly in Washington, D.C. to provide input and advice to USTR and other agencies. Members pay for their own travel and related expenses.

### **Tier I: President’s Advisory Committee on Trade Policy and Negotiations (ACTPN)**

As the highest-level committee in the system, the ACTPN examines U.S. trade policy and agreements from the broad context of the overall national interest. The ACTPN consists of no more than 45 members, who are broadly representative of the key economic sectors of the economy affected by trade, including non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests.. The President appoints ACTPN members to four year terms not to exceed the duration of the charter.

A current roster of ACTPN members and the interests they represent is available on the USTR at <https://ustr.gov/about-us/advisory-committees/advisory-committee-trade-policy-and-negotiations-actpn>.

### **Tier II: Policy Advisory Committees**

Members of the five policy advisory committees are appointed by USTR or in conjunction with other Cabinet officers. The Intergovernmental Policy Advisory Committee on Trade (IGPAC), the Trade and Environment Policy Advisory Committee (TEPAC), and the Trade Advisory Committee on Africa (TACA) are appointed and managed solely by USTR. The Agricultural Policy Advisory Committee (APAC) and the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) are managed jointly with, respectively, the U.S. Departments of Agriculture and Labor. Each committee provides advice based upon the perspective of its specific area, and its members are chosen to represent the diversity of interests in those areas. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website.

#### *Agricultural Policy Advisory Committee (APAC)*

The APAC is designed to represent a broad spectrum of agricultural interests including the interests of farmers, ranchers, processors, renderers, and public advocates, for the range of food and agricultural products grown and produced in the United States. Members serve at the discretion of the U.S. Secretary

of Agriculture and the U.S. Trade Representative. The Secretary of Agriculture and the U.S. Trade Representative jointly appoint the maximum of 40 members to four-year terms.

#### *Intergovernmental Policy Advisory Committee on Trade (IGPAC)*

The IGPAC consists of not more than 35 members appointed from, and representative of, the various States and other non-Federal Governmental entities within the jurisdiction of the United States. These entities include, but are not limited to, the executive and legislative branches of state, county, and municipal governments. Members may hold elective or appointive office. Members are appointed by, and serve at the discretion of, the U.S. Trade Representative.

#### *Labor Advisory Committee (LAC)*

The LAC consists of not more than 30 members from the U.S. labor community, appointed by the U.S. Trade Representative and the U.S. Secretary of Labor, acting jointly. Members represent unions from all sectors of the economy including steel, automotive, aerospace, farmworkers, teachers, pilots, artists, machinists, service workers, and food and commercial workers. Members are appointed by, and serve at the discretion of, the U.S. Secretary of Labor and the U.S. Trade Representative.

#### *Trade Advisory Committee on Africa (TACA)*

TACA consists of not more than 30 members, including, but not limited to, representatives from industry, labor, investment, agriculture, services, academia, and non-profit development organizations. The members of the Committee are appointed to be broadly representative of key sectors and groups with an interest in trade and development in sub-Saharan Africa, including non-profit organizations, producers, and retailers. Members of the committee are appointed by, and serve at the discretion of, the U.S. Trade Representative.

#### *Trade and Environment Policy Advisory Committee (TEPAC)*

TEPAC consists of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry, services, academia, and non-Federal Governments. The Committee is designed to be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues. Members of the Committee are appointed by, and serve at the discretion of, the U.S. Trade Representative.

### **Tier III: Technical and Sectoral Committees**

The 20 technical and sectoral advisory committees are organized into two areas: agriculture and industry. Representatives are appointed jointly by USTR and the U.S. Secretaries of Agriculture or Commerce, respectively. Each sectoral or technical committee represents a specific sector, commodity group, or functional area and provides specific technical advice concerning the effect that trade policy decisions may have on its sector or issue.

#### *Agricultural Technical Advisory Committees (ATACs)*

There are six ATACs, focusing on the following products: 1) Animals and Animal Products; 2) Fruits and Vegetables; 3) Grains, Feed, Oilseeds, and Planting Seeds; 4) Processed Foods; 5) Sweeteners and Sweetener Products; and, 6) Tobacco, Cotton, and Peanuts. Members of each committee are appointed by, and serve at the discretion of, the U.S. Secretary of Agriculture and the U.S. Trade Representative. Members must represent a U.S. entity with an interest in agricultural trade and should have expertise and

knowledge of agricultural trade as it relates to policy and commodity-specific products. In appointing members to the committees, balance is achieved and maintained by assuring that the members appointed represent entities across the range of agricultural interests that will be directly affected by the trade policies of concern to the committee (for example, farm producers, farm and commodity organizations, processors, traders, and consumers). Geographical balance on each committee is also sought. A list of all the members of the committees and the diverse interests they represent is available on the U.S. Department of Agriculture website: <http://www.fas.usda.gov/topics/trade-policy/trade-advisory-committees>.

#### *Industry Trade Advisory Committees (ITACs)*

There are 14 industry trade advisory committees (ITACs). These committees are: Aerospace Equipment (ITAC 1); Automotive Equipment and Capital Goods (ITAC 2); Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3); Consumer Goods (ITAC 4); Forest Products, Building Materials, Construction and Nonferrous Metals (ITAC 5); Energy and Energy Services (ITAC 6); Steel (ITAC 7); Digital Economy (ITAC 8); Small and Minority Business (ITAC 9); Services (ITAC 10); Textiles and Clothing (ITAC 11); Customs Matters and Trade Facilitation (ITAC 12); Intellectual Property Rights (ITAC 13); and, Standards and Technical Trade Barriers (ITAC 14).

Members of the ITACs are appointed jointly by the U.S. Secretary of Commerce and the U.S. Trade Representative and serve at their discretion. Each of the committees consists of not more than 50 members representing diverse interests and perspectives including, but not limited to, labor unions, manufacturers, exporters, importers, service providers, producers, and representatives of small and large business. Committee members should have knowledge and experience in their industry or interest area, and represent a U.S. entity that has an interest in trade matters related to the sectors or subject matters of concern to the individual committees. In appointing members to the committees, balance is achieved and maintained by assuring that the members appointed represent private businesses, labor unions, and other U.S. entities across the range of interests as provided in law in a particular sector, commodity group, or functional area that will be directly affected by the trade policies of concern to the committee. A list of all the members of the committees and the diverse interests the committees and their respective memberships represent is available on the U.S. Department of Commerce website: <http://ita.doc.gov/itac/>.

## **4. State and Local Government Relations**

USTR maintains consultative procedures between Federal trade officials and state and local governments. USTR informs the states, on an ongoing basis, of trade-related matters that directly relate to, or that may have a direct effect on, them. U.S. territories may also participate in this process. USTR also serves as a liaison point in the Executive Branch for state and local government and Federal agencies to transmit information to interested state and local governments, and relay advice and information from the states on trade-related matters. This is accomplished through a number of mechanisms, detailed below.

### **State Single Point of Contact System and IGPAC**

#### *State Single Point of Contact System*

For day-to-day communications, USTR operates a State Single Point of Contact (SPOC) system. The Governor's office in each state designates a single contact point to disseminate information received from USTR to relevant state and local offices and assist in relaying specific information and advice from the states to USTR on trade-related matters. Through the SPOC network, state governments are promptly informed of Administration trade initiatives so that they can provide companies and workers with



information in order to take full advantage of increased foreign market access and reduced trade barriers. It also enables USTR to consult with states and localities directly on trade matters which may affect them.

#### *Intergovernmental Policy Advisory Committee on Trade*

Additionally, USTR works closely with the Intergovernmental Policy Advisory Committee on Trade (IGPAC) made up of various state and local officials. The IGPAC makes recommendations to USTR and the Administration on trade policy matters from the perspective of state and local governments. During the review period, the IGPAC was briefed and consulted on trade priorities of interest to states and localities, including the negotiation of the United States–Mexico–Canada Agreement, KORUS modification negotiations, and enforcement actions at the WTO. IGPAC members are also invited to participate in periodic teleconference briefings, similar to teleconference calls held for SPOC and chairs of the advisory committees.

#### **Meetings of State and Local Associations and Local Chambers of Commerce**

USTR officials participate frequently in meetings of state and local government associations and local chambers of commerce to apprise them of relevant trade policy issues and solicit their views. USTR senior officials have met with the National Governors’ Association and other state and local commissions and organizations. Additionally, USTR officials have addressed gatherings of state and local officials around the country.

#### **Consultations Regarding Specific Trade Issues**

USTR consults with particular states and localities on issues arising under the WTO and other U.S. trade agreements and frequently responds to requests for information from state and local governments. Topics of interest include negotiation of the United States-Mexico-Canada Agreement, the China 301 Investigation, enforcement of trade agreements, and consultations with individual states regarding certain trade remedy investigations.

### **5. Freedom of Information Act (FOIA)**

USTR is subject to the Freedom of Information Act (FOIA), a law that provides the public with a right of access to federal agency records except to the extent those records are protected from disclosure under particular FOIA exemptions or exceptions. Detailed information about the USTR FOIA program is available on the USTR website at <https://ustr.gov/about-us/reading-room/foia>. In FY2018, USTR received and processed more FOIA requests than in any prior year. USTR had five requests pending at the start of FY2018, received 186 new FOIA requests over the course of the year, and processed 188 FOIA requests. The USTR FOIA Office demonstrated its ongoing commitment to transparency by, among other things, significantly reducing the backlog of requests while also improving greatly the timeliness of responses. In addition, when the USTR FOIA Office anticipates there will be high public interest in certain issues, such as the USMCA and United States-Korea Free Trade Agreement negotiations, it proactively adds links to relevant materials. In addition, it updates frequently requested records. USTR’s FOIA logs are updated on a quarterly basis, and the calendars of senior-level officials and visitor logs are updated on a bi-monthly basis. Proactively disclosed information is available in the USTR FOIA Library at <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library>.

## C. Congressional Consultations

To broaden access to negotiating texts and further encourage Congressional participation, USTR provides access to U.S. text proposals and consolidated text of agreements under negotiation to professional staff of the Committees on Finance and Ways and Means with an appropriate security clearance, to professional staff from other Committees with an appropriate security clearance interested in reviewing text relevant to that Committee's jurisdiction, to personal office staffers with appropriate clearance of a member of the Committees on Finance and Ways and Means, and to personal office staff with appropriate clearance accompanying his or her Member of Congress. Any member of the House or Senate Advisory Group on Negotiations, or any member designated a congressional advisor on trade policy and negotiations by the Speaker of the House or the President *pro tempore* of the Senate (in both cases after consultation with the Chairman and Ranking member of the appropriate committees of jurisdiction) will be accredited to negotiating rounds.

Over 2018, USTR consulted extensively with Congressional Committees and leadership of both parties in the U.S. Senate and U.S. House of Representatives. This included formal hearings, closed-door Committee hearings and briefings, and hundreds of meetings with members and staff of Congress. In total, USTR scheduled over 500 Congressional meetings in 2018. These covered issues ranging from negotiation of the U.S.-Mexico-Canada Agreement (USMCA), to China policy, agricultural market access barriers, and labor standards.

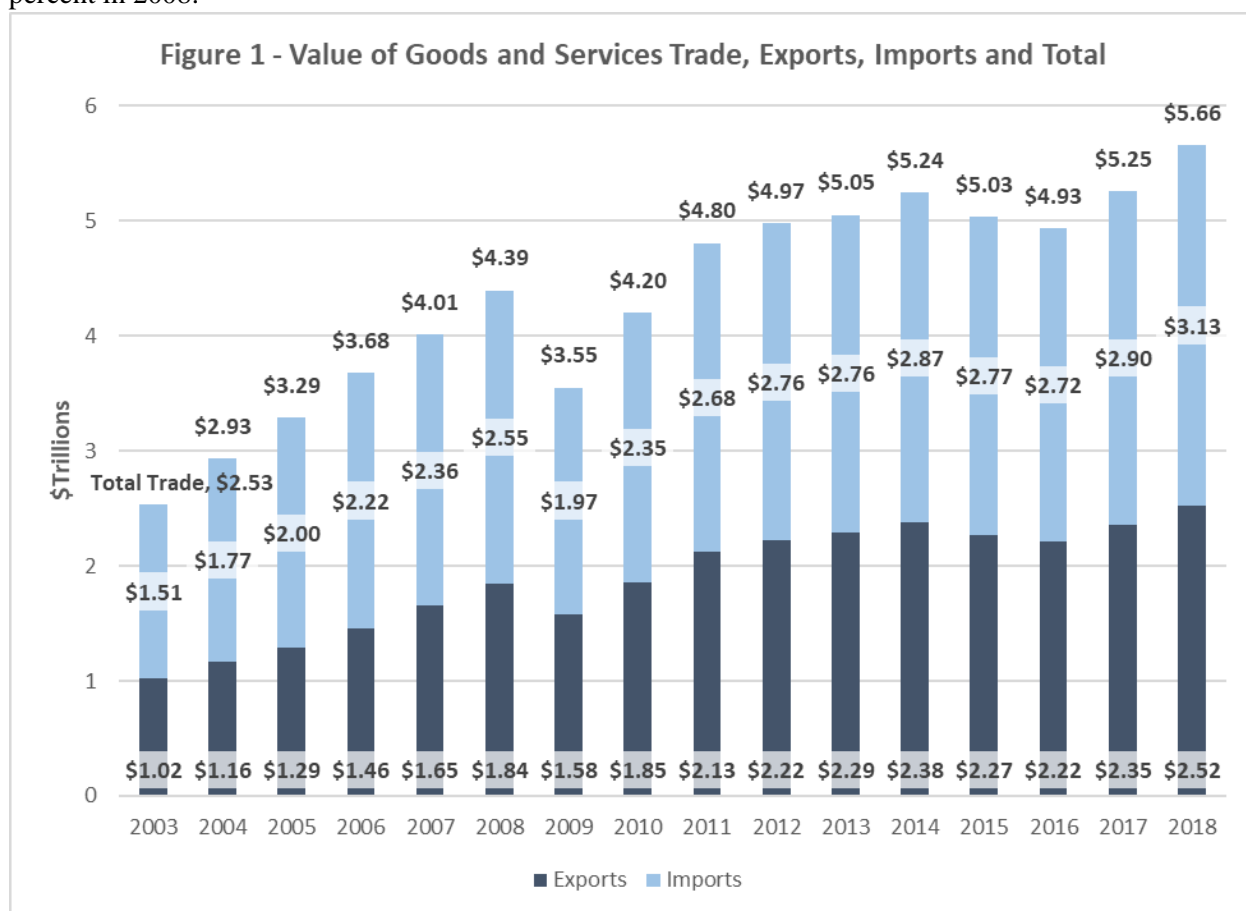
# ANNEX I



# U.S. TRADE IN 2018

## I. 2018 Overview

U.S. trade (exports and imports of goods and services) increased by an estimated 7.6 percent in 2018,<sup>1</sup> the largest nominal increase since 2011 (figure 1). U.S. exports of goods and services increased by 7.3 percent while U.S. imports of goods and services increased by 7.9 percent. As a percent of GDP, total trade (exports plus imports) increased as well, representing 27.6 percent in 2018, up from 27.0 percent in 2017, but still down from the high of 30.9 percent in 2011 (figure 2). Exports represented 12.3 percent of GDP in 2018, up from 12.1 percent in 2017, but down from the high of 13.7 percent in 2013. Imports represented 15.3 percent of GDP in 2018, up from 14.9 percent in 2017, but down from the high of 17.3 percent in 2008.<sup>2</sup>

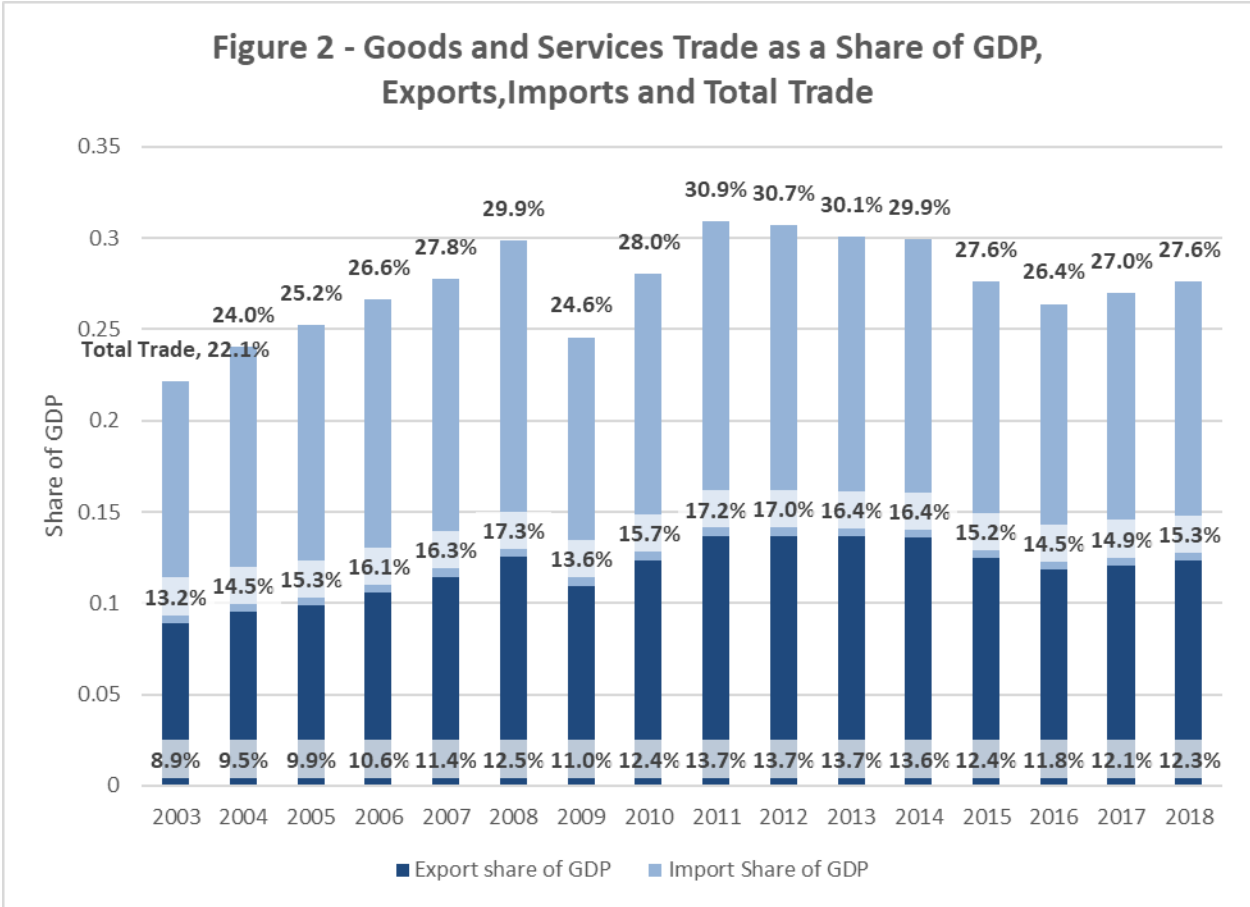


Source: U.S. Department of Commerce.

<sup>1</sup> On a balance of payments (BOP) basis. Data for 2018 in this Annex are annualized based on 11 months of data, unless otherwise stated.

<sup>2</sup> The broadest measure of commercial trade is from the Current Account. This includes goods and services as well as earnings/payments on foreign investment (but not transfer payments). Earnings are considered trade because they are the payment made/received to foreign/U.S. residents for the service rendered by the use of foreign/U.S. capital. Based on the Current Account, trade increased by 8.7 percent in 2018 and representing 38.8 percent of GDP, up from 37.5 percent in 2017, but down from the high of 41.9 percent in 2008. Data are annualized based on the first three quarters of 2018.

In real terms, trade was up by 4.9 percent, an increase from the 3.9 percent growth rate in 2017.<sup>3</sup> Real exports of goods and services were up 4.7 percent (up from 3.0 percent increase in 2017), while real imports of goods and services were up 5.0 percent (up from 4.6 percent growth in 2017). Exports contributed 0.6 percentage points of the 28 percent growth of the economy.



Source: U.S. Department of Commerce.

The deficit on goods and services trade increased by \$57.2 billion (10.4 percent) in 2018 to \$609.4 billion. Although this was the fifth consecutive year of the deficit increasing, it was still 14.0 percent lower than its pre-recession level of \$708.7 billion in 2008 and 20.0 percent lower than the 2006 high of \$761.7 billion. As a share of GDP, the deficit increased from 2.8 percent of GDP in 2017 to 3.0 percent of GDP in 2018, but is down from its high of 5.5 percent in 2006.

The U.S. deficit in goods trade alone increased by \$73.2 billion (9.1 percent) from \$807.5 billion in 2017 to \$880.7 billion in 2018. The services trade surplus increased by \$16.0 billion (6.3 percent), from \$255.2 billion in 2017 to \$271.3 billion in 2018. As a share of GDP, the goods deficit increased from 4.1 percent to 4.3 percent, and the services surplus remained roughly the same at 1.3 percent.

<sup>3</sup> On a National Income Products Account basis.

## II. Export Growth

U.S. exports of goods and services were up by 7.3 percent in 2018 (and up 10.0 percent since 2013), to \$2.5 trillion (table 2). Goods exports were up 9.0 percent (\$140.2 billion) to \$1.7 trillion, while services exports were up 4.0 percent (\$31.9 billion) to \$829.6 billion (table 1).

	Value (\$Billions)			% Change	
	2013	2017	2018	13-18	17-18
<b>Total Goods and Services</b>	<b>2,294.2</b>	<b>2,351.1</b>	<b>2,523.1</b>	<b>10.0%</b>	<b>7.3%</b>
<b>Goods on a BOP Basis</b>	<b>1,593.7</b>	<b>1,553.4</b>	<b>1,693.6</b>	<b>6.3%</b>	<b>9.0%</b>
Foods, Feeds, Beverages	136.2	132.7	142.6	4.7%	7.4%
Industrial Supplies	508.2	464.7	545.5	7.3%	17.4%
Capital Goods	534.4	533.3	565.1	5.8%	6.0%
Automotive Vehicles	152.7	157.6	160.1	4.9%	1.6%
Consumer Goods	188.8	197.7	207.0	9.6%	4.7%
Other Goods	58.3	60.3	65.4	12.3%	8.5%
Petroleum (Addendum)	137.4	125.2	176.1	28.2%	40.7%
Manufacturing (Addendum)	1,375.2	1,323.3	1,407.3	2.3%	6.3%
Agriculture (Addendum)	148.7	142.9	146.1	-1.7%	2.3%
<b>Services</b>	<b>700.5</b>	<b>797.7</b>	<b>829.6</b>	<b>18.4%</b>	<b>4.0%</b>
Maintenance and repair services	18.6	26.4	30.0	61.3%	13.3%
Transport	86.8	88.6	92.8	6.9%	4.7%
Travel	177.5	210.7	215.3	21.3%	2.1%
Insurance services	16.7	18.0	18.3	9.7%	1.5%
Financial services	95.1	109.6	114.5	20.3%	4.4%
Charges for the use of intellectual property	128.0	128.4	132.4	3.4%	3.1%
Telecom, computer, and information services	34.4	42.2	43.4	26.0%	2.7%
Other business services	121.5	154.3	162.9	34.0%	5.5%
Government goods and services	21.9	19.3	20.2	-7.5%	4.5%

Source: U.S. Department of Commerce, Balance of Payments basis for total, Census basis for sectors.

### A. Goods Exports

Goods exports increased in 2018, by 9.0 percent, to \$1.69 trillion (table 1). Manufacturing exports, which accounted for 83.1 percent of total goods exports, were up 6.3 percent in 2018. Agricultural exports, which accounted for 8.6 percent of total goods exports, were up 2.3 percent in 2018. U.S. goods exports increased for all of the major end-use categories in 2018, with the largest increases in industrial supplies, up 17.4 percent (\$80.8 billion). U.S. petroleum exports, a subset of industrial supplies, were up 40.7 percent (\$51.0 billion). Industrial supplies was followed by increases in capital goods, up 6.0 percent (\$31.8 billion), foods, feeds, and beverages, up 7.4 percent (\$9.8 billion), consumer goods, up 4.7 percent (\$9.4 billion), and automotive vehicles and parts, up 1.6 percent (\$2.5 billion).

Over the last 5 years, between 2013 and 2018, U.S. goods exports have increased by 6.3 percent (\$99.9 billion). Over the same time period U.S. agricultural exports decreased by 1.7 percent (\$2.5 billion), while manufacturing exports increased by 2.3 percent (\$32.1 billion). Of the major end-use categories, industrial supplies and materials had the largest increase, up \$37.3 billion (7.3 percent). While U.S. petroleum exports (a subset of industrial supplies and materials) increased by 28.2 percent (\$38.7 billion) from 2013 to 2018.

Industrial supplies was followed by capital goods (up \$30.7 billion, or 5.8 percent), consumer goods, up \$18.2 billion (9.6 percent), automotive vehicles and parts, up 4.9 percent (\$7.5 billion), and foods, feeds and beverages, up 4.7 percent (\$6.4 billion).

<b>Table 2 - U.S. Goods Exports to Selected Countries/Regions</b>					
	<b>Value (\$Billions)</b>			<b>% Change</b>	
	<b>2013</b>	<b>2017</b>	<b>2018</b>	<b>13-18</b>	<b>17-18</b>
Canada	300.8	282.3	301.2	0.1%	6.7%
Mexico	226.0	243.3	267.1	18.2%	9.8%
China	121.7	129.9	124.2	2.0%	-4.4%
Japan	65.2	67.6	75.3	15.5%	11.4%
European Union (28)	262.1	283.3	320.7	22.4%	13.2%
Latin America (excluding Mexico)	184.4	150.2	164.5	-10.8%	9.5%
Pacific Rim (excluding Japan and China)	201.1	201.3	217.9	8.4%	8.3%
FTA Countries (Addendum)	732.3	720.3	784.7	7.2%	8.9%
Advanced Economies (Addendum)	926.4	937.8	1,011.1	9.1%	7.8%
Emerging Markets and Developing Economies (Addendum)	652.1	608.5	666.0	2.1%	9.4%

Source: U.S. Department of Commerce, Census basis.

Advanced Economies and Emerging Markets as defined by the IMF.

In 2018, U.S. goods exports increased to four of the top five U.S. export markets: Canada (up 6.7 percent); Mexico (up 9.8 percent); Japan (up 11.4 percent); and the European Union (EU) (up 13.2 percent). U.S. goods exports to China declined by 4.4 percent (table 2). In addition, U.S. goods exports to our 20 free trade agreement partners increased by 8.9 percent.<sup>4</sup> U.S. goods exports to advanced economies, accounting for 60.3 percent of U.S. total goods exports, increased by 7.8 percent, while goods exports to emerging markets and developing economies increased by 9.4 percent.

## **B. Services Exports**

U.S. exports of services increased by 4.0 percent to \$829.6 billion in 2018 (table 1). U.S. services exports accounted for 32.9 percent of the level of U.S. goods and services exports in 2018.

The increase in U.S. services exports was led by other business services (*e.g.* professional and management consulting services, and research and development services) (up 5.5 percent, \$8.6 billion), financial services (up 4.4 percent, \$4.8 billion), and travel services (up 2.1 percent, \$4.5 billion).

U.S. services exports have increased by 18.4 percent over the past 5 years. Of the \$129.1 billion increase in U.S. services exports between 2013 and 2018, other business services accounted for 32.0 percent (\$41.3 billion) of the increase, while travel services and financial services accounted for 29.3 percent (\$37.8 billion) and 15.0 percent (\$19.3 billion), respectively.

The United Kingdom was the largest purchaser of U.S. services exports in 2018, accounting for \$74.9 billion of total U.S. services exports.<sup>5</sup> The next five largest purchasers of services exports in 2018 were: Canada (\$63.1 billion); China (\$59.7 billion); Japan (\$45.2 billion); Germany (\$34.9 billion); and Mexico

<sup>4</sup> The 20 countries for which FTAs currently are entered into force accounted for 46.8 percent of total goods exports in 2018.

<sup>5</sup> Data are annualized based on three quarters of information.



(\$34.7 billion). Regionally, in 2018, the United States exported \$254.2 billion in services to the EU, \$247.4 billion to the Asia/Pacific region (\$142.5 billion excluding Japan and China), \$70.3 billion to South and Central America (excluding Mexico), and \$97.7 billion to NAFTA countries.

### III. Imports

U.S. imports of goods and services were up by 7.9 percent in 2018, to a record \$3.1 trillion. Goods imports were up 9.0 percent (\$213.4 billion) to \$2.6 trillion. Services imports are up 2.9 percent (\$15.9 billion) to \$558.4 billion (table 3).

	Value (\$Billions)			% Change	
	2013	2017	2018	13-18	17-18
<b>Total Goods and Services</b>	<b>2,755.3</b>	<b>2,903.3</b>	<b>3,132.6</b>	<b>13.7%</b>	<b>7.9%</b>
<b>Goods on a BOP Basis</b>	<b>2,294.2</b>	<b>2,360.9</b>	<b>2,574.3</b>	<b>12.2%</b>	<b>9.0%</b>
Foods, Feeds, Beverages	115.1	137.8	147.6	28.2%	7.1%
Industrial Supplies	681.5	507.3	581.1	-14.7%	14.6%
Capital Goods	555.7	640.6	695.3	25.1%	8.5%
Automotive Vehicles	308.8	359.0	371.8	20.4%	3.6%
Consumer Goods	531.7	601.9	651.9	22.6%	8.3%
Other Goods	75.2	95.5	106.3	41.4%	11.4%
Petroleum (Addendum)	369.7	186.5	229.6	-37.9%	23.1%
Manufacturing (Addendum)	1,834.0	2,021.6	2,192.1	19.5%	8.4%
Agriculture (Addendum)	104.4	121.0	128.9	23.5%	6.6%
<b>Services</b>	<b>461.1</b>	<b>542.5</b>	<b>558.4</b>	<b>21.1%</b>	<b>2.9%</b>
Maintenance and repair services	7.4	8.3	8.1	9.8%	-2.3%
Transport	90.6	101.7	107.9	19.0%	6.0%
Travel	98.1	135.0	145.0	47.8%	7.4%
Insurance services	53.4	50.7	37.8	-29.2%	-25.3%
Financial services	21.5	28.9	31.2	44.9%	7.9%
Charges for the use of intellectual property	38.9	51.3	53.9	38.8%	5.1%
Telecom, computer, and information services	35.0	40.1	39.9	13.9%	-0.4%
Other business services	90.7	104.4	111.6	23.0%	6.9%
Government goods and services	25.3	22.0	22.9	-9.4%	4.1%

Source: U.S. Department of Commerce, Balance of Payments basis, Census basis for goods sectors.

#### A. Goods Imports

U.S. goods imports increased by 9.0 percent in 2018 to \$2.57 trillion, accounting for 82.2 percent of total imports (table 3). U.S. manufacturing imports, which accounted for 70.0 percent of total goods imports, increased by 8.4 percent in 2018. Agriculture imports, accounting for 4.1 percent of total goods imports, increased by 6.6 percent.

All broad end-use categories increased, led by industrial supplies and materials, which increased 14.6 percent (\$73.8 billion). Petroleum imports, a subset of industrial goods imports, increased by 23.1 percent (\$43.1 billion), 100 percent of this increase in petroleum imports was driven by price. After industrial supplies and materials, the next largest increases were in capital goods (up 8.5 percent, \$54.7 billion),

consumer goods (up 8.3 percent, \$50.0 billion), automotive vehicles and parts (up 3.6 percent, \$12.9 billion), and food feeds and beverages (up 7.1 percent, \$9.8 billion).

U.S. goods imports have increased by 12.2 percent since 2013. Over this same time period imports of agriculture and manufactured goods have increased by 23.5 percent and 19.5 percent, respectively. For the major end-use categories increases were led by capital goods (up 25.1 percent, \$139.6 billion), consumer goods (up 22.6 percent, \$120.2 billion), and automotive vehicles and parts (up 20.4 percent, \$63.0 billion). The only decline was in industrial supplies and materials (down 14.7 percent, \$100.4 billion), petroleum products, a subset of this category, decreased by 37.9 percent (\$140.1 billion).

<b>Table 4 - U.S. Goods Imports from Selected Countries/Regions</b>					
	<b>Value (\$Billions)</b>			<b>% Change</b>	
	<b>2013</b>	<b>2017</b>	<b>2018</b>	<b>13-18</b>	<b>17-18</b>
China	440.4	505.5	541.1	22.9%	7.0%
Mexico	280.6	314.3	347.1	23.7%	10.5%
Canada	332.5	299.3	321.9	-3.2%	7.5%
Japan	138.6	136.5	142.7	3.0%	4.6%
European Union (28)	387.5	434.6	492.9	27.2%	13.4%
Latin America (excluding Mexico)	158.4	116.0	121.8	-23.1%	5.0%
Pacific Rim (excluding Japan and China)	192.2	224.3	240.7	25.2%	7.3%
FTA Countries (Addendum)	799.9	796.8	866.7	8.4%	8.8%
Advanced Economies (Addendum)	1,462.2	1,563.8	1,701.7	16.4%	8.8%
Emerging Markets and Developing Economies (Addendum)	805.8	778.2	852.3	5.8%	9.5%

Source: U.S. Department of Commerce, Census basis.

Advanced Economies and Emerging Markets as defined by the IMF.

In 2018, U.S. goods imports increased from all of our top 4 import suppliers, China (up 7.0 percent), Mexico (up 10.5 percent), Canada (up 7.5 percent) and Japan (up 4.6 percent) (table 4). U.S. goods imports from our 20 FTA partners increased by 8.8 percent in 2018.<sup>6</sup> U.S. goods imports from advanced economies, accounting for 33.4 percent of U.S. total goods imports, increased by 8.8 percent, while goods imports from emerging markets and developing economies increased by 9.5 percent.

## **B. Services Imports**

U.S. services imports increased by 2.9 percent (\$15.9 billion) to \$558.4 billion in 2018 (table 3). Increases in services imports were led by travel services (up 7.4 percent, \$10.0 billion), other business services (e.g. professional and management consulting services, and research and development services) (up 6.9 percent, \$7.2 billion), transport services (up 6.0 percent, \$6.1 billion). Increases were partially offset by decreases in insurance services (down 25.3 percent, \$12.8 billion) and small declines in maintenance and repair services and telecom, computer and information services.

U.S. services imports increased by 21.1 percent over the past 5 years. Of the \$97.3 billion increase in U.S. services imports between 2013 and 2018, travel services accounted for 48.2 percent (46.9 billion) of the increase, while other business services (professional and management consulting services, research and

<sup>6</sup> The 20 FTA countries currently entered into force accounted for 33.9 percent of total goods imports in 2018.

development services, and others) and transport services accounted for 21.5 percent (\$20.9 billion) and 17.7 percent (\$17.2 billion), respectively.

The United Kingdom remained our largest supplier of services, accounting for \$60.4 billion of total U.S. services imports in 2018.<sup>7</sup> The next five largest suppliers of U.S. services imports in 2018 were: Canada (\$35.1 billion); Japan (\$34.7 billion); Germany (\$33.0 billion); India (\$28.4 billion); and Mexico (\$25.5 billion). Regionally, the United States imported \$198.0 billion of services from the EU in 2018, \$153.0 billion from the Asia/Pacific region (\$99.7 billion, excluding Japan and China), \$60.6 billion from the NAFTA, and \$28.5 billion from South and Central America (excluding Mexico).

#### IV. The U.S. Trade Balance

The total deficit in goods and services trade<sup>8</sup> increased by \$57.2 billion in 2018 to \$609.4 billion. The deficit was 14.0 percent lower than its pre-recession level of \$708.7 billion in 2008 and 20.0 percent lower than the 2006 high of \$761.7 billion. As a share of GDP the deficit increased, from 2.8 percent of GDP in 2017 to 3.0 percent of GDP in 2018. However, this is still substantially lower than its high of 5.5 percent in 2006.

The U.S. deficit in goods trade alone increased by \$73.2 billion from \$807.5 billion in 2017 (4.1 percent of GDP) to \$880.7 billion in 2018 (4.3 percent of GDP). The services trade surplus increased by \$16.0 billion, from \$255.2 billion in 2017 to \$271.3 billion in 2018. As a share of GDP the services surplus remained roughly the same, at 1.3 percent of GDP.

<b>Table 5 - U.S. Trade Balances</b>						
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>U.S. Trade Balances as a share of GDP</b>						
<b>Goods and Services</b>	<b>-2.7%</b>	<b>-2.8%</b>	<b>-2.7%</b>	<b>-2.7%</b>	<b>-2.8%</b>	<b>-3.0%</b>
Goods	-4.2%	-4.3%	-4.2%	-4.0%	-4.1%	-4.3%
Services	1.4%	1.5%	1.4%	1.3%	1.31%	1.32%
<b>U.S. Trade Balances with the World (\$Billions)</b>						
<b>Goods and Services</b>	<b>-461.1</b>	<b>-489.6</b>	<b>-498.5</b>	<b>-502.0</b>	<b>-552.3</b>	<b>-609.4</b>
Goods	-700.5	-749.9	-761.9	-751.1	-807.5	-880.7
Services	239.4	260.3	263.3	249.1	255.2	271.3

Source: U.S. Department of Commerce.

<sup>7</sup> Data are annualized based on three quarters of information.

<sup>8</sup> On a balance of payments basis.



# ANNEX II



# U.S. TRADE-RELATED AGREEMENTS AND DECLARATIONS

## I. Agreements That Have Entered Into Force

Following is a list of trade agreements entered into by the United States since 1984 and monitored by the Office of the United States Trade Representative for compliance.

### Multilateral and Plurilateral Agreements

- Marrakesh Agreement Establishing the World Trade Organization (WTO) (signed April 15, 1994), the Ministerial Decisions and Declarations adopted by the Uruguay Round Trade Negotiations Committee on December 15, 1993, and subsequent WTO agreements.
  - a. Multilateral Agreements on Trade in Goods
    - i. General Agreement on Tariffs and Trade 1994
    - ii. Agreement on Agriculture
    - iii. Agreement on the Application of Sanitary and Phyto-sanitary Measures
    - iv. Agreement on Technical Barriers to Trade
    - v. Agreement on Trade-Related Investment Measures
    - vi. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
    - vii. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
    - viii. Agreement on Preshipment Inspection
    - ix. Agreement on Rules of Origin
    - x. Agreement on Import Licensing Procedures
    - xi. Agreement on Subsidies and Countervailing Measures
    - xii. Agreement on Safeguards
    - xiii. Agreement on Trade Facilitation (entered into force on February 22, 2017 for those Members that had accepted it by then (two-thirds of the WTO Members); thereafter to take effect for other Members upon acceptance)
  - b. General Agreement on Trade in Services (GATS)
    - i. Fourth Protocol to the GATS (Basic Telecommunication Services) (February 5, 1998)
    - ii. Fifth Protocol to the GATS (Financial Services) (March 1, 1999)
  - c. Agreement on Trade-Related Aspects of Intellectual Property Rights (amended in 2017)
  - d. Plurilateral Trade Agreements
    - i. Agreement on Trade in Civil Aircraft (April 12, 1979; amended in 1986)
    - ii. Agreement on Government Procurement (April 15, 1994; amended in 2014)

- WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) (March 26, 1997)
- Declaration on the Expansion of Trade in Information Technology Products (July 28, 2015)
- International Tropical Timber Agreement (successor to the 1994 International Tropical Timber Agreement, December 7, 2011)
- International Coffee Agreement 2007 (successor to the 2001 International Coffee Agreement; entered into force February 2, 2011)
- North American Free Trade Agreement (January 1, 1994)
  - i. Agreement with Mexico and Canada to a first round of NAFTA Accelerated Tariff Elimination (March 26, 1997)
  - ii. Agreement with Mexico and Canada to a second round of NAFTA Accelerated Tariff Elimination (July 27, 1998)
  - iii. Agreement with Mexico to a third round of NAFTA Accelerated Tariff Elimination (November 29, 2000)
  - iv. Agreement with Mexico to a fourth round of NAFTA Accelerated Tariff Elimination (December 5, 2001)
  - v. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (November 27, 2002)
  - vi. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (October 8, 2004)
  - vii. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (March 8, 2006)
  - viii. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (April 11, 2008)
  - ix. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (April 9, 2009)
- North American Agreement on Environmental Cooperation (January 1, 1994)
- North American Agreement on Labor Cooperation (January 1, 1994)
- Statement Concerning Semiconductors by the European Commission and the Governments of the United States, Japan, and Korea (June 10, 1999)
- Agreement on Mutual Acceptance of Oenological Practices (December 18, 2001)
- The Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica (January 1, 2009); the Dominican Republic (March 1, 2007); El Salvador (March 1, 2006); Guatemala (July 1, 2006); Honduras (April 1, 2006); and Nicaragua (April 1, 2006))
  - i. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Article 22.5 (March 29, 2006)
  - ii. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Textiles Matters (August 15, 2008)
  - iii. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Guatemala Tariffs on Beer (February 4, 2009)
  - iv. Decision Regarding the Rules of Origin for Textile and Apparel Goods (Feb. 23, 2011)
  - v. Decision Regarding Appendix 4.1-B (Feb. 23, 2011)



- vi. Decision Regarding Annex 9.1.2(b)(i) (Feb. 23, 2011)
  - vii. Decision Regarding Common Guidelines for the Interpretation, Application and Administration of Chapter Four (October 27, 2012)
  - viii. Decision Regarding the Specific Rules of Origin of Annex 4.1 (March 26, 2015)
  - ix. Decision Regarding the Special Rules of Origin of Appendix 3.3.6 (March 26, 2015)
  - x. Decision Regarding The Tariff Elimination for Lines 15071000, 15121100 and 15152100 of Annex 3.3 (Tariff Schedule of Costa Rica) (March 26, 2015)
  - xi. Decision Concerning the Tariff Elimination for Tariff Lines 0207 13 99B and 0207 14 99B (Tariff Schedule of Guatemala to Annex 3.3) (April 11, 2017)
  - xii. Decision Regarding the Specific Rules of Origin of Annex 4.1 (July 7, 2017)
  - xiii. Decision Regarding The Determination Of The Chicken Tariff Rate Quota Volumes For Years 13 To 17 As Provided For In Appendix I Of The General Notes To The Tariff Schedule To Annex 3.3 Of El Salvador, Honduras And Nicaragua (September 17, 2017)
  - xiv. Exchange of Letters between the United States and Guatemala Regarding Tariff Elimination for Tariff Lines 0207 13 99B and 0207 14 99B (Tariff Schedule of Guatemala) (January 1, 2018)
  - xv. Exchange of Letters between the United States and Nicaragua Regarding Tariff Rate Quotas for Tariff Lines 0207139920, 0207149920 and 16023200A (Tariff Schedule of Nicaragua to Annex 3.3) (January 1, 2018)
  - xvi. Exchange of Letters between the United States and Honduras Regarding Tariff Rate Quotas for Tariff Lines 02071399B, 02071499B and 16023200A (Tariff Schedule of Honduras to Annex 3.3) (January 1, 2018)
  - xvii. Exchange of Letters between the United States and El Salvador Regarding Tariff Rate Quotas for Tariff Lines 02071399B, 02071499B and 16023200A (Tariff Schedule of El Salvador to Annex 3.3) (January 1, 2018)
- Agreement Establishing a Secretariat for Environmental Matters Under the Dominican Republic-Central America-United States Free Trade Agreement (August 25, 2006)
  - Agreement on Duty-Free Treatment of Multi-Chips Integrated Circuits (MCPs) (January 18, 2006) (Korea, Taiwan, Japan, European Union, and the United States)
  - Agreement on Requirements for Wine Labeling (January 23, 2007) (Australia, Argentina, Canada, Chile, New Zealand, and the United States)

## **Bilateral Agreements**

### **Albania**

- Agreement on Bilateral Trade Relations (May 14, 1992)
- Bilateral Investment Treaty (January 4, 1998)

### **Argentina**

- Private Courier Mail Agreement (May 25, 1989)
- Bilateral Investment Treaty (October 20, 1994)

### **Armenia**

- Agreement on Bilateral Trade Relations (April 7, 1992)
- Bilateral Investment Treaty (March 29, 1996)

### **Australia**

- Settlement on Leather Products Trade (November 25, 1996)
- Understanding on Automotive Leather Subsidies (June 20, 2000)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 19, 2002)
- United States-Australia Free Trade Agreement (January 1, 2005)

### **Azerbaijan**

- Agreement on Bilateral Trade Relations (April 21, 1995)
- Bilateral Investment Treaty (August 2, 2001)

### **Bahrain**

- Bilateral Investment Treaty (May 30, 2001)
- United States-Bahrain Free Trade Agreement (August 1, 2006)
- Memorandum of Understanding Between the United States of America and the Kingdom of Bahrain on Trade in Food and Agricultural Products (March 30, 2018)

### **Bangladesh**

- Bilateral Investment Treaty (July 25, 1989)

### **Belarus**

- Agreement on Bilateral Trade Relations (February 16, 1993)

## **Bolivia**

- Bilateral Investment Treaty (June 6, 2001) (Bolivia terminated the treaty in June 2012; investments established or acquired before the termination will continue to be protected under the treaty for 10 years following the date of termination.)

## **Brazil**

- Memorandum of Understanding Between the Government of Brazil and the Government of the United States Concerning Trade Measures in the Automotive Sector (March 16, 1998)
- Agreement on trade and economic cooperation between the Government of the Federative Republic of Brazil and the Government of the United States of America (March 19, 2011)
- Exchange of Letters between the United States and Brazil Regarding Certain Distinctive Products (April 9, 2012)
- Memorandum of Understanding Between the Government of the United States and the Government of the Federative Republic of Brazil Related to the Cotton Dispute (WT/DS267) (October 1, 2014)

## **Bulgaria**

- Agreement on Trade Relations (November 22, 1991)
- Bilateral Investment Treaty (June 2, 1994; amended January 1, 2007)
- Agreement Concerning Intellectual Property Rights (July 6, 1994)

## **Cambodia**

- Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection (October 8, 1996)

## **Cameroon**

- Bilateral Investment Treaty (April 6, 1989)

## **Canada**

- Agreement on Salmon & Herring (May 11, 1993)
- Agreement Regarding Tires (May 25, 1993)
- Memorandum of Understanding on Provincial Beer Marketing Practices (August 5, 1993)
- Agreement on Ultra-High Temperature Milk (September 1993)
- Agreement on Beer Market Access in Quebec and British Columbia Beer Antidumping Cases (April 4, 1994)
- Agreement on Salmon & Herring (April 1994)
- Agreement on Barley Tariff-Rate Quota (September 8, 1997)

- Record of Understanding on Agriculture (December 1998)
- Agreement on Magazines (Periodicals) (May 1999)
- Agreement on Implementation of the WTO Decision on Canada's Dairy Support Programs (December 1999)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 17, 2002)
- Agreement to Implement Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 28, 2003)
- United States-Canada Understanding on Implementation of the Decision of the WTO General Council of August 30, 2003, on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" as Interpreted by the Accompanying Statement of the Chairman of the General Council of the Same Date (July 16, 2004)
- Technical Arrangement between the United States and Canada concerning Trade in Potatoes (November 1, 2007)
- Agreement Between the Government of the United States and the Government of Canada on Government Procurement (February 16, 2010)
- United States-Canada Exchange of Letters on Milk Equivalence (February 4, 2016)
- United States-Canada Exchange of Letters on the Sale of Wine (November 30, 2018)
- United States-Canada Exchange of Letters on Trade in Automotive Goods (November 30, 2018)
- United States-Canada Exchange of Letters on Research and Development Expenditures (November 30, 2018)
- United States-Canada Exchange of Letters on Measures Taken Under Section 232 of the Trade Expansion Act of 1962 (November 30, 2018)

#### **Caribbean Community (CARICOM)**

- Trade and Investment Council Agreement (July 22, 1991)
- Trade and Investment Framework Agreement (May 28, 2013)

#### **Chile**

- United States-Chile Free Trade Agreement (January 1, 2004)
- United States-Chile Agreement on Accelerated Tariff Elimination (November 14, 2008)
- United States-Chile Agreement on Trade in Table Grapes (November 21, 2008)
- United States-Chile Agreement on Beef Grade Labeling (March 26, 2009)

- United States-Chile Exchange of Letters on Chapter 17 of United States-Chile Free Trade Agreement (March 17, 2011)
- United States-Chile Exchange of Letters on Salmonid Eggs (February 4, 2016)

## **China**

- Accord on Industrial and Technological Cooperation (January 12, 1984)
- Memorandum of Understanding on the Protection of Intellectual Property Rights (January 17, 1992)
- Memorandum of Understanding on Prohibiting Import and Export in Prison Labor Products (June 18, 1992)
- Memorandum of Understanding Concerning Market Access (October 10, 1992)
- Agreement on Trade Relations between the United States of America and the People's Republic of China (February 1, 1980)
- Agreement on Providing Intellectual Property Rights Protection (February 26, 1995)
- Report on China's Measures to Enforce Intellectual Property Protections and Other Measures (June 17, 1996)
- Interim Agreement on Market Access for Foreign Financial Information Companies (Xinhua) (October 24, 1997)
- Bilateral Agriculture Agreement (April 10, 1999)
- Memorandum of Understanding between China and the United States Regarding China's Value-Added Tax on Integrated Circuits (July 14, 2004)
- Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products (November 8, 2005)
- Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Granting Refunds, Reductions, or Exemptions from Taxes or Other Payments (November 29, 2007)
- Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Affecting Foreign Suppliers of Financial Information Services (November 13, 2008)
- Memorandum of Understanding between the People's Republic of China and the United States of America Regarding Films for Theatrical Release (April 25, 2012)

## **Colombia**

- Memorandum of Understanding on Trade in Bananas (January 9, 1996)
- Exchange of Letters between the United States and Colombia on Sanitary and Phyto-sanitary Measures and Technical Barriers to Trade Issues (February 27, 2006)

- Exchange of Letters between the United States and Colombia on Beef Sanitary and Phyto-sanitary Issues (August 21, 2006)
- Exchange of Letters between United States and Colombia on Control Measures on Avian Influenza (April 15, 2012)
- Exchange of Letters between United States and Colombia on Control Measures on Salmonella in Poultry and Poultry Products (April 15, 2012)
- Exchange of Letters between United States and Colombia on Phyto-sanitary Measures for Paddy Rice (April 15, 2012)
- Exchange of Letters between United States and Colombia related to Constitutional Court Review of Certain IPR Treaties (April 15, 2012)
- United States-Colombia Trade Promotion Agreement (May 15, 2012)
  - i. Decision of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement Regarding Clarification of the Definition of Poultry in the Context of Appendix I, Paragraph 6, of Colombia’s Tariff Schedule (September 25, 2012)
  - ii. Decision No. 2 of Free Trade Commission of the United States – Colombia Trade Promotion Agreement by which ECOPETROL Qualifies as a Special Covered Entity Under Section D of Annex 9.1 (November 19, 2012)
  - iii. Decision No. 3 of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement; Decision on Tariff-Rate Quotas Covering Yellow Corn (November 2017)
  - iv. Decision No. 4 of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement; Decision on Tariff-Rate Quotas Covering Variety Meats (December 2017)
  - v. Decision No. 5 of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement; Decision to Establish the Remuneration of Panelists, Assistants, and Experts, and the Payment of Expenses in Dispute Settlement Proceedings Under Chapter Twenty-One (Dispute Settlement) (July 2018)
  - vi. Decision No. 6 of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement; Decision Establishing the Model Rules of Procedure (July 2018)
  - vii. Decision No. 7 of the Free Trade Commission of the United States – Colombia Trade Promotion Agreement; Decision Establishing a Code of Conduct (July 2018)
- Exchange of Letters between the United States and Colombia Establishing the Committee of Sanitary and Phyto-Sanitary (SPS) and SPS Committee Terms of Reference (June 14, 2012)
- Exchange of Letters between the United States and Colombia Rescinding the 2012 SPS Letter Exchange on Paddy Rice (August 2017)
- Exchange of Letters between the United States and Colombia Regarding Chapter 16 of the United States – Colombia Trade Promotion Agreement and Truck Scrapage Program (April 2018)

### **Congo, Democratic Republic of the (formerly Zaire)**

- Bilateral Investment Treaty (July 28, 1989)

### **Congo, Republic of the**

- Bilateral Investment Treaty (August 13, 1994)

### **Costa Rica**

- Memorandum of Understanding on Trade in Bananas (January 9, 1996)

### **Croatia**

- Memorandum of Understanding on Intellectual Property Rights (May 26, 1998)
- Bilateral Investment Treaty (June 20, 2001)

### **Czech Republic**

- Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

### **Dominican Republic**

- Exchange of Letters on Trade in Textile and Apparel Goods (October 21, 2006)

### **Ecuador**

- Trade and Investment Council Agreement (July 23, 1990)
- Agreement on Intellectual Property Rights Protection (October 15, 1993) (Ecuador notified the United States on January 19, 2017 of its intent to withdraw from this treaty).
- Bilateral Investment Treaty (May 11, 1997) (Ecuador had notified the United States that it would terminate the treaty effective May 18, 2018; investments established or acquired before the termination will continue to be protected under the treaty for 10 years following the date of termination).

### **Egypt**

- Bilateral Investment Treaty (June 27, 1992)

### **Estonia**

- Bilateral Investment Treaty (February 16, 1997; amended May 1, 2004)

### **European Economic Area – European Free Trade Association (EEA EFTA States – Norway, Iceland, and Liechtenstein)**

- Agreement on Mutual Recognition between the United States of America and the EEA EFTA States Regarding Telecommunications Equipment, Electromagnetic Compatibility and Recreational Craft (March 1, 2006)

- Agreement between the United States of America and the EEA EFTA States on the Mutual Recognition of Certificates of Conformity for Marine Equipment (March 1, 2006)

## **European Union**

- Wine Accord (July 1983)
- Agreement for the Conclusion of Negotiations between the United States and the European Community under GATT Article XXIV:6 (January 30, 1987)
- Agreement on Exports of Pasta with Settlement, Annex and Related Letter (September 15, 1987)
- Agreement on Canned Fruit (updated) (April 14, 1992)
- Agreement on Meat Inspection Standards (November 13, 1992)
- Corn Gluten Feed Exchange of Letters (December 4 and 8, 1992)
- Malt-Barley Sprouts Exchange of Letters (December 4 and 8, 1992)
- Oilseeds Agreement (December 4 and 8, 1992)
- Agreement on Recognition of Bourbon Whiskey and Tennessee Whiskey as Distinctive U.S. Products (March 28, 1994)
- Memorandum of Understanding on Government Procurement (April 15, 1994)
- Letter on Financial Services Confirming Assurances to Provide Full MFN and National Treatment (July 14, 1995)
- Agreement on EU Grains Margin of Preference (signed July 22, 1996; retroactively effective December 30, 1995)
- Exchange of Letters Concerning Implementation of the Marrakesh Agreement Establishing the World Trade Organization and Related Matters (June 26, 1996)
- Exchange of Letters between the United States of America and the European Community on a Settlement for Cereals and Rice, and Accompanying Exchange of Letters on Rice Prices (July 22, 1996)
- Agreement for the Conclusion of Negotiations between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters (signed July 22, 1996; retroactively effective December 30, 1995)
- Tariff Initiative on Distilled Spirits (February 28, 1997)
- Agreement on Global Electronic Commerce (December 9, 1997)
- Agreed Minute on Humane Trapping Standards (December 18, 1997)
- Agreement on Mutual Recognition between the United States of America and the European Community (December 1, 1998) and United States – European Union Amended Sectoral Annex for Pharmaceutical Good Manufacturing Practices (March 1, 2017)



- Agreement between the United States and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products (July 20, 1999)
- Understanding on Bananas (April 11, 2001)
- Agreement between the United States of America and the European Community on the Mutual Recognition of Certificates of Conformity for Marine Equipment (July 1, 2004)
- Agreement in the Form of an Exchange of Letters between the United States and the European Community Relating to the Method of Calculation of Applied Duties for Husked Rice (June 30, 2005; retroactively effective March 1, 2005)
- Agreement between the United States and European Community on Trade in Wine (March 10, 2006)
- Agreement in the Form of an Exchange of Letters between the United States and the European Union pursuant to Article XXIV:6 and Article XXVIII of the GATT 1994 Relating to the Modification of Concessions in the Schedules of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the Course of their Accession to the European Union (March 22, 2006)
- Joint Letter from the United States and the European Communities on implementation of GATS Article XXI procedures relating to the accession to the European Communities of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Austria, Poland, Slovenia, the Slovak Republic, Finland, and Sweden (August 7, 2006)
- Memorandum of Understanding Between the United States and European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied to Certain Products of the European Communities (May 13, 2009)
- Agreement on Trade in Bananas Between the United States of America and the European Union (January 24, 2013)
- Agreement in the Form of an Exchange of Letters Between the United States of America and the European Union Pursuant to Articles XXIV:6 and XXVIII of the GATT 1994 (July 1, 2013)
- Bilateral Agreement Between the European Union and the United States of America on Prudential Measures Regarding Insurance and Reinsurance (April 4, 2018)

### **Georgia**

- Agreement on Bilateral Trade Relations (August 13, 1993)
- Bilateral Investment Treaty (August 17, 1997)

### **Grenada**

- Bilateral Investment Treaty (March 3, 1989)

### **Haiti**

- Exchange of Letters on Trade in Textile and Apparel Goods (September 18, 2008)

## **Hong Kong**

- Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (April 4, 2005)
- Memorandum of Understanding between the United States of America and the Hong Kong Special Administrative Region Concerning Cooperation in Trade in Textile and Apparel Goods (August 1, 2005)

## **Honduras**

- Memorandum of Understanding on Worker Rights (November 15, 1995)
- Bilateral Investment Treaty (July 11, 2001)

## **Hungary**

- Agreement on Trade Relations (July 7, 1978)
- Agreement on Intellectual Property Rights Protection (September 29, 1993)

## **India**

- Agreement Regarding Indian Import Policy for Motion Pictures (February 5, 1992)
- Reduction of Tariffs on In-Shell Almonds (May 27, 1992)
- Agreement on Intellectual Property Rights Protections (March 1993)
- Agreement on Import Restrictions (December 28, 1999)
- Agreement on Textile Tariff Bindings (September 15, 2000)

## **Indonesia**

- Conditions for Market Access for Films and Videos into Indonesia (April 19, 1992)
- Memorandum of Understanding with Indonesia Concerning Cooperation in Trade in Textile and Apparel Goods (September 26, 2006)

## **Israel**

- United States-Israel Free Trade Agreement (August 19, 1985)
- United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (July 27, 2004; extended by Exchange of Letters (This agreement has been extended on a yearly basis since December 2008, with the last extension on November 8, 2018)
- Mutual Recognition Agreement between the Government of the United States of America and the Government of the State of Israel for Conformity Assessment of Telecommunications Equipment (December 12, 2013)

## **Jamaica**

- Agreement on Intellectual Property (February 1994)
- Bilateral Investment Treaty (March 7, 1997)

## **Japan**

- Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals (January 9, 1986)
- Exchange of Letters Regarding Tobacco (October 6, 1986)
- Foreign Lawyers Agreement (February 27, 1987)
- Science and Technology Agreement (June 20, 1988; extended June 16, 1993)
- Exchange of Letters on Procedures to Introduce Supercomputers (August 7, 1987)
- Measures Relating to Wood Products (June 15, 1990)
- Policies and Procedures Regarding Satellite Research and Development/Procurement (June 15, 1990)
- Policies and Procedures Regarding International Value-Added Network Services and Network Channel Terminating Equipment (July 31, 1990)
- Joint Announcement on Amorphous Metals (September 21, 1990)
- Measures Further to 1990 Policies and Procedures regarding International Value-Added Network Services (April 27, 1991)
- Measures Regarding International Value-Added Network Services Investigation Mechanisms (June 25, 1991)
- United States-Japan Major Projects Arrangement (July 31, 1991; originally negotiated 1988)
- Measures Related to Japanese Public Sector Procurement of Computer Products and Services (January 22, 1992)
- United States-Japan Framework for a New Economic Partnership (July 10, 1993)
- Exchange of Letters Regarding Apples (September 13, 1993)
- United States-Japan Public Works Agreement (January 18, 1994)
- Mutual Understanding on Intellectual Property Rights between the Japanese Patent Office and the U.S. Patent and Trademark Office (January 20, 1994)
- Rice (April 15, 1994)
- Harmonized Chemical Tariffs (April 15, 1994)
- Copper (April 15, 1994)
- Market Access (April 15, 1994)

- Actions to be Taken by the Japanese Patent Office and the U.S. Patents and Trademark Office pursuant to the January 20, 1994, Mutual Understanding on Intellectual Property Rights (August 16, 1994)
- Measures by the Government of the United States and the Government of Japan Regarding Insurance (October 11, 1994)
- Measures on Japanese Public Sector Procurement of Telecommunications Products and Services (November 1, 1994)
- Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services (November 1, 1994)
- Measures Regarding Financial Services (February 13, 1995)
- Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships (June 20, 1995)
- Exchange of Letters on Financial Services (July 26 and 27, 1995)
- Interim Understanding for the Continuation of Japan-United States Insurance Talks (September 30, 1996)
- United States-Japan Insurance Agreement (December 24, 1996)
- Japan's Recognition of United States-Grade marked Lumber (January 13, 1997)
- Resolution of WTO dispute with Japan on Sound Recordings (January 13, 1997)
- National Policy Agency Procurement of VHF Radio Communications System (March 31, 1997)
- United States-Japan Enhanced Initiative on Deregulation and Competition Policy (June 19, 1997)
- United States-Japan Agreement on Distilled Spirits (December 17, 1997)
- First Joint Status Report on Deregulation and Competition Policy (May 29, 1998)
- United States-Japan Joint Report on Investment (April 28, 1999)
- Second Joint Status Report on Deregulation and Competition Policy (May 3, 1999)
- United States-Japan Agreement on NTT Procurement Procedures (July 1, 1999)
- Third Joint Status Report on Deregulation and Competition Policy (July 19, 2000)
- Fourth Joint Status Report on Deregulation and Competition Policy (June 30, 2001)
- United States-Japan Economic Partnership for Growth (June 30, 2001)
- First Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (June 25, 2002)
- Second Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (May 23, 2003)
- Third Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (June 8, 2004)

- Fourth Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (November 2, 2005)
- Fifth Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (June 29, 2006)
- Sixth Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (June 6, 2007)
- Agreement on Mutual Recognition of Results of Conformity Assessment Procedures between the United States of America and Japan (United States-Japan Telecom MRA) (January 1, 2008)
- Seventh Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (July 5, 2008)
- Eighth Report to the Leaders on the United States-Japan Regulatory Reform and Competition Policy Initiative (July 6, 2009)
- Memorandum Between the Relevant Authorities of the United States and the Ministry of Health, Labour and Welfare of Japan Concerning Enforcement of Japan's Pesticide Maximum Residue Levels (July 28, 2009)
- Record of Discussion, United States-Japan Economic Harmonization Initiative (January 27, 2012)
- United States-Japan Exchange of Letters on certain distilled spirits and wine (February 4, 2016)

#### **Jordan**

- Agreement between the United States and Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (December 17, 2001)
- Bilateral Investment Treaty (June 12, 2003)

#### **Kazakhstan**

- Agreement on Bilateral Trade Relations (February 18, 1993)
- Bilateral Investment Treaty (January 12, 1994)

#### **Korea**

- Record of Understanding on Intellectual Property Rights (August 28, 1986)
- Agreement on Access of U.S. Firms to Korea's Insurance Markets (August 28, 1986)
- Record of Understanding Concerning Market Access for Cigarettes (May 27, 1988; amended October 16, 1989)
- Agreement Concerning the Korean Capital Market Promotion Law (September 1, 1988)
- Agreement on the Importation and Distribution of Foreign Motion Pictures (December 30, 1988)
- Agreement on Market Access for Wine and Wine Products (January 18, 1989)
- Investment Agreement (May 19, 1989)

- Agreement on Liberalization of Agricultural Imports (May 25, 1989)
- Record of Understanding on Telecommunications (January 23, 1990)
- Record of Understanding on Telecommunications (February 15, 1990)
- Exchange of Letters Regarding the 1986 Intellectual Property Rights Agreement: Product Pipeline Protection (February 22, 1990)
- Record of Understanding on Beef (March 21, 1990)
- Exchange of Letters on Beef (April 26 and 27, 1990)
- Agreement on Wine Access (December 19, 1990)
- Record of Understanding on Telecommunications (February 7, 1991)
- Agreement on International Value-Added Services (June 20, 1991)
- Understanding on Telecommunications (February 17, 1992)
- Exchange of Letters Relating to Korea Telecom Company's Procurement of AT&T Switches (March 31, 1993)
- Beef Agreements (June 26, 1993; December 29, 1993)
- Record of Understanding on Agricultural Market Access in the Uruguay Round (December 13, 1993)
- Exchange of Letters on Telecommunications Issues Relating to Equipment Authorization and Korea Telecom Company's Procurement (March 29, 1995)
- Agreement on Steel (July 14, 1995)
- Shelf-Life Agreement (July 20, 1995)
- Revised Cigarette Agreement (August 25, 1995)
- Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in Korea (September 28, 1995)
- Exchange of Letters on Implementation of the 1992 Telecommunications Agreement (April 12, 1996)
- Korean Commitments on Trade in Telecommunications Goods and Services (July 23, 1997)
- Agreement on Korean Motor Vehicle Market (October 20, 1998)
- Exchange of Letters Regarding Tobacco Sector Related Issues (June 14, 2001)
- Exchange of Letters on Data Protection (March 12, 2002)
- Record of Understanding between the Governments of the United States and the Republic of Korea Regarding the Extension of Special Treatment for Rice (February 2005)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (May 10, 2005)

- Agreed Minutes on Fuel Economy and Greenhouse Gas Emissions Regulations (February 10, 2011)
- Agreed Minutes on Visa Validity Period (February 10, 2011)
- Exchange of Letters between the United States and Korea related to the United States-Korea Free Trade Agreement (February 10, 2011)
- United States-Korea Free Trade Agreement (March 15, 2012)
- Agreed Minutes on Korea Certification Mark and Korea's Motor Vehicle Fuel Economy and Greenhouse Gas Emissions Regulations (September 24, 2018)
- Interpretation by the Joint Committee of the Free Trade Agreement between the United States of America and the Republic of Korea Regarding the June 30, 2007 Exchange of Letters (September 24, 2018)
- Exchange of Letters between the United States and Korea Regarding Entry Into Force of the Protocol between the Government of the United States of America and the Government of the Republic of Korea Amending the Free Trade Agreement between the United States of America and the Republic of Korea (September 24, 2018)
- Exchange of Letters between the United States and Korea Regarding the Confirmation of Customs Principles and the Establishment of the Rules of Origin Verification Working Group under the Free Trade Agreement between the United States of America and the Republic of Korea (September 24, 2018)
- Exchange of Letters between the United States and Korea Regarding Amendments to Korea's Premium Pricing Policy for Global Innovative New Drugs (September 24, 2018)
- Exchange of Letters between the United States and Korea Regarding Korea's Request to Modify the Rules of Origin under the Free Trade Agreement between the United States of America and the Republic of Korea (September 24, 2018)
- Protocol between the Government of the United States of America and the Government of the Republic of Korea Amending the February 10, 2011 Exchange of Letters (January 1, 2019)
- Protocol between the Government of the United States of America and the Government of the Republic of Korea Amending the Free Trade Agreement between the United States of America and the Republic of Korea (January 1, 2019)

### **Kyrgyzstan**

- Agreement on Bilateral Trade Relations (May 8, 1992)
- Bilateral Investment Treaty (January 12, 1994)

### **Latvia**

- Agreement on Bilateral Trade Relations (August 21, 1992)
- Bilateral Investment Treaty (November 26, 1996; amended May 1, 2004)
- Agreement on Trade & Intellectual Property Rights Protection (January 20, 1995)

## **Lithuania**

- Bilateral Investment Treaty (November 22, 2001; amended May 1, 2004)

## **Laos**

- Bilateral Trade Agreement (February 4, 2005)

## **Macao**

- Memorandum of Understanding with Macao Concerning Cooperation in Trade in Textile and Apparel Goods (August 8, 2005)

## **Marshall Islands**

- Compact of Free Association Agreement Between the United States of America and the Marshall Islands (June 25, 1983)

## **Mexico**

- Agreement with Mexico on Tire Certification (March 8, 1996)
- Memorandum of Understanding between the United States and Mexico Regarding Areas of Food and Agriculture Trade (April 4, 2002)
- United States-Mexico Exchange of Letters Regarding Mexico's NAFTA Safeguard on Certain Poultry Products (July 24-25, 2003)
- Understanding Regarding the Implementation of the WTO Decision on Mexico's Telecommunications Services (June 1, 2004)
- Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Tequila (January 17, 2006)
- Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Cement (April 3, 2006)
- United States-Mexico Exchange of Letters Regarding Trade in Sweetener Goods (July 27, 2006)
- Bilateral Agreement on Customs Cooperation regarding Claims of Origin Under FTA Cumulation Provisions (January 26, 2007)
- Customs Cooperation Agreement with Mexico relating to Textiles Matters (August 15, 2008)
- Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment (June 10, 2011)
- United States-Mexico Exchange of Letters on Measures Taken Under Section 232 of the Trade Expansion Act of 1962 (November 30, 2018)
- United States-Mexico Exchange of Letters on Trade in Automotive Goods (November 30, 2018)
- United States-Mexico Exchange of Letters on Dispute Settlement Regarding Trade in Automotive Goods Exchange (November 30, 2018)



## **Micronesia**

- Compact of Free Association with the Federated States of Micronesia (November 3, 1986)

## **Moldova**

- Agreement on Bilateral Trade Relations (July 2, 1992)
- Bilateral Investment Treaty (November 25, 1994)

## **Mongolia**

- Agreement on Bilateral Trade Relations (January 23, 1991)
- Bilateral Investment Treaty (January 1, 1997)
- Agreement on Transparency in Matters Related to International Trade and Investment between the United States of America and Mongolia (March 20, 2017)

## **Morocco**

- Bilateral Investment Treaty (May 29, 1991)
- United States-Morocco Free Trade Agreement (January 1, 2006)
- Agreement between the Government of the United States of America and the Government of the Kingdom of Morocco Concerning Customs Administration and Trade Facilitation (November 21, 2013)

## **Mozambique**

- Bilateral Investment Treaty (March 2, 2005)

## **Nicaragua**

- Bilateral Intellectual Property Rights Agreement with Nicaragua (December 22, 1997)
- Exchange of Letters on Trade in Textile and Apparel Goods (March 24, 2006)

## **Norway**

- Agreement on Procurement of Toll Equipment (April 26, 1990)

## **Oman**

- United States-Oman Free Trade Agreement (January 1, 2009)

## **Palau**

- Compact of Free Association with the Republic of Palau (October 1, 1994)

## **Panama**

- Bilateral Investment Treaty (May 30, 1991)
- Agreement on Bilateral Trade Relations (1994)

- Agreement on Cooperation in Agricultural Trade (December 20, 2006)
- Agreement regarding Certain Sanitary and Phyto-sanitary Measures and Technical Standards Affecting Agricultural Products (December 20, 2006)
- Exchange of Letters Regarding Autos (June 28, 2007)
- Confirmation Letter Regarding Ship Repairs (June 28, 2007)
- Confirmation Letter Regarding Panama Joining the ITA (June 28, 2007)
- Exchange of Letters Regarding Free Trade Zones (June 28, 2007)
- Exchange of Letters Regarding Article 9.15 (June 28, 2007)
- Exchange of Letters Regarding Investment in Specified Sectors (June 28, 2007)
- Exchange of Letters Regarding Retail Sales (June 28, 2007)
- Exchange of Letters Regarding Cross Border Financial Service (June 28, 2007)
- Exchange of Letters Regarding Insurance (June 28, 2007)
- Exchange of Letters Regarding Pensions (June 28, 2007)
- Exchange of Letters Regarding Traditional Knowledge (June 28, 2007)
- Exchange of Letters Regarding Taxation (June 28, 2007)
- United States-Panama Trade Promotion Agreement (October 31, 2012)
  - i. Decision of the Free Trade Commission Regarding Article 3.20 and Article 6.3 (March 19, 2013)
  - ii. Decision No. 2 of the Free Trade Commission Establishing a Code of Conduct (May 28, 2014)
  - iii. Decision No. 3 of the Free Trade Commission to Establish the Remuneration of Panelists, Assistants, and Experts, and the Payment of Expenses in Dispute Settlement Proceedings under Chapter 20 (Dispute Settlement) (May 28, 2014)
  - iv. Decision No. 4 of the Free Trade Commission Establishing Model Rules of Procedure (May 28, 2014)
  - v. Decision No. 5 of the Free Trade Commission to Amend Annex 4.1 (December 6, 2016)
- Exchange of Letters Regarding Multiple Services Businesses (October 31, 2012)
- Exchange of Letters Regarding Beef and Beef Product Imports (March 27, 2013)
- Exchange of Letters on Free Trade Zones (October 2, 2013)
- Exchange of Letters Regarding Pet Food Containing Animal Origin Ingredients Imports (June 24, 2014)
- Agreement Establishing a Secretariat for Environmental Enforcement Matters Under the United States – Panama Trade Promotion Agreement (December 21, 2015)

## **Paraguay**

- Memorandum of Understanding on Intellectual Property Rights Between the Government of the Republic of Paraguay and the Government of the United States of America (June 18, 2015)

## **Peru**

- Memorandum of Understanding on Intellectual Property Rights (May 23, 1997)
- Exchange of Letters on Sanitary and Phyto-sanitary Measures and Technical Barriers to Trade Issues (January 5, 2006)
- Additional Letter Exchange on Sanitary and Phyto-sanitary Measures and Technical Barriers to Trade Issues (April 10, 2006)
- United States-Peru Trade Promotion Agreement (February 1, 2009)
- Understanding for Implementing Article 18.8 of the United States-Peru Trade Promotion Agreement (March 20, 2016)
- Memorandum of Understanding (MOU) between the Government of the United States of America, the Government of the Republic of Peru, and the General Secretariat of the Organization of American States regarding a Secretariat for Submissions on Environmental Enforcement Matters under the United States-Peru Trade Promotion Agreement (March 23, 2016)

## **Philippines**

- Protection and Enforcement of Intellectual Property Rights (April 6, 1993)
- Agreement regarding Pork and Poultry Meat (February 13, 1998)
- Memorandum of Understanding with the Philippines Concerning Cooperation in Trade in Textile and Apparel Goods (August 23, 2006)
- Exchange of Letters on Special Treatment for Rice and Related Agricultural Concessions (June 5, 2014)

## **Poland**

- Business and Economic Relations Treaty (August 6, 1994; amended May 1, 2004)

## **Romania**

- Agreement on Bilateral Trade Relations (April 3, 1992)
- Bilateral Investment Treaty (January 15, 1994; amended January 1, 2007)

## **Russia**

- Trade Agreement Concerning Most Favored Nation and Nondiscriminatory Treatment (June 17, 1992)
- Joint Memorandum of Understanding on Market Access for Aircraft (January 30, 1996)
- Agreed Minutes regarding exports of poultry products from the United States to Russia (March 15, March 25, and March 29, 1996)

- Agreement on Russian Firearms & Ammunition (April 3, 1996; amended 2003)
- Protocol of the Negotiations between the Experts of Russia and the United States of America on the Issue of U.S. Poultry Meat Imports into the Russian Federation (March 31, 2002)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Trade in Certain Types of Poultry, Beef and Pork (June 15, 2005; amended December 29, 2008)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Protection and Enforcement of Intellectual Property Rights (November 19, 2006)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Market Access for Beef and Beef By-Products (November 19, 2006)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Importation of Pork and Pork By-Products into the Russian Federation (November 19, 2006)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Inspection of Facilities for Exporting Pork and Poultry to the Russian Federation (November 19, 2006)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Agricultural Biotechnology (November 19, 2006)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Establishment of Import licensing Procedures for Imports of Goods Containing Encryption Technology (November 19, 2006)
- Exchange of Letters between the Government of the United States of America and the Government of the Russian Federation on Tariff Treatment of Certain Aircraft Imported Under Operational Lease (November 19, 2006)
- Exchange of Letters between the Ministry of Economic Development and Trade of the Russian Federation and the Office of the United States Trade Representative on Tariff Treatment of Certain Combine Harvester-Threshers and Self-Propelled Forage Harvesters (November 19, 2006)
- Letter on Market Access between the United States and the Russian Federation for Service Suppliers in Certain Energy Related Sectors (November 19, 2006)
- Letter on Market Access between the United States and the Russian Federation for Certain Insurance Firms (November 19, 2006)
- Bilateral Agreement on Verification of Pathogen Reduction Treatments and Resumption of Trade in Poultry (July 14, 2010)
- Bilateral Agreement on Pre-Notification Requirements Applied to Certain Imports of Meat Products from the United States (applied provisionally as of December 14, 2011)
- Agreement between the Government of the United States of America and the Government of the Russian Federation on Trade in Parts and Components of Motor Vehicles between the United States of America and the Russian Federation (July 12, 2013)

## **Rwanda**

- Bilateral Investment Treaty (January 1, 2012)

## **Senegal**

- Bilateral Investment Treaty (October 25, 1990)

## **Singapore**

- Agreement on Intellectual Property Rights Protection (April 27, 1987)
- Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 8, 2003)
- United States-Singapore Free Trade Agreement (January 1, 2004)

## **Slovakia**

- Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

## **Sri Lanka**

- Agreement on the Protection and Enforcement of Intellectual Property Rights (September 20, 1991)
- Bilateral Investment Treaty (May 1, 1993)

## **Suriname**

- Agreement on Bilateral Trade Relations (1993)

## **Switzerland**

- Exchange of Letters on Financial Services (November 9 and 27, 1995)

## **Taiwan**

- Agreement on Customs Valuation (August 22, 1986)
- Agreement on Export Performance Requirements (August 1986)
- Agreement Concerning Beer, Wine, and Cigarettes (1987)
- Agreement on Turkeys and Turkey Parts (March 16, 1989)
- Agreement on Beef (June 18, 1990)
- Agreement on Intellectual Property Protection (June 5, 1992)
- Agreement on Intellectual Property Protection (Trademark) (April 1993)
- Agreement on Intellectual Property Protection (Copyright) (July 16, 1993)
- Agreement on Market Access (April 27, 1994)

- Telecommunications Liberalization by Taiwan (July 19, 1996)
- United States-Taiwan Medical Device Issue: List of Principles (September 30, 1996)
- Agreement on Market Access (February 20, 1998)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (March 16, 1999)
- Understanding on Government Procurement (August 23, 2001)
- Protocol of Bovine Spongiform Encephalopathy (BSE)-Related Measures for the Importation of Beef and Beef Products for Human Consumption from the Territory of the Authorities Represented by the American Institute in Taiwan (November 2, 2009)

### **Tajikistan**

- Agreement on Bilateral Trade Relations (November 24, 1993)

### **Thailand**

- Agreement on Cigarette Imports (November 23, 1990)
- Agreement on Intellectual Property Protection and Enforcement (December 19, 1991)

### **Trinidad and Tobago**

- Agreement on Intellectual Property Protection and Enforcement (September 26, 1994)
- Bilateral Investment Treaty (December 26, 1996)

### **Tunisia**

- Bilateral Investment Treaty (February 7, 1993)

### **Turkey**

- Bilateral Investment Treaty (May 18, 1990)
- WTO Settlement Concerning Taxation of Foreign Film Revenues (July 14, 1997)

### **Turkmenistan**

- Agreement on Bilateral Trade Relations (October 25, 1993)

### **Ukraine**

- Agreement on Bilateral Trade Relations (June 23, 1992)
- Bilateral Investment Treaty (November 16, 1996)
- Agreement between the Government of the United States of America and the Government of the Republic of Ukraine on Sanitary and Phyto-sanitary Measures (February 21, 2007)

- Agreement between the United States and the Ukraine on Export Duties on Ferrous and Non-Ferrous Scrap Metal (February 22, 2007)

### **Uruguay**

- Bilateral Investment Treaty (November 1, 2006)

### **Uzbekistan**

- Agreement on Bilateral Trade Relations (January 13, 1994)

### **Vietnam**

- Agreement between the United States and Vietnam on Trade Relations (December 10, 2001)
- Copyright Agreement (June 27, 1997)
- Exchange of Letters on Equivalence of Food Safety Inspection Systems (May 31, 2006)
- Exchange of Letters on Beef (May 31, 2006)
- Exchange of Letters on Biotechnology (May 31, 2006)
- Exchange of Letters on Energy Services (May 31, 2006)
- Exchange of Letters on Elimination of Prohibited Subsidies to Textile and Garment Sector (May 31, 2006)
- Bilateral Agreement on Export Duties on Ferrous and Nonferrous Scrap Metals (May 31, 2006)
- Exchange of Letters on Shelf Life (May 31, 2006)
- Acceptance of U.S. Certificates for Exports of Poultry Meat and Meat Products (May 31, 2006)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (June 19, 2008)

## **II. Agreements That Have Been Negotiated, But Have Not Yet Entered Into Force**

Following is a list of trade agreements concluded by the United States since 1984 that have not yet entered into force.

### **Multilateral and Plurilateral Agreements**

- OECD Agreement on Shipbuilding (December 21, 1994; interested parties evaluating implementing legislation)
- Anti-Counterfeiting Trade Agreement (signed by the United States on October 1, 2011)
- The Dominican Republic-Central America-United States Free Trade Agreement Decision Regarding the Specific Rules of Origin of Annex 4.1 (signed by the United States on July 6, 2017)
- Agreement Between the United States of America, the United Mexican States, and Canada (signed November 30, 2018)

### **Bilateral Agreements**

#### **Belarus**

- Bilateral Investment Treaty (signed January 15, 1994)

#### **Canada**

- United States-Canada Exchange of Letters on Energy (signed November 30, 2018)
- United States-Canada Exchange of Letters on Natural Water Resources (signed November 30, 2018)

#### **Colombia**

- Agreement Establishing a Secretariat for Environmental Matters (signed by the United States on July 9, 2018)

#### **El Salvador**

- Bilateral Investment Treaty (signed March 10, 1999)

#### **Estonia**

- Trade and Intellectual Property Rights Agreement (April 19, 1994; requires approval by Estonian legislature)

#### **Israel**

- Decision of the Joint Committee of the Agreement on the Establishment of a Free Trade Area Between the Government of Israel and the Government of the United States of America on Annex III (Rules of Origin) (signed May 10, 2017)



## **Kazakhstan**

- Exchange of Letters on Sanitary and Phyto-sanitary Measures of Kazakhstan (signed July 2, 2015)

## **Lithuania**

- Trade and Intellectual Property Rights Agreement (April 26, 1994; requires approval by Lithuanian legislature)

## **Mexico**

- United States-Mexico Exchange of Letters on Safety Standards in the Automotive Sector (signed November 30, 2018)
- United States-Mexico Exchange of Letters on Prior Users (signed November 30, 2018)
- United States-Mexico Exchange of Letters Distilled Spirits (signed November 30, 2018)
- United States-Mexico Exchange of Letters on Cheeses (signed November 30, 2018)
- United States-Mexico Exchange of Letters on Biologics (signed November 30, 2018)

## **Nicaragua**

- Bilateral Investment Treaty (signed July 1, 1995)

## **Paraguay**

- United States–Paraguay Trade and Investment Framework Agreement (January 13, 2017)

## **Russia**

- Bilateral Investment Treaty (signed June 17, 1992)

## **United Kingdom**

- Bilateral Agreement between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance (signed December 18, 2018)
- Agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland on Trade In Wine (signed January 31, 2019)
- Agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland on the Mutual Recognition of Certain Distilled Spirits/Spirit Drinks (signed January 31, 2019)

## **Uzbekistan**

- Bilateral Investment Treaty (signed December 16, 1994)

### **III. Other Trade-Related Agreements, Understandings and Declarations**

Following is a list of other trade-related agreements, understandings and declarations negotiated by the Office of the United States Trade Representative from January 1993. These documents provide the framework for negotiations leading to future trade agreements or establish mechanisms for structured dialogue in order to develop specific steps and strategies for addressing and resolving trade, investment, intellectual property, and other issues among the signatories.

#### **Multilateral Agreements and Declarations**

- Second Ministerial of the World Trade Organization, Ministerial Declaration on Global Electronic Commerce (May 20, 1998)
- WTO Guidelines for the Negotiation of Mutual Recognition Agreements on Accountancy (May 29, 1997)
- Asia Pacific Economic Cooperation
  - 1st Joint Ministerial Statement (November 6-7, 1989)
  - 2nd Joint Ministerial Statement (July 29-31, 1990)
  - 3rd Joint Ministerial Statement (November 12-14, 1991)
  - 4th Joint Ministerial Statement (September 10-11, 1992)
  - 5th Joint Ministerial Statement (November 17-19, 1993)
  - Leaders' Economic Vision Statement (November 20, 1993)
  - Ministers Responsible for Trade Statement (October 6, 1994)
  - 6th Joint Ministerial Statement (November 11-12, 1994)
  - Leaders' Declaration of Common Resolve (November 15, 1994)
  - 7th Joint Ministerial Statement (November 16-17, 1995)
  - Leaders' Declaration for Action (November 19, 1995)
  - Ministers Responsible for Trade Statement (July 15-16, 1996)
  - 8th Joint Ministerial Statement (November 22-23, 1996)
  - Leaders' Declaration: From Vision to Action (November 25, 1996)
  - Ministers Responsible for Trade Statement (May 8-10, 1997)
  - 9th Joint Ministerial Statement (November 21-22, 1997)

- Leaders' Declaration on Connecting the APEC Community (November 25, 1997)
- Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Agreement (June 5, 1998)
- Ministers Responsible for Trade Statement (June 22-23, 1998)
- 10th Joint Ministerial Statement (November 14-15, 1998)
- Leaders' Declaration on Strengthening the Foundations for Growth (November 18, 1998)
- Ministers Responsible for Trade Statement (June 29-30, 1999)
- 11th Joint Ministerial Statement (September 9-10, 1999)
- Leaders' Declaration: The Auckland Challenge (September 13, 1999)
- Ministers Responsible for Trade Statement (June 6-7, 2000)
- 12th Joint Ministerial Statement (November 12-13, 2000)
- Leaders' Declaration: Delivering to the Community (November 16, 2000)
- Ministers Responsible for Trade Statement (June 6-7, 2001)
- 13th Joint Ministerial Statement (October 17-18, 2001)
- Leaders' Declaration: Meeting New Challenges in the New Century (October 21, 2001)
- Ministers Responsible for Trade Statement (May 29-30, 2002)
- 14th Joint Ministerial Statement (October 23-24, 2002)
- Leaders' Declaration: Expanding the Benefits of Cooperation for Economic Growth and Development-Implementing the Vision (October 27, 2002)
- Ministers Responsible for Trade Statement (June 2-3, 2003)
- 15th Joint Ministerial Statement (October 17-18, 2003)
- Declaration: A World of Differences-Partnership for the Future (October 21, 2003)
- Ministers Responsible for Trade Statement (June 4-5, 2004)
- 16th Joint Ministerial Statement (November 17-18, 2004)
- Leaders' Declaration: One Community, Our Future (November 20-21, 2004)
- Ministers Responsible for Trade Statement (June 2-3, 2005)
- 17th Joint Ministerial Statement (November 15-16, 2005)

- Leaders' Declaration: Towards One Community: Meet the Challenge, Make the Change (November 18-19, 2005)
- Ministers Responsible for Trade Statement (June 1-2, 2006)
- 18th Joint Ministerial Statement (November 15-16, 2006)
- Leaders' Declaration: Towards a Dynamic Community for Sustainable Development and Prosperity (November 18-19, 2006)
- Ministers Responsible for Trade Statement (July 5-6, 2007)
- 19th Joint Ministerial Statement (September 5-6, 2007)
- Leaders' Declaration: Strengthening our Community, Building a Sustainable Future (September 9, 2007)
- Ministers Responsible for Trade Statement (May 31-June 1, 2008)
- 20th Joint Ministerial Statement (November 19-20, 2008)
- Leaders' Declaration: A New Commitment to Asia-Pacific Development (November 22-23, 2008)
- Ministers Responsible for Trade Statement (July 21-22, 2009)
- 21st Joint Ministerial Statement (November 11-12, 2009)
- Leaders' Declaration: Sustaining Growth, Connecting The Region (November 14-15, 2009)
- Ministers Responsible for Trade Statement (June 5-6, 2010)
- 22nd Joint Ministerial Statement (November 10-11, 2010)
- Leaders' Declaration: The Yokohama Vision-Bogor and Beyond (November 13-14, 2010)
- Ministers' Responsible for Trade Statement (May 19-20, 2011)
- 23rd Joint Ministerial Statement (November 11, 2011)
- Leaders' Declaration: Toward a Seamless Regional Economy (November 12-13, 2011)
- Ministers' Responsible for Trade Statement (June 4-5, 2012)
- 24th Joint Ministerial Statement (September 5-6, 2012)
- Leaders' Declaration: Integrate to Grow, Innovate to Prosper (September 8-9, 2012)
- Ministers' Responsible for Trade Statement (April 20-21, 2013)
- 25th Joint Ministerial Statement (October 5, 2013)

- Leaders' Declaration: Resilient Asia-Pacific, Engine of Global Growth (October 8, 2013)
- Cooperation Agreement Among the Partner States of the East African Community and the United States of America on Trade Facilitation, Sanitary and Phyto-sanitary Measures, and Technical Barriers to Trade (February 26, 2015)
- Organization of American States (OAS), Inter-American Telecommunications Commission (CITEL) Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment (October 29, 1999)
- United States-Association of Southeast Asian Nations Trade and Investment Framework Arrangement (August 25, 2006)
- World Wine Trade Group Memorandum of Understanding on Certification Requirements (October 20, 2011)

## **Bilateral Agreements and Declarations**

### **Afghanistan**

- United States-Afghanistan Trade and Investment Framework Agreement (September 21, 2004)
- Memorandum of Understanding on Joint Efforts to Enable the Economic Empowerment of Women and to Promote Women's Entrepreneurship (June 16, 2013)

### **Algeria**

- United States-Algeria Trade and Investment Framework Agreement (July 13, 2001)

### **Angola**

- United States-Angola Trade and Investment Framework Agreement (May 19, 2009)

### **Argentina**

- Bilateral Council on Trade and Investment (February 2002)
- United States–Argentina Trade and Investment Framework Agreement (March 23, 2016)

### **Armenia**

- United States-Armenia Trade and Investment Framework Agreement (signed November 13, 2015)

### **Association of Southeast Asian Nations (ASEAN)**

- United States-ASEAN Trade and Investment Framework Arrangement (August 5, 2006)

## **Bangladesh**

- United States-Bangladesh Trade and Investment Cooperation Forum Agreement (signed November 25, 2013)

## **Bolivia**

- Agreement between the Government of the United States of America and the Government of the Republic of Bolivia concerning a United States-Bolivia Council on Trade and Investment (May 8, 1990)

## **Brazil**

- United States-Brazil Agreement on Trade and Economic Cooperation (March 19, 2011)

## **Brunei Darussalam**

- United States-Brunei Darussalam Trade and Investment Framework Agreement (December 16, 2002)

## **Burma**

- United States-Myanmar Trade and Investment Framework Agreement (2013)

## **Cambodia**

- United States-Cambodia Trade and Investment Framework Agreement (July 14, 2006)

## **Canada**

- The Canada-United States Organic Equivalency Arrangement (June 17, 2009)

## **Caribbean Community (CARICOM)**

- United States-CARICOM Trade and Investment Framework Agreement (2013)

## **Central Asian Economies**

- United States-Central Asian Trade and Investment Framework Agreement (June 1, 2004)

## **China**

- United States-China Joint Commission on Commerce and Trade Agreements (April 21, 2004)
- United States-China Joint Commission on Commerce and Trade Agreements (July 11, 2005)
- Memorandum of Understanding on Combating Illegal Logging and Associated Trade (May 5, 2008)

### **Common Market for Eastern and Southern Africa**

- United States-Common Market for Eastern and Southern Africa Trade and Investment Framework Agreement (October 2001)

### **East African Community**

- United States-East African Community Trade and Investment Framework Agreement (July 16, 2008)
- Cooperation Agreement Among the Partner States of the East African Community and the United States of America on Trade Facilitation, Sanitary and Phyto-sanitary Measures, and Technical Barriers to Trade (February 26, 2015)

### **Economic Community of West African States**

- United States-Economic Community of West African States Trade and Investment Cooperation Forum Agreement (signed August 5, 2014)

### **Ecuador**

- Agreement between the Government of the United States of America and the Government of the Republic of Ecuador concerning a United States-Ecuador Council on Trade and Investment (July 23, 1990)

### **Egypt**

- United States-Egypt Trade and Investment Framework Agreement (July 1, 1999)

### **European Union**

- United States-EU Transatlantic Economic Partnership (May 18, 1998)
- United States-EU Joint Action Plan for the Transatlantic Economic Partnership (November 9, 1998)
- Decision to Establish the United States-EU High Level Working Group on Jobs and Growth, Joint Statement of the United States-EU Summit (November 28, 2010)
- The EU-United States Organic Equivalency Arrangement (February 15, 2012)

### **Georgia**

- United States-Georgia Trade and Investment Framework Agreement (June 20, 2007)
- United States-Georgia Trade Principles for Information and Communication Technology Services (October 30, 2015)

### **Ghana**

- United States-Ghana Trade and Investment Framework Agreement (February 26, 1999)

## **Gulf Cooperation Council**

- Framework Agreement for Trade, Economic, Investment and Technical Cooperation (signed September 25, 2012)

## **Iceland**

- United States-Iceland Trade and Investment Cooperation Forum Agreement (January 15, 2009)

## **India**

- United States-India Trade Policy Forum, Framework for Cooperation on Trade and Investment (March 17, 2010)

## **Indonesia**

- United States-Indonesia Memorandum of Understanding on the Establishment of the Council on Trade and Investment (July 16, 1996)
- Memorandum of Understanding on Combating Illegal Logging and Associated Trade (November 16, 2006)
- Memorandum of Understanding Between the Government of the United States of American and the Government of the Republic of Indonesia to resolve certain outstanding issues in order to enhance the Parties' bilateral trade relationship (October 3, 2014)

## **Israel**

- Understanding regarding Israel's intellectual property regime for pharmaceutical products (February 18, 2010)

## **Iraq**

- United States-Iraq Trade and Investment Framework Agreement (July 11, 2005)

## **Japan**

- United States-Japan Joint Statement on the Bilateral Steel Dialogue (September 24, 1999)
- Exchange of Letters between the United States and Japan—Letters Regarding Electro-Magnetic Compatibility (EMC) Testing of Unintentional Radiators and Industrial Scientific and Medical (ISM) Equipment (February 26, 2007)
- Requirements for Beef and Beef Products to be Exported to Japan from the United States of America (January 25, 2013)
- United States-Japan Organic Equivalency Arrangement (September 26, 2013)

## **Korea**

- United States-Korea Organic Equivalency Arrangement (June 30, 2014)



**Kuwait**

- United States-Kuwait Trade and Investment Framework Agreement (February 6, 2004)

**Laos**

- United States-Lao People's Democratic Republic Trade and Investment Framework Agreement (February 17, 2016)

**Lebanon**

- United States-Lebanon Trade and Investment Framework Agreement (November 30, 2006)

**Liberia**

- United States-Liberia Trade and Investment Framework Agreement (February 15, 2007)

**Libya**

- United States-Libya Trade and Investment Framework Agreement (signed December 18, 2013)

**Malaysia**

- United States-Malaysia Trade and Investment Framework Agreement (May 10, 2004)
- Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (June 28, 2016)

**Maldives**

- United States-Maldives Trade and Investment Framework Agreement (October 17, 2009)

**Mauritius**

- United States-Mauritius Trade and Investment Framework Agreement (September 18, 2006)
- United States-Mauritius Trade Principles for Information and Communication Technology Services (June 18, 2012)

**Mongolia**

- United States-Mongolia Trade and Investment Framework Agreement (July 15, 2004)

**Morocco**

- Kingdom of Morocco-United States Trade Principles for Information and Communication Technology Services (December 5, 2012)
- Statement of Principles for International Investment (December 5, 2012)

## **Mozambique**

- United States-Mozambique Trade and Investment Framework Agreement (June 21, 2005)

## **Nepal**

- United States-Nepal Trade and Investment Framework Agreement (April 15, 2011)

## **New Zealand**

- United States-New Zealand Trade and Investment Framework Agreement (October 2, 1992)

## **Nigeria**

- United States-Nigeria Trade and Investment Framework Agreement (February 16, 2000)

## **Oman**

- United States-Oman Trade and Investment Framework Agreement (July 7, 2004)

## **Pakistan**

- United States-Pakistan Trade and Investment Framework Agreement (June 25, 2003)

## **Paraguay**

- Joint Commission on Trade and Investment (September 26, 2003)

## **Philippines**

- United States-Philippines Trade and Investment Framework Agreement (1989)
- United States-Philippines Trade and Investment Framework Agreement Protocol Concerning Customs Administration and Trade Facilitation (November 13, 2011)

## **Qatar**

- United States-Qatar Trade and Investment Framework Agreement (March 19, 2004)

## **Rwanda**

- United States-Rwanda Trade and Investment Framework Agreement (June 7, 2006)

## **Saudi Arabia**

- United States-Saudi Arabia Trade and Investment Framework Agreement (July 31, 2003)

## **South Africa**

- United States-South Africa Agreement Concerning the Development of Trade and Investment (June 18, 2012)

### **Southern Africa Customs Union**

- United States-Southern Africa Customs Union Trade, Investment, and Development Cooperative Agreement (July 16, 2008)

### **Sri Lanka**

- United States-Sri Lanka Trade and Investment Framework Agreement (July 25, 2002)

### **Switzerland**

- United States-Switzerland Trade and Investment Cooperation Forum Agreement (May 25, 2006)
- United States-Switzerland Organic Equivalency Arrangement (July 10, 2015)

### **Taiwan**

- United States-Taiwan Trade and Investment Framework Agreement (September 19, 1994)

### **Thailand**

- United States-Thailand Trade and Investment Framework Agreement (October 23, 2002)

### **Tunisia**

- United States-Tunisia Trade and Investment Framework Agreement (October 2, 2002)

### **Turkey**

- United States-Turkey Trade and Investment Framework Agreement (September 29, 1999)

### **Ukraine**

- United States-Ukraine Trade and Investment Cooperation Agreement (March 28, 2008)

### **United Arab Emirates (UAE)**

- United States-United Arab Emirates Trade and Investment Framework Agreement (March 15, 2004)

### **Uruguay**

- United States-Uruguay Bilateral and Commercial Trade Review (May 20, 1999)
- Joint Commission on Trade and Investment (January 25, 2007)
- United States-Uruguay Trade and Investment Framework Agreement (January 25, 2007)
  - i United States-Uruguay Trade and Investment Framework Agreement Protocol Concerning Trade and Environment Public Participation (October 2, 2008)
  - ii United States-Uruguay Trade and Investment Framework Agreement Protocol Concerning Trade Facilitation (October 2, 2008)

**Vietnam**

- United States-Vietnam Trade and Investment Framework Agreement (June 21, 2007)

**West African Economic and Monetary Union**

- United States-West African Economic and Monetary Union Trade and Investment Framework Agreement (April 24, 2002)

**Yemen**

- United States-Yemen Trade and Investment Framework Agreement (February 6, 2004)

# **ANNEX III**



# **BACKGROUND INFORMATION ON THE WTO**

## MEMBERSHIP OF THE WORLD TRADE ORGANIZATION

As of December 31, 2018 (164 Members)

Government	Entry Into Force	Government	Entry Into Force
Afghanistan	July 29, 2016	Latvia	February 10, 1999
Albania	September 8, 2000	Lesotho	May 31, 1995
Angola	November 23, 1996	Liberia	July 14, 2016
Antigua and Barbuda	January 1, 1995	Luxembourg	January 1, 1995
Argentina	January 1, 1995	Macao, China	January 1, 1995
Armenia	February 5, 2003	Republic of Macedonia	April 4, 2003
Australia	January 1, 1995	Madagascar	November 17, 1995
Austria	January 1, 1995	Malawi	May 31, 1995
Bahrain	January 1, 1995	Malaysia	January 1, 1995
Bangladesh	January 1, 1995	Maldives	May 31, 1995
Barbados	January 1, 1995	Mali	May 31, 1995
Belgium	January 1, 1995	Malta	January 1, 1995
Belize	January 1, 1995	Mauritania	May 31, 1995
Benin	February 22, 1996	Mauritius	January 1, 1995
Bolivia	September 12, 1995	Mexico	January 1, 1995
Botswana	May 31, 1995	Moldova	July 26, 2001
Brazil	January 1, 1995	Mongolia	January 29, 1997
Brunei Darussalam	January 1, 1995	Montenegro	April 29, 2012
Bulgaria	December 1, 1996	Morocco	January 1, 1995
Burkina Faso	June 3, 1995	Mozambique	August 26, 1995
Burundi	July 23, 1995	Myanmar	January 1, 1995



Cambodia	October 12, 2004	Namibia	January 1, 1995
Cameroon	December 13, 1995	Nepal	April 23, 2004
Canada	January 1, 1995	The Netherlands	January 1, 1995
Cape Verde	July 23, 2008	New Zealand	January 1, 1995
Central African Republic	May 31, 1995	Nicaragua	September 3, 1995
Chad	October 19, 1996	Niger	December 13, 1996
Chile	January 1, 1995	Nigeria	January 1, 1995
China	December 11, 2001	Norway	January 1, 1995
Colombia	April 30, 1995	Oman	November 9, 2000
Democratic Republic of the Congo	January 1, 1997	Pakistan	January 1, 1995
Republic of the Congo	March 27, 1997	Panama	September 6, 1997
Costa Rica	January 1, 1995	Papua New Guinea	June 9, 1996
Côte d'Ivoire	January 1, 1995	Paraguay	January 1, 1995
Croatia	November 30, 2000	Peru	January 1, 1995
Cuba	April 20, 1995	Philippines	January 1, 1995
Cyprus	July 30, 1995	Poland	July 1, 1995
Czech Republic	January 1, 1995	Portugal	January 1, 1995
Denmark	January 1, 1995	Qatar	January 13, 1996
Djibouti	May 31, 1995	Romania	January 1, 1995
Dominica	January 1, 1995	Russia	August 22, 2012
Dominican Republic	March 9, 1995	Rwanda	May 22, 1996
Ecuador	January 21, 1996	Saint Kitts and Nevis	February 21, 1996
Egypt	June 30, 1995	Saint Lucia	January 1, 1995

El Salvador	May 7, 1995	Saint Vincent and the Grenadines	January 1, 1995
Estonia	November 13, 1999	Samoa	May 10, 2012
Eswatini	January 1, 1995	Saudi Arabia	December 11, 2005
European Union	January 1, 1995	Senegal	January 1, 1995
Fiji	January 14, 1996	Seychelles	April 26, 2015
Finland	January 1, 1995	Sierra Leone	July 23, 1995
France	January 1, 1995	Singapore	January 1, 1995
Gabon	January 1, 1995	Slovak Republic	January 1, 1995
The Gambia	October 23, 1996	Slovenia	July 30, 1995
Georgia	June 14, 2000	Solomon Islands	July 26, 1996
Germany	January 1, 1995	South Africa	January 1, 1995
Ghana	January 1, 1995	Spain	January 1, 1995
Greece	January 1, 1995	Sri Lanka	January 1, 1995
Grenada	February 22, 1996	Suriname	January 1, 1995
Guatemala	July 21, 1995	Sweden	January 1, 1995
Guinea	October 25, 1995	Switzerland	July 1, 1995
Guinea Bissau	May 31, 1995	Taiwan (referred to in the WTO as Chinese Taipei)	January 1, 2002
Guyana	January 1, 1995	Tajikistan	March 2, 2013
Haiti	January 30, 1996	Tanzania	January 1, 1995
Honduras	January 1, 1995	Thailand	January 1, 1995
Hong Kong, China	January 1, 1995	Togo	May 31, 1995
Hungary	January 1, 1995	Tonga	July 27, 2007
Iceland	January 1, 1995	Trinidad and Tobago	March 1, 1995
India	January 1, 1995	Tunisia	March 29, 1995

Indonesia	January 1, 1995	Turkey	March 26, 1995
Ireland	January 1, 1995	Uganda	January 1, 1995
Israel	April 21, 1995	Ukraine	May 16, 2008
Italy	January 1, 1995	United Arab Emirates	April 10, 1996
Jamaica	March 9, 1995	United Kingdom	January 1, 1995
Japan	January 1, 1995	United States of America	January 1, 1995
Jordan	April 11, 2000	Uruguay	January 1, 1995
Kazakhstan	November 30, 2015	Vanuatu	August 24, 2012
Kenya	January 1, 1995	Venezuela	January 1, 1995
Republic of Korea	January 1, 1995	Vietnam	January 11, 2007
Kuwait	January 1, 1995	Yemen	June 26, 2014
Kyrgyz Republic	December 20, 1998	Zambia	January 1, 1995
Laos	February 2, 2013	Zimbabwe	March 5, 1995

**Consolidated 2018-2019 Budget for the WTO Secretariat  
and the Appellate Body and its Secretariat**  
(in thousand Swiss francs)

Part	Section	Line	2017	2018	2019	Inc / Decr 2018	Inc / Decr 2019
A	Staffing Resources						
	1. Staff Expenditure	i) Staff Remuneration	90,480	88,530	88,530	-1,950	0
		ii) Staff Pension & Post-Employment Benefits	22,110	22,110	22,110	0	0
		iii) Staff Health & Invalidity Insurance	5,944	5,944	5,944	0	0
		iv) Staff Family & International Benefits	11,071	13,021	13,021	1,950	0
		v) Other Staff Expenditure	1,810	1,810	1,810	0	0
	<b>1. Staff Expenditure Total</b>		<b>131,415</b>	<b>131,415</b>	<b>131,415</b>	<b>0</b>	<b>0</b>
	2. Temporary Assistance	i) Short-Term Staff	9,013	8,913	8,913	-100	0
		ii) Consulting	6,770	6,761	6,761	-9	0
		iii) Panelists & Appellate Body Members Fees	1,506	1,606	1,606	100	0
	<b>2. Temporary Assistance Total</b>		<b>17,289</b>	<b>17,281</b>	<b>17,281</b>	<b>-9</b>	<b>0</b>
B	Other Resources						
	3. General Services	i) Telecommunication & Post	831	831	831	0	0
		ii) Contractual Services & Maintenance	10,681	10,881	11,123	200	242
		iii) Energy & Supplies	2,251	2,251	2,251	0	0
		iv) Documentation & Publication	1,479	1,479	1,479	0	0
		v) Other/Miscellaneous	88	88	88	0	0
	<b>3. General Services Total</b>		<b>15,330</b>	<b>15,530</b>	<b>15,773</b>	<b>200</b>	<b>242</b>
	4. Travel & Hospitality	i) Travel	7,135	7,144	7,234	9	90
		ii) Hospitality	216	216	216	0	0
	<b>4. Travel &amp; Hospitality Total</b>		<b>7,351</b>	<b>7,360</b>	<b>7,450</b>	<b>9</b>	<b>90</b>
	5. Implementing Partners	i) Implementing Partners	213	213	213	0	0
	<b>5. Implementing Partners Total</b>		<b>213</b>	<b>213</b>	<b>213</b>	<b>0</b>	<b>0</b>
	6. Capital Expenditure	i) Procurement of Fixed Assets	1,430	1,762	1,430	332	-332
		ii) Rental & Leasing of Equipment	920	920	920	0	0
	<b>6. Capital Expenditure Total</b>		<b>2,350</b>	<b>2,682</b>	<b>2,350</b>	<b>332</b>	<b>-332</b>
	7. Financial Expenditure	i) Bank & Interest Charges	80	80	80	0	0
		ii) Building Loan Reimbursement	1,200	1,200	1,200	0	0
	<b>7. Financial Expenditure Total</b>		<b>1,280</b>	<b>1,280</b>	<b>1,280</b>	<b>0</b>	<b>0</b>
C	Operating Funds and ITC						
	8. Contributions to ITC & Special Reserves	i) Contribution to ITC	18,775	18,243	18,243	-532	0
		ii) Appellate Body Operating Fund	2,000	2,000	2,000	0	0
		iii) Ministerial Conference Operating Fund	600	600	600	0	0
		iv) Building Renovation Fund	600	600	600	0	0
	<b>8. Contributions to ITC &amp; Special Reserves Total</b>		<b>21,975</b>	<b>21,443</b>	<b>21,443</b>	<b>-532</b>	<b>0</b>
<b>Grand Total</b>			<b>197,204</b>	<b>197,204</b>	<b>197,204</b>	<b>0</b>	<b>0</b>

## 2018-2019 Budget for the WTO Secretariat

(in thousand Swiss francs)

Part	Section	Line	2017	2018	2019	Inc/ Deer 2018	Inc/ Deer 2019
A Staffing Resources							
	1. Staff Expenditure	i) Staff Remuneration	87,154	85,269	85,269	-1,885	0
		ii) Staff Pension & Post-Employment Benefits	21,380	21,380	21,380	0	0
		iii) Staff Health & Invalidation Insurance	5,765	5,765	5,765	0	0
		iv) Staff Family & International Benefits	10,776	12,661	12,661	1,885	0
		v) Other Staff Expenditure	1,767	1,767	1,767	0	0
	<b>1. Staff Expenditure Total</b>		<b>126,842</b>	<b>126,842</b>	<b>126,842</b>	<b>0</b>	<b>0</b>
	2. Temporary Assistance	i) Short-Term Staff	8,958	8,858	8,858	-100	0
		ii) Consulting	6,745	6,736	6,736	-9	0
		iii) Panellists	715	815	815	100	0
	<b>2. Temporary Assistance Total</b>		<b>16,418</b>	<b>16,409</b>	<b>16,409</b>	<b>-9</b>	<b>0</b>
B Other Resources							
	3. General Services	i) Telecommunication & Post	822	822	822	0	0
		ii) Contractual Services & Maintenance	10,663	10,863	11,105	200	242
		iii) Energy & Supplies	2,231	2,231	2,231	0	0
		iv) Documentation & Publication	1,469	1,469	1,469	0	0
		v) Other / Miscellaneous	87	87	87	0	0
	<b>3. General Services Total</b>		<b>15,271</b>	<b>15,471</b>	<b>15,713</b>	<b>200</b>	<b>242</b>
	4. Travel & Hospitality	i) Travel	7,085	7,094	7,184	9	90
		ii) Hospitality	215	215	215	0	0
	<b>4. Travel &amp; Hospitality Total</b>		<b>7,300</b>	<b>7,308</b>	<b>7,398</b>	<b>9</b>	<b>90</b>
	5. Implementing Partners	i) Implementing Partners	213	213	213	0	0
	<b>5. Implementing Partners Total</b>		<b>213</b>	<b>213</b>	<b>213</b>	<b>0</b>	<b>0</b>
	6. Capital Expenditure	i) Procurement of Fixed Assets	1,405	1,737	1,405	332	-332
		ii) Rental & Leasing of Equipment	920	920	920	0	0
	<b>6. Capital Expenditure Total</b>		<b>2,325</b>	<b>2,657</b>	<b>2,325</b>	<b>332</b>	<b>-332</b>
	7. Financial Expenditure	i) Bank & Interest Charges	80	80	80	0	0
		ii) Building Loan Reimbursement	1,200	1,200	1,200	0	0
	<b>7. Financial Expenditure Total</b>		<b>1,280</b>	<b>1,280</b>	<b>1,280</b>	<b>0</b>	<b>0</b>
C Operating Funds and ITC							
	8. Contributions to ITC & Special Reserves	i) Contribution to ITC	18,775	18,243	18,243	-532	0
		iii) Ministerial Conference Operating Fund	600	600	600	0	0
		iv) Building Renovation Fund	600	600	600	0	0
	<b>8. Contributions to ITC &amp; Special Reserves Total</b>		<b>19,975</b>	<b>19,443</b>	<b>19,443</b>	<b>-532</b>	<b>0</b>
<b>Grand Total</b>			<b>189,624</b>	<b>189,624</b>	<b>189,624</b>	<b>0</b>	<b>0</b>

**2018-2019 Budget for the Appellate Body and Its Secretariat**  
(in thousand Swiss francs)

Part	Section	Line	2017	2018	2019	Inc / Decr 2018	Inc / Decr 2019
A Staffing Resources							
	1. Staff Expenditure	i) Staff Remuneration	3,326	3,261	3,261	-65	0
		ii) Staff Pension & Post-Employment Benefits	730	730	730	0	0
		iii) Staff Health & Invalidity Insurance	179	179	179	0	0
		iv) Staff Family & International Benefits	296	361	361	65	0
		v) Other Staff Expenditure	43	43	43	0	0
	<b>1. Staff Expenditure Total</b>		<b>4,573</b>	<b>4,573</b>	<b>4,573</b>	<b>0</b>	<b>0</b>
	2. Temporary Assistance	i) Short-Term Staff	55	55	55	0	0
		ii) Consulting	25	25	25	0	0
		iii) Appellate Body Members Fees	791	791	791	0	0
	<b>2. Temporary Assistance Total</b>		<b>871</b>	<b>871</b>	<b>871</b>	<b>0</b>	<b>0</b>
B Other Resources							
	3. General Services	i) Telecommunication & Post	10	10	10	0	0
		ii) Contractual Services & Maintenance	18	18	18	0	0
		iii) Energy & Supplies	20	20	20	0	0
		iv) Documentation & Publication	10	10	10	0	0
		v) Other / Miscellaneous	2	2	2	0	0
	<b>3. General Services Total</b>		<b>59</b>	<b>59</b>	<b>59</b>	<b>0</b>	<b>0</b>
	4. Travel & Hospitality	i) Travel	50	50	50	0	0
		ii) Hospitality	1	1	1	0	0
	<b>4. Travel &amp; Hospitality Total</b>		<b>51</b>	<b>51</b>	<b>51</b>	<b>0</b>	<b>0</b>
	6. Capital Expenditure	i) Procurement of Fixed Assets	25	25	25	0	0
		ii) Rental & Leasing of Equipment	0	0	0	0	0
	<b>6. Capital Expenditure Total</b>		<b>25</b>	<b>25</b>	<b>25</b>	<b>0</b>	<b>0</b>
C Operating Funds and ITC							
	8. Contributions to ITC & Special Reserves	ii) Appellate Body Operating Fund	2,000	2,000	2,000	0	0
	<b>8. Contributions to ITC &amp; Special Reserves Total</b>		<b>2,000</b>	<b>2,000</b>	<b>2,000</b>	<b>0</b>	<b>0</b>
<b>Grand Total</b>			<b>7,580</b>	<b>7,580</b>	<b>7,580</b>	<b>0</b>	<b>0</b>

## Scale of Contributions for 2018

(in Swiss francs and with a minimum contribution of 0.015 percent)

Member	2017 Contribution CHF	2017 Contribution %	2018 Contribution CHF	2018 Contribution %
Afghanistan	48,875	0.0250%	48,875	0.025%
Albania	44,965	0.0230%	43,010	0.022%
Angola	496,570	0.2540%	475,065	0.243%
Antigua and Barbuda	29,325	0.0150%	29,325	0.015%
Argentina	780,045	0.3990%	760,495	0.389%
Armenia	35,190	0.0180%	37,145	0.019%
Australia	2,754,595	1.4090%	2,680,305	1.371%
Austria	1,978,460	1.0120%	1,931,540	0.988%
Bahrain, Kingdom of	168,130	0.0860%	164,220	0.084%
Bangladesh	297,160	0.1520%	316,710	0.162%
Barbados	29,325	0.0150%	29,325	0.015%
Belgium	3,800,520	1.9440%	3,692,995	1.889%
Belize	29,325	0.0150%	29,325	0.015%
Benin	29,325	0.0150%	29,325	0.015%
Bolivia, Plurinational State of	93,840	0.0480%	99,705	0.051%
Botswana	72,335	0.0370%	76,245	0.039%
Brazil	2,586,465	1.3230%	2,519,995	1.289%
Brunei Darussalam	80,155	0.0410%	78,200	0.040%
Bulgaria	316,710	0.1620%	308,890	0.158%
Burkina Faso	31,280	0.0160%	29,325	0.015%
Burundi	29,325	0.0150%	29,325	0.015%
Cabo Verde	29,325	0.0150%	29,325	0.015%
Cambodia	86,020	0.0440%	82,110	0.042%
Cameroon	64,515	0.0330%	72,335	0.037%
Canada	5,022,395	2.5690%	4,971,565	2.543%
Central African Republic	29,325	0.0150%	29,325	0.015%
Chad	44,965	0.0230%	43,010	0.022%
Chile	787,865	0.4030%	760,495	0.389%
China	18,756,270	9.5940%	19,237,200	9.840%
Colombia	576,725	0.2950%	580,635	0.297%
Congo	91,885	0.0470%	84,065	0.043%
Costa Rica	142,715	0.0730%	144,670	0.074%
Cote d'Ivoire	105,570	0.0540%	105,570	0.054%
Croatia	224,825	0.1150%	220,915	0.113%
Cuba	146,625	0.0750%	142,715	0.073%
Cyprus	119,255	0.0610%	121,210	0.062%
Czech Republic	1,397,825	0.7150%	1,391,960	0.712%
Democratic Republic of the Congo	103,615	0.0530%	103,615	0.053%
Denmark	1,515,125	0.7750%	1,503,395	0.769%
Djibouti	29,325	0.0150%	29,325	0.015%
Dominica	29,325	0.0150%	29,325	0.015%
Dominican Republic	154,445	0.0790%	158,355	0.081%
Ecuador	240,465	0.1230%	238,510	0.122%
Egypt	510,255	0.2610%	496,570	0.254%
El Salvador	74,290	0.0380%	76,245	0.039%
Estonia	179,860	0.0920%	175,950	0.090%

Member	2017 Contribution CHF	2017 Contribution %	2018 Contribution CHF	2018 Contribution %
European Union <sup>1</sup>	0	0.0000%	0	0.000%
Fiji	29,325	0.0150%	29,325	0.015%
Finland	944,265	0.4830%	905,165	0.463%
France	7,470,055	3.8210%	7,427,045	3.799%
Gabon	68,425	0.0350%	66,470	0.034%
The Gambia	29,325	0.0150%	29,325	0.015%
Georgia	64,515	0.0330%	68,425	0.035%
Germany	14,294,960	7.3120%	13,939,150	7.130%
Ghana	152,490	0.0780%	160,310	0.082%
Greece	672,520	0.3440%	637,330	0.326%
Grenada	29,325	0.0150%	29,325	0.015%
Guatemala	140,760	0.0720%	142,715	0.073%
Guinea	29,325	0.0150%	29,325	0.015%
Guinea-Bissau	29,325	0.0150%	29,325	0.015%
Guyana	29,325	0.0150%	29,325	0.015%
Haiti	29,325	0.0150%	29,325	0.015%
Honduras	76,245	0.0390%	74,290	0.038%
Hong Kong, China	5,157,290	2.6380%	5,233,535	2.677%
Hungary	1,030,285	0.5270%	1,000,960	0.512%
Iceland	60,605	0.0310%	62,560	0.032%
India	4,463,265	2.2830%	4,480,860	2.292%
Indonesia	1,800,555	0.9210%	1,769,275	0.905%
Ireland	1,955,000	1.0000%	2,121,175	1.085%
Israel	832,830	0.4260%	834,785	0.427%
Italy	5,436,855	2.7810%	5,233,535	2.677%
Jamaica	52,785	0.0270%	52,785	0.027%
Japan	8,345,895	4.2690%	8,091,745	4.139%
Jordan	164,220	0.0840%	166,175	0.085%
Kazakhstan	639,285	0.3270%	615,825	0.315%
Kenya	121,210	0.0620%	119,255	0.061%
Korea, Republic of	5,947,110	3.0420%	5,913,875	3.025%
Kuwait, the State of	694,025	0.3550%	682,295	0.349%
Kyrgyz Republic	39,100	0.0200%	41,055	0.021%
Lao People's Democratic Republic	29,325	0.0150%	31,280	0.016%
Latvia	156,400	0.0800%	158,355	0.081%
Lesotho	29,325	0.0150%	29,325	0.015%
Liberia	29,325	0.0150%	29,325	0.015%
Liechtenstein	62,560	0.0320%	64,515	0.033%
Lithuania	310,845	0.1590%	316,710	0.162%
Luxembourg	848,470	0.4340%	889,525	0.455%
Macao, China	303,025	0.1550%	248,285	0.127%
Madagascar	29,325	0.0150%	29,325	0.015%
Malawi	29,325	0.0150%	29,325	0.015%
Malaysia	2,084,030	1.0660%	2,015,605	1.031%
Maldives	29,325	0.0150%	29,325	0.015%
Mali	29,325	0.0150%	31,280	0.016%
Malta	125,120	0.0640%	136,850	0.070%
Mauritania	29,325	0.0150%	29,325	0.015%

<sup>1</sup> The European Union is not subject to contributions. However, its 28 Members are assessed individually. The total share of Members of the European Union represents 33.6 percent of the total assessed contributions for 2018.



Member	2017 Contribution CHF	2017 Contribution %	2018 Contribution CHF	2018 Contribution %
Mauritius	58,650	0.0300%	58,650	0.030%
Mexico	3,503,360	1.7920%	3,612,840	1.848%
Moldova, Republic of	37,145	0.0190%	37,145	0.019%
Mongolia	54,740	0.0280%	56,695	0.029%
Montenegro	29,325	0.0150%	29,325	0.015%
Morocco	351,900	0.1800%	347,990	0.178%
Mozambique	62,560	0.0320%	68,425	0.035%
Myanmar	91,885	0.0470%	103,615	0.053%
Namibia	56,695	0.0290%	56,695	0.029%
Nepal	41,055	0.0210%	41,055	0.021%
Netherlands	5,821,990	2.9780%	5,778,980	2.956%
New Zealand	451,605	0.2310%	457,470	0.234%
Nicaragua	48,875	0.0250%	52,785	0.027%
Niger	29,325	0.0150%	29,325	0.015%
Nigeria	785,910	0.4020%	742,900	0.380%
Norway	1,530,765	0.7830%	1,477,980	0.756%
Oman	391,000	0.2000%	392,955	0.201%
Pakistan	340,170	0.1740%	342,125	0.175%
Panama	254,150	0.1300%	263,925	0.135%
Papua New Guinea	64,515	0.0330%	66,470	0.034%
Paraguay	113,390	0.0580%	113,390	0.058%
Peru	416,415	0.2130%	418,370	0.214%
Philippines	660,790	0.3380%	666,655	0.341%
Poland	2,107,490	1.0780%	2,107,490	1.078%
Portugal	793,730	0.4060%	778,090	0.398%
Qatar	791,775	0.4050%	811,325	0.415%
Romania	666,655	0.3410%	670,565	0.343%
Russian Federation	4,418,300	2.2600%	4,236,485	2.167%
Rwanda	29,325	0.0150%	29,325	0.015%
Saint Kitts and Nevis	29,325	0.0150%	29,325	0.015%
Saint Lucia	29,325	0.0150%	29,325	0.015%
Saint Vincent and the Grenadines	29,325	0.0150%	29,325	0.015%
Samoa	29,325	0.0150%	29,325	0.015%
Saudi Arabia, Kingdom of	2,490,670	1.2740%	2,455,480	1.256%
Senegal	43,010	0.0220%	46,920	0.024%
Seychelles	29,325	0.0150%	29,325	0.015%
Sierra Leone	29,325	0.0150%	29,325	0.015%
Singapore	4,723,280	2.4160%	4,762,380	2.436%
Slovak Republic	764,405	0.3910%	764,405	0.391%
Slovenia	308,890	0.1580%	304,980	0.156%
Solomon Islands	29,325	0.0150%	29,325	0.015%
South Africa	1,051,790	0.5380%	1,024,420	0.524%
Spain	3,800,520	1.9440%	3,696,905	1.891%
Sri Lanka	158,355	0.0810%	168,130	0.086%
Suriname	29,325	0.0150%	29,325	0.015%
Swaziland	29,325	0.0150%	29,325	0.015%
Sweden	2,142,680	1.0960%	2,105,535	1.077%
Switzerland	3,554,190	1.8180%	3,712,545	1.899%
Chinese Taipei	3,000,925	1.5350%	3,378,240	1.728%
Tajikistan	29,325	0.0150%	29,325	0.015%
Tanzania	91,885	0.0470%	95,795	0.049%

Member	2017 Contribution CHF	2017 Contribution %	2018 Contribution CHF	2018 Contribution %
Thailand	2,367,505	1.2110%	2,390,965	1.223%
The former Yugoslav Republic of Macedonia	52,785	0.0270%	52,785	0.027%
Togo	29,325	0.0150%	29,325	0.015%
Tonga	29,325	0.0150%	29,325	0.015%
Trinidad and Tobago	115,345	0.0590%	125,120	0.064%
Tunisia	217,005	0.1110%	207,230	0.106%
Turkey	1,998,010	1.0220%	2,017,560	1.032%
Uganda	54,740	0.0280%	54,740	0.028%
Ukraine	746,810	0.3820%	690,115	0.353%
United Arab Emirates	2,774,145	1.4190%	2,936,410	1.502%
United Kingdom	7,366,440	3.7680%	7,407,495	3.789%
United States of America	21,968,335	11.2370%	22,251,810	11.382%
Uruguay	119,255	0.0610%	121,210	0.062%
Vanuatu	29,325	0.0150%	29,325	0.015%
Venezuela, Bolivarian Republic of	705,755	0.3610%	664,700	0.340%
Viet Nam	1,114,350	0.5700%	1,247,290	0.638%
Yemen	99,705	0.0510%	89,930	0.046%
Zambia	86,020	0.0440%	87,975	0.045%
Zimbabwe	48,875	0.0250%	56,695	0.029%
<b>TOTAL</b>	<b>195,500,000</b>	<b>100.00%</b>	<b>195,500,000</b>	<b>100.00%</b>

**WTO Staff Members by Nationality**  
(as per information available on January 1, 2019)

<b>Country</b>	<b>Senior Management<sup>1</sup></b>	<b>Professional</b>	<b>Support</b>	<b>Total</b>
American	1	29	7	37
Argentine		3	5	8
Australian		8	1	9
Austrian		4	0	4
Bangladeshi		1	0	1
Barbadian		1	0	1
Belgian		1	3	4
Beninese		2	0	2
Bolivian		2	0	2
Brazilian	1	10	5	16
British		20	34	54
Bulgarian		5	0	5
Burkina Faso		1	0	1
Burundian		1	0	1
Cameroonian		1	0	1
Canadian		14	0	14
Chadian		1	0	1
Chilean		1	1	2
Chinese	1	15	1	17
Colombian		5	2	7
Congolese (DRC)		1	2	3
Costa Rican		2	0	2
Croatian		1	0	1
Cuban		0	1	1
Czech		1	0	1
Danish		2	1	3
Dutch		5	1	6
Ecuadorian		3	0	3
Egyptian		4	0	4
Estonia		1	0	1
Finnish		3	2	5
French		60	114	174
Gambian		1	1	2
German	1	19	2	22
Ghanaian		2	0	2
Greek		3	2	5
Guatemalan		1	1	2
Guinean		2	0	2
Honduran		0	2	2

<sup>1</sup> Comprises the Director-General and the Deputies Director-General.

Hungarian		2	1	3
Indian		13	1	14
Irish		5	8	13
Italian		20	4	24
Jamaican		2	0	2
Japanese		5	0	5
Jordanian		1	0	1
Kenyan		1	0	1
Korean (ROK)		4	0	4
Lithuanian		1	0	1
Malawian		1	0	1
Malaysian		2	0	2
Mauritian		1	1	2
Mexican		8	1	9
Moldovan		1	0	1
Moroccan		3	1	4
Motswana		1	0	1
Nepalese		2	0	2
New Zealand		1	0	1
Nigerian	1	0	0	1
Norwegian		1	1	2
Pakistani		4	1	5
Paraguayan		0	1	1
Peruvian		5	5	10
Philippine		11	4	15
Polish		3	1	4
Portuguese		1	3	4
Romanian		1	1	2
Russian		4	0	4
Rwandan		1	0	1
Senegalese		1	1	2
Seychelles		1	0	1
Sierra Leonean		1	0	1
South African		1	0	1
Spanish		27	17	44
Sri Lankan		0	2	2
Swedish		3	0	3
Swiss		8	6	14
Tanzanian		1	1	2
Trinidad and Tobago		1	0	1
Tunisian		3	1	4
Turkish		4	0	4
Ugandan		2	0	2
Ukrainian		3	0	3
Uruguayan		2	1	3
Venezuelan		3	1	4

Vietnamese		1	0	1
Zambian		1	0	1
Zimbabwean		2	0	2
<b>Grand Total</b>	<b>5</b>	<b>406</b>	<b>252</b>	<b>663</b>

**WAIVERS CURRENTLY IN FORCE**  
(as of December 31, 2018)

WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2018 <sup>13</sup>
<b>Granted in 2018</b>				
Kimberly Process Certification Scheme for Rough Diamonds - Extension of Waiver <sup>14</sup>	WT/L/1039	26 July 2018	31 December 2024	-
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions <sup>15</sup>	WT/L/1048	12 December 2018	31 December 2019	-
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions <sup>16</sup>	WT/L/1049	12 December 2018	31 December 2019	-
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions <sup>17</sup>	WT/L/1050	12 December 2018	31 December 2019	-
Introduction of Harmonized System 2017 Changes into WTO Schedules of Tariff Concessions <sup>18</sup>	WT/L/1051	12 December 2018	31 December 2019	-

<sup>13</sup> Applicable if so stipulated in the corresponding waiver Decision.

<sup>14</sup> Annex: Australia; Botswana; Brazil; Cambodia; Canada; European Union; Guyana; India; Japan; Kazakhstan; Republic of Korea; Malaysia; Mauritius; Montenegro; Namibia; Norway; Panama; Russian Federation; Sierra Leone; Singapore; South Africa; Sri Lanka; Switzerland; Thailand; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey; Ukraine; and the United States.

<sup>15</sup> The Member that has requested to be covered under this waiver is China.

<sup>16</sup> The Members that have requested to be covered under this waiver are Argentina, Brazil, China, Dominican Republic, European Union, Malaysia, the Philippines, and Thailand.

<sup>17</sup> The Members that have requested to be covered under this waiver are Argentina; Australia; Brazil; Canada; China; Colombia; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Hong Kong, China; India; Kazakhstan; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Norway; Philippines; Russian Federation; Singapore; Switzerland; Thailand; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and the United States.

<sup>18</sup> The Members that have requested to be covered under this waiver are Argentina; Brazil; Canada; China; Colombia; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Kazakhstan; Republic of Korea; Macao, China; Montenegro; New Zealand; Norway; Pakistan; Paraguay; Philippines; Russian Federation; Switzerland; Thailand; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; the United States; and Uruguay.

WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2018 <sup>19</sup>
<b>Previously granted – in force in 2018</b>				
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions <sup>20</sup>	WT/L/1 026	30 November 2017	31 December 2018	-
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions <sup>21</sup>	WT/L/1 027	30 November 2017	31 December 2018	-
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions <sup>22</sup>	WT/L/1 028	30 November 2017	31 December 2018	-
Introduction of Harmonized System 2017 Changes into WTO Schedules of Tariff Concessions <sup>23</sup>	WT/L/1 029	30 November 2017	31 December 2018	-
United States – Former Trust Territory of the Pacific Islands	WT/L/1 000	7 December 2016	31 December 2026	WT/L/ 1046
United States – Trade Preferences granted to Nepal	WT/L/1 001	7 December 2016	31 December 2025	WT/L/ 1047
European Union – Application of Autonomous Preferential Treatment to the Western Balkans	WT/L/1 002	7 December 2016	31 December 2021	WT/L/ 1044
Cuba – Article XV:6 – Extension of waiver	WT/L/1 003	7 December 2016	31 December 2021	WT/L/ 1043

<sup>19</sup> Applicable if so stipulated in the corresponding waiver Decision.

<sup>20</sup> The Members that have requested to be covered under this waiver are Argentina and China.

<sup>21</sup> The Members that have requested to be covered under this waiver are Argentina, Brazil, China, Dominican Republic, European Union, Malaysia, the Philippines, Switzerland, and Thailand.

<sup>22</sup> The Members that have requested to be covered under this waiver are Argentina; Australia; Brazil; Canada; China; Colombia; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Kazakhstan; Korea, Republic of; Macao, China; Malaysia; Mexico; New Zealand; Norway; Pakistan; the Philippines; Russian Federation; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and the United States.

<sup>23</sup> The Members which have requested to be covered under this waiver are Argentina; Brazil; Canada; China; Colombia; Costa Rica; Dominican Republic (WT/L/1029/Add.2); El Salvador; European Union; Guatemala; Honduras (WT/L/1029/Add.1); Hong Kong, China; India; Israel; Kazakhstan; Korea, Republic of; Macao, China; Montenegro; New Zealand; Norway; Pakistan; Paraguay; Russian Federation; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; the United States; and Uruguay.

WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2018 <sup>24</sup>
<b>Previously granted – in force in 2018</b>				
Implementation of Preferential Treatment in favour of Services and Service Suppliers of LDCs and Increasing LDC Participation in Services Trade <sup>25</sup>	WT/L/982 WT/MIN(15)/48	19 December 2015	31 December 2030 <sup>26</sup>	-
United States – African Growth and Opportunity Act	WT/L/970	30 November 2015	30 September 2025	WT/L/1045 , WT/L/1045/Co rr.1
Least-Developed Country Members – Obligations under Article 70.8 and Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products	WT/L/971	30 November 2015	1 January 2033	-
Canada - CARIBCAN	WT/L/958	28 July 2015	31 December 2023	WT/L/1036
United States – Caribbean Basin Economic Recovery Act	WT/L/950	5 May 2015	31 December 2019	WT/L/1038 , WT/L/1038/Co rr.1
Operationalization of the Waiver concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries <sup>27</sup>	WT/MIN(13)/43 WT/L/918	7 December 2013	-	-
Kimberly Process Certification Scheme for Rough Diamonds - Extension of Waiver <sup>28</sup>	WT/L/876	11 December 2012	31 December 2018	-

<sup>24</sup> Applicable if so stipulated in the corresponding waiver Decision.

<sup>25</sup> This Ministerial Decision was adopted in furtherance of the waiver on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries adopted in 2011 (WT/L/847) and of the subsequent Decision on the Operationalization of the Waiver concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries adopted in 2013 (WT/MIN(13)/43 - WT/L/918). See also next page, below.

<sup>26</sup> At the Nairobi Ministerial Conference, Ministers decided to extend the 2011 waiver on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries (WT/L/847). See also next page, below.

<sup>27</sup> This Ministerial Decision was adopted in furtherance of the waiver on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries adopted in 2011 (WT/L/847). It does not represent a new waiver. See also next page and the decision in WT/L/847, below.

<sup>28</sup> Annex: Australia, Botswana, Brazil, Canada, Croatia, European Union, India, Israel, Japan, Korea, Mexico, New Zealand, Norway, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Turkey, the United States, and Bolivarian Republic of Venezuela.



WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2018 <sup>29</sup>
<b>Previously granted – in force in 2018</b>				
Preferential Treatment to Services and Service Suppliers of Least- developed countries <sup>30</sup>	WT/L/847	17 December 2011	15 years from the date of its adoption <sup>31</sup>	-
Preferential Tariff Treatment for Least-Developed Countries – Decision on Extension of waiver	WT/L/759	27 May 2009	30 June 2019	-
Implementation of Para. 6 of the Doha Declaration on the TRIPS Agreement and Public Health <sup>32</sup>	WT/L/540 and WT/L/540/Corr.1	30 August 2003	See WT/L/540 and WT/L/540/Corr.1	-

<sup>29</sup> Applicable if so stipulated in the corresponding waiver Decision.

<sup>30</sup> Two decisions were subsequently adopted by the Ministerial Conference in furtherance of this waiver: in 2013 (WT/MIN(13)/43 – WT/L/918) and in 2015 (WT/MIN(15)/48 – WT/L/982). See also previous page and the decision in WT/MIN(13)/43 – WT/L/918, above.

<sup>31</sup> At the Nairobi Ministerial Conference, Ministers decided to extend the waiver until 31 December 2030 (WT/MIN(15)/48 – WT/L/982) - see also previous page, above.

<sup>32</sup> Pursuant to the General Council Decision of 30 August 2003 (WT/L/540 and Corr.1), a Protocol Amending the TRIPS Agreement was adopted by the General Council on 6 December 2005 (WT/L/641) and submitted to Members for acceptance. In accordance with Article X:3 of the WTO Agreement, the Protocol entered into force on

<sup>33</sup> January 2017. Since then, the amended TRIPS Agreement applies to those Members who have accepted it. For each other Member, the Protocol will take effect upon acceptance by it. In the meantime, the 2003 Decision continues to apply to those Members. For the purposes of the 2003 Decision, the Annual Review of the Special Compulsory Licensing System is deemed to fulfil the review requirements of Article IX:4 of the WTO Agreement.

**WT/DSB/44/Rev.44**

4 September 2018

**INDICATIVE LIST OF GOVERNMENTAL AND  
NON-GOVERNMENTAL PANELISTS**

*Revision*

1. To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of governmental and non-governmental individuals.
2. The attached is a revised consolidated list of governmental and non-governmental panelists.<sup>1</sup> The list is based on the previous indicative list issued on 23 April 2018 (WT/DSB/44/Rev.43). It includes additional names approved by the DSB at its meetings on 22 June 2018 and 20 July 2018.<sup>2</sup> Any future modifications or additions to this list submitted by Members will be circulated in periodic revisions of this list.
3. For practical purposes, the proposals for the administration of the indicative list approved by the DSB on 31 May 1995 are reproduced as an Annex to this document.

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<sup>1</sup> Curricula Vitae containing more detailed information are available to WTO Members upon request from the Secretariat (Council & TNC Division).

<sup>2</sup> See documents WT/DSB/W/623 and WT/DSB/W/625.

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ARGENTINA</b>	BARDONESCHI, Mr. Rodrigo C.	Trade in Goods and Services; TRIPS
	BÉRAUD, Mr. Alan Claudio	Trade in Goods
	BERTONI, Mr. Ramiro	Trade in Goods
	CHIARADIA, Mr. Alfredo Vicente	Trade in Goods; TRIPS
	CIMA, Mr. Marcelo	Trade in Goods and Services
	CURI, Mr. Alfredo Esteban	Trade in Goods
	DUMONT, Mr. Alberto Juan	Trade in Goods
	LAVOPA, Mr. Federico	Trade in Goods and Services
	LUNAZZI, Mr. Gustavo Nerio	Trade in Goods
	MAKUC, Mr. Adrián Jorge	Trade in Goods
	MALVAREZ, Mr. Martín	Trade in Goods
	MÉNDEZ, Mr. Gustavo Héctor	Trade in Goods and Services
	MONNER SANS, Mr. Alejo	Trade in Goods
	NEGUELOAETCHEVERRY, Mr. Pedro	Trade in Goods
	NISCOVOLOS, Mr. Luis Pablo	Trade in Goods and Services
	RAITERI, Ms. María Valeria	Trade in Goods
	SERRA, Mr. Adrián	Trade in Goods and Services
	TABOADA, Mr. Gabriel Gaspar	Trade in Goods
	TEMPONE, Mr. Eduardo	Trade in Goods; TRIPS
	VICIEN-MILBURN, Ms. Rosa María	Trade in Goods and Services; TRIPS
<b>AUSTRALIA</b>	BENNETT, Ms. Annabelle	Trade in Goods and Services
	CHURCHE, Mr. Milton	Trade in Goods
	FARBENBLOOM, Mr. Simon	Trade in Goods and Services
	GALLAGHER, Mr. Peter	Trade in Goods; TRIPS
	GOSPER, Mr. Bruce	Trade in Goods
	HOLMES, Ms. Patricia Ann	Trade in Goods
	JENNINGS, Mr. Mark	Trade in Goods; TRIPS
	MITCHELL, Mr. Andrew	Trade in Goods and Services; TRIPS
	MORETTA, Mr. Remo	Trade in Goods and Services
	MULGREW, Mr. Michael	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>AUSTRALIA (cont'd)</b>	MYLER, Mr. Paul	Trade in Goods and Services
	O'CONNOR, Mr. Paul Richard	Trade in Goods
	RAPER, Ms. Cathy	Trade in Goods and Services
	SIN FAR LEE, Ms. Stephanie	Trade in Goods
	STOLER, Mr. Andrew	Trade in Goods and Services
	VOON, Ms. Tania Su Lien	Trade in Goods and Services; TRIPS
	WITBREUK, Ms. Trudy	Trade in Goods and Services
	YOUNG, Ms. Elizabeth	Trade in Goods
<b>BOLIVARIAN REPUBLIC OF VENEZUELA</b>		
	ESCOBAR, Mr. José Benjamín	Trade in Services
	MARQUEZ, Mr. Guillermo	Trade in Services
	ROJAS PENSO, Mr. Juan Francisco	Trade in Goods and Services
<b>BOLIVIA, PLURINATIONAL STATE OF</b>		
	ZELADA CASTEDO, Mr. Alberto	Trade in Goods
<b>BRAZIL</b>		
	AMARAL DE ANDRADE JUNQUEIRA, Ms. Carla	Trade in Goods
	BARRAL, Mr. Welber Oliveira	Trade in Goods
	BASSO, Ms. Maristela	Trade in Goods; TRIPS
	BENTES, Mr. Pablo M.	Trade in Goods and Services; TRIPS
	BERENHOLC, Mr. Mauro	Trade in Goods
	CAETANO DE MARINIS, Ms. Ana Teresa	Trade in Goods
	CASTAÑON PENHA VALLE, Ms. Marília	Trade in Goods
	CELLI JUNIOR, Mr. Umberto	Trade in Goods and Services
	DE CAMARGO VIDIGAL NETO, Mr. Geraldo	Trade in Goods
	DO AMARAL JÚNIOR, Mr. Alberto	Trade in Goods and Services; TRIPS
	KANAS GRITZ, Ms. Vera	Trade in Goods
	KANITZ, Mr. Roberto H.	Trade in Goods
	KRAMER, Ms. Cynthia	Trade in Goods; TRIPS
	MANZANO SAYEG, Ms. Fernanda	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>BRAZIL (cont'd)</b>	MEDRADO, Mr. René Guilherme S.	Trade in Goods
	NASSER, Mr. Rabih	Trade in Goods
	PUPO, Mr. Rodrigo Luís	Trade in Goods
	SALDANHA-URES, Ms. Carolina	Trade in Goods
	SETTI DIAZ, Mr. José	Trade in Goods
	THORSTENSEN, Ms. Vera Helena	Trade in Goods
<b>CAMEROON</b>	NGANGJOH HODU, Mr. Yenkong	Trade in Goods and Services; TRIPS
<b>CANADA</b>	BERNIER, Mr. Ivan	Trade in Goods and Services
	BRADFORD, Mr. Meriel V. M.	Trade in Goods and Services
	BROWN, Ms. Catherine Anne	Trade in Goods and Services; TRIPS
	CLARK, Mr. Peter James	Trade in Goods and Services
	CLOSE, Ms. Patricia Margaret	Trade in Goods
	DE MESTRAL, Mr. Armand	Trade in Goods
	EYTON, Mr. Anthony T.	Trade in Goods
	GHERSON, Mr. Randolph	Trade in Goods
	GOODWIN, Ms. Kirsten M.	Trade in Goods and Services; TRIPS
	HALLIDAY, Mr. Anthony L.	Trade in Goods and Services
	HERMAN, Mr. Lawrence L.	Trade in Goods
	HINES, Mr. Wilfred Roy	Trade in Goods
	MacMILLAN, Ms. Kathleen E.	Trade in Goods
	McRAE, Mr. Donald Malcolm	Trade in Goods
	OSTRY, Ms. Sylvia	Trade in Goods
	RITCHIE, Mr. Gordon	Trade in Goods
	THOMAS, Mr. Christopher	Trade in Goods and Services
	WINHAM, Mr. Gilbert R.	Trade in Goods
<b>CHILE</b>	BIGGS, Mr. Gonzalo	Trade in Goods
	ERNST, Mr. Felipe	Trade in Goods and Services
	ESCUDERO, Mr. Sergio	TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>CHILE (cont'd)</b>	ESPINOZA, Mr. Alvaro	Trade in Goods
	JANA, Mr. Álvaro	Trade in Goods
	MATUS, Mr. Mario	Trade in Goods
	MLADINIC, Mr. Carlos	Trade in Goods
	PEÑA, Ms. Gloria	Trade in Goods
	SAEZ, Mr. Sebastián	Trade in Goods and Services
	SATELER, Mr. Ricardo	TRIPS
	SOSA, Ms. Luz	Trade in Goods and Services
	TIRONI, Mr. Ernesto	Trade in Goods
<b>CHINA</b>		
	CHEN, Mr. Yusong	Trade in Goods and Services; TRIPS
	DONG, Mr. Shizhong	Trade in Goods and Services; TRIPS
	E, Mr. Defeng	Trade in Goods
	GONG, Mr. Baihua	Trade in Goods and Services; TRIPS
	HAN, Mr. Liyu	Trade in Goods; TRIPS
	HONG, Mr. Xiaodong	Trade in Services
	HUANG, Mr. Dongli	Trade in Goods; TRIPS
	LI, Mr. Enheng	Trade in Goods and Services
	LI, Ms. Yongjie	Trade in Goods and Services
	LI, Mr. Zhongzhou	Trade in Goods
	SHI, Ms. Xiaoli	Trade in Goods
	SUO, Mr. Bicheng	Trade in Goods
	YANG, Mr. Guohua	Trade in Goods; TRIPS
	ZHANG, Ms. Liping	Trade in Goods and Services
	ZHANG, Mr. Naigen	TRIPS
	ZHANG, Mr. Xiangchen	Trade in Goods and Services; TRIPS
	ZHANG, Mr. Yuqing	Trade in Goods and Services; TRIPS
	ZHU, Ms. Lanye	Trade in Services; TRIPS
<b>COLOMBIA</b>		
	IBARRA PARDO, Mr. Gabriel	Trade in Goods
	JARAMILLO, Mr. Felipe	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>COLOMBIA (cont'd)</b>	LOZANO FERRO, Ms. Olga Lucia	Trade in Goods; TRIPS
	OROZCO GOMEZ, Ms. Angela María	Trade in Goods
	OROZCO, Ms. Claudia	Trade in Goods
	PRIETO, Mr. Diego	Trade in Goods and Services
	ROJAS ARROYO, Mr. Santiago	Trade in Goods; TRIPS
	TANGARIFE, Mr. Marcel	Trade in Goods; TRIPS
<b>COTE D'IVOIRE</b>	GOSSET, Ms. Marie	Trade in Goods; TRIPS
<b>CUBA</b>	COBO ROURA, Mr. Narciso A.	Trade in Goods
	LABORA RODRÍGUEZ, Ms. Celia M.	Trade in Goods and Services
	VÁZQUEZ De ALVARÉ, Ms. Dánice	TRIPS
<b>DJIBOUTI</b>	PIQUEMAL, Mr. Alain	Trade in Goods and Services; TRIPS
<b>DOMINICAN REPUBLIC</b>	DE LOS SANTOS DE PIANTINI, Ms. Roxana	Trade in Goods; TRIPS
	NAUT, Ms. Katrina	Trade in Goods and Services; TRIPS
<b>ECUADOR</b>	ESPINOSA CAÑIZARES, Mr. Cristian	Trade in Goods and Services; TRIPS
	MONTAÑO HUERTA, Mr. César	Trade in Goods and Services; TRIPS
<b>EGYPT</b>	EL-SEGINY, Mr. Ibrahim	Trade in Goods
	FARAHAT, Mr. Magdi Ahmed	Trade in Goods
	FAWZY, Mr. Abdelrahman	Trade in Goods and Services
	HATEM, Mr. Samy Affify	Trade in Goods
	RIAD, Mr. Tarek Fouad	Trade in Goods and Services; TRIPS
	SHAHIN, Ms. Magda	Trade in Goods and Services; TRIPS
	SHARAF ELDIN, Mr. Ahmed	Trade in Goods; TRIPS
	ZHRAN, Mr. Mohamed Mounir	Trade in Goods and Services; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>EUROPEAN UNION</b>		
<b>AUSTRIA</b>	BENEDEK, Mr. Wolfgang	Trade in Goods
	REITERER, Mr. Michael G. K.	Trade in Goods and Services; TRIPS
	ZEHETNER, Mr. Franz	Trade in Goods
<b>BELGIUM</b>		
	DIDIER, Mr. Pierre	Trade in Goods
	PAUWELYN, Mr. Joost	Trade in Goods and Services; TRIPS
	VAN CALSTER, Mr. Geert	Trade in Goods
	VAN DER BORGHT, Mr. Kim	Trade in Goods
	VANDER SCHUEREN, Ms. Paulette	Trade in Goods and Services
	WOUTERS, Mr. Jan	Trade in Goods and Services
	ZONNEKEYN, Mr. Geert A.	Trade in Goods
<b>CZECH REPUBLIC</b>		
	PALEČKA, Mr. Peter	Trade in Goods and Services
<b>DENMARK</b>		
	NIELSEN, Ms. Laura	Trade in Goods and Services
	OLSEN, Ms. Birgitte Egelund	Trade in Goods
	SMIDT, Mr. Steffen	Trade in Goods and Services
	WEGENER, Mr. Christian	Trade in Goods and Services; TRIPS
<b>EUROPEAN UNION</b>		
	BRAKELAND, Mr. Jean-François	Trade in Goods and Services
	CARL, Mr. Mogens Peter	Trade in Goods and Services; TRIPS
	KUIJPER, Mr. Pieter Jan	Trade in Goods and Services; TRIPS
	WHITE, Mr. Eric	Trade in Goods and Services; TRIPS
<b>FINLAND</b>		
	HIMANEN, Mr. Vesa	Trade in Goods
	LUOTONEN, Mr. Yrjö Kim David	Trade in Goods
	PYYSALO, Mr. Tapio	Trade in Goods
<b>FRANCE</b>		
	ARMAIGNAC, Ms. Marie-Christine	Trade in Services; TRIPS
	BOISSON DE CHAZOURNES, Mrs. Laurence	Trade in Goods and Services
	JENNY, Mr. Frédéric Yves	Trade in Goods and Services; TRIPS



<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>FRANCE (cont'd)</b>	METZGER, Mr. Jean-Marie	Trade in Goods
	MONNIER, Mr. Pierre	Trade in Goods and Services; TRIPS
	RIEGERT, Mr. François	Trade in Goods
	RUIZ-FABRI, Ms. Hélène	Trade in Goods and Services
	STERN, Ms. Brigitte	Trade in Goods
<b>GERMANY</b>		
	DELBRÜCK, Mr. Kilian	Trade in Goods
	HERRMANN, Mr. Christoph Walter	Trade in Goods; TRIPS
	HILF, Mr. Meinhard	Trade in Goods and Services
	MENG, Mr. Werner	Trade in Goods, TRIPS
	PETERSMANN, Mr. Ernst-Ulrich	Trade in Goods and Services; TRIPS
	STEINBACH, Mr. Armin	Trade in Goods and Services
	TANGERMANN, Mr. Stefan	Trade in Goods
<b>GREECE</b>	STANGOS, Mr. Petros N.	Trade in Goods and Services; TRIPS
<b>HUNGARY</b>		
	HALGAND DANI, Ms. Virág	Trade in Goods and Services; TRIPS
	LAKATOS, Mr. Andrés	Trade in Goods and Services
<b>IRELAND</b>		
	MATTHEWS, Mr. Alan Henry	Trade in Goods
<b>ITALY</b>		
	GIARDINA, Mr. Andrea	Trade in Goods and Services
	MALAGUTI, Ms. Maria Chiara	Trade in Goods and Services; TRIPS
	MENSI, Mr. Maurizio	Trade in Goods
<b>LITHUANIA</b>		
	ALISAUSKAS, Mr. Raimondas	Trade in Goods and Services
<b>MALTA</b>		
	BONELLO, Mr. Michael C.	Trade in Services
<b>NETHERLANDS</b>		
	BRONCKERS, Mr. Marco	Trade in Goods and Services; TRIPS
	GENEE, Mr. Otto	Trade in Goods; TRIPS
	HOEKMAN, Mr. Bernard Marco	Trade in Goods and Services; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>POLAND</b>	PIETRAS, Mr. Jaroslaw	Trade in Services
<b>PORTUGAL</b>	CALHEIROS DA GAMA, Mr. José Sérgio	TRIPS
<b>ROMANIA</b>	BERINDE, Mr. Mihai	Trade in Goods
	CAMPEANU, Ms. Victoria	Trade in Goods
	FRATITA, Ms. Carmen Florina	Trade in Goods
<b>SPAIN</b>	LÓPEZ DE SILANES MARTÍNEZ, Mr. Juan Pablo	Trade in Goods and Services
	PÉREZ SANCHEZ, Mr. José Luis	Trade in Goods and Services; TRIPS
	RIGO, Mr. Andrés	Trade in Services
<b>SWEDEN</b>	AHNLID, Mr. Anders Gustav Ragnar	Trade in Goods and Services; TRIPS
	JOHANSSON, Ms. Lena	Trade in Goods and Services
	REITER, Mr. Joakim H.	Trade in Goods and Services
	STELLINGER, Ms. Anna	Trade in Goods and Services; TRIPS
	WALDER, Ms. Eva	Trade in Goods and Services
<b>UNITED KINGDOM</b>	BETHLEHEM, Mr. Daniel	Trade in Goods and Services; TRIPS
	JOHNSON, Mr. Michael David Clarke	Trade in Goods
	MUIR, Mr. Tom	Trade in Goods and Services; TRIPS
	PLENDER, Mr. Richard	Trade in Goods
	QURESHI, Mr. Asif Hasan	Trade in Goods
	ROBERTS, Mr. Christopher William	Trade in Goods and Services
	ROBERTS, Mr. David F.	Trade in Goods
	SAROOSHI, Mr. Dan	Trade in Services
	TOULMIN, Mr. John Kelvin	Trade in Services
<b>GHANA</b>	NIMAKO-BOATENG, Ms. Gertrude	Trade in Goods and Services
	OPOKU AWUKU, Mr. Emmanuel	Trade in Goods and Services; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>HONG KONG, CHINA</b>	CARTLAND, Mr. Michael David	Trade in Goods and Services
	CHEUNG, Mr. Peter Kam Fai	TRIPS
	LEUNG, Ms. Ada Ka Lai	TRIPS
	LITTLE, Mr. David	Trade in Goods and Services
	MILLER, Mr. Tony J.A.	Trade in Goods and Services
<b>ICELAND</b>	BJÖRGVINSSON, Mr. David Thór	Trade in Goods and Services
	JÓHANNSSON, Mr. Einar M.	Trade in Goods
	SANDHOLT, Mr. Brynjolfur	Trade in Goods
<b>INDIA</b>	AGARWAL, Mr. Vinod Kumar	Trade in Goods; TRIPS
	AGRAWAL, Mr. Rameshwar Pal	Trade in Goods and Services; TRIPS
	BHANSALI, Mr. Sharad	Trade in Goods
	BHATNAGAR, Mr. Mukesh	Trade in Goods
	BHATTACHARYA, Mr. G. C.	Trade in Goods
	CHANDRASEKHAR, Mr. Kesava Menon	Trade in Goods and Services; TRIPS
	CHAUDHURI, Mr. Sumanta	Trade in Goods and Services; TRIPS
	DAS, Mr. Abhijit	Trade in Goods
	DAS, Mr. Bhagirath Lal	Trade in Goods
	DASGUPTA, Mr. Jayant	Trade in Goods
	GOPALAN, Mr. Rajarangamani	Trade in Goods
	GOYAL, Mr. Arun	Trade in Services
	KAUSHIK, Mr. Atul	Trade in Goods; TRIPS
	KHER, Mr. Rajeev	Trade in Goods and Services; TRIPS
	KHULLAR, Mr. Rahul	Trade in Goods and Services; TRIPS
	KUMAR, Mr. Mohan	Trade in Goods and Services
	MOHANTY, Mr. Prasant Kumar	Trade in Goods
	MUKERJI, Mr. Asoke Kumar	Trade in Goods and Services; TRIPS
	NARAYANAN, Mr. Srinivasan	Trade in Goods; TRIPS
PARTHASARATHY, Mr. R.	Trade in Goods; TRIPS	
PRABHU, Mr. Pandurang Palimar	Trade in Goods; TRIPS	

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>INDIA (cont'd)</b>	PRASAD, Ms. Anjali	Trade in Goods and Services; TRIPS
	RAMAKRISHNAN, Mr. N.	Trade in Goods
	RAO, Mr. Pemmaraju Sreenivasa	Trade in Goods
	REGE, Mr. Narayan Vinod	Trade in Goods
	SABHARWAL, Mr. Narendra	TRIPS
	SAJJANHAR, Mr. Ashok	Trade in Goods
	SESHADRI, Mr. V.S.	Trade in Goods
	SHARMA, Mr. Lalit	Trade in Goods and Services; TRIPS
	VENUGOPAL, Mr. Krishnan	Trade in Goods; TRIPS
	YADAV, Mr. Amit	Trade in Services
	ZUTSHI, Mr. B. K.	Trade in Goods and Services; TRIPS
<b>ISRAEL</b>		
	ALTUVIA, Mr. Magen	Trade in Goods
	BROUDE, Mr. Tomer	Trade in Goods and Services; TRIPS
	FRID DE VRIES, Ms. Rachel	Trade in Goods and Services; TRIPS
	GABAY, Mr. Mayer	TRIPS
	HARAN, Mr. Ephraim F.	Trade in Services
	HARPAZ, Mr. Guy	Trade in Goods and Services; TRIPS
	HOROVITZ, Mr. Dan	Trade in Goods and Services
	POLINER, Mr. Howard Zvi	TRIPS
	REICH, Mr. Arie	Trade in Goods and Services; TRIPS
	RIVAS, Mr. Rodolfo C.	Trade in Goods; TRIPS
	SEMADAR, Mr. Moshe	Trade in Goods
	SHATON, Mr. Michael Marcel	Trade in Goods and Services
	TALBAR, Mr. Michael Adin	Trade in Goods
	WEILER, Mr. Joseph H.H.	Trade in Goods
<b>JAMAICA</b>		
	ROBINSON, Mr. Patrick L.	Trade in Goods and Services; TRIPS
<b>JAPAN</b>		
	ARAKI, Mr. Ichiro	Trade in Goods and Services; TRIPS
	ASAKAI, Mr. Kazuo	Trade in Goods
	ASAKURA, Mr. Hironori	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>JAPAN (cont'd)</b>	HASEBE, Mr. Masamichi	Trade in Goods and Services
	ISHIGE, Mr. Hiroyuki	Trade in Goods
	ISHIGURO, Mr. Kazunori	Trade in Goods and Services; TRIPS
	IWASAWA, Mr. Yuji	Trade in Goods
	KANDA, Mr. Hideki	Trade in Services
	KAZEKI, Mr. Jun	Trade in Goods and Services
	KEMMOCHI, Mr. Nobuaki	Trade in Goods and Services
	KOMETANI, Mr. Kazumochi	Trade in Goods and Services; TRIPS
	OHARA, Mr. Yoshio	Trade in Goods; TRIPS
	SAITO, Mr. Koji	Trade in Goods
	SANO, Mr. Tadakatsu	Trade in Goods
	SHIMIZU, Mr. Akio	Trade in Goods
	SUZUKI, Mr. Masabumi	Trade in Goods; TRIPS
	TAKAHASHI, Ms. Misako	Trade in Services
	TSURUOKA, Mr. Koji	Trade in Services
	YAMANE, Ms. Hiroko	Trade in Goods; TRIPS
<b>KENYA</b>	GATHII, Mr. James T.	Trade in Goods and Services; TRIPS
<b>KOREA</b>	AHN, Mr. Dukgeun	Trade in Goods
	AHN, Mr. Ho-Young	Trade in Goods
	BARK, Mr. Taeho	Trade in Goods
	CHO, Mr. Tae-Yul	Trade in Goods
	CHOI, Mr. Byung-il	Trade in Services
	CHOI, Mr. Seung-Hwan	Trade in Goods
	CHOI, Mr. Won-Mog	Trade in Goods and Services; TRIPS
	CHUNG, Mr. Chan-Mo	Trade in Goods
	KIM, Mr. Jong Bum	Trade in Goods
	KANG, Mr. Junha	Trade in Goods
	KIM, Mr. Doo-Sik	Trade in Goods
	KIM, Mr. Youngjae	Trade in Goods
	LEE, Mr. Jaehyoung	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>KOREA (cont'd)</b>	LEE, Mr. Jaemin	Trade in Goods
	WANG, Mr. Sanghan	Trade in Goods
<b>KYRGYZ REPUBLIC</b>	DJUMALIEV, Mr. Muktar	Trade in Goods and Services
<b>LIECHTENSTEIN</b>	ZIEGLER, Mr. Andreas R.	Trade in Services; TRIPS
<b>MADAGASCAR</b>	ANDRIANARIVONY, Mr. Minoarison	Trade in Goods and Services; TRIPS
<b>MALAYSIA</b>	HARUN, Mrs. Hiswani	Trade in Goods
	KASIMIR, Mr. Merlyn	Trade in Goods and Services
	YACOB, Mr. Muhammad Noor	Trade in Goods
<b>MAURITIUS</b>	BEEKARRY, Mr. Navin	Trade in Goods and Services
	BHUGLAH, Mr. Achad	Trade in Goods and Services
<b>MEXICO</b>	DE LA PEÑA, Mr. Alejandro	Trade in Goods and Services; TRIPS
	DE MATEO VENTURINI, Mr. Fernando	Trade in Goods and Services; TRIPS
	DE ROSENZWEIG, Mr. Francisco	Trade in Goods and Services; TRIPS
	FERRARI, Mr. Bruno	Trade in Goods and Services; TRIPS
	JASSO TORRES, Mr. Humberto	Trade in Goods
	LEYCEGUI, Ms. Beatriz	Trade in Goods and Services; TRIPS
	MALPICA SOTO, Mr. Guillermo	Trade in Services
	PEREZCANO DÍAZ, Mr. Hugo Manuel	Trade in Goods and Services; TRIPS
	PÉREZ GÁRATE, Mr. Orlando	Trade in Goods and Services; TRIPS
	POBLANO, Mr. José F.	Trade in Services; TRIPS
	REYES, Ms. Luz Elena	Trade in Goods
	TRASLOSHEROS HERNÁNDEZ, Mr. José Gerardo	Trade in Goods and Services; TRIPS
	VÉJAR, Mr. Carlos	Trade in Goods and Services; TRIPS
	ZABLUDOVSKY KUPER, Mr. Jaime	Trade in Goods and Services; TRIPS
<b>MOLDOVA</b>	FOLTEA, Ms. Marina	Trade in Goods; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>NEPAL</b>	PANDEY, Mr. Posh Raj	Trade in Goods and Services
	SUBEDI, Mr. Surya P.	Trade in Goods and Services; TRIPS
<b>NEW ZEALAND</b>		
	ARMSTRONG, Mr. Wade Mowatt Valentine	Trade in Goods; TRIPS
	CARSON, Mr. Christopher Barr	Trade in Goods
	FALCONER, Mr. Crawford Dunlop	Trade in Goods
	FALCONER, Mr. William John	Trade in Goods and Services; TRIPS
	GROSER, Mr. Tim	Trade in Goods
	HARVEY, Mr. Martin Wilfred	Trade in Goods
	HIGGIE, Ms. Dell Clark	Trade in Goods
	KENNEDY, Mr. Peter Douglas	Trade in Goods
	MACEY, Mr. Adrian	Trade in Goods; TRIPS
	McPHAIL, Mr. Alexander Hugh	Trade in Goods
	NOTTAGE, Mr. Richard Frederick	Trade in Goods
	SLADE, Ms. Michelle	Trade in Goods and Services; TRIPS
	TRAINOR, Mr. Mark Julian	Trade in Goods; TRIPS
	WALKER, Mr. David John	Trade in Goods and Services
	WOODFIELD, Mr. Edward A.	Trade in Goods
<b>NIGER</b>	TANKOANO, Mr. Amadou	Trade in Goods and Services; TRIPS
<b>NIGERIA</b>		
	AGAH, Mr. Yonov Frederick	Trade in Goods and Services; TRIPS
	NNONA, Mr. George C.	Trade in Goods and Services; TRIPS
<b>NORWAY</b>		
	BRYN, Mr. Kåre	Trade in Goods and Services; TRIPS
	GLENNE, Mr. Eirik	Trade in Goods and Services
	HOLTEN, Ms. Inger	Trade in Goods; TRIPS
	LILLERUD, Mr. Kjell	Trade in Goods and Services
	SELAND, Mr. Helge A.	Trade in Goods and Services; TRIPS
	TØNSETH, Mr. Didrik	Trade in Goods and Services; TRIPS
<b>PAKISTAN</b>		
	ARIF, Mr. Muhammad Ikram	Trade in Goods
	BASHIR, Mr. Shahid	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>PAKISTAN (cont'd)</b>	HAMID ALI, Mr. Muhammad	Trade in Goods; TRIPS
	HUSAIN, Mr. Ishrat	Trade in Services
	KHAN, Mr. Mujeeb Ahmed	Trade in Goods; TRIPS
	MALIK, Mr. Riaz Ahmad	Trade in Goods
	MUKHTAR, Mr. Ahmad	Trade in Goods and Services; TRIPS
<b>PANAMA</b>	ALVAREZ DE SOTO, Mr. Francisco	Trade in Goods and Services; TRIPS
	FERRER, Mr. Alejandro	Trade in Goods and Services
	FRANCIS LANUZA, Ms. Yavel Mireya	Trade in Goods and Services
	GONZALEZ, Mr. Carlos Ernesto	Trade in Goods and Services
	HARRIS ROTKIN, Mr. Norman	Trade in Goods and Services
	SALAZAR FONG, Ms. Diana Alejandrina	Trade in Goods
	SHEFFER MONTES, Mr. Leroy Jhon	Trade in Goods and Services
<b>PERU</b>	BELAÚNDE G., Mr. Victor Andres	TRIPS
	DE LA PUENTE LEON, Mr. Jose A.	Trade in Goods and Services
	DIEZ LIZARDO, Mr. Juan	Trade in Goods
	LEÓN-THORNE, Mr. Raúl	Trade in Goods and Services
<b>PHILIPPINES</b>	CONEJOS, Mr. Esteban B.	Trade in Goods
<b>QATAR</b>	AL-ADBA, Mr. Nasser M.	Trade in Goods and Services
	MAKKI, Mr. Fadi	Trade in Goods and Services
<b>SINGAPORE</b>	GAFOOR, Mr. Burhan	TRIPS
	GOVINDASAMY, Mr. Peter Mari	Trade in Goods and Services
	HONG, Ms. Fan Sin Daphne	Trade in Services; TRIPS
	ITHNAIN, Mr. Rossman	Trade in Goods
	KWOK, Mr. Fook Seng	Trade in Goods
	LOH, Mr. K. Y. Derek	Trade in Goods and Services; TRIPS
	NG, Ms. Bee Kim	Trade in Goods



<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>SINGAPORE (cont'd)</b>	ONG, Mr. Chin Heng	Trade in Goods and Services
	TAN, Mr. T. K. Jason	Trade in Goods and Services
	YEOW, Ms. P. L. Danielle	Trade in Goods and Services; TRIPS
<b>SRI LANKA</b>	JAYASEKERA, Mr. Douglas	Trade in Goods; TRIPS
<b>SWITZERLAND</b>	ADDOR, Mr. Felix	TRIPS
	CHAMBOVEY, Mr. Didier	Trade in Goods
	COTTIER, Mr. Thomas	Trade in Goods and Services; TRIPS
	HÄBERLI, Mr. Christian	Trade in Goods
	HOLZER, Mr. Patrick Edgar	Trade in Goods; TRIPS
	INEICHEN-FLEISCH, Ms. Marie-Gabrielle	Trade in Goods and Services
	KAUFMANN, Ms. Christine	Trade in Services
	LEGLER, Mr. Thomas	TRIPS
	MÄCHLER, Ms. Monica	Trade in Goods and Services; TRIPS
	MEYER, Mr. Matthias	Trade in Goods and Services; TRIPS
	PANNATIER, Mr. Serge Nicolas	Trade in Goods
	SCHMID, Mr. Michael	Trade in Goods and Services
	TSCHÄENI, Mr. Hanspeter	Trade in Goods
	WASESCHA, Mr. Luzius	Trade in Goods and Services; TRIPS
	WEBER, Mr. Rolf H.	Trade in Services
	ZULAUF, Mr. Daniel	Trade in Goods and Services; TRIPS
<b>THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU</b>	CHANG, Ms. Yie-Yun	TRIPS
	KAO, Mr. Pei-Huan	Trade in Goods and Services; TRIPS
	LI, Ms. Catherine	Trade in Goods
	LIN, Ms. Tsai-Yu	Trade in Goods
	LO, Mr. Chang-Fa	Trade in Goods and Services
	NI, Mr. Kuei-Jung	Trade in Goods; TRIPS
	PENG, Ms. Shin-Yi	Trade in Goods and Services
	YANG, Ms. Guang-Hwa	Trade in Goods and Services
	YANG, Ms. Jen-Ni	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>TURKEY</b>	DILEMRE, Mr. Hüsnü	Trade in Goods
	GÜRAKAN, Ms. Tulü	Trade in Goods
	KABAALIOĞLU, Mr. A. Haluk	Trade in Goods and Services
	KAÇAR, Mr. Bayram	Trade in Goods
	MOLLASALİHOĞLU, Mr. Yavuz	Trade in Goods
	YAMAN, Mr. Şahin	Trade in Goods
	YAPICI, Mr. Murat	Trade in Goods
	YENAL, Mr. Aytaç	Trade in Goods
<b>UNITED STATES</b>	BROWN-WEISS, Ms. Edith	Trade in Goods and Services
	CONNELLY, Mr. Warren	Trade in Goods
	GANTZ, Mr. David A.	Trade in Goods
	GORDON, Mr. Michael Wallace	Trade in Goods
	HODGSON, Ms. Mélida	Trade in Goods and Services
	KASSINGER, Mr. Theodore W.	Trade in Goods and Services
	KHO, Mr. Stephen	Trade in Goods and Services; TRIPS
	LAYTON, Mr. Duane	Trade in Goods
	LICHTENSTEIN, Ms. Cynthia Crawford	Trade in Services
	McGINNIS, Mr. John Oldham	Trade in Goods; TRIPS
	PARTAN, Mr. Daniel G.	Trade in Goods
	POWELL, Mr. Stephen J.	Trade in Goods
	SANDSTROM, Mr. Mark R.	Trade in Goods and Services
	THOMPSON, Mr. George W.	Trade in Goods
	TROSSEVIN, Ms. Marguerite	Trade in Goods
	VERRILL, Jr. Mr. Charles Owen	Trade in Goods
<b>URUGUAY</b>	AMORÍN, Mr. Carlos	Trade in Goods; TRIPS
	CAYRÚS, Mr. Hugo	Trade in Goods and Services
	EHLERS, Mr. William	Trade in Goods
	ROSSELLI, Mr. Elbio	Trade in Goods
	VANERIO, Mr. Gustavo	Trade in Goods and Services

## **Administration of the Indicative List**

1. To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of qualified governmental and non-governmental individuals. Accordingly, the Chairman of the DSB proposed at the 10 February meeting that WTO Members review the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9) (hereinafter referred to as the "1984 GATT Roster") and submit nominations for the indicative list by mid-June 1995. On 14 March, The United States delegation submitted an informal paper discussing, amongst other issues, what information should accompany the nomination of individuals, and how names might be removed from the list. The DSB further discussed the matter in informal consultations on 15 and 24 March, and at the DSB meeting on 29 March. This note puts forward some proposals for the administration of the indicative list, based on the previous discussions in the DSB.

### *General DSU requirements*

2. The DSU requires that the indicative list initially include "the roster of governmental and non-governmental panelists established on 30 November 1984 (BISD 31S/9) and other rosters and indicative lists established under any of the covered agreements, and shall retain names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement" (DSU 8.4). Additions to the indicative list are to be made by Members who may "periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements". The names "shall be added to the list upon approval by the DSB" (DSU 8.4).

### *Submission of information*

3. As a minimum, the information to be submitted regarding each nomination should clearly reflect the requirements of the DSU. These provide that the list "shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements" (DSU 8.4). The DSU also requires that panelists be "well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member" (DSU 8.1).

4. The basic information required for the indicative list could best be collected by use of a standardized form. Such a form, which could be called a Summary Curriculum Vitae, would be filled out by all nominees to ensure that relevant information is obtained. This would also permit information on the indicative list to be stored in an electronic database, making the list easily updateable and readily available to Members and the Secretariat. As well as supplying a completed Summary Curriculum Vitae form, persons proposed for inclusion on the indicative list could also, if they wished, supply a full Curriculum Vitae. This would not, however, be entered into the electronic part of the database.

### *Updating of indicative list*

5. The DSU does not specifically provide for the regular updating of the indicative list. In order to maintain the credibility of the list, it should however be completely updated every two years. Within the first month of each two-year period, Members would forward updated Curricula Vitae of persons appearing on the indicative list. At any time, Members would be free to modify the indicative list by

proposing new names for inclusion, or specifically requesting removal of names of persons proposed by the Member who were no longer in a position to serve, or by updating the summary Curriculum Vitae.

6. Names on the 1984 GATT Roster that are not specifically resubmitted, together with up-to-date summary Curriculum Vitae, by a Member before 31 July 1995 would not appear after that date on the indicative list.

*Other rosters*

7. The Decision on Certain Dispute Settlement Procedures for the GATS (S/L/2 of 4 April 1995), adopted by the Council for Trade in Services on 1 March 1995, provides for a special roster of panelists with sectoral expertise. It states that "panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns". It directs the Secretariat to maintain the roster and "develop procedures for its administration in consultation with the Chairman of the Council". A working document (S/C/W/1 of 15 February 1995) noted by the Council for Trade in Services states that "the roster to be established under the GATS pursuant to this Decision would form part of the indicative list referred to in the DSU". The specialized roster of panelists under the GATS should therefore be integrated into the indicative list, taking care that the latter provides for a mention of any service sectoral expertise of persons on the list.

8. A suggested format for the Summary Curriculum Vitae form for the purposes of maintaining the Indicative List is attached.

**SUMMARY CURRICULUM VITAE  
FOR PERSONS PROPOSED FOR THE INDICATIVE LIST<sup>148</sup>**

- |            |   |   |
|------------|---|---|
| <b>1.</b>  | <b>Name</b>   | full name   |
| <b>2.</b>  | <b>Sectoral Experience</b><br>List here any particular sectors of expertise:<br>(e.g. technical barriers, dumping, financial services, intellectual property, etc.) |   |
| <b>3.</b>  | <b>Nationality(ies)</b>   | all citizenships                                  |
| <b>4.</b>  | <b>Nominating Member</b>  | the nominating Member                             |
| <b>5.</b>  | <b>Date of birth:</b>   | full date of birth                                |
| <b>6.</b>  | <b>Current occupations:</b>   | year beginning, employer, title, responsibilities |
| <b>7.</b>  | <b>Post-secondary education</b>   | year, degree, name of institution                 |
| <b>8.</b>  | <b>Professional qualifications</b>  | year, title                                       |
| <b>9.</b>  | <b>Trade-related experience in Geneva in the WTO/GATT system</b>  |   |
|            | a. Served as a panelist   | year, dispute name, role as chairperson/member    |
|            | b. Presented a case to a panel  | year, dispute name, representing which party      |
|            | c. Served as a representative of a contracting party or member to a WTO or GATT body, or as an officer thereof  | year, body, role                                  |
|            | d. Worked for the WTO or GATT Secretariat   | year, title, activity                             |
| <b>10.</b> | <b>Other trade-related experience</b>   |   |
|            | a. Government trade work  | year, employer, activity                          |
|            | b. Private sector trade work  | year, employer, activity                          |

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<sup>148</sup> Members putting forward an individual for inclusion on the indicative list are requested to provide full contact details for this individual separately. The Summary Curriculum Vitae and the contact details should be sent electronically to the Secretariat.

**11. Teaching and publications**

- a. Teaching in trade law and policy      year, institution, course title
- b. Publications in trade law and policy      year, title, name of periodical/book, author/editor  
(if book)

**12. Language capabilities**

ability to work as a panelist in WTO-official languages and any other language capability

- a. English
- b. French
- c. Spanish
- d. Other language(s)

9 November 2018

**Dispute Settlement Body**  
**21 November 2018**

**PROPOSED NOMINATION FOR THE INDICATIVE LIST OF  
GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following additional name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU.

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<b>NOMINATING MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>EGYPT</b>	GAWAD ALLAM, Mr. Mohamed. A.	Trade in Goods and Services

## **MEMBERSHIP OF THE WTO APPELLATE BODY**

### **As of December 31, 2018**

Pursuant to the DSU, the DSB envisions 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. The DSB also agreed that Appellate Body members would serve on a part-time basis and sit periodically in Geneva. The original seven Appellate Body members were Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Mr. Claus-Dieter Ehlermann of Germany, Mr. Said El-Naggar of Egypt, Mr. Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Mr. Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano, and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on December 11, 1997.

At its meeting held on October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus, and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Mr. El-Naggar and Mr. Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Mr. Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia, and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 11, 2001.

On November 7, 2003, the DSB agreed to appoint Ms. Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Mr. Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart, and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006.

At its meeting held on November 19 and 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista of the Philippines and Ms. Jennifer Hillman of the United States as members of the Appellate Body for four years commencing on December 11, 2007, and to appoint Mr. Shotaro Oshima of Japan and Ms. Yuejiao Zhang of China as members of the Appellate Body for four years commencing on June 1, 2008. On November 12, 2008, Mr. Baptista notified the DSB that he was resigning for health reasons, effective in 90 days. On December 22, 2008, the DSB decided to deem the term of the position to which Mr. Baptista was appointed to expire on June 30, 1999, and to fill the position previously held by Mr. Baptista for a four year term. On June 19, 2009, the DSB agreed to appoint Mr. Ricardo Ramírez Hernández of Mexico as a member of the Appellate Body for four years commencing on July 1, 2009, to appoint Mr. Peter Van den Bossche of Belgium as a member of the Appellate Body for four years commencing on December 12, 2009, and to reappoint Mr. Unterhalter for a final term of four years commencing on December 12, 2009.

On November 18, 2011, the DSB agreed to appoint Mr. Thomas Graham of the United States and Mr. Ujal Bhatia of India as members of the Appellate Body for four years commencing on December 11, 2011. On May 24, 2012, the DSB agreed to appoint Mr. Seung Wha Chang of Korea as a member of the Appellate Body for four years commencing on June 1, 2012, and to reappoint Ms. Zhang for a final term of four years commencing on June 1, 2012. On March 26, 2013, the DSB agreed to reappoint Mr. Ramírez Hernández



of Mexico for a final term of four years commencing on July 1, 2013. On November 25, 2013, the DSB agreed to reappoint Mr. Van den Bossche of Belgium for a final term of four years commencing on December 12, 2013.

On September 26, 2014, the DSB agreed to appoint Mr. Shree Baboo Chekitan Servansing of Mauritius to a term of four years commencing on October 1, 2014. On November 25, 2015, the DSB agreed to reappoint Mr. Bhatia of India and Mr. Graham of the United States for a final term of four years each commencing on December 11, 2015. On November 23, 2016, the DSB agreed to appoint Ms. Zhao Hong of China and Mr. Hyun Chong Kim of Korea to a term of four years commencing on December 1, 2016. On August 1, 2017, Mr. Kim tendered his resignation, effective immediately. The DSB had not appointed replacements for Mr. Ramirez, Mr. Kim, Mr. Van den Bossche, or Mr. Servansing as of the end of 2018.

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 a Chairperson.

Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi served as Chairperson from December 17, 2004 to December 16, 2005; Mr. Ganesan served as Chairperson from December 17, 2005 to December 16, 2006; Mr. Sacerdoti served as Chairperson from December 17, 2006 to December 17, 2007; Mr. Baptista served as Chairperson from December 18, 2007, to December 17, 2008; Mr. Unterhalter served as Chairperson from December 18, 2008 to December 16, 2010; Ms. Bautista served as Chairperson from December 17, 2010 to June 14, 2011; Ms. Hillman served as Chairperson from June 15, 2011 until December 10, 2011; Ms. Zhang served as Chairperson from December 11, 2011 to December 31, 2012; Mr. Ramirez served as Chairperson from January 1, 2013 to December 31, 2014; Mr. Van den Bossche served as Chairperson from January 1, 2015 to December 31, 2015; Mr. Graham served as Chairperson from January 1, 2016 to December 31, 2016, and Mr. Bhatia served as Chairperson from January 1, 2017 to December 31, 2018.

From January 1, 2018 to September 30, 2018, the membership of the WTO Appellate Body was as follows (in alphabetical order): Mr. Ujal Singh Bhatia (India), Mr. Thomas Graham (United States), Mr. Shree Baboo Chekitan Servansing (Mauritius), and Ms. Hong Zhao (China).

From October 1, 2018 to December 31, 2018, the membership of the WTO Appellate Body was as follows (in alphabetical order): Mr. Ujal Singh Bhatia (India), Mr. Thomas Graham (United States), and Ms. Hong Zhao (China).

## *BIOGRAPHICAL NOTES*

### **Ujal Singh Bhatia**

Born in India on April 15, 1950, Ujal Singh Bhatia is currently an independent consultant and academic engaged in developing a policy framework for Indian agricultural investments overseas, while at the same time working with the Commonwealth Secretariat on multilateral trade issues.

From 2004 to 2010, Mr. Bhatia was India's Permanent Representative to the WTO. During his tenure as Permanent Representative, he was an active participant in the dispute settlement process, representing India in a number of dispute settlement cases both as a complainant and respondent in disputes relating to antidumping, as well as taxation and import duty issues. He also has adjudicatory experience having served as a WTO dispute settlement panelist.

Mr. Bhatia previously served as Joint Secretary in the Indian Ministry of Commerce, where he focused on the legal aspects of international trade. During this period, he was also a Member of the Appellate Committee under the Foreign Trade (Development and Regulation) Act. The Committee heard appeals of exporters and importers against the orders of the Director General Foreign Trade. Mr. Bhatia was also Joint Secretary of the Ministry of Information and Broadcasting and held various positions in the public and private sectors of the Indian state of Orissa.

Mr. Bhatia's legal and adjudicatory experience spans three decades. He has focused on addressing domestic and international legal/jurisprudence issues, negotiating trade agreements and policy issues at the bilateral, regional and multilateral levels, and formulating and implementing trade and development policies for a range of agriculture, industry and service sector activities.

Mr. Bhatia is a frequent lecturer on international trade issues, and has published numerous papers and articles in Indian and foreign journals on a wide range of trade and economic issues.

Mr. Bhatia holds an M.A. in Economics from the University of Manchester and from Delhi University, as well as a B.A. (Hons.) in Economics, also from Delhi University.

### **Thomas R. Graham**

Mr. Graham is the former head of the international trade practice at King & Spalding, and he was the founder of the international trade practice at Skadden, Arps. He was one of the first US lawyers to represent respondents in trade remedy cases in various countries around the world, and he was among the first to bring economists, accountants, and other non-lawyer professionals into the international trade practices of private law firms.

Prior to entering private practice, Mr. Graham served as Deputy General Counsel in the Office of the US Trade Representative. Early in his career, he was a Legal Officer of the United Nations, in Geneva; and a visiting professor of law and staff member of Ford Motor Company, in Caracas, Venezuela.

Mr. Graham was the founding chairman of the American Society of International Law's Committee on International Economic Law and the chair of the American Bar Association's Subcommittee on Exports. He has been a visiting professor at the University of North Carolina Law School and an adjunct professor at the Georgetown Law Center and the American University Washington College of Law. He has edited books on international trade policy, and international trade and environment, and he has written many articles and monographs on international trade law and policy as a Guest Scholar at the Brookings Institution and as a Senior Associate at the Carnegie Endowment for International Peace. He also is the co-author, with his daughter, of *Getting Open: The Unknown Story of Bill Garrett and the Integration of College Basketball* (Simon & Schuster, Atria Books, 2006; Indiana University, paperback, 2008).

Mr. Graham received his undergraduate degree from Indiana University and his J.D. from Harvard Law School.

## **Shree Baboo Chekitan Servansing**

Born in Mauritius on April 22, 1955, Shree Baboo Chekitan Servansing enjoyed a long and distinguished career with the Mauritian civil service. From 2004 to 2012, Mr. Servansing was Mauritius' Ambassador and Permanent Representative to the United Nations Office and other International Organizations in Geneva, including the WTO. During his tenure as Permanent Representative, he served on various Committees at the WTO, and chaired the Committees on Trade and Environment, and Trade and Development. He also chaired the Work Programme on Small Economies, the dedicated session on Aid-for-Trade, and the African Group, and was coordinator of the African Caribbean Pacific (ACP) Group.

Mr. Servansing previously worked, in various capacities, for the Mauritius Ministry of Foreign Affairs in Mauritius, India and Belgium. During his tenure at the Mauritius Embassy in Belgium, he was intensively involved in the ACP-EU negotiations leading to the Cotonou Agreement and subsequently in the Economic Partnership Agreement (EPA) negotiations. Mr. Servansing also served as the personal representative of the Prime Minister of Mauritius on the Steering Committee of the New Partnership for Africa's Development (NEPAD). In this capacity he was engaged in the strategic formulation of Africa's flagship development framework.

Upon retiring from civil service, Mr. Servansing served as the head of the ACP-EU Programme on Technical Barriers to Trade in Brussels from 2012 to 2014. In this position, he was responsible for facilitating the building of capacity among ACP countries in order to enhance their export competitiveness, and improve their Quality Infrastructure to comply with technical regulations.

Mr. Servansing's experience in trade policy, trade negotiations, and the multilateral trading system spans three decades. He has frequently spoken on international trade issues, and has published numerous papers and articles in Mauritian and foreign journals on a variety of trade-related issues.

Mr. Servansing holds an M.A. from the University of Sussex, a Postgraduate Diploma in Foreign Affairs and International Trade from Australian National University, and a B.A. (Hons.) from the University of Mauritius.

## **Hong Zhao**

Ms. Zhao received her Degrees of Bachelor, Masters and PhD in Law from the Law School of Peking University in China. She currently serves as Vice President of the Chinese Academy of International Trade and Economic Cooperation. Previously she served as Minister Counsellor in charge of legal affairs at China's mission to the WTO, during which time she served as Chair of the WTO's Committee on Trade-Related Investment Measures (TRIMs). Ms. Zhao then served as Commissioner for Trade Negotiations at the Chinese Ministry of Commerce's Department for WTO Affairs, where she participated in a number of important negotiations on international trade, including the Trade Facilitation Agreement negotiations, and negotiations on expansion of the Information Technology Agreement.

Domestically, Ms. Zhao helped formulate many important Chinese legislative acts on economic and trade areas adopted since the 1990s and has experience in China's judiciary system, serving as Juror at the Economic Tribunal of the Second Intermediate Court of Beijing between 1999 and 2004. She has also taught and supervised law students on international economic Law, WTO law and intellectual property rights (IPR) at various universities in China.

## Where to Find More Information on the WTO

Information about the WTO and trends in international trade is available to the public at the following websites:

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- WTO Organizational Chart
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- Disputes and Dispute Reports

services, intellectual property, and other topics

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