
II. World Trade Organization

Overview¹

The World Trade Organization is the result of fifty years of American leadership and commitment to an open world trading system, governed by the rule of law. This work dates back to the foundation of the General Agreement on Tariffs and Trade, or GATT, in 1948: an event reflecting the personal experiences of Presidents Roosevelt and Truman and their European counterparts in the Great Depression and World War II. These leaders had seen the Smoot-Hawley Act in America and similar protectionist policies overseas deepen the Great Depression and contribute to the political upheavals of the 1930s. Fifteen years later, they realized that by reopening world markets they could promote growth and raise living standards. In tandem with a strong and confident security policy, as open markets gave nations greater stakes in stability and prosperity beyond their borders, they believed a fragile peace would strengthen.

The work they began has now entered into its sixth decade, and the faith they placed in open markets and the rule of law has been abundantly vindicated. Through eight Rounds of negotiations, and as 112 new Members joined the 23 founders of the GATT, we abandoned the closed markets of the Depression era and helped to foster a fifty-year economic boom, during

¹This Chapter and Annex II to this report are provided pursuant to the reporting requirements contained in sections 122, 124 and 125 of the Uruguay Round Agreements Act.

which the world economy grew six-fold and per capita income tripled. The United States, as the world's largest exporter and importer, benefits perhaps most of all: the efficiency of our industries and the high living standards of our families reflect both the gains we receive from open markets abroad, and the benefits of our own open-market policies at home.

The creation of the World Trade Organization on January 1, 1995 was the next step in the evolution of the multilateral trading system since the GATT's founding. The WTO was established as part of the results of the Uruguay Round, the last set of trade negotiations conducted under the auspices of the GATT. The Uruguay Round was completed with President Clinton's leadership at the end of 1993. Extension of the GATT to the WTO was part of the President's broader overall strategy to strengthen the American economy, to help create higher-wage jobs and to raise living standards. The record shows how successful this strategy has been: we are now celebrating the longest economic expansion in American history, with 14.4 million new jobs since the WTO entered into force in 1995.

Congress debated and then approved the results of the negotiations in the Uruguay Round Agreements Act (URAA), which was signed into law on December 8, 1994. This Act required a series of annual reports on the operation of the WTO, culminating in a review after the fifth year. The five-year review contained in this chapter confirms how vital U.S. participation in the global trading system is to America's long-term economic and strategic

interests, continued prosperity and strengthening the rule of law around the world. This chapter describes the WTO's operations in 1999 and its activities and accomplishments since its creation in 1995.

While work remains – both to create new economic opportunities through trade liberalization and to improve the WTO itself – the WTO is the continuation of 50 years of successful trade policy. It is fundamentally important to the remarkable record of growth and job creation America has built in the past five years. Continued U.S. participation and leadership in the WTO is essential to safeguard U.S. interests in the future.

The WTO is a crucial vehicle for maximizing the advantages from, and managing our interests in, a global economy. To ensure that Americans receive fair treatment in the global economy, the United States has negotiated a framework of clear, transparent rules that: prohibit discrimination against American products; safeguard Americans against unfair trade; and afford commercial predictability. As the world's largest exporter and importer, we need such a system more than any other country. Consider the alternative – no one would suffer more than America's workers, businesses and farm families in a world of closed markets, abusive trade practices, and the rising international tensions trade conflicts can cause in difficult times.

Thus, over the past fifty years, through eight negotiating Rounds, Americans have led in opening markets and developing the rules of today's WTO. And the past five years since the creation of the WTO have clearly demonstrated its benefits. American exports have risen by well over \$200 billion, contributing to the economic growth we have enjoyed and expanding high-skill, high-wage job opportunities.

Key WTO Accomplishments in the Past Five Years Include:

- ▶ *Market Access:* The Uruguay Round negotiations cut tariffs substantially, by a full third in the manufacturing sector. It offered agricultural exporters opportunities through the first enforceable commitments to reduce barriers and limit the use of export subsidies. U.S. services providers, from accounting and other professional services to finance, telecommunications and others, gained real export opportunities for the first time in the history of the trading system. New entrants into the global marketplace, particularly small and medium-sized enterprises, also benefit from these new market openings and innovations.
- ▶ *Intellectual Property Rights Protection:* In the 21st century, economies will rely on innovation and ingenuity to promote economic development and investment – both human and capital. This is why WTO Member governments agreed to a far-ranging set of rules to protect and enforce intellectual property rights, including copyrights, patents and trademarks. To ensure that innovation and technology continue to serve as engines of growth in rich and poor countries alike, the WTO provides strong protection and a system of rules that applies to all.
- ▶ *Dispute Settlement:* The WTO created a set of procedures that can settle trade disputes promptly, eliminating many of the shortcomings of the earlier GATT system where the process could be prolonged indefinitely. Improvements to the system are still warranted, notably with respect to the transparency of the dispute procedures. Since the WTO's creation in 1995 the United

States has filed more complaints – 49 to date – than any other WTO Member, and we are involved as a third party in a number of other cases. Our overall record of success is very strong. The United States has prevailed in 23 of the 25 complaints acted upon so far, either by successful settlement or panel victory. These favorable rulings and settlements have involved an array of sectors within manufacturing, agriculture, services, and intellectual property.

- ▶ Expansion of the Rule of Law: In the past five years, the 50 year-old trading system has been transformed from a limited set of rules and disciplines that applied to the United States and a few of our trading partners, to a system with specific rules applicable in full to *all* Members. Thus the WTO eliminates the potential for “free riders” on the benefits of an open trading system.
- ▶ Creation of a Dynamic Forum for Trade Liberalization: The WTO is a system responsive to rapid changes in the 21st century world economy. After its creation in 1995, the WTO first set in motion and then realized agreements in financial services, basic telecommunications services and information technology. These opened new markets and produced gains larger in scope than the results of the Uruguay Round. The WTO has laid the groundwork for further advances by setting a built-in agenda to continue to liberalize and reform areas like agriculture and services, and initiating further work on electronic commerce and other emerging trade issues.
- ▶ High Technology and Telecommunications: The WTO has kept the trading system at the cutting

edge of technological development, benefitting both business and consumers – whether in electronic commerce, or telecommunications goods and services. According to the FCC, rates paid by U.S. consumers for international service have declined significantly since the Agreement on Basic Telecommunications came into effect. From 1996 to 1998, the average price of an international long distance call dropped from 74 cents per minute to 55 cents per minute. On highly competitive routes, such as the U.S.-UK route, prices fell even more dramatically, to as low as 10 cents per minute. Although aggregate data for 1999 are not yet available, all indications are that the trend toward lower rates has continued and that the current average price is well below 55 cents per minute.

- ▶ Global Membership: Growing in membership from 119 in 1995 to 135 in 1999, with another 30 applicants seeking to negotiate entry, the WTO is becoming more universal. The fall of the Berlin Wall brought new urgency to integrate former command economies into the trading system. Despite much more stringent requirements for membership than were used in the GATT, acceptance of WTO rules has become an integral part of a country’s successful strategy for growth and development – making WTO membership a key element in the reformist policies of newly emerging market economies in Central and Eastern Europe, and of countries in Asia and in the Middle East. Consistent with the Administration’s initiatives for Africa, an important new dimension is that many more African nations now participate meaningfully in the system.

- ▶ *Force for Global Economic Stability:*
The WTO has also strengthened the world's ability to address economic crises. During the financial crisis of 1997 and 1998, for example, the respect WTO members showed for open market commitments helped to prevent a cycle of protection and retaliation similar to that of the Depression era, ensuring affected countries the access to markets they needed for recovery, and minimizing damage to American farmers and manufacturing exporters.
- ▶ *Greater Openness and Accountability:*
In its first five years, the WTO has taken steps to ensure greater transparency in its operations, by making a majority of its documents available to the public, by creating a user-friendly Internet website, and by reaching out to the non-governmental community (through symposia and other means) to solicit their views. All WTO Ministerial meetings held thus far – in Singapore, Geneva and Seattle – have included participation by non-governmental organizations (NGOs). These initial steps lay the foundation for further enhancing the openness and accountability of the WTO, which remains a critical U.S. objective, including in particular for WTO dispute settlement.

As these points indicate, the WTO – including the 50 plus years of the trading system it represents – has become an important institution for managing our interests in the global economy. Other institutions, such as the World Bank, International Monetary Fund and International Labor Organization, as well as domestic policies also play an important role in addressing the variety of issues arising from globalization. As the challenges of globalization have increased in all facets of economic activity, the WTO and its system of rules have

become much more vital for securing, managing and promoting America's interests in the world economy. That makes it imperative for the United States to exercise leadership and vision to strengthen and improve the WTO and to utilize its provisions to open markets and safeguard America's trade interests and economic future in the 21st century.

As trade has become more important to the U.S. domestic economy and in our relations with other countries, it is only natural that the WTO should be subject to greater scrutiny. In 1970, trade (exports + imports) was valued at 13 percent of U.S. GDP; in 1999 it exceeded 30 percent of GDP. While the WTO can respond by doing a better job in explaining its practices and procedures to the public, and by reforming procedures outmoded in this era of rapid communication, it is also not surprising that a new organization such as the WTO encounters some misconceptions.

Contrary to the criticisms that have been made:

- ▶ *The WTO has not eroded the sovereign right of the United States to pass its own laws:* The United States benefits by having a set of rules to hold other countries accountable for their trade actions. But neither the WTO nor its dispute settlement panels have any power to compel the United States to change its laws and regulations. Only the United States can decide how it will respond to WTO dispute settlement reports; and only the Congress can change U.S. law. In the relatively few cases where the United States has defended one of its statutes or regulations and has not prevailed, we have responded in a manner that did not infringe upon U.S. sovereignty, or alter any statute.
- ▶ *The WTO has not limited the ability of the United States to set its own high*

environment and health standards: The WTO agreements explicitly recognize the right of all WTO Members to establish the levels of environment, health, safety and consumer protection they deem appropriate, even when such levels of protection are higher than those provided by international standards. No WTO panel has ever declared that a U.S. environmental or health or safety statute is inconsistent with a WTO agreement. Generally, all the WTO's rules require is that authorities opt for a less trade-restrictive regulation when they can, and avoid discriminating by imposing a higher standard for foreign products than for domestic products.

- ▶ ***The WTO has not relegated U.S. interests to a bloated international Secretariat of faceless bureaucrats:*** The WTO is a "member-driven" organization. WTO Members like the United States take responsibility for monitoring compliance with the Agreements and setting the course for the Organization. The WTO is staffed by a Secretariat of international civil servants headed by a Director-General. Unlike many other institutions, the Secretariat does not operate with a high degree of independence, and serves at the direction of the membership. The WTO is not a specialized UN agency, reflecting the strong views of its Members that it should not be included in the UN structure. And like the earlier GATT, the WTO takes decisions by consensus, despite the fact that there are highly-limited provisions for voting in certain instances.

- ▶ ***The WTO has not hindered the development prospects of poorer countries:*** The WTO's system of rules helps countries to move from failed

inward-looking policies of import substitution and protectionism to policies based on openness, competition and outward-oriented growth. The former policies perpetuated poverty and inequality, and indirectly abetted anti-democratic forces. With the WTO, trade has become a key part of the solution to long-term structural problems resulting from decades of mismanagement. The record is clear: developing nations that have adopted an outward orientation and abided by the rules-based system have been most successful.²

Much work lies ahead, of course. We intend to work at the WTO to further open markets to American goods and services; to enforce the commitments our trading partners have made; reform the WTO to improve transparency and access to civil society; and to ensure that it contributes to our work to promote environmental protection and internationally recognized core labor standards worldwide. Much of this work will be complex and difficult. WTO Members were, for example, unable to launch a new Round of trade negotiations in 1999, reflecting the fact that these issues are complex and often lead to negotiating deadlock.

But after five years, the record of the WTO is one of success. American workers and companies depend on open markets around the world; American living standards, especially for the poorest, depend on our own open market policies. The WTO is our strongest guarantee that these policies will remain in place. The United States is the world's largest exporter – which in turn accounts for 11.7 million American jobs. The institution and its rules

² See in particular, the World Bank World Development Report 1987 and 1997. See also the IMF's World Economic Outlook, May 1993.

provide the best possible foundation for a world which is open, responsive to the rule of law, and able to offer new opportunities and higher living standards to its people.

The record of the past fifty years should give us a great deal of confidence. Taken as a whole, the multilateral trading system has promoted the rule of law, created new opportunities for worldwide economic growth, and created opportunities for Americans. This amply justifies the decision Congress took five years ago to support creation of the WTO as a successor to the GATT. It should remind us how significant will be the rewards of success as we take up the challenges of the new century.

A. Economic Assessment

Aided by more open markets and the expansion of trade, including through the WTO, the U.S. economy has flourished during the first five years of the World Trade Organization and implementation of the Uruguay Round results. From the fourth quarter 1994 through the fourth quarter 1999, real U.S. GDP grew at a strong average annual rate of 3.9 percent. Likewise, real industrial production in the United States has increased by nearly 29 percent in the last 5 years, more than in any of the other country of the G-7 grouping. According to World Bank data, U.S. average per capita GDP has been rising relative to the handful of other high income countries, exceeding the average for that group by over 40 percent in 1998. This excellent growth of the economy has, in part, reflected the strong role of investment in this expansion with real gross domestic investment having risen at an annual rate of 7.9 percent, or double the rate of GDP growth. Increases in such investment accounted for over 30 percent of GDP growth between 1994 and 1999.

Nearly 14.4 million new jobs were created between December 1994 and January 2000 and the unemployment rate dropped from 6.1 percent in 1994 to 4.0 percent in January 2000 –

the lowest level since 1969. The growth in the productivity of U.S. workers accelerated from 1.8 percent annually in the 1990-1994 period to 2.2 percent in 1994-1998, hitting 3.3 percent between third quarter 1998 and third quarter 1999. After stagnating in the earlier part of the 1990s, real hourly labor compensation, in part reflecting stronger productivity growth, rose at an average annual rate of 2.5 percent from the first quarter of 1996 to the third quarter of 1999. In addition, a recent Council of Economic Advisers and Department of Labor study found that (1) the strong growth of employment since 1993 has been dominated by jobs that the evidence suggests are higher paying; and (2) the benefits of enhanced compensation for U.S. workers have been widely shared.

Open markets in general, and the World Trade Organization and Uruguay Round Agreements in particular, have acted in a number of ways to help the U.S. economy achieve such success over the last five years. The lowering of foreign barriers to U.S. exports contributed to the 36 percent increase in U.S. exports between 1994 and 1999, despite the effects of the Asian financial crisis and slow growth and recessionary conditions experienced by many U.S. trade partners. The number of U.S. jobs supported by exports increased by 1.4 million from 1994 to an estimated level of 11.7 million in 1998 (latest year available), and jobs supported by goods exports in the United States are estimated to pay between 13 percent and 16 percent more than the U.S. national average wage.

The more open markets that the Uruguay Round supported at home and abroad also helped American workers by stretching further the purchasing power of pay checks with high quality, competitively priced imports and by increasing the range and quality of goods available in our markets. As domestic demand surged in the United States in 1998 and 1999, open markets and the availability of high quality

imports also helped stem any incipient inflationary pressures.

Finally, market opening agreements under the WTO helped expand demand for the products of America's high-tech and other competitive sectors beyond levels that could be supported by the U.S. market alone – thus helping raise the revenues and level of investment in many of the United States most technologically advanced sectors, and contributing directly to the remarkable growth of the economy in recent years.

Academic studies recently reviewed by the Council of Economic Advisers (in its report "America's Interest in the World Trade Organization: An Economic Assessment," November 16, 1999) confirm the economic benefits of the Uruguay Round Agreements to the United States. These studies estimate an annual income gain to the United States of between \$27 billion and \$37 billion (1992 dollars), with full implementation of the Round's results. While sizeable, these figures only partially estimate the economic benefits deriving from the Uruguay Round. These studies take incomplete or no account of reductions in non-tariff barriers to trade in goods and services, of beneficial rules changes, such as the WTO's strengthened dispute settlement mechanism, or of the growth effects of more open markets because such benefits are difficult to quantify.

Other aspects of the Uruguay Round and the WTO, likewise not readily quantifiable, also have proven beneficial to the United States. We draw attention to three such areas where recent agreements achieved since conclusion of the Uruguay Round have strengthened the system globally and provided benefits to American interests. Much of the fastest growth in the U.S. economy is occurring in information technology products, telecommunication services and financial services where productivity and output has been greatly enhanced by advanced

computer and telecommunications equipment and services. Favoring the rapid advance of these technologies and industries, and the jobs that they support, is the ability to finance research and development on a sales base that is global, rather than national, in size. Unquestionably, developments in the WTO –and in particular the landmark agreements covering these three sectors – expand market access and help the United States to finance research and investment and to achieve or maintain preeminence in many high technology sectors.

The Information Technology Agreement (ITA), for example, includes 52 countries representing over 95 percent of trade in the ever expanding \$600 billion global market for information technology products. Under the ITA, participants will eliminate tariffs, largely by the year 2000, on products of interest to the United States such as computers, computer equipment, semiconductors, telecommunications equipment, semiconductor manufacturing equipment and computer based-analytical instruments. The Agreement on Basic Telecommunications has opened up over 95 percent of the world telecommunications markets. The market access opportunities opened up by this Agreement cover the full range of innovative services and technologies pioneered in the United States that continue to propel growth in this sector. The Financial Services Agreement, covering an overwhelming share of the global trade from 102 countries, is opening world financial services' markets encompassing \$38 trillion in global domestic bank lending, \$19.5 trillion in global securities trading and \$2.1 trillion in world wide insurance premiums. Financial services is one of the United States' most competitive industries, contributing importantly to the growth of U.S. employment opportunities. Also, more recent work on electronic commerce has included an agreement to a moratorium on the imposition of customs duties on electronic transmissions. Such market opening agreements expand the

sales base for U.S. high-tech and high-tech related sectors, helping the firms involved to better finance the large outlays of capital required to sustain technology-based growth.

A more detailed discussion of the economic benefits of the Uruguay Round and WTO for the United States in the last five years is found at the end of this chapter.

B. Work for 2000

The WTO will remain at the center of the formation and execution of U.S. trade policy. It provides a strong foundation of rules and disciplines on which the United States will continue to build the trade agenda for the future – bilaterally, regionally and multilaterally.

The WTO faces a number of challenges in the coming year, from proceeding on the built-in agenda for agriculture and services, to implementing prior agreements, bringing in new Members, improving the ability of the least developed countries to participate, reforming its institutions, and expanding the scope of negotiations in pursuit of a new Round. Meeting these challenges is a responsibility that all WTO Members share. None of these are easy or simple; but others have shouldered equally difficult tasks in the past.

Pursuit of the Built-In Agenda Negotiations:

The core elements of the negotiating agenda are agriculture and services. These are the sectors in which markets remain most distorted and closed, and in which the opening of trade will mean perhaps most to future prospects for rising living standards, technological progress, and sustainable development. The WTO General Council set the initial negotiating meetings for the mandated negotiations in the first quarter of 2000, starting with special sessions of the Committee on Agriculture and the Council for Trade in Services. Work will include the development of negotiating proposals this year, a matter on which the United States will be

consulting the private sector in the days ahead. The work has just begun, and the Administration will soon publish a notice in the *Federal Register* seeking comments from all interested parties as we begin the process of developing proposals for these negotiations. But our view of the initial steps are as follows:

In agriculture, the WTO Agreement on Agriculture, with binding commitments on market access, export subsidies and domestic support, provides the basis on which to pursue further agricultural reform. Useful preparatory work has already been accomplished through the WTO Committee on Agriculture over the last three years, where countries have identified key issues and their interests.

We are now working with other countries to ensure discussions in Geneva focus on substantive reform proposals. Our work last year enabled us to identify general negotiating objectives, such as eliminating export subsidies; reducing tariffs; expanding market access opportunities for products subject to tariff-rate quotas, including better disciplines on the administration of those TRQ's; reducing trade-distorting domestic support levels; and ensuring that the operation of agricultural state trading entities are more market-oriented. We also want to ensure access for biotechnology products.

The Administration is in the process of developing proposals to implement these objectives. While specific negotiating time lines have not been established by the Uruguay Round, the expiration of the agricultural "peace clause" in 2003, and continued domestic farm reform efforts in the United States, Europe and other countries, should help to move the negotiations forward.

In services, the Administration has started to develop negotiating proposals for a wide range of sectors where our companies have strong commercial interests, including energy services,

environmental services, audiovisual services, express delivery, financial services, telecommunications, professional services, education and training, private healthcare, travel and tourism, and other sectors. U.S. companies are poised to be among the primary beneficiaries from stronger services commitments in the WTO.

Broadly speaking, U.S. objectives are to remove restrictions on services trade and ensure non-discriminatory treatment. We also need to ensure that the commitments we obtain accurately reflect our companies' range of commercial activities. For example, the GATS definition of environmental services does not include recycling services, an area where U.S. companies are leaders. We will address this issue in the new negotiations.

U.S. proposals must also reflect the many different means U.S. service providers use to meet the needs of their foreign customers. This includes U.S. companies that establish operations overseas – for example, as a branch or subsidiary; that deliver their services electronically by phone, fax, or the Internet; or that depend on individual personnel to “export” services – for example, Americans that perform short-term consultancy services in a foreign country.

Implementation: Monitoring and compliance of existing agreements will remain a high priority for the Administration. The year 2000 marks the end of transitions in some Agreements central to the functioning of WTO rules in areas such as intellectual property rights protection, customs valuation, trade-related investment measures and industrial subsidies. Certain WTO Members, particularly less advanced countries, had been given extra time to bring their trade regimes into compliance with the rules agreed in the Uruguay Round.

For market access as well, the bulk of market access opportunities agreed in the Round is

nearing full implementation, culminating in the largest global tax cut in history, through which tariffs on manufacturing products were cut by one-third. Thus, implementation of, and compliance with, the Uruguay Round Agreements will remain a central part of the U.S. agenda in the WTO for the coming year.

Expanding the Agenda: Beyond the mandated negotiations and implementation, the United States has pressing needs to address market access concerns in non-agricultural products, electronic commerce, issues related to trade and the environment, trade facilitation, and perhaps other topics as well. For this reason, we will continue to work with our trading partners to build the necessary consensus for a new Round. However, to be successful, all countries must be flexible.

The WTO also must look ahead and respond to the challenges of a new economy that is driven by rapid technological developments and growth in the high technology sector. Since the conclusion of the Uruguay Round, the WTO has made impressive gains in this field. Beginning in 2000, as a result of the Information Technology Agreement concluded in 1996, tariffs fall to zero on a range of information technology products valued at over \$600 billion (e.g., semiconductors, computers and telecommunications equipment) in 52 countries that account for well over 90 percent of world trade in such products.

In 1997, the WTO successfully complemented this breakthrough on the equipment side of information technology by concluding the Basic Telecommunications Services Agreement, which has led to dramatic reductions in the costs of such services around the globe and covers more than 95 percent of the global market for telecommunications. Also in 1997, the WTO completed historic negotiations in trade in financial services covering \$18 trillion in global securities assets, \$38 trillion in global domestic

bank lending and \$2.2 trillion in world wide insurance premiums.

With these Agreements in place, the WTO began to focus carefully on the promise of electronic commerce to enhance development and growth prospects. In 1998 WTO Members signaled the importance of preventing the establishment of barriers to electronic commerce by agreeing to a moratorium on duties for electronic commerce transactions. In a relatively short period of time, WTO Members have seen the importance of electronic commerce to their trade regimes, particularly for the less advanced Members, and to leveraging the benefits of the trading system for small and medium-sized enterprises.

Strengthening the WTO and its Ability to Address Citizens' Concerns, including on Labor and the Environment: Another element for the WTO's agenda must be to maximize public confidence in the WTO's ability to address the issues of trade and the environment and trade and labor in a manner that is compatible with broader U.S. objectives. Ministers have tackled these issues in a variety of ways during the WTO's short tenure. In establishing the WTO, the United States sought, and Members agreed, to create a Committee on Trade and Environment. Since 1995, the Committee has provided an important venue for discussion between representatives of government and the trade and environment communities regarding the intersection of trade and environment issues.

Similarly, on trade and labor, at the WTO's first ministerial meeting in Singapore in 1996, trade ministers for the first time committed to the observance of core labor standards and to encourage continued collaboration between the WTO and the International Labor Organization. The issues of trade and environment and trade and labor will continue to command attention in the year ahead. As part of the broader efforts to launch a Round, the United States will continue

efforts to build a consensus on addressing these issues in the WTO's work program.

Institutional reform, particularly the need for greater transparency – both internally and externally – also will be an important agenda item for the WTO in the coming year. Thus, the year ahead will continue to find the United States urging its trading partners to make additional progress in enhancing the accountability and openness of the institution, and taking actions to promote transparency.

The United States has been at the forefront of efforts to improve public understanding of and access to the WTO. The United States has made progress and seeks additional action by WTO Members to provide better and easier means to obtain access to information and documents from the WTO, including dispute settlement proceedings; greater interaction with the NGO community; and an extended range of opportunities to ensure more effective outreach to citizens and consumers. We have argued that transparency provides all countries a means of addressing problems of corruption in areas like customs and procurement.

The WTO and its Members will have to find additional ways to explain the value of what makes the WTO different – i.e., unlike other international institutions, the WTO is and should remain an inter-governmental, member-driven institution, whose Members take decisions on the basis of consensus.

As the WTO has become a much larger institution, with membership expanding from 119 in 1995 to 135 in 1999, suggestions have been renewed to improve the WTO's internal consultative processes. The United States will work with its trading partners to improve the WTO's operation in this regard, without disturbing the fundamental requirement of decision-making by consensus. It is clear that improvements can be made to ensure that the WTO remains an inclusive institution reflecting

the concerns and interests of its Members at varying levels of development.

Expanding WTO Membership: One of the WTO's remarkable achievements over the past five years has been the steady effort of countries at all levels of development to negotiate entry into the WTO. Nine accession negotiations have been completed since the WTO was established in 1995. The former Soviet Republics of Latvia, Estonia and the Kyrgyz Republic are now WTO Members. Accession to the WTO takes hard work and commitment. In the coming year, the United States looks forward to expanding the membership of the WTO further, from bringing in major economies such as China, to making substantial progress with a range of partners from the Middle East and Eastern Europe and Asia. Early in 2000, the United States looks forward to Jordan and Georgia joining the WTO once their respective parliaments have ratified their accession agreements.

Conclusion: The WTO has given the world a crucial source of economic stability in a very difficult time. During the recent financial crisis, often overlooked is the fact that countries' binding WTO commitments served to help resist a protectionist response to the crisis. This helped avert the cycle of protection and retaliation of the sort that occurred in the 1920s and 1930s, a cycle which would have denied affected countries the markets they need to recover, and hurt our own farmers and workers as well.

The system of WTO rules has repeatedly demonstrated its worth in helping governments respond to rapid changes in the global economy, as the recovery from the recent financial crisis has shown. The Clinton Administration will continue to pursue a vigorous agenda in the WTO to fashion a trading system that keeps pace with rapid developments in the 21st century; one that responds to the concerns of

citizens about the WTO's accountability, and its proper role in the global economy.

C. The WTO's 3rd Ministerial Conference, November 30 - December 3, 1999

In May 1998, President Clinton joined other leaders in celebrating the 50th anniversary of the post-World War II trading system. In his speech, he challenged U.S. trading partners to liberalize world trade further on terms better suited to the fast-paced global economy. His address focused on the need to continue to open markets around the world and to further develop the WTO as an institution that is responsive to and responsible for the needs and interests of various constituencies; one that works effectively with other international institutions like the international financial institutions and other international organizations such as the ILO. One option for reaching these goals, favored by most of the WTO's Members in 1999, was to begin a new Round of multilateral trade negotiations at the WTO's 3rd Ministerial Conference.

The United States hosted and chaired the WTO's 3rd Ministerial Conference in Seattle, Washington, from November 30 - December 3, 1999. A total of approximately 3,000 delegates, 2,700 members of the press and 1,500 NGO representatives were accredited to the 1999 Ministerial Conference.

Most WTO Members agreed that the Round to be launched at the Ministerial would consist, at a minimum, of the mandated negotiations to further liberalize trade in services and agriculture, along with other to-be-specified topics. Delegations approached this task with good will but did not reach a consensus on the launch of a new Round.

At various points since the creation of the GATT, governments have made politically difficult choices to serve the greater good. At

times, they also have reached deadlocks. Creation of the GATT in 1948, for example, built on a failure to set up an “International Trade Organization” in 1947. The creation of the WTO five years ago followed a failed attempt to launch a Round in 1982, a mid-term breakdown in 1988, and failures to conclude the Round in 1990 and 1992. The more recent negotiations on financial services and telecommunications also broke down in 1996 and 1997, in all cases to be followed by success. In each instance, governments reviewed their positions, and were ultimately able to move the agenda forward.

A preparatory process for the 3rd Ministerial Conference was organized in Geneva. WTO Members agreed on the need to proceed with the mandated negotiations from the built-in agenda. Most also agreed that the negotiations needed to be relatively short and that the scope of the negotiations needed to be broadened beyond the built-in agenda. WTO Members were near consensus on the proper treatment of electronic commerce, the agenda for negotiations on services, and several issues relating to trade and the environment.

Even in the late stages, however, the preparatory process did not narrow the differences between WTO Members on a number of other important issues. These differences contributed to a difficult preparatory process in Geneva. However, the prevailing view at the conclusion of the preparatory process was that once Ministers convened and political decisions were made on the basic features of the negotiations, agreement to launch the Round could be reached. Ultimately, of course, the differences could not be bridged in the preparatory process or in the time available to ministers during the Conference, with divisions on agriculture proving to be the litmus test for broader agreement to launch negotiations.

Major points of disagreement included:

- ▶ Agriculture: The EU, Japan and Korea resisted a commitment to thorough reform of agricultural trade. The built-in agenda negotiations envisioned further reductions in export subsidies, strengthened rules on domestic support, reductions in tariffs and the expansion of market access opportunities for products subject to tariff-rate quotas.
- ▶ Implementation of Existing Agreements: A number of developing countries, including some of the most advanced, requested broad exemptions from previous commitments. Likewise, certain of our trading partners sought to use the debate on implementation to reopen agreements like textiles or antidumping, confusing in some cases the problems with implementation with a more basic dissatisfaction over the results of the Uruguay Round.
- ▶ Market Access: Questions here centered on the breadth of negotiations on market access, whether they could be supplemented with early provisional results as was suggested by the APEC sectoral initiatives in the industrial sector, and to what extent industrial market access would result in improvements in current or existing market access.
- ▶ Investment and Competition Policy: The EU and Japan in particular argued for negotiation of broad new rules in the areas of investment and competition policy, but found relatively little support.
- ▶ Labor: Extensive consultations were held at the Ministerial on various ways to address this issue in the WTO’s work program. The United States called for

establishment of a Working Group in the WTO; others proposed a broader forum engaging other international organizations such as the ILO.

- ▶ **Environment:** Broad agreement emerged to confirm sustainable development as a guiding principle for the negotiations, to pursue trade liberalization in areas that hold particular promise for yielding both trade and environmental benefits and to use the Committee on Trade and Environment to identify and consider the environmental implications of the negotiations. Differences emerged however regarding proposals to address subsidies that contribute to over-fishing, and others to modify WTO rules.

The issues outlined above remain to be resolved. With the launch of the built-in agenda negotiations, we will continue to work with our WTO partners in an effort to build consensus toward the launch of a new Round.

D. Preparations for the 1999 WTO Ministerial Conference

Preparations for the Ministerial meeting were the responsibility of the WTO's General Council, meeting in special session, under the direction of Chairman John Weekes of Canada, followed by Chairman Ali Mchumo of Tanzania, and Director-General Mike Moore, after his appointment on September 1, 1999. All WTO Members were free to participate in the preparations. The Council received 235 submissions from Members during the course of its preparations for the Ministerial, covering all the major trade issues of concern to Members.

The General Council then systematically reviewed the issues, as called for in the Ministerial Declaration of May 1998, focusing on: (i) implementation of existing agreements; (ii) the mandated negotiations; (iii) work

mandated under existing agreements and decisions taken; (iv) any recommendations on the work program agreed at the Singapore Ministerial Meeting in 1996; (v) recommendations on the follow-up to the High Level Meeting for the Least Developed Countries; and (vi) other matters proposed and agreed by Members.

These preparations were conducted in three phases. First, from September 1998 to February of 1999, WTO Members engaged in an issue identification process. Second, from February 1999 through July, they tabled specific negotiating proposals. Finally, from September 1999 to the actual Ministerial Conference, they worked to draft a Ministerial Declaration for consideration and adoption by Ministers. In order to conduct the preparations in a much more open and transparent fashion, the WTO for the first time used its website to publish proposals submitted by delegations (169 of the 235 proposals were submitted by delegations as derestricted documents).

The United States was an active participant in the preparations for the Ministerial, submitting proposals in phases one and two, and drafting proposals for Declaration text in the course of informal consultations that began in the fall of 1999.

Proposals Tabled by the United States

- ▶ Advancing the WTO's Contribution to Trade Facilitation
- ▶ Agriculture-Biotechnology
- ▶ Agriculture-Domestic Support
- ▶ Agriculture-Export Competition
- ▶ Agriculture-Market Access
- ▶ Agriculture- Objective and Overall Framework
- ▶ Fisheries Subsidies
- ▶ Further Negotiations As Mandated by the General Agreement on Trade in Services (GATS)
- ▶ Implementation Issues (two proposals)

- ▶ Mandated Negotiations and the Built-in Agenda
- ▶ Non-industrial Market Access
- ▶ Singapore Work Program Issues and Other Issues of Concern to Members: Industrial Market Access, Trade and Labor, Trade and Environment, Transparency and Openness, and Technical Assistance
- ▶ Technical Assistance/Capacity Building (original and revised proposals)
- ▶ Trade and Sustainable Development
- ▶ Trade and Labor
- ▶ Transparency in Government Procurement (proposal and draft text)
- ▶ Transparency in WTO Work

E. Consultations on the Agenda for the Third Ministerial

U.S. Domestic Consultations: The 1998 Annual Report called attention to a Trade Policy Staff Committee (TPSC) solicitation for public comment on the elements for the Third Ministerial agenda. The Administration received nearly one hundred replies to this solicitation, copies of which are available in the USTR reading room. These submissions, along with an extensive process of consultations that extended beyond the private sector advisory committees established pursuant to Section 135 of the Trade Act of 1974, provided the initial views used by U.S. negotiators in setting the U.S. priorities. These views were supplemented in 1999 by three important events. In the spring, the Trade Policy Staff Committee held hearings in Atlanta, Chicago, Dallas, Los Angeles, and Washington D.C. and solicited public comments about the development of the agenda. The comments filed for these hearings are also available in the USTR reading room. The Department of Agriculture and the Office of the U.S. Trade Representative also held hearings around the country to solicit views on the upcoming agriculture negotiations. Cities visited included: Winterhaven, Indianapolis, Austin, Richland, Kearney, Des Moines,

Sacramento, Newark, Burlington, Bozeman, Memphis, and Minneapolis. Information from these hearings is available at the USDA website (www.fas.usda.gov). Finally, the U.S. International Trade Commission (ITC) was requested to provide advice to the U.S. Trade Representative for the market access negotiations. Such advice is required before the United States can engage in negotiations. The ITC published a notice for comment and held hearings to prepare its report to the U.S. Trade Representative.

Meetings Hosted by the WTO: In addition to the discussions held in the General Council, the United States and other WTO Members sought to broaden the debate on the WTO's forward agenda by calling for WTO-sponsored meetings with the NGO community. In the lead up to the Ministerial meeting, there was a high-level meeting on trade and the environment and another on trade and development. Details from these meetings can be found on the USTR website, and the simulcast remains available from the WTO. Finally, on the eve of the Ministerial meeting, the WTO convened a meeting with NGO participants in Seattle. Notwithstanding that the start of this meeting was disrupted as a result of demonstrations, once convened, it provided non-governmental representatives a day-long opportunity to share their views on the full range of pressing matters before the WTO Members.

High Level Symposium on Trade and the Environment: In his speech to the WTO in May 1998, President Clinton called on the WTO "to provide strong direction and new energy to the WTO's environmental efforts in the years to come." As a result of U.S. leadership, the WTO held a High Level Symposium on Trade and Environment on March 15 -16, 1999. A high-level delegation of 22 U.S. officials participated in the symposium, which brought together senior officials from trade and environment ministries, as well as representatives from non-governmental organizations, the business

community, academia, and other international organizations such as the World Bank and the United Nations, to engage in an open dialogue on the trade and environment relationship. Specifically, the agenda addressed the linkages between trade and environmental policies, the interaction between the trade and environment communities, and the synergies between trade liberalization and sustainable development. This was the first meeting of its kind, and represented to the United States a recognition by many WTO Members of the role that sustainable development must play in the global trading system. Details of the meeting, including submissions and presentations, can be located on the WTO website.

High Level Symposium on Trade and Development: The WTO sponsored the High Level Symposium on Trade and Development on March 17-18, 1999, immediately following the High Level Symposium on Trade and the Environment, to provide informal high-level dialogue among senior officials of WTO Members, senior officials of international organizations, and representatives of non-governmental organizations from developed and developing countries. The symposium offered the opportunity for an exchange of views on issues such as the development dimension of international trade issues and trade-related concerns of developing countries, including least developed countries, and the role of the WTO in promoting developmental objectives set out in the preamble to the Marrakesh Agreement establishing the WTO.

NGO Symposium: Immediately prior to the formal opening of the Third Ministerial meeting, the WTO sponsored a symposium designed to encourage an informal dialogue among WTO Members and NGO representatives on issues likely to affect the international trading system in the next century. Participants included representatives of the more than 700 NGO organizations which had been accredited to the Ministerial Conference.

Topics included: “Trade and Development Prospects for the next Twenty Years: The Role of International Trade in Poverty Elimination; Effects of Globalization on Developing Country Economies; Integration of Developing Countries into the Multilateral Trading System” and “Evolving Public Concerns and the Multilateral Trading System: Public Concerns Towards 2020, Trade and Sustainable; Development Trade and Technological Developments.” The meeting was simulcast and details are available on the WTO website.

F. Dispute Settlement

1. The Dispute Settlement Understanding

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

Assessment of the First Five Years of Operation

The accomplishments of the WTO dispute settlement system in the last five years particularly stand out when compared to the record of the prior system under the GATT. Under the GATT, panel proceedings took years, the defending party could simply block any unfavorable judgment, and the GATT panel process did not cover some of the agreements. Under the WTO, there are strict timetables for panel proceedings, the defending party cannot block findings unfavorable to it, and there is one comprehensive dispute settlement process covering all of the Uruguay Round Agreements. The first five years have demonstrated that when a WTO Member violates its WTO obligations, there will be consequences. Moreover, if a WTO Member violates its

intellectual property or trade in services obligations, another Member can be authorized to retaliate against the goods of the violating Member.

In setting negotiating objectives for the Uruguay Round, Congress placed dispute settlement reform high on the list, as it saw effective enforcement as an essential precondition for agreeing to be bound by new rules. Five years later, WTO dispute settlement has begun to pay the dividends that Congress sought. The existence of effective WTO dispute settlement means that U.S. trading partners are on notice that they have to be serious about living up to their obligations. Like any other form of law enforcement, dispute settlement in the WTO creates a stable and law-abiding climate that U.S. businesses and workers can depend on, aiding the Administration's unparalleled record of economic growth. The WTO dispute settlement mechanism also provides the United States with a means to raise and to solve particular bilateral trade problems.

While the DSU has been an effective tool so far, its procedures need to be strengthened – particularly with respect to the procedures for monitoring compliance with WTO rulings and facilitating swift action in the event of non-compliance. The United States has been working over the past year to clarify the dispute settlement procedures to prevent protracted litigation where there is a disagreement about the WTO-consistency of measures taken to comply with a panel ruling, and to preclude a party that has lost a case from gaming the system and delaying the exercise of WTO rights by the complaining parties. Even though the number of cases in which WTO Members have complied with adverse rulings far outweighs the cases where they have failed to comply, it is nevertheless critical to improve the DSU to ensure better implementation. The United States will continue to seek these and other improvements to the DSU, including more openness of the dispute settlement proceedings.

(See below for a discussion of the DSU Review conducted in 1999.)

During its first five years in operation 185 requests for consultations (25 in 1995, 40 in 1996, 50 in 1997, 40 in 1998, and 30 in 1999) concerning 144 distinct matters were filed with the WTO. During that period, the United States filed 49 requests for consultations, and received 35 requests for consultations on U.S. measures.

Disputes Brought by the United States

The United States has been the world's most active user of the WTO dispute settlement process. The Administration has used WTO dispute settlement both as a means of vindicating rights in particular cases, and as a way to communicate to U.S. trading partners that the United States expects them to be as serious as it is about complying with WTO rules. The United States has been successful in litigation both by prevailing in the cases it has brought, and by negotiating agreements that settled cases "out of court" in its favor. So far 25 of the complaints that we have filed with the WTO have reached resolution, and we prevailed on 23 of them – winning 13 cases in panel proceedings and successfully settling 10 others. And in two cases the United States has been authorized to retaliate against a non-complying WTO Member, without fear of counter-retaliation. Highlights of our litigation successes include:³

- ▶ Elimination of discriminatory taxes on U.S. exports of distilled spirits to Japan and to Korea – U.S. exports to Japan in

³ Other cases where the United States prevailed in panel proceedings include challenges to the EU banana import regime; the EU ban on U.S. meat; Argentina's restrictions on textile imports; Australia's export subsidies on leather; and Mexico's antidumping duties on high-fructose corn syrup (which has not yet reached the implementation stage).

the year after Japan began implementing the WTO rulings were up 23 percent over the previous year (\$14 million), and grew faster than exports to other markets, in spite of the Japanese recession;

- ▶ Elimination of barriers to U.S. magazines in the Canadian market, and the creation of new tax and investment benefits and opportunities for U.S. publishers to sell and distribute magazines in Canada;
- ▶ Compliance by India with its WTO intellectual property rights obligations prior to providing patent protection for pharmaceutical and agricultural chemical inventions;
- ▶ Elimination of Indonesia's 1996 National Car Program and its local content requirements which discriminated against imports of U.S. automobiles;
- ▶ Elimination of Japanese restrictions on the imports of certain varieties of fruit, including apples and cherries – Japan's compliance with the WTO rulings will help our growers export more than \$50 million a year of apples and other products to Japan;
- ▶ Elimination of India's import bans and other quantitative restrictions on 2,700 tariff lines of goods – as a result of the WTO ruling, India has already liberalized trade in hundreds of these items for the first time, and when India complies with this ruling for the remaining tariff lines, it will open new markets for U.S. producers of consumer goods, textiles, agricultural products, petrochemicals, high technology products and other industrial products; and

- ▶ Reduction of Canada's subsidized exports of dairy products – Canada will comply immediately with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products; beginning in the 2000-2001 marketing year, Canada will not be able to export more than 9,076 tons of subsidized cheese, which is less than half of the volume exported in recent years.

Each of these cases provides concrete economic benefits to the United States. And in each case, we have insisted that our partners act rapidly to address the problems. This will remain the case in all our disputes; and in most cases our partners have taken their responsibilities seriously.

In two longstanding cases involving the European Union, however, the United States, after protracted litigation, had to exercise its right under the DSU to suspend concessions with respect to certain products from the EU as a result of the EU's failure to lift its ban on imports of U.S. meat, as well as its adoption of a new banana import regime that perpetuates WTO violations previously found by a WTO panel and the Appellate Body. In both of these disputes, talks aimed at a positive resolution are continuing. (Both of these cases are more fully described below.)

As important as favorable WTO rulings are early settlements, achieved without having to pursue litigation to completion. In the past 5 years we have obtained favorable settlements in cases involving:

- ▶ Korea's unfair shelf-life standards for agricultural imports;
- ▶ Hungary's agricultural export subsidies;

- ▶ Market access for pork and poultry in the Philippines;
- ▶ Market access for U.S. rice in the EU;
- ▶ Full copyright protection for sound recordings in Japan (which the Recording Industry Association of America estimated was worth half a billion dollars annually);
- ▶ Full enforcement of intellectual property rights in Sweden;
- ▶ Improved patent protection for U.S. inventions in Portugal;
- ▶ Pakistan's provisions for exclusive marketing rights for pharmaceutical and agricultural chemicals;
- ▶ Elimination of tax discrimination against imported movies in Turkey; and
- ▶ Trade-related investment measures on autos in Brazil.

In addition to the 13 disputes that the United States has successfully pursued through WTO litigation, we also pursued two other complaints involving measures that, in our view, denied U.S. rights under the WTO agreements, but we did not obtain rulings in our favor. One case involved Europe's reclassification of local-area computer network equipment from one tariff category to another. The WTO ruling in that case, however, had no effect because we succeeded in negotiating the elimination of tariffs on such equipment in the multilateral Information Technology Agreement (ITA). The products at issue now enter the EU duty-free no matter where classified, and the ITA has ensured against any repetition of the problem. In the other case, we challenged various Japanese laws, regulations, and requirements affecting Japanese imports of photographic film and paper, but the WTO panel did not find

sufficient evidence that Japanese Government measures were responsible for changes in the conditions of competition between imported and domestic photographic materials. While the United States did not prevail in the film dispute, Japan made a number of representations during the course of the panel process regarding the openness of its photographic film and paper market, and we have been actively monitoring Japan's actions to ensure that they are in line with Japan's representations. (See Japan section in Chapter V.)

Disputes Brought Against the United States

During the past five years, 35 complaints were filed in the WTO against U.S. measures. Seven of those cases have completed all phases of the litigation process, including an appeal where one was filed. In one case, a WTO panel upheld the WTO-consistency of a U.S. law: Section 301 of the Trade Act of 1974. Section 301 is the principal U.S. statute for addressing foreign trade barriers. In the other six cases, some aspect of U.S. practice was found inconsistent with U.S. WTO obligations.

When we have defended a U.S. statute or regulation and have not prevailed, we have respected our WTO obligations – just as we expect the same of our trading partners – and responded in a manner that did not diminish U.S. sovereignty. For example:

- ▶ In a dispute regarding an Environmental Protection Agency (EPA) regulation on conventional and reformulated gasoline, a WTO panel found against one aspect of the regulation that treated domestic companies differently than their foreign competitors. In that case, the WTO Appellate Body took a broad view of the WTO's exception for conservation measures and affirmed that clean air is an exhaustible natural resource covered by that exception. The WTO ruling recognized the U.S. right to impose

special enforcement requirements on foreign refiners that sought treatment equivalent to U.S. refiners. The ability of the United States to achieve the environmental objective of that regulation was never in question, and EPA was able to issue a revised regulation that fully met its commitment to protect health and the environment while meeting U.S. obligations under the WTO.

- ▶ In a dispute involving U.S. restrictions on imports of shrimp harvested in a manner harmful to endangered species of sea turtles (the “Shrimp-Turtle” law), on appeal the Appellate Body agreed that our law was within the scope of the WTO’s exception for conservation measures. Although the Appellate Body found problems in the U.S. implementation of the law, these issues could be addressed in a manner that did not weaken, and in fact promoted, our sea turtle conservation efforts. In particular, the Appellate Body found that the procedures for determining whether countries meet the requirements of the law did not provide adequate due process, because exporting nations were not given formal opportunities to be heard, and were not given formal written explanations of adverse decisions. The Appellate Body also found that the United States had unfairly discriminated between the complaining countries and Western Hemisphere nations by not exerting as great an effort to negotiate a sea turtle conservation agreement with the complaining countries and by not providing them the same opportunities to receive technical assistance. The United States informed the WTO of its intention to implement the ruling in a manner consistent not only with WTO obligations, but also with the firm

commitment of the United States to protect endangered sea turtles. In July 1999 the State Department revised its procedures to provide more due process to countries applying for certification under the Shrimp-Turtle law. The United States is also engaged with the complaining countries in the process of negotiating a comprehensive sea turtle conservation agreement, and is providing them with additional technical assistance. Throughout the case, U.S. import restrictions on shrimp harvested in a manner harmful to sea turtles have remained fully in effect.

- ▶ We also failed to prevail in two cases involving U.S. import measures on textiles and apparel – on underwear from Costa Rica and on wool shirts and blouses from India. The measure on underwear from Costa Rica was imposed in March 1995 for a two-year period. It ran to the full length of its term and expired in March 1997, one month after dispute settlement proceedings had concluded. The measure on wool shirts from India was unilaterally terminated by the U.S. interagency Committee on Implementation of Textile Agreements (which oversees the U.S. textile import program) due to changed commercial conditions. U.S. production in this category had increased and imports from India in this category had plummeted. The WTO panel did not recommend that the United States make any changes, and no action by the United States was necessary.
- ▶ In a dispute involving a Commerce Department antidumping order on Korean dynamic random access memory chips (DRAMs), we prevailed on all but one of the claims raised by Korea. Specifically, Korea won on one

claim that the standard in Commerce's regulation on review of antidumping orders should have been whether it was "likely" that dumping would continue or recur if an antidumping order were revoked instead of "not not likely." Commerce amended the regulation in question and has made a redetermination retaining the DRAMs antidumping order under the revised regulation.

- ▶ Finally, in a case challenging the Foreign Sales Corporation (FSC) provisions in U.S. tax law, the WTO Appellate Body ruled on February 24, 2000 that the FSC tax exemption constitutes a prohibited export subsidy under the WTO Subsidies Agreement, and also violates the WTO Agreement on Agriculture. The Appellate Body report is due to be adopted in March.

The WTO dispute settlement system does not give panels any power to order the United States or other countries to change their laws. If a panel finds that a country has not lived up to its commitments, all a panel may do is recommend that the country begin observing its obligations. It is then up to the disputing countries to decide how they will settle their differences. The defending country may choose to make a change in its law. Or it may decide instead to offer trade "compensation" – such as lower tariffs. The countries concerned could agree on compensation or on some other mutually satisfactory solution. Alternatively, the defending country may decide not to change its measure and the country that lodged the complaint may retaliate by suspending trade concessions equivalent to the trade benefits it has lost.

2. Dispute Activity in 1999

a. Disputes Brought by the United States

The United States continues to be the most active user of the WTO dispute settlement process. In 1999, eight new complaints were filed by the United States. This section includes brief summaries of dispute settlement activity in 1999 with respect to those cases in which the United States was a complainant. These cases involve a variety of different WTO-inconsistent trade barriers maintained by several different governments. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in many instances, the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel procedures.

New complaints filed by the United States in 1999:

The United States filed the following eight new complaints under WTO dispute settlement procedures in 1999, covering a broad range of sectors and various WTO Agreements:

Republic of Korea – Measures affecting imports of fresh, chilled, and frozen beef. The Republic of Korea has established a regulatory scheme that discriminates against imported beef by confining sales of imported beef to specialized stores, limiting the manner of its display, and otherwise constraining the opportunities for the sale of imported beef. In addition to challenging the regulatory scheme, the United States contends that the Republic of Korea imposes a markup on sales of imported beef, limits import authority to certain so-called "super-groups" and the Livestock Producers Marketing Organization (LPMO), and provides domestic support to the cattle industry in the

Republic of Korea in amounts that cause the country to exceed its aggregate measure of support as reflected in its WTO schedule. These restrictions appear to be inconsistent with the GATT 1994, the Agreement on Agriculture, and the Import Licensing Agreement. Consultations were held March 11-12, 1999, and a panel was established on May 26, 1999. Australia also brought a dispute against the Republic of Korea on the same measures; the Australian and U.S. panels have been consolidated.

Republic of Korea – Measures affecting government procurement. The United States is challenging certain procurement practices of Korean entities responsible for the procurement of airport construction in the Republic of Korea. The United States believes these practices, which include domestic partnering requirements, the absence of access to challenge procedures, and inadequate bid deadlines, are inconsistent with the Republic of Korea's obligations under the Agreement on Government Procurement (GPA). While the Republic of Korea contends that the entities responsible for the procurement of airport construction are not covered under its GPA obligations, the United States maintains that such entities are in fact within the scope of the country's list of covered central entities as specified in its GPA concessions. Consultations with the Republic of Korea were held March 17, 1999. On May 11, 1999, the United States requested the establishment of a panel. A panel was established on June 16, 1999.

Argentina – Certain measures affecting imports of footwear. In November 1998 Argentina adopted Resolution 1506 modifying an existing safeguard measure on imports of footwear from non-MERCOSUR countries. This resolution imposes a tariff-rate quota (TRQ) on such imports, in addition to safeguard duties previously imposed. Moreover, the resolution postponed any liberalization of the original safeguard duty until November 30, 1999, and liberalized the TRQ only once during

the life of the measure. On March 1, 1999, the United States requested consultations with Argentina on this measure, alleging violations of the Agreement on Safeguards. A panel was established on July 26, 1999, but work did not proceed pending the outcome of a dispute brought by the European Union involving the same matter. On December 14, 1999, the Appellate Body in the EU challenge upheld the panel's determination that Argentina violated the Agreement on Safeguards. The United States is currently monitoring Argentina's implementation of the panel and Appellate Body's rulings and recommendations.

Canada – Patent protection. The TRIPS Agreement obligates WTO Members to grant a term of protection for patents that runs at least 20 years from the filing date of the underlying application, and requires each Member to grant this minimum term to all patents existing as of the date of application of the Agreement to that Member. Under the Canadian Patent Act, the term granted to patents issued on the basis of applications filed before October 1, 1989 is only 17 years from the date on which the patent is issued. This provision is inconsistent with Canada's obligations under the TRIPS Agreement. The United States filed a request for consultations on May 6, 1999. Consultations were held June 11, 1999. The United States requested the establishment of a panel on July 15, 1999. The panel was established on September 22, 1999.

Argentina – Patent and test data protection for pharmaceuticals and agricultural chemicals. The United States is challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, pursuant to the TRIPS Agreement. In addition, the United States is challenging Argentina's failure to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. The United States filed a request for consultations on

May 6, 1999. Consultations were held on June 15, 1999 and again on July 27, 1999.

France and EU – Measures relating to the development of a flight management system.

This dispute involved a French government loan – on preferential and non-commercial terms – in the amount of 140 million French francs, to be disbursed over three years, for a project in which a French company, Sextant Avionique, will develop a new flight management system (FMS) adapted to Airbus aircraft. The grant of the loan was approved by the EU. On May 21, 1999, the United States filed a request for consultations. Consultations were held on June 30, 1999.

EU – Protection of trademarks and geographical indications for agricultural products and foodstuffs.

EU Regulation 2081/92, as amended, does not provide non-discriminatory treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers that this measure is inconsistent with the EU's obligations under the TRIPS Agreement and requested consultations regarding this matter on June 1, 1999. Consultations were held on July 9, 1999.

India – Measures affecting trade and investment in the motor vehicle sector. In order to obtain import licenses for certain motor vehicle parts and components, India requires manufacturing firms in the motor vehicle sector to achieve specified levels of local content, to neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and to limit imports to a value based on the previous year's imports. Considering these requirements inconsistent with India's obligations under the GATT 1994 and the TRIMS Agreement, the United States requested

consultations on June 2, 1999. Consultations were held on July 20, 1999.

Activity in 1999 on disputes that were commenced in prior years:

Argentina – Specific duties and other measures affecting imports of footwear, textiles and apparel.

The United States prevailed when it challenged (with the EU, Hungary and India participating as interested third parties) specific duties imposed by Argentina on various textile, apparel and footwear items in excess of its tariff commitments; a statistical tax of 3 percent *ad valorem* on almost all imports; and measures requiring that each import of textiles, apparel and footwear be labeled with the number of a corresponding affidavit of product component filed with the Argentine government. On November 25, 1997, the panel found that the specific duties violated Argentina's tariff bindings under GATT Article II, and that the statistical tax violated GATT Article VIII. The Appellate Body then determined on March 27, 1998 that the structure and design of Argentina's specific duties resulted in the levying of customs duties at rates above Argentina's Article II tariff bindings. Argentina capped its specific duties on textiles and apparel at 35 percent in October 1998, and complied with the ruling on the statistical tax in February 1999.

Australia – Prohibited export subsidies on leather. The United States prevailed in this dispute concerning subsidies available to leather producers under Australia's Textile, Clothing and Footwear Import Credit Scheme (TCF scheme) and other subsidies granted or maintained, which are prohibited under Article 3 of the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). Under the original TCF scheme, exporters of eligible products could earn import credits. After consultations held October 31, 1996, the two sides reached a settlement announced on November 25, 1996, with an

agreement by Australia to excise automotive leather from eligibility for these export subsidies by April 1, 1997. However, soon after settling this dispute, Australia announced a new package of subsidies, granted to the sole Australian exporter of automotive leather. On November 10, 1997, the United States requested WTO consultations on the new measures; the consultations took place December 16, 1997. On January 22, 1998, a panel was established under the expedited procedures of the Subsidies Agreement. Further consultations were requested on May 4, 1998 and a replacement panel was established June 22, 1998.

On May 25, 1999, the panel circulated its report, ruling that the grant constituted a WTO-inconsistent export subsidy and recommending that Australia withdraw the subsidy within 90 days. Australia did not appeal to the WTO Appellate Body and the Dispute Settlement Body adopted the panel report on June 16, 1999. On September 14, 1999, Australia announced that it had taken actions to implement the findings of the panel report. The United States did not consider Australia's action as full and complete compliance and therefore asked the panel to review Australia's implementation of the recommendations. The panel recently ruled that Australia had not complied. If a satisfactory solution cannot be reached with Australia, the Dispute Settlement Body will authorize the United States to suspend concessions (i.e., retaliate) with respect to products of Australia.

Canada – Export subsidies and tariff-rate quotas on dairy products. The United States prevailed on its claim that Canada was providing subsidies to exports of dairy products without regard to its Uruguay Round commitment to reduce the quantity of subsidized exports, and was maintaining a tariff-rate quota on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On March 19, 1999, the panel

issued its report upholding U.S. arguments by finding that Canada's export subsidies are inconsistent with the Agreement on Agriculture. Similarly, the panel determined that Canada's practice of restricting the import of milk to retail-sized containers imported by Canadian residents is inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel's finding that Canada's export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the DSB on October 27, 1999. On December 22, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada will implement the DSB's rulings and recommendations in stages; Canada has already implemented on some measures, and will complete full implementation no later than December 31, 2000.

Canada – Measures affecting split-run magazines. This dispute, in which we prevailed, concerned Canada's measures affecting "split-run" and other imported magazines, including a ban on imports of magazines with advertisements directed at Canadians, a special excise tax on split-run magazines, and discriminatory postal rates on imported magazines. The panel found that Canada's import ban violated the provisions of GATT 1994. Upon appeal, the Appellate Body rejected Canada's argument that the excise tax was a services measure and confirmed the panel's determination with regard to the GATT 1994. Canada abolished the excise tax, the postal rate discrimination, and the import ban in October 1998. However, the Canadian government proposed legislation which, if enacted, would have accomplished the same protectionist result. On May 26, 1999, the United States and Canada successfully reached an agreement that not only addresses U.S. concerns, but also provides commitments from Canada in the areas of investment, tax, and market access for U.S. periodicals carrying

advertisements directed primarily for the Canadian market. In return, the United States has committed not to take further action under the WTO.

Denmark – Measures affecting enforcement of intellectual property rights. The United States used the dispute settlement procedures in this case to encourage action by Denmark to implement its TRIPS obligations. The TRIPS Agreement requires that all WTO Members provide provisional relief in civil intellectual property rights enforcement proceedings. After numerous consultations with the United States in 1997 and 1998, the Government of Denmark agreed to form a special committee to consider amending Danish law to provide this type of remedy. The work of the committee appears to be proceeding in the right direction, and the United States expects Denmark to move toward amendment of its law in the near future. We continue to monitor Denmark's progress on this issue.

EU – Regime for the importation, sale and distribution of bananas. The United States, along with Ecuador, Guatemala, Honduras, and Mexico, successfully challenged the EU banana regime. The regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. On May 22, 1997, the panel found that the EU banana regime violated WTO rules; the Appellate Body upheld the panel's decision on September 9, 1997. At the request of the complaining parties, the compliance period was set by arbitration and expired on January 1, 1999. However, on January 1, 1999, the EU adopted a regime that perpetuates the WTO violations identified by the panel and the Appellate Body. The United States sought WTO authorization to suspend concessions (i.e., retaliate) with respect to certain products from the EU, the value of which is equivalent to the nullification or impairment sustained by the United States. The EU exercised its right to request arbitration concerning the amount of the

suspension and on April 6, 1999, the arbitrators determined the level of suspension to be \$191.4 million. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$191.4 million. Discussions with the EU to resolve this matter are continuing.

EU – Hormone ban. The United States and Canada successfully 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. The EU's ban ignored a vast body of scientific evidence – including evidence produced by the EU's own reviews – that it is safe to consume meat from animals to which these drugs have been administered in accordance with good animal husbandry practice. Because the EU did not comply with the rulings and recommendations 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 (i.e., retaliate) with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the

level of suspension to be \$116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$116.8 million. Discussions with the EU to resolve this matter are continuing.

Greece – Enforcement of intellectual property rights. The United States has obtained positive results through the pursuit of this dispute under the dispute settlement process. Prior to the United States initiating this case, a significant number of television stations in Greece regularly broadcasted copyrighted motion pictures and television programs without the authorization of the copyright owners; effective remedies against such copyright infringements were not provided. Copyrights owned by U.S. nationals were violated in this manner, despite efforts by the U.S. owners to enforce their rights in Greece. The United States considered the situation to be inconsistent with the TRIPS Agreement. Consultations were held on June 11 and September 28, 1998. In September 1998, the Greek government enacted new legislation to crack down on pirate stations. The U.S. industry has filed several test cases under this new law, the majority of which have been resolved. In addition, the rate of television piracy in Greece fell significantly in 1999. Discussions were held again in April 1999 and the United States continues to monitor the situation.

India – Import quotas on agricultural, textile and industrial products. The United States prevailed in its challenge to India's import restrictions on more than 2,700 tariff items. These restrictions are no longer justified under the balance-of-payments (BOP) exceptions of the GATT 1994. On April 6, 1999, the panel circulated its report, finding that India's quantitative restrictions on imports violate the WTO Agreement and rejecting India's claim that its BOP situation justified them. The

Appellate Body confirmed the panel's determination on August 23, 1999. The DSB adopted the panel and Appellate Body reports at its meeting on September 22, 1999. The United States and India have agreed that India will implement the DSB's rulings and recommendations by April 1, 2000 for approximately 73 percent of the tariff items at issue in this case, and by April 1, 2001 for the remaining items.

India – Patent protection for pharmaceutical and agricultural chemical products. The United States successfully challenged India regarding its failure to provide a "mailbox" system for filing patents for pharmaceutical and agricultural chemical products, and for failing to provide a system of exclusive marketing rights for such products. Both a panel and the Appellate Body ruled in favor of the United States. The compliance period of April 19, 1999 was set by agreement with India. India announced at the April 28, 1999 DSB meeting that it had completed its implementation by enacting, among other things, amendments to its patent law and new regulations, to the satisfaction of the United States.

Indonesia – Certain measures affecting the automobile industry. The United States prevailed in this dispute affecting U.S. auto exports. Beginning in 1993, Indonesia granted tax and tariff benefits to automobile manufacturers based on the percentage of local content in a finished automobile. In 1996, the Indonesian Government established the "National Car Program," which granted "pioneer" companies luxury tax and tariff-free treatment if they met gradually-increasing local content requirements. On April 22, 1998, a WTO panel requested by the United States found that Indonesia's measures violated its obligations under the Agreement on Trade-Related Investment Measures (TRIMS Agreement) and the GATT 1994. Indonesia has already eliminated the 1996 National Car Program, and the 1993 program was to be

terminated by July 22, 1999, as determined through WTO arbitration. On July 26, 1999, Indonesia announced that it had fully implemented the rulings and recommendations of the DSB. The United States continues to monitor Indonesia's new automotive sector policy.

Ireland and EU – Measures affecting the grant of copyright and neighboring rights. In this dispute, the United States used WTO dispute settlement consultations to encourage Ireland to take further steps to implement its TRIPS obligations. Ireland has not comprehensively revised its copyright law to implement the TRIPS Agreement. Examples of TRIPS inconsistencies include the absence of rental rights for sound recordings and the lack of “anti-bootlegging” provisions. After consultations with the United States, Ireland committed in February 1998 to accelerate its implementation of comprehensive copyright reform legislation, and agreed to pass a separate bill, on an expedited basis, to address two particularly pressing enforcement issues. Consistent with this agreement, Ireland enacted legislation in July 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. The process of completing comprehensive copyright legislation is progressing, but is currently behind schedule. The United States continues to monitor Ireland's progress and to press for rapid implementation of the new legislation.

Japan – Measures affecting imports of agricultural products. The United States obtained a favorable ruling when it complained to the WTO that, when requiring quarantine treatment for agricultural products, Japan prohibited the importation of each variety of a product until the quarantine treatment had been tested for that particular variety (even though the same treatment was proven effective for other varieties of the same product). On October 6, 1998, a WTO panel found that Japan's testing requirement was not supported

by scientific evidence, was more trade restrictive than required, and was non-transparent. Japan appealed certain panel findings and the United States cross-appealed. The Appellate Body decision, issued on February 22, 1999, broadly upheld the panel decision and accepted the U.S. cross-appeal (extending the scope of the findings to cover more products). The Appellate Body also reversed the panel finding that the requirement was more trade restrictive than necessary. As a result of this dispute, variety-by-variety testing must be eliminated, not just simplified. The DSB adopted these reports on March 19, 1999 and Japan agreed to implement the rulings and recommendations of the DSB by December 31, 1999. On July 30, 1999, Japan's Agriculture Ministry announced that it had lifted restrictions on the imports of certain varieties of fruit, including apples and cherries.

Republic of Korea – Taxes on alcoholic beverages. The United States, joined by the EU, prevailed in this case against Korean excise tax rates that discriminate in favor of the Korean distilled spirit soju and against whisky and other Western-type distilled spirits. On May 23, 1997, the United States requested consultations. On October 16, the DSB established a single panel to consider both the EU and U.S. complaints against the Republic of Korea. The final panel report, circulated on September 17, 1998, found that the Republic of Korea's liquor taxes violate Article III:2 of GATT 1994. The Appellate Body confirmed this finding on January 18, 1999. The reports were then adopted on February 17, 1999. The Republic of Korea confirmed to the DSB its commitment to meet its obligations under the WTO with respect to this matter, and an arbitrator determined that it had to comply by January 31, 2000. To comply with the rulings, the Korean Government has harmonized tax rates on Korean and imported alcoholic beverages and has reduced taxes on imports of whiskey by 28 percentage points.

Mexico – Antidumping investigation of high fructose corn syrup from the United States. At the panel stage of this dispute the United States prevailed. In 1997, Mexico had commenced an antidumping investigation, on the basis of a petition by the Mexican sugar industry, concerning the import of high fructose corn syrup (HFCS) from the United States. The United States successfully challenged the findings of this investigation under the WTO Antidumping Agreement. A WTO panel established on November 25, 1998, ruled that Mexico’s imposition of antidumping duties on HFCS was inconsistent with the requirements of the Antidumping Agreements in several respects. Mexico did not appeal, and the panel report was adopted on February 24, 2000.

Sweden – Measures affecting enforcement of intellectual property rights. A satisfactory resolution of this dispute was reached through the use of WTO dispute settlement procedures, without having to resort to panel proceedings. The TRIPS Agreement requires that all WTO Members provide provisional relief in civil enforcement proceedings (see discussion of Denmark above). Sweden had not implemented this obligation. On May 27, 1997, the United States requested consultations with Sweden concerning Sweden’s failure to implement this obligation. Consultations were held on June 27 and in September 1997. Settlement was then reached on November 25, 1998, when Sweden passed legislation addressing U.S. concerns. The legislation took effect on January 1, 1999.

b. Disputes Brought Against the United States

Section 124 of the URAA requires *inter alia* that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO, the status and matter at issue in each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law and for the status of the proceeding, 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 1999 with respect to those cases in which the United States was a defendant.

New complaints filed against the United States in 1999:

United States – Section 110(5) of the Copyright Act. As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act provides that certain retail establishments may play radio music without paying royalties to songwriters and music publishers. The EU claims that, as a result of this exception, the United States is 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.

United States – 1916 Revenue Act. Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled “Unfair Competition”), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. The EU claims that the 1916 Act is not in conformity with the GATT 1994 and the Antidumping Agreement. A panel was established on January 29, 1999 and will issue its final report in March 2000. Separately, Japan submitted a request for consultations on the same matter on February 10, 1999. Consultations with Japan took place on March 17, 1999. A panel pursuant to Japan’s request was established July 26, 1999.

United States – Import measures on certain products from the EU. On March 4, 1999, the EU requested consultations regarding increased U.S. Customs bonding requirements on certain imports from the EU, alleging violations of the DSU and of the GATT 1994. The United States

had increased bonding requirements to preserve its ability to collect any increased duties which might ultimately be authorized by the DSB as a result of the EU's failure to comply with the DSB's rulings and recommendations in the dispute involving *Bananas* (see description above). Consultations were held on April 21, 1999, and a panel was established on June 16, 1999.

United States – Safeguard measure on imports of wheat gluten from the EU. By Presidential Proclamation 7103 of May 30, 1998, the United States imposed a safeguard measure in the form of a quantitative limitation on imports of wheat gluten from the EU. On March 17, 1999, the EU requested consultations concerning this safeguard measure, asserting that it is in violation of the Agreement on Safeguards, the Agreement on Agriculture, and the GATT 1994. Consultations were held on May 3, 1999. A panel was established July 26, 1999.

United States – Countervailing duty investigation with respect to live cattle from Canada. On March 19, 1999, Canada requested consultations regarding a countervailing duty investigation, initiated by the United States on December 22, 1998 concerning Canadian subsidies on live cattle. Canada contended that the initiation of this investigation was inconsistent with U.S. obligations under the WTO, and alleged that the countervailing duty petition was not “by or on behalf of” the domestic industry and that the information in the petition was insufficient as a basis for initiating such an investigation. Canada asserted that the initiation was inconsistent with the WTO Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture. Consultations were held April 22, 1999. On October 12, 1999, the Department of Commerce issued a final negative determination, thereby terminating the investigation.

United States – Section 211 of the 1998 Omnibus Appropriations Act. 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 questions the consistency of Section 211 with the TRIPS Agreement and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999.

United States – Safeguard measure on imports of fresh, chilled, or frozen lamb. On July 22, 1999, the United States imposed a safeguard measure on imports of lamb meat from New Zealand and Australia, pursuant to section 203 of the Trade Act of 1974. New Zealand and Australia requested consultations on July 16 and July 23, 1999, respectively, claiming violations of the GATT 1994 and the Agreement on Safeguards. Consultations were held August 26, 1999. A panel was established on November 18, 1999.

United States – Antidumping measures on stainless steel from Republic of Korea. The Government of the Republic of Korea contends that several errors were made by the United States Department of Commerce in the Preliminary and Final determinations of *Stainless Steel Plate in Coils from the Republic of Korea* dated January 20, 1999 and June 8, 1999, respectively. The Republic of Korea claims that these errors resulted in improper findings and deficient consultations as well as the imposition, calculation and collection of antidumping margins which are incompatible with the obligations of the United States under the Antidumping Agreement and the GATT 1994. On October 14, 1999, the Republic of Korea requested the establishment of a panel. A panel was established on November 18, 1999.

United States – Tariff reclassification of sugar syrups. The Government of Canada requested consultations with the United States to review

the U.S. reclassifications of certain sugar syrups by the United States Customs Service. Canada believes that these measures are inconsistent with the GATT 1994 and the Agreement on Agriculture. Consultations were held on October 20, 1999, and no further action has been taken.

United States – Antidumping measures on certain hot-rolled steel products from Japan.

Japan contends that the preliminary and final determinations of the United States Department of Commerce and International Trade Commission 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 claims that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement. Consultations were held on January 13, 2000, and Japan thereafter requested the establishment of a panel.

Activity in 1999 on disputes that were commenced in prior years:

United States – Measures relating to the importation of shrimp and shrimp products.

The United States prevailed on the central points of a challenge brought by India, Malaysia, Pakistan, and Thailand to U.S. restrictions on imports of shrimp and shrimp products harvested in a manner harmful to endangered species of sea turtles, under a special “shrimp-turtle” statute. (This case did not concern and did not affect the Endangered Species Act.) A dispute settlement panel found that these import restrictions were inconsistent with WTO rules. However, the United States appealed, and on October 12, 1998, the Appellate Body largely reversed the panel’s ruling. The Appellate Body confirmed that WTO rules allow Members to condition access to their markets on compliance with certain

policies such as environmental conservation and agreed that the U.S. “shrimp-turtle law” was a permissible measure adopted for the purpose of sea turtle conservation. The Appellate Body also found that WTO rules permit panels to accept unsolicited *amicus curiae* briefs from non-governmental organizations. The Appellate Body, however, did find fault with certain aspects of the U.S. implementation of the shrimp-turtle law. In particular, it found that the State Department’s procedures for determining whether countries meet the requirements of the law did not provide adequate due process, because exporting nations were not afforded formal opportunities to be heard, and were not given formal written explanations of adverse decisions. The Appellate Body also found that the United States had unfairly discriminated between the complaining countries and Western Hemisphere nations by not exerting as great an effort to negotiate a sea turtle conservation agreement with the complaining countries and by not providing them the same opportunities to receive technical assistance.

The United States informed the DSB of its intention to implement the rulings and recommendations of the DSB in a manner consistent not only with WTO obligations, but also with the firm commitment of the United States to protect endangered species of sea turtles. In this connection, the United States agreed to an implementation period of 13 months, which ended on December 6, 1999. After Congressional consultations and opportunities for input from all interested parties, in July 1999 the State Department revised its procedures to provide more due process to countries applying for certification under the shrimp-turtle law. In addition, the State Department is making progress in efforts to negotiate a sea turtle conservation agreement with the countries of the Indian Ocean region, including the complaining countries, and the United States is providing the complaining countries with additional technical assistance in the adoption of sea turtle conservation

measures. Throughout the case, U.S. import restrictions on shrimp harvested in a manner harmful to sea turtles have remained fully in effect.

United States – Rule of origin for textiles and apparel. This dispute has been settled through consultations. On May 23, 1997, the United States received an EU request for consultations concerning U.S. rules of origin for textile and apparel products provided for in section 334 of the Uruguay Round Agreements Act. The EU request stated that these rules adversely affect exports of EU fabrics, scarves and other flat products to the United States; it cited possible incompatibility with the ATC, the Agreement on Rules of Origin, GATT 1994, and the TBT Agreement. On July 15, 1997, the EU and United States reached agreement on a settlement, committing themselves *inter alia* to achieving a satisfactory resolution in the WTO negotiations on harmonization of rules of origin for textiles. On November 19, 1998, the EU again requested consultations concerning U.S. rules of origin for textiles. Consultations were held on January 15, 1999 and later the two sides reached an agreement to settle this case. A legislative proposal to implement that settlement was included in the Trade and Development Act of 1999 as approved by the Senate, which is currently awaiting action by a conference committee.

United States – Antidumping measures on DRAMs from the Republic of Korea. The Republic of Korea challenged the Department of Commerce’s antidumping review of dynamic random access memory (DRAM) semiconductors from the Republic of Korea, alleging that Commerce’s decision not to revoke the antidumping order was inconsistent with the Antidumping Agreement and the GATT 1994. The panel report was circulated on January 29, 1999. While the panel rejected almost all of the Republic of Korea’s claims, it found that, technically, the “not likely” standard in Commerce’s regulations (for determining

whether dumping would continue or recur if an antidumping order were revoked) did not meet the requirements of Article 11.2 of the Antidumping Agreement. The panel report was adopted on March 19, 1999 and neither side appealed. On April 15, 1999, the United States indicated its intention to implement the ruling of the DSB. The parties eventually negotiated a “reasonable period” for implementation, in which the United States agreed to implement by November 19, 1999. The Commerce Department amended its regulations to comply with the panel report, and made a redetermination under the revised regulations retaining the antidumping order on DRAMs from the Republic of Korea.

United States – Foreign Sales Corporation (FSC) tax provisions. The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agriculture Agreement. The panel did not make findings regarding the FSC administrative pricing rules or the EU’s import substitution subsidy claims. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel’s finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU’s import substitution subsidy claims. While the Appellate Body reversed the panel’s findings regarding the Agriculture Agreement, it found that the FSC tax exemption violated provisions

of that Agreement other than the ones cited by the panel.

United States – Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom. This dispute is pending before the WTO Appellate Body. The EU is challenging several administrative reviews conducted by the Department of Commerce with respect to the countervailing duty order placed on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, alleging violations of the Subsidies Agreement. The EU claims that the Department of Commerce improperly attributed the benefits of subsidies received by British Steel Corporation (BSC) to UES, a joint venture that acquired BSC's leaded bar facilities, and that the Department of Commerce also improperly attributed to the production of leaded bars the benefits of subsidies received by BSC prior to its privatization. Consultations were held on July 29, 1998, and a panel was established February 17, 1999. The panel report, circulated on December 23, 1999, found that the Department of Commerce's attribution of pre-privatization subsidies to the privatized UES and BSC was inconsistent with the Subsidies Agreement. However, the countervailing duty order in question was revoked by operation of law on January 1, 2000 under the Department of Commerce's "sunset review" procedures. The United States filed its notice of appeal on January 27, 2000.

United States – Sections 301 - 310 of the Trade Act of 1974. The panel in this case rejected the EU claims and upheld the U.S. law as consistent with WTO rules. In late 1998 the EU complained about these provisions of the U.S. trade law, especially sections 304 to 306, alleging that the law does not allow the United States to comply with the DSU. Consultations were held on December 17, 1998, and a panel was established on March 2, 1999. On December 22, 1999, the panel circulated its report rejecting the EU complaint. The panel

concluded that the U.S. law was not inconsistent with U.S. WTO obligations and the panel found nothing to contradict evidence that the United States has in fact acted in accordance with its WTO obligations in every Section 301 determination involving an alleged violation of U.S. WTO rights. The panel concluded that neither the EU nor the third parties to the dispute had demonstrated otherwise. The EU decided not to appeal and the panel report was adopted on January 27, 2000.

G. The Dispute Settlement Body

The DSU is administered by the Dispute Settlement Body (DSB), which includes representatives of all WTO Members. The DSB 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 the suspension of concessions where a defending party fails to comply with DSB recommendations and rulings. Further background on the WTO dispute settlement process can be found in Annex II of this Report.

Assessment of the First Five Years of Operation

In its first five years of operation, the DSB has addressed the ambitious agenda set for it by the negotiators in the Uruguay Round, and has put in place the rules and institutions required for a functioning dispute settlement system. It has established rules of conduct designed to keep the system free from conflicts of interest. It has elected the members of an Appellate Body that has become one of the most active and productive tribunals in the field of international law. Yet while the DSB has made some procedural decisions when required, the agenda of dispute settlement in the WTO remains member-driven. Any procedural innovations happen not because panels or the Appellate Body impose them on the parties, but because Member governments propose and agree to

them. The review of WTO dispute settlement rules and procedures conducted in the last two years was run as a member-driven process in which all proposals were generated by Members and agreed by consensus.

In January 1999, the DSB for the first time authorized measures in response to non-compliance by a WTO Member with panel and Appellate Body rulings. The United States invoked its WTO and DSU rights and proposed to suspend concessions in an amount equivalent to the trade damage caused to the United States by the EU's illegal banana import regime. Resisting repeated attempts at blockage by the EU, the DSB authorized the United States to proceed. This action by the DSB was a signal to agricultural exporters everywhere that compliance with WTO rules cannot simply be ignored. Later in 1999, the DSB again authorized suspension of concessions (retaliation) by the United States against the EU in the hormones case, again reinforcing WTO rules.

Major Issues in 1999

The DSB met 42 times in 1999 to oversee the dispute settlement process, to conduct informal meetings discussing the ongoing review of the Dispute Settlement Understanding, and to take care of tasks such as approving additions to the roster of governmental and non-governmental panelists.

DSU Review: A 1994 Decision taken by Ministers at Marrakesh provided for a general review of WTO dispute settlement rules and procedures, to be completed within four years after the WTO Agreement's entry into force, i.e., by January 1, 1999. USTR solicited input for U.S. positions in the Review through a Federal Register notice in June 1998, and drew on the comments received in formulating U.S. proposals and reactions to the proposals of other delegations. The U.S. paper tabled in the Review on October 30, 1998, emphasized two

key goals: enhancement of compliance with WTO obligations, and enhancement of transparency in WTO dispute settlement. In December 1998, the DSB agreed to extend the deadline for completion of the DSU Review to July 31, 1999. However, after many informal negotiating meetings of the DSB in the early part of 1999, consensus for an amendment package did not emerge by the July deadline. Discussions have continued informally, and the DSU Review package of proposed amendments remains pending.

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. The Secretariat maintained a roster of non-governmental experts since 1985 for GATT 1947 dispute settlement, which was available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and for expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information to be submitted by roster candidates, to aid in evaluation of candidates' qualifications and to encourage appointment of well-qualified candidates who would have expertise in the subject matters of the Uruguay Round Agreements. In 1999, 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. At the end of 1999, the DSB initiated a renewal of the roster, which was not completed as of December 31, 1999. The WTO panel roster as of December 31, 1999, appears in the background information in Annex II at the end of this Report. 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 due to its importance is reproduced in Annex II of this Report. (The Rules of Conduct are also available on the WTO and USTR websites.) There were no changes in these Rules in 1999.

The Rules of Conduct were designed to elaborate on the ethical standards built into the DSU, and to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals participating in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings, and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts. The Rules of Conduct also provide parties to a dispute an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the Uruguay Round Agreements Act, which directed the USTR to seek conflicts 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 (i) arbitrators; (ii) experts participating in the dispute settlement mechanism (e.g., the Permanent Group of Experts under the Subsidies Agreement); (iii) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (iv) the Chairman of the Textile Monitoring Body (TMB) and other members of the TMB Secretariat assisting the TMB in formulating

recommendations, findings or observations under the Agreement on Textiles and Clothing; and (v) 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 2 to the Rules, and include the following: (i) financial interests, business interests, and property interests relevant to the dispute in question; (ii) professional interests; (iii) other active interests; (iv) considered statements of personal opinion on issues relevant to the dispute in question; and (v) employment or family interests.

Appellate Body: The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expire at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, are: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. The names and biographical data for the Appellate Body members are included in the annex to this report. 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 December 11, 1997.

In September 1999, Messrs. El-Naggar and Matsushita announced their intention to retire at the end of their terms, on December 11, 1999. On November 3, the DSB agreed to reappoint Messrs. Bacchus and Beeby for a final term of four years commencing December 11, 1999. The DSB also agreed to extend the terms of Messrs. El-Naggar and Matsushita until the end of March 2000 and to initiate a process to ensure their timely replacement. The DSB agreed to request nominations by December 17, 1999 and to set up a Selection Committee composed of the WTO Director-General, together with the 1999 Chairs of the General Council, the DSB, and the Councils for Trade in Goods, Trade in Services and TRIPS, with a view to a recommendation being made to the DSB for a decision at its meeting in March 2000.

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 Chairman, and one-year terms for subsequent Chairmen. Mr. Lacarte Muró, the first Chairman, served until February 7, 1998; Mr. Beeby served from February 7, 1998 to February 6, 1999; Mr. El-Naggar served from February 7, 1999 to February 6, 2000; and Mr. Feliciano's term as Chairman runs from February 7, 2000 to February 6, 2001.

In 1999, the Appellate Body issued 10 reports, of which 4 involved the United States as a party and are discussed in detail below. The 6 other reports concerned Argentina's safeguard measures on footwear imports, Brazil's export subsidies for aircraft, Canada's export subsidies for aircraft, Chile's taxes on distilled spirits, the Republic of Korea's safeguard measures on dairy imports, and Turkey's quantitative restrictions on textiles. The United States was an active third party in all but one of those appeals.

Work for 2000

In 2000, the United States expects the DSB to continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the Administration's litigation and negotiation strategy for enforcing U.S. WTO rights. The revised DSU Review package remains a pending item.

The United States has long sought an international trading system governed by enforceable rules. If WTO dispute settlement proceedings are to play the role of ultimate guarantor of the system, they must be open to observation by the public, and open to receiving input from the public. Openness of this sort is essential to assuring public support for the legitimacy of WTO dispute settlement. As the WTO takes on more complex and controversial cases, there is an ever-increasing need for transparency in dispute settlement.

The United States has taken many steps on its own to improve the transparency of the WTO dispute settlement process. USTR seeks public comment, through a *Federal Register* notice, on every dispute that goes to a panel where the United States is a party. USTR also makes its written submissions to panels and the Appellate Body available to the public as soon as they are submitted. The United States routinely requests the parties to *any* WTO case (even cases in which it is not a party) to provide it with a copy of their submissions or non-confidential summaries for release to the public.

USTR makes WTO panel reports available to the public upon receipt, and the WTO makes WTO panel and Appellate Body reports available on the Internet for downloading the day after they are circulated in Geneva, and sometimes the same day. This is also true of other WTO documents regarding disputes. The

consultation requests and panel requests in every dispute are circulated to all WTO Members in all three official languages (English, French and Spanish) as public documents, and immediately put on the WTO website. Any member of the public can access WTO documents through the Internet and follow the progress of WTO disputes on that website. In this way, members of the public can find out from these WTO documents that there will be a panel proceeding and what issues the panel will address, even before the panel is established.

The United States has proposed that the WTO include a mechanism to permit non-governmental stakeholders to present their written views on disputes, and that the WTO allow the public to observe WTO panel and appellate proceedings. The United States will continue to urge other WTO Members to work with the United States to enhance the transparency of the WTO dispute settlement process, through changes in the working procedures applied in individual disputes, and through an ongoing assessment of the operation of the DSU.

Implementation of the WTO Agreements

A. General Council Activities

Status

The WTO General Council is the highest decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet once every two years. The General Council and Ministerial Conference consist of representatives of all WTO Members. Three major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related

Aspects of Intellectual Property Rights. All subsidiary bodies report through this hierarchy; the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council. Ambassador Ali Said Mchumo of Tanzania served as Chairman of the General Council in 1999.

Assessment of the First Five Years of Operation

The General Council has successfully fulfilled the role envisioned when the WTO was created in 1995. It follows the pattern of the GATT Council – conducting the regular business of the WTO between meetings of the Ministerial Conference. Only the Ministerial Conference and the General Council are permitted to adopt authoritative interpretations of the WTO Agreements, submit amendments to the Agreements for consideration by Members, and to grant waivers of obligations. All accessions to the WTO must be approved by the General Council or the Ministerial Conference. Technically, meetings of both the Dispute Settlement Body and the Trade Policy Review Body (TPRB) are meetings of the General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB.

The General Council has a heavy responsibility in following the work of the WTO, monitoring compliance and in the management of the institution, including the Secretariat. Over the past five years the General Council has served as the focal point of activity in the WTO, from dispensing with hundreds of regular business items to addressing the most difficult, complex

and contentious issues confronting the WTO. The Chairman of the General Council, who serves an annual term and is selected from the WTO Membership, plays an important role in working with the Director-General and Secretariat in managing the day-to-day work of WTO and addressing issues of concern to Members. The work of the General Council, in many cases, is all the more important because the WTO is a new organization and many rules and policies are new or must be developed.

The General Council is the body, beyond all others, that is most representative of the views of the 135 Members of the WTO. It attracts the highest level of attention and participation of WTO Members, and meetings are attended by Heads of Delegation, generally senior trade policy officials at the level of Ambassador. To the extent that there is disagreement within the membership on a particular issue, it will be reflected in the work of the General Council and resolved by the Chairman in consultation with the Membership. The General Council has worked effectively in achieving consensus on many issues ranging from making the WTO operational in 1995 to facilitating the entrance of new Members to providing a forum for all Members to be heard.

Major Issues in 1999

The General Council met 18 times during 1999 in regular session and seven times in special session, focusing on preparations for the third Ministerial Conference discussed earlier in this chapter.

Accessions: The General Council approves the terms of accession of Members when negotiations are complete. In 1999, the General Council approved the accession of Estonia, Georgia and Jordan. Estonia became a Member of the WTO on November 13, 1999, after depositing its instrument of ratification. Domestic ratification of the terms of accession for Jordan and Georgia are expected early in 2000. Additional details are discussed below in

the section "Accession to the World Trade Organization."

Waivers of Obligations: As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers and decided by consensus to extend the waivers for specified periods. The Council agreed to extend three such waivers applicable to the United States concerning the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, and preferences for the Former Trust Territories of the Pacific Islands. (Annex II contains the list of waivers currently in force.) The General Council also approved two new waivers. One waiver allows developing countries to extend tariff preferences to least-developed countries without providing those preferences to other WTO Members. Developed countries, including the United States, generally provide preferential market access for least developed countries through their respective GSP programs. A waiver allowing Peru an additional three months to implement its obligations under the Agreement on Customs Valuation was also approved.

Review of Procedures for Circulation and Derestriction of WTO Documents: In 1996, the General Council adopted a decision on procedures for the circulation and derestriction of WTO documents which was designed to reduce the number of documents withheld from the public and to speed the circulation of WTO-origin information both to Members and to the public at large. The 1996 decision called for a review in 1998 and, beginning with the February 1998 meeting of the General Council, the United States introduced proposals designed to further the dissemination of WTO documents to the public. A proposal put forth by the U.S. delegation in the course of 1998 urged Members to agree to make unrestricted information on the outcome of dispute settlement panel proceedings available on a more expedited basis after dispute settlement rulings are made. Although the

various proposals put forth by the United States and others enjoy a wide degree of support among WTO Members, the General Council was not able to reach a consensus on modifications to the 1996 decision. Discussions of these issues continued throughout 1999 without resolution. Debate on the dispute settlement documents also took place in the DSU Review.

Selection of the Next Director-General and Senior Management Team: The General Council, in the person of its chairman, oversaw the consultations for selection of a new Director-General and senior management team. The previous Director-General, Renato Ruggiero, retired in April 1999. At the same time, the terms of the four serving Deputies Director-General expired and these officials left the organization. After intensive consultations among Members, on July 22 a consensus was reached to appoint Mr. Mike Moore of New Zealand as Director-General. Mr. Moore will serve a three year term, from September 1, 1999 to August 31, 2002. He will be succeeded by Dr. Supachai Panitchpakdi of Thailand, who will serve from September 1, 2002 to August 31, 2005.

At the October 6 meeting, following the appointment of the Director-General, the General Council agreed that a review of the WTO Secretariat and senior management structure would be carried out in conjunction with the review of the current Rules and Procedures for appointment of Directors-General, to be concluded by the end of September 2000.

After consulting with WTO Members, on November 3, Director-General Moore announced the selection of four Deputies Director-General: Mr. Ablasse Ouedraogo of Burkina Faso, Mr. Miguel Rodriguez Mendoza of Venezuela, Mr. Paul-Henri Ravier of France, and Mr. Andrew Stoler of the United States. The terms of service are until September 30, 2002.

Work for 2000

In addition to its regular responsibility of overseeing the work of the WTO, a significant focus of the Council will be devoted to follow-up activities from the 3rd Ministerial Conference, including the work on mandated negotiations in agriculture and services; developing a consensus on a broader negotiating agenda; implementation issues; transparency related issues (the internal operation of the WTO as well as outreach to civil society); and the program of action for least-developed countries and technical cooperation issues. The Council will be the venue for decisions to be taken on the expansion of negotiations or the preparation of decisions on a launch of a new Round.

The Council will continue to oversee work on revisions to the 1996 Decision on Circulation and Derestriction Procedures and oversight of the work program on electronic commerce will also feature importantly in the work of the Council, as will the likely consideration of potential new Members' accession protocols. Early in 2000, the Council will be expected to consider the mandates of the working groups on investment, competition policy, and transparency in government procurement that were established at the Singapore Ministerial meeting, and how work in these areas should proceed.

B. Council for Trade in Goods

Status

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

Body (TMB), the Working Party on State Trading, and the Working Party on Preshipment Inspection). In 1999, the CTG held five formal meetings.

Assessment of the First Five Years of Operation

At the conclusion of the Uruguay Round, the Council for Trade in Goods was established. It has proven to be a useful forum for discussing issues and decisions which may ultimately require the attention of the General Council for resolution or a higher-level discussion, and putting the issue in the broader context of the rules and disciplines that apply to trade in goods. The CTG serves as a place to lay the groundwork and to resolve issues on many matters that will ultimately require General Council approval. The use of the waiver provisions, for example, often are initiated in the Goods Council. One question that has been raised is whether the Council on Goods is needed given the fact that issues and recommendations are sent forward to the Ministerial Conference via the General Council. The Services and TRIPS Councils report to the General Council directly, so there may be value in reflecting on this question further.

Major Issues in 1999

As the central oversight body in the WTO for monitoring agreements related to trade in goods, the CTG addressed a number of important issues in 1999. Much of its attention was devoted to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions taken by individual Members with respect to the operation of agreements under its purview. Many of these were resolved by interested Members through consultations, although some were subsequently pursued through the Dispute Settlement Body.

The actions taken by the CTG in 1999 include:

- ▶ Approval of the Working Party Report on Preshipment Inspection.
- ▶ Referral of a number of newly notified regional agreements to the Committee on Regional Trading Agreements for consideration of their consistency with WTO obligations.
- ▶ Approval of the extension of a number of waivers, including those related to implementation of the Harmonized System and renegotiation of tariff schedules, tariff preferences by developing countries to least developed countries, and a short extension of the transition period for implementation of the Agreement on Customs Valuation by one country and referral of these to the General Council for final decision. (Annex II of this Report lists waivers currently in force.)

Work for 2000

The CTG will continue to discharge its responsibilities as the final approving body for decisions and recommendations made by its various subsidiary bodies. The Council will continue its work on waivers, as it did in 1999. The United States will continue to use the CTG as another means to draw attention to problems related to monitoring and compliance. Given the renewed attention to implementation of existing Agreements, expiry of transition periods in a number of rules agreements (e.g., Customs Valuation and TRIMS) and staging of market access commitments from the Uruguay Round, the CTG is poised to play an active role in the enforcement efforts of WTO Members. In light of experience to date, and the work of the General Council on implementation issues, the United States will assess suggestions to streamline the WTO Committee process and merge the functions of the CTG, which would require modification of existing Agreements.

1. Committee on Agriculture

Status

The WTO Committee on Agriculture oversees implementation of and adherence to the Agreement on Agriculture. It provides a vital forum for consultation and, in many cases, resolution of issues resulting from the commitments made in the Uruguay Round. The Committee is also charged with monitoring the follow-up to the 1995 Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net Food Importing Developing Countries.

During 1999, the Committee concluded its work on the Analysis and Information Exchange (AIE) that had been mandated by the WTO's 1st Ministerial Conference in Singapore. The AIE was charged with reviewing issues arising out of the implementation of the Uruguay Round Agreement and identifying possible areas to address in the continuation of the agriculture reform process, mandated as part of the WTO's built-in agenda.

Assessment of the First Five Years of Operation

The Agreement on Agriculture represents a major step forward in bringing agriculture more fully under WTO disciplines. The creation of new trade rules and specific market-opening commitments has transformed the world trading environment in agriculture from one where trade was heavily distorted and basically outside effective GATT disciplines to a rules-based system that quantifies, caps and reduces trade-distorting protection and support. Prior to the establishment of the Agreement, Members were able to block imports of agricultural products, provide essentially unlimited production subsidies to farmers, and dump surplus production on world markets with the aid of export subsidies. As a consequence, U.S. farmers and ranchers were denied access to

other countries' markets and were undercut by subsidized competition in world markets.

The WTO Agreement on Agriculture set out a framework that imposed disciplines in three critical areas affecting trade in agriculture.

- ▶ First, the Agreement places limits on the use of export subsidies. Products that had not benefitted from export subsidies in the past are banned from receiving them in the future. Where Members had provided export subsidies in the past, the future use of export subsidies was capped and reduced.
- ▶ Second, the Agreement set agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into simple tariffs. Currently, trade in agricultural products can only be restricted by tariffs. Quotas, discriminatory licensing, and other non-tariff measures are now prohibited. Also, all agricultural tariffs were "bound" in the WTO and made subject to reduction commitments; a decision by a Member to impose tariff rates above a binding would violate WTO obligations. Creating a "tariff-only" system for agricultural products is an important advance, yet too many high tariffs and administrative difficulties with tariff-rate quota systems that replaced the non-tariff barriers continue to impede international trade of food and fiber products.
- ▶ Third, the Agreement calls for reduction commitments on trade-distorting domestic supports, while preserving criteria-based "green box" policies that can provide support to agriculture in a manner that minimizes distortions to trade. Governments have the right to support farmers if they so choose. However, it is important that this

support be provided in a manner that causes minimal distortions to production and trade.

As a result, farmers all over the world benefit from access to new markets and improved access to existing markets, face less subsidized competition, and now have a solid framework for addressing agricultural trade disputes. Yet it is clear that full agricultural reform is a long-term endeavor. Hence, the Agreement also called for new negotiations on agriculture beginning in 1999, as part of the “built-in” agenda of the WTO.

The Committee on Agriculture has proven since its inception to be a vital instrument for the United States in monitoring and enforcing agricultural trade commitments that were undertaken by other countries in the Uruguay Round. Members agreed to provide annual notifications of progress in meeting their commitments in agriculture, and the Committee has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

Under the watchful eye of the Committee, Members have, for the most part, been in compliance with the agricultural commitments that they undertook in the WTO. However, there have been important exceptions where clear violations of Uruguay Round commitments have adversely affected U.S. agricultural trade interests. In these situations, the Agriculture Committee has frequently served as an indispensable tool for resolving conflicts before they become formal WTO disputes. The following are some examples:

- ▶ Resolution of issues related to the use of export subsidies in Hungary, benefitting U.S. exports of grains, fruits and vegetables by nearly \$10 million.
- ▶ Elimination of restrictions on beef imports by Switzerland that affected

approximately \$15 million in U.S. exports.

- ▶ Resolution of issues related to access for pork and poultry in the Philippines. In the case of pork, resolution of this issue meant additional U.S. exports of up to \$70 million, and in the case of poultry, of up to \$20 million.
- ▶ Resolving issues associated with Turkey’s imposition of a tax on imported cotton, important to U.S. exports of more than \$150 million.
- ▶ Resolution of issues related to the implementation of a tariff-rate quota on poultry in Costa Rica helped to triple U.S. exports to that country in 1998.
- ▶ Questioning Canada concerning a milk pricing scheme that appeared to be in violation of Canada’s export subsidy commitments. Building on a process that began with the Committee’s discussion, the United States eventually won a WTO dispute settlement case on this issue, benefitting U.S. exporters by reining in unfairly subsidized dairy exports from Canada.

Major Issues in 1999

In 1999, the Committee on Agriculture remained an effective forum for raising agricultural trade issues of concern to participating Members. The United States played a leading role in the Committee’s activities, working with other countries to ensure broad-based compliance with WTO commitments on agriculture.

The Committee held four formal meetings, in March, June, September and November of 1999. Over the course of these meetings, WTO Members provided detailed notifications to the Committee on their adherence to the commitments they undertook in the Uruguay Round related to export subsidies, market access

and domestic supports. As a result of the Committee's strong history of vigilance on required notifications since the conclusion of the Uruguay Round, most Members conscientiously supply the required information. The United States and other Members also examined ways to streamline the notification requirements on market access commitments, export subsidies, and domestic support.

In November, the Committee conducted its annual monitoring exercise on the possible negative effects of agricultural reform on least developed and net food importing countries. In this review, the Food and Agriculture Organization (FAO) reported that the combined cereal import bill of least-developed and net-food importing countries in marketing year 1998/99 was down 15 percent from the previous year. This decline reflects a small reduction in the volume of imports but, more substantially, much lower average prices paid for imports.

The following are some of the more important specific issues that were raised in the Committee:

Notifications: The Committee reviewed more than 250 notifications detailing the implementation of market access commitments, particularly with regard to tariff-rate quota commitments and the special agricultural safeguard, and compliance with export subsidy and domestic support commitments. Generally, the rate of compliance with notification obligations and the scope of country participation has been good. Most major U.S. trading partners are in compliance with the notification obligations.

Member-specific issues: The Committee also provides the opportunity to clarify or resolve specific policies and issues of interest to Members. During 1999, issues raised included use of unused export subsidies from previous years in the current year, or the so-called "rollover" provisions (European Union, Turkey, United States); noncompliance with export

subsidy commitments leading to modifications in the use of those measures (Poland, Thailand); domestic support programs (EU, the Republic of Korea, Thailand, Norway, United States, Czech Republic) inadequate implementation of tariff-rate quota commitments (Venezuela, South Africa, Czech Republic, the Republic of Korea, Japan); compliance with tariff bindings (Panama, Chile); and, inappropriate application of agricultural safeguards (Republic of Korea). The United States also questioned the Republic of Korea about market access restrictions on U.S. beef; this issue is now in formal dispute settlement.

Analysis and Information Exchange. In addition to its work on the specific trade issues mentioned above, the Committee continued its work in the informal AIE forum, prompting a wide-ranging exchange on topics of relevance to the built-in agenda negotiations on agriculture. More than 80 papers on issues affecting agricultural trade reform were presented during the AIE process. The United States submitted papers on a number of trade issues, including the administration of tariff-rate quotas and trade in products involving new technologies. Issues raised by other Members included non-trade concerns, special and differential treatment for developing countries, export credits, and domestic support. Although the forum was curtailed in September 1999, as mandated by the Singapore Ministerial, the AIE process proved vital in preparing and identifying areas of interest for the new negotiations on agriculture.

Work for 2000

The United States and other like-minded Members will focus considerable attention in 2000 on developing the procedures and framework for the mandated negotiations on agriculture. Work on agriculture negotiations will proceed in the Committee on Agriculture in Special Session, beginning on March 23-24, 2000. This situation does not mean, however, that the work and scrutiny of the Committee on Agriculture will be lessened, and its activities

during the year 2000 will complement the ongoing negotiations on agriculture. The main focus of the Committee, however, will continue to be ensuring timely notification and enforcement of Uruguay Round commitments. Members will give particular attention to problems revealed in the notifications covering market access, export competition, and domestic support. In addition to monitoring compliance with commitments, the Committee will continue reviewing the mechanisms and the processes Members use to implement their Uruguay Round commitments, monitoring the effects of implementation on net-food importing developing countries and will continue identifying emerging agricultural issues.

2. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) provides detailed rules and disciplines which allow Members to impose antidumping duties in carefully circumscribed situations to offset injurious dumping of products exported from one Member country to another.

The Ad Hoc Group on Implementation is an important subsidiary body of the Antidumping Committee. The Group focuses on implementation of the Antidumping Agreement. Members meet to discuss specific topics, in order to understand similarities and differences in their policies and practices in implementing the terms of the Agreement. Members provide papers in advance of each meeting on the topics that will be discussed. This enhances the depth of the discussions, and gives all Members an opportunity to describe their own laws, policies and practices in writing and to put forward questions about operational and other practical aspects of conducting antidumping investigations. Since the inception of the Ad Hoc Group, the United States has submitted

papers on most topics, and has been an active participant at all meetings. Where possible, the Ad Hoc Group endeavors to prepare draft recommendations on the topics it discusses which it forwards to the Antidumping Committee for consideration. To date, the Committee has adopted on Ad Hoc Group recommendation on pre-initiation notifications under Article 5.5 of the Agreement.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention. Per the framework, the Informal Group held meetings in April and October 1999 to discuss the topic of “what constitutes circumvention.”

Assessment of the First Five Years of Operation

Antidumping rules provide a remedial mechanism which WTO Members have agreed is necessary to the maintenance and health of the multilateral trading system. Without this and other trade remedies, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system. While WTO rules ensure that antidumping actions are governed by objective and transparent standards and procedures, these rules continue to be founded on the principle set out in Article VI of the GATT 1994 that injurious dumping is to be condemned. The WTO, therefore, sets out rules and procedures that ensure the legitimate actions taken against injurious dumping are grounded in the rule of law and due process, building upon the standards that have been ingrained in U.S. antidumping statutes for decades.

Antidumping rules are necessarily complex. Yet they have come to be used by a growing circle of countries, especially in the developing world. Unlike the situation prior to entry into force of the WTO, when only a handful of countries were held to the relatively more rigorous requirements of the Tokyo Round Antidumping Code, the Antidumping Agreement resulting from the Uruguay Round sets the standard by which all WTO Members must act if they choose to take measures to combat injurious dumping. This means that developing countries and countries in transition from centrally-planned to market economies are, in essence, learning the rules as they implement them. This can understandably lead to frustrations with compliance, and concerns that the existing rules are too difficult or onerous for some to apply. The United States understands these concerns, which explains why we have chosen to place so much emphasis on improving the implementation of existing antidumping rules – including through technical cooperation and assistance – versus a reopening of those rules that would lead to ever greater complexities and difficulties of implementation.

In light of these needs, the work of the Antidumping Committee and its subsidiary bodies takes on even greater importance than it would otherwise have. Their work over the past five years has been essential in anchoring the importance and usefulness of multilateral antidumping rules for the world trade system. The Committee's work has helped ensure that Members understand their commitments under the Antidumping Agreement and can develop the tools to implement them properly. By providing opportunities to discuss Members' legislation, policies and practices, and views on controversial topics such as the need for rules on anticircumvention, the Committee's work assists all Members in conducting antidumping investigations and adopting antidumping measures in conformity with the detailed provisions of the Agreement. To date, Members have requested the establishment of dispute settlement panels to review the consistency of

antidumping measures with the Agreement in relatively few instances. The work of the Committee has played a role in ensuring that Members take their commitments seriously.

The United States is a key actor in the work of the Antidumping Committee and its subsidiary bodies. This has had several important ramifications. First, U.S. participation has demonstrated the importance of the antidumping rules in the multilateral trading system. Second, U.S. participation has provided an opportunity to showcase the U.S. antidumping laws both for their detail and intrinsic consistency with the provisions of the Antidumping Agreement, and as a model for other Members to consider when adopting and amending their own antidumping rules. Finally, U.S. participation in the Committee and bilaterally with other Members has been successfully used to serve the interests of U.S. exporters whose products are subject to antidumping investigations by other Members. The Office of the United States Trade Representative, assisted by the Department of Commerce, regularly follows antidumping investigations ongoing in other countries that affect U.S. exporters. Where warranted, the United States engages other Members in bilateral discussions to resolve issues arising under the Antidumping Agreement that affect U.S. exporters. The United States has also raised other Members' antidumping investigations affecting U.S. exports for discussion in the Antidumping Committee. Finally, in one instance, the United States has successfully challenged the antidumping measure of another Member in dispute settlement proceedings, and remains prepared to take such action in the future if appropriate.

Major Issues in 1999

The Antidumping Committee's work remains an important avenue for ensuring Members' understanding of the detailed provisions in the Antidumping Agreement, and for providing opportunities for discussing Members' views on

the interpretation and application of the Agreement's provisions.

In 1999, the Antidumping Committee held two regular meetings, in April and October, as did the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed the reports that the Agreement requires Members to provide of their preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 1999 by the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention are the following:

Notification and Review of Antidumping Legislation: The Antidumping Committee reviewed 14 notifications of new or amended antidumping legislation, and also reviewed one notification of legislation which had been previously reviewed. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings. The regulations of the U.S. Department of Commerce on procedures for sunset reviews were reviewed as a part of this process at the Committee's October meeting. Eight Members put forward written questions regarding these regulations which the United States answered in detail, both orally and in writing.

Notification and Review of Antidumping Actions: Twenty-five Members notified antidumping actions taken during the first half of 1999. These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the

Antidumping Committee's review and discussion.

Ad Hoc Group on Implementation: At its April meeting, the Ad Hoc Group discussed seven of the topics which the Antidumping Committee referred to it for discussion: (i) treatment of confidential information under Article 6.5, (ii) sampling methods, (iii) "special circumstances" in Article 5.6, (iv) the provision for hearings in Article 6.2, (v) public notices under Article 12, (vi) content of affirmative preliminary determinations, and (vii) duty assessments under Article 9. Members submitted papers on these topics, and the WTO Secretariat compiled information that Members had provided for previous meetings on their practices concerning hearings and the disclosure of essential facts. The Group also gave consideration to draft recommendations on two topics: the period of data collection for a dumping investigation and the provision of essential facts and disclosure of findings under Article 6.9. Members offered views on these draft recommendations and agreed that further work on them was required. Finally, the Ad Hoc Group discussed suggestions for new topics and forwarded a list of these topics to the Antidumping Committee. The Committee agreed that the Ad Hoc Group should begin discussing six new topics: (i) practical issues and experience in applying Article 2.4.2, (ii) termination of investigations under Article 5.8 in cases of *de minimis* import volume, (iii) practical issues and experience in cases involving cumulation under Article 3.3, (iv) practical issues and experience with respect to questionnaires and requests for information under Articles 6.1 and 6.1.1, (v) practical issues and experience in providing opportunities for industrial users and consumer organizations to provide information under Article 6.1.2, and (vi) practical issues and experience in conducting "new shipper" reviews under Article 9.5.

At its October meeting, the Ad Hoc Group began discussing the six new topics that the

Committee referred to it. The United States submitted papers on all of these topics and participated actively in the discussion. Many other Members also submitted papers. The Group also discussed new drafts of the recommendations on the period of data collection for a dumping investigation and the provision of essential facts and disclosure of findings under Article 6.9.

The Ad Hoc Group has opened important opportunities for Members to examine issues relating to the implementation of the Antidumping Agreement, and the United States has been a key participant in the work of this Group. The annual report of the Antidumping Committee notes the satisfaction expressed by the Committee's chairman on the high level of participation by Members and the presence and participation in Geneva of experts from Members' capitals.

Informal Group on Anticircumvention: The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step in taking up the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its 1999 meetings, the Informal Group on Anticircumvention had productive discussions on the subject of "what constitutes circumvention." For the April meeting, the United States submitted a paper providing examples from U.S. practice of what types of facts have resulted in findings that circumvention of an antidumping order was or was not taking place. The United States also replied to questions from Hong Kong and Japan received at the October 1998 meeting. The Republic of Korea submitted a paper regarding the circumvention inquiry the United States conducted on color television receivers, which was ended with a withdrawal by the U.S. industry of its request for this inquiry. At the end of the October meeting, Members agreed that it was appropriate to consider the second item in the agreed framework: "what is being done by Members confronted with what they

consider to be circumvention." The first topic, "what constitutes circumvention", will remain open for further discussion.

Work for 2000

Work in 2000 will continue in all of the areas that the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention addressed this past year. The Antidumping Committee will continue to review Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This on-going review process in the Committee is important to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are unrestricted documents, it will remain possible for U.S. exporters to have access to the antidumping laws of other countries in order to better understand their operation and to take them into account in commercial planning.

The preparation by Members and review in the Committee of semi-annual reports and reports of preliminary and final antidumping actions will continue in 2000. The 1996 decision of the WTO General Council to liberalize the rules on the restriction of WTO documents has resulted in these reports also becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This has been an important development in ensuring the merited degree of public awareness regarding Members' antidumping actions.

The discussions in the Ad Hoc Group on Implementation will continue to provide opportunities for the United States to learn in more detail about the administration by other countries of their antidumping laws, particularly

by those Members that have newly enacted legislation. This process is important because it sheds light on the operational practices of Members in implementing their obligations under the Antidumping Agreement. The process has led to the Committee's adoption of one Ad Hoc Group recommendation regarding notifications under Article 5.5 of the Agreement, and two more draft recommendations are in the final stages of consideration by the Group. As Members continue to submit papers on the topics being considered and participate actively in the discussions, it is anticipated that the Group's utility will continue to be confirmed.

The work of the Informal Group on Anticircumvention will continue to be pursued in 2000, according to the framework for discussion which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible.

3. Committee on Customs Valuation

Status

The purpose of the WTO Agreement on Customs Valuation is to ensure that the valuation of goods for customs purposes, such as for the application of duty rates, is conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement has become an increasingly important issue for U.S. exporters and a priority in the negotiations for all countries in the process of acceding to the WTO.

Assessment of the First Five Years of Operation

Achieving universal adherence to the Agreement on Customs Valuation in the

Uruguay Round was an important objective of the United States dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO.

At one time, difficulties associated with customs valuation regimes in export markets were often generally characterized as mere technical irritants. However, since the completion of the Uruguay Round and the resulting dramatic growth in trade combined with the continuing shift to a faster-moving manufacturing and distribution environment, issues pertaining to how trade transactions are conducted are increasingly viewed as important systemic matters. U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology products – have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. These difficulties – which can affect every single shipment of goods to a particular export market – generally are related to arbitrary and inappropriate “uplifts” in the transfer prices that are ultimately used by the importing country for the application of tariffs. If unchecked, such practices can sometimes result in a doubling or tripling of duties, undermining market access opportunities gained through tariff reductions. Other difficulties to exporters presented by customs valuation methodologies can pertain to an absence of transparency, delays in shipments, and improper handling of confidential business information. Finally, in a significant number of key U.S. emerging export markets, an arbitrary customs valuation methodology is often the genesis of corruption by customs officials entering the trade transaction process.

The means for squarely addressing many of these problems are provided by the Agreement's disciplines, which underscores the Administration's stance toward meeting the 20-year objective of bringing about implementation

of the Customs Valuation Agreement by the full WTO membership. A proper valuation methodology under the WTO Agreement on Customs Valuation, avoiding arbitrary determinations or officially-established minimum import prices, can be the foundation to the realization of market access commitments. Just as important, the implementation of the Customs Valuation Agreement also often represents the first concrete and meaningful steps taken by developing countries toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

Major Issues in 1999

The Agreement is administered by the WTO Committee on Customs Valuation, which met formally three times in 1999. The Agreement also established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO). The WTO Committee continued to follow through on an initiative generated by the United States in 1998, holding several informal sessions on implementation and technical assistance issues related to those developing country Members who will be implementing the provisions of the Agreement in the year 2000. The United States has led efforts within the Committee to impress upon Members the importance of timely implementation of the Agreement, both in terms of enhancing the trade facilitation environment and ensuring that market access gains are not otherwise diminished through customs valuation practices.

This Agreement only became applicable to all WTO Members in 1995. The Agreement provided special transitional measures for developing country Members, providing time to bring their respective regimes into compliance with the provisions of the Agreement. At the end of the Uruguay Round, more than 50 developing country Members opted for recourse to delayed application for up to five years from

January 1, 1995, or the date of entry into force of the WTO Agreement. For approximately half these Members, the deadline for implementation was January 1, 2000, while for others the five year deadline expires at various dates throughout 2000 and into 2001.

While many developing country Members with a January 1, 2000 deadline undertook timely implementation of the Agreement, throughout 1999 the Committee began to address individual requests either for transitional reservations as to how the Agreement would be implemented, or for further extensions of time for overall implementation. Working with key trading partners, the United States led consultations which resulted in the development of a detailed decision on each request, including individualized benchmarked work programs toward full implementation, along with reporting requirements and specific commitments on other implementation issues important to U.S. export interests.

Work for 2000

A high priority for the Committee will continue to be the adequate preparation for the remaining developing country Members which have deadlines to apply the Agreement's provisions. The Committee's work in 2000 will also include a review of the relevant implementing legislation and regulations submitted by those newly-implementing Members, along with monitoring progress of the benchmarked work programs that were the result of requests for transitional reservations or extensions of time. The Committee also will continue to provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Agreement to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values, such as "minimum reference prices."

Finally, reflecting the recommendation of the Working Party on Preshipment Inspection which was adopted by the General Council, the

Committee on Customs Valuation will provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the Agreement on Preshipment Inspection.

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

Status

The landmark agreement to eliminate tariffs by January 1, 2000 on a wide range of information technology products, generally known as the Information Technology Agreement, or ITA, was concluded at the WTO's first Ministerial Conference at Singapore in December 1996. As of this writing, the ITA has 52⁴ participants representing over 95 percent of trade in the \$600 billion global market for information technology products.

Assessment of the First Three Years of Operation

The ITA entered into force on July 1, 1997. The ITA was one of three post-Uruguay Round agreements essential to the new economy of the 21st century (the others were financial services and basic telecommunications services). The

⁴ ITA participants are: Albania, Australia, Canada, Costa Rica, Croatia, Czech Republic, El Salvador, Estonia, European Communities (on behalf of 15 Member States), Georgia, Hong Kong China, Iceland, India, Indonesia, Israel, Japan, Jordan, Republic of Korea, Krygyz Republic, Latvia, Lithuania, Macau, Malaysia, Mauritius, New Zealand, Norway, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Switzerland and Liechtenstein, Taiwan, Thailand, Turkey, and the United States. Additional countries, including China, Armenia, Georgia and Moldova, have indicated their intention to join the ITA.

ITA confirms the potential for the WTO as a vehicle for ongoing trade liberalization. The multilateral benefits of the ITA are demonstrated by growth in participation. Twenty-eight participants launched the ITA in 1996 at the WTO Ministerial in Singapore. By March 1997, 39 participants agreed to implement the ITA and to establish the Committee to carry out the work program envisioned in the Ministerial Declaration. As of December 17, 1999, the number of participants has grown to 52, with several more countries in the process of WTO accession having agreed to join the ITA upon joining the Organization.

ITA product coverage includes computers and computer equipment, semiconductors and integrated circuits, computer software products, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments. The ITA participants will eliminate tariffs on these products by the year 2000. Some limited staging up to 2005 was granted on a country-by-country basis for individual products. The ITA, thus far, is the only global, sectoral agreement in which participating governments have agreed on a uniform list of products on which all duties will be eliminated.

In launching the ITA, Ministers agreed that the product coverage would be subject to periodic review and expansion to take account of the rapidly changing technology and differences in tariff nomenclature in the sector. Ministers further agreed consultations on non-tariff measures would be undertaken during the course of WTO work in this sector. Participants also established a Committee on the Expansion of Trade in Information Technology Products to carry out the work program identified at Singapore. The ITA is a special Agreement in many ways. Many countries in the process of accession have already negotiated and implemented commitments and joined the ITA, pending completion of their negotiations.

The ITA, thus far, is the only global, sectoral agreement in which participating governments have agreed on a uniform list of products on which all duties will be eliminated. The ITA covers much of the hardware side of the innovations in electronic commerce and telecommunications services and the interactive software that underlies these innovations – products that represent over \$600 billion in global trade.

United States producers and exporters receive significant benefits from the expansion of global markets through the ITA. Industry sources estimate that the Information Technology Agreement will save U.S. exporters of ITA products about \$5 billion in tariffs, benefitting the 1.6 million workers in the information technology industry, including the 200,000 workers in the 1,000 U.S. computer hardware companies that produced equipment worth over \$70 billion last year; the 200,000 workers in the over 7,000 firms that comprise the U.S. software industry, which is the largest in the world and one of the fastest growing high technology sectors in the U.S. economy; the 170,000 workers in the more than 5,000 firms that make the United States the largest single-country producer of telecommunications equipment in the world; the 400 or so U.S. manufacturers of semiconductor manufacturing equipment that account for 50 percent of world shipments; the 3,200 U.S. firms producing high technology measuring, testing and analyzing instruments that account for over 40 percent of global production; and the 190,000 workers in the U.S. semiconductor industry that alone produced about \$40 billion in state-of-the-art semiconductors in recent years.

The WTO, through the activities of the Committee, is well-placed to respond to the dynamic nature of the information technology sector. The Committee, through its ongoing work on product expansion and non-tariff measures (including product standards, and product classification issues) offers the venue and interested participants to address these and

other forthcoming issues, such as those related to the convergence of consumer and information technology product technologies.

Major Issues in 1999

The Committee examined all areas of its mandated work program during the six formal meetings of the Committee held during 1999. The Committee consistently reviewed the status of implementation of the ITA. All participants continued to lower tariffs on ITA products in 1999, and for the majority of participants, 1999 marked the final year where tariffs would be charged on these products. Consultations also continued throughout the year on the so-called ITA II product expansion list proposed in 1998, with certain participants noting the need for further time to continue domestic review of the package.

Pursuant to the provisions of the Singapore Ministerial Declaration, the Committee also continued its work to address divergences in classifying information technology products that had begun in 1998. The Committee agreed that an informal meeting of experts would be a useful way to move forward on this issues. As a result, experts from many Member countries met for a week of technical discussions in October to review a wide range of classification divergences for ITA products, particularly semiconductor manufacturing and test equipment. As a result of these discussions, certain participants revised their classification of some products to achieve more uniform and transparent classification. Participants agreed to continue this constructive discussion of classification issues in 2000. Participants also reviewed the product description for monitors in accordance with a provision contained in Attachment B of the Ministerial Declaration. There were no resulting decisions or changes to the product description.

The Committee continued its consultations on nontariff measures with many participants expressing a strong interest in work on

standards-related measures in the sector. Following a proposal initiated by the United States, the Committee had conducted a survey among participants of current regulations and conformity assessment requirements for information technology products as an initial project in this area. More specifically, the survey asked about current practices in the areas of safety (i.e., use of IEC 950), other standards (i.e., CISPR 22 which addresses electromagnetic interference) and reliance on suppliers' declaration of conformity for IT products. Further work in this areas is anticipated, utilizing a summary of replies to the survey requested by the Committee for this purpose as well as "national experience" papers by certain participants.

The importance of further work on standards and other non-tariff measures was one of the issues highlighted by private sector participants in an Information Technology Symposium held by the Committee on July 16, 1999 in order to ensure that the WTO and the trading system overall adequately address the challenges of the 21st century. The symposium consisted of issue-oriented panels that addressed the dynamism of the information technology sector and its future, to explain the role of information technology in promoting economic growth and development, and to highlight the value of the application of information technology. Each panel was followed by an interactive discussion and question and answer session. Speakers from 18 countries, with wide geographic representation, participated in the symposium.

One theme stressed by the speakers was the importance of information technology, its "enabling" quality, and the importance of trade. The convergence of computers, communication, consumers, and electronic commerce was a major theme of the presentations. Private sector representatives from Israel, Malaysia, Costa Rica, and Estonia highlighted the benefit of information technology trade for small and developing countries. Other speakers addressed the private sector's concerns that cumbersome

regulatory procedures substantially slow the introduction of new products in this sector. Private sector speakers addressing this issue expressed their support for a regulatory regime that would leave it up to the product's producer to determine if the product conforms to required standards rather than requiring that testing be done by independent laboratories or government agencies. The presentations of all speakers can be found on the WTO website at www.wto.org.

Work for 2000

Bolstered by the enthusiasm expressed by the private sector at the July symposium for the Committee's work program, the Committee is expected to intensify its efforts to ensure that the WTO remains an important vehicle to address the dynamic nature of the information technology sector. The Committee will continue its mandated work program, including reviewing possibilities for product expansion ("ITA II"), classification issues, standards and other non-tariff measures that present barriers to trade in information technology products. In addition, the Committee will continue to monitor implementation of the Agreement, including undertaking any necessary clarifications.

5. Committee on Import Licensing

Status

The Agreement on Import Licensing Procedures establishes rules for WTO Members that use import licensing systems to regulate their trade. The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not restrict them, and "non-automatic" licensing systems where certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions, for quotas and tariff-rate quotas or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act

like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Agreement. A Committee was established to administer the Agreement and monitor compliance.

Assessment of the First Five Years of Operation

As tariff barriers have decreased, the rules governing non-tariff measures has grown in importance. The aim of the Agreement is to ensure that the procedures used by Members in operating their import licensing systems do not in themselves form barriers to trade. It sets guidelines for the administrative procedures importers must observe to obtain import licenses, and is designed principally to increase the transparency and predictability of such regimes while creating disciplines that protect the importer against unreasonable requirements or delays that block trade. The Uruguay Round codified changes to the Tokyo Round Agreement by setting firm deadlines for the publication of information on new or revised licensing requirements and places limits on the time for processing licensing applications. The Agreement also establishes a limit on the number of government agencies an importer must approach to obtain a license, and requires all information on the operation of the licensing system be available for importers and exporters. The results of the Uruguay Round expanded the application of rules on import licensing measures to the entirety of the WTO's Membership. This has been an important development in the evolution of trade regimes of trading partners because it has ensured a single set of procedures will be followed in the administration of licensing procedures. This expanded membership moves the benefits of the Agreement beyond the trade regimes of the mostly industrialized core of countries that negotiated the original Agreement to a more universal coverage. As a result, there is now broad acceptance of the requirement for transparency, certainty and predictability in the operation of licensing regimes, and of the need

for the discipline of mutually agreed rules for the application of these widely used measures.

As tariffs have declined in relative importance as a means of trade regulation, and as licensing to monitor trade and to apply safety, quality, and other requirements to imports has increased, the Agreement's provisions have taken on added significance. The effect of licensing requirements also has increasingly impacted agricultural trade as most Members use licensing to implement tariff-rate quota provisions established during the Uruguay Round. It is expected that the Agreement will be invoked more frequently to minimize trade disruptions that could result from such requirements.

In the first five years of operation of the Agreement under the WTO, the Committee has received initial or follow-on information on import licensing requirements from about half the WTO Members, including the countries that account for the bulk of international trade. In addition, the provisions of this Agreement have been very important in review of the trade regimes of acceding countries. Many of the new Members are either transforming economies with broad mandatory licensing requirements or developing economies that have long relied on discretionary licensing to regulate trade flows. These countries' regimes have been closely scrutinized during the accession process. They are required to adopt the Agreement's provisions in law and immediately provide their initial notifications to the Committee for further review and discussion. Committee reviews of the notifications have allowed Members to identify specific procedures and measures that have the potential of blocking trade, and to focus multilateral attention on problems at an early stage. In addition, while the Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they establish the base line of what constitutes a fair and non-discriminatory application of the procedures and in minimizing the procedures themselves as a

barrier to trade. This issue has been critical in at least one recent trade dispute involving injury to trading interests through the application of licensing procedures to administer tariff-rate quotas.

Major Issues in 1999

The main work of the WTO Committee on Import Licensing, which oversees the WTO Licensing Agreement, is to receive the official notifications on the licensing regimes of the Members, which includes responses to a questionnaire that lays out how the system works. Initial or new notifications or completed questionnaires were received from 23 WTO Members in 1999. The Committee also addressed specific issues raised by Members, such as Brazil's import licensing procedures and Malaysia's approval permit requirement on imports of heavy machinery and construction equipment. While not a substitute for dispute settlement procedures, consultations on specific issues allow Members to clarify problems and resolve possible potential problems before they become disputes.

Work for 2000

The Committee has issued an ambitious agenda to review of Members' regimes during 2000, and continues to be the point of first contact in the WTO for Members with complaints or questions on the licensing regimes of other Members. The Committee has also undertaken to increase the rate at which countries supply their initial and revised information for review. Additional attention will be given to the disciplines in this area as negotiations proceed in agriculture. Administration of tariff rate quotas, for example, is generally accomplished via licensing regimes. Where necessary, the United States will rely on the expertise of the Committee and consider notifications in devising appropriate options for the new disciplines in agriculture.

6. Committee on Market Access

Status

WTO Members established the Committee on Market Access in January 1995, consolidating the work of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures from the GATT 1947. The Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures (where not explicitly covered by another WTO body, e.g., the Textiles Monitoring Body) agreed in negotiations under WTO auspices. The Committee also is the working-level body responsible for future negotiations and verification of new concessions on market access in the goods area.

Assessment of the First Five Years of Operation

Since 1995, WTO Members have negotiated and implemented new tariff initiatives on pharmaceuticals (1997 and 1999), distilled spirits (1997) and information technology products (1997) under the Committees auspices⁵. In addition, in 1998 and 1999, the Committee has been the venue for introducing the Accelerated Tariff Liberalization initiatives on environmental goods and services, medical equipment and instruments, fish and fish products, toys, gems and jewelry, chemicals, energy sector goods and services, and forest products.

The Committee also has focused on developing the tools needed to monitor goods market access commitments and establish the technical foundation for any new market access

⁵A new WTO Committee on Trade in Information Technology Products was established to monitor implementation of the Information Technology Agreement.

negotiations, including the ongoing negotiations on agriculture. Specific achievements include:

- ▶ *Revitalizing the Integrated Data Base (IDB)* by restructuring the framework from a mainframe environment to a personal computer-based system and developing technical assistance projects to facilitate participation by developing countries. Once the new IDB framework had been developed, the Committee recommended that all WTO Members be mandated to supply tariff and trade information on an annual basis. After review by the Council on Trade in Goods, the General Council adopted the Decision in July 1997. As of September 1999, 65 Members and three acceding countries had provided IDB submissions; in contrast, only three Members (including the United States) supplied IDB information in 1994 under the old mainframe system.
- ▶ *Ensuring implementation of the 1996 updates to the harmonized system nomenclature (HS96) did not adversely affect existing tariff bindings of WTO Members.* This activity has required more time than initially anticipated due to the scope of changes required under HS96 and the lack of foresight in 1991 (when the HS96 implementation procedures were developed) as to the potential value of detailed, electronically-based data requirements and verification methods. Despite these difficulties, most WTO Members are now using HS96 nomenclature. The lessons learned from the HS96 experience should yield procedures for the HS2002 updates that maximize the new innovations in computer software.
- ▶ *Establishing procedures and technical assistance projects to ensure the development in 2000 of an up-to-date schedule in current tariff nomenclature*

of the tariff bindings for each WTO Member that reflects Uruguay Round tariff concessions, HS96 updates to tariff nomenclature and bindings, and any other modifications to the WTO schedule. These consolidated schedules will be the vehicles for conducting future tariff negotiations in the WTO.

Major Issues in 1999

During 1999, WTO Members continued implementing the ambitious package of tariff cuts agreed in the Uruguay Round with the Committee having responsibility for verifying that implementation is proceeding on track. The Committee held four meetings in 1999 to discuss the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; the WTO Integrated Data Base; and procedures for preparing a consolidated schedule of WTO tariff concessions in current HS nomenclature, including technical assistance that could be provided to developing country Members. The Committee also was the venue for reporting on tariff initiatives, such as the Accelerated Tariff Liberalization initiative.

Expansion of the Product Coverage for the Zero-Duty Initiative on Pharmaceuticals. The United States and most of the other 22 participants to the second expansion of pharmaceutical products initiative begun under the Uruguay Round zero duty initiative implemented the additional tariff concessions on July 1, 1999. The new initiative covered 642 finished pharmaceutical products and related chemical intermediates, including products for the treatment of breast cancer, AIDS, diabetes, asthma, and Parkinson's disease. As a result of WTO actions on pharmaceutical tariffs in the Uruguay Round and thereafter, nearly 7,000 pharmaceutical items in participating countries are duty-free.

The industries affected by this initiative employ over 400,000 American workers. The

elimination of tariffs on these products will further expand U.S. producers' overseas market access opportunities in Europe and Asia, and will help to reduce costs and improve productivity in this leading high technology sector. Moreover, U.S. and other consumers will benefit from lower costs and, potentially, a wider choice of product.

Accelerated Tariff Liberalization initiative (ATL) and other market access proposals. In March, New Zealand in its role as APEC Chair provided additional information to the Committee on the sectoral liberalization initiatives that Malaysia, on behalf of APEC members, had introduced into the Committee following the November 1998 APEC Leaders' meeting. APEC Leaders agreed to seek multilateral participation in sectoral liberalization initiatives on environmental equipment, medical equipment and instruments, fish and fish products, toys, gems and jewelry, chemicals, energy sector goods and services, and forest products. The eight ATL sectors are of major importance to U.S. exporters, accounting for 29 percent of total U.S. merchandise exports in 1998. Approximately 2.2 million jobs were supported by the \$198 billion in exports in the eight product sectors, counting both direct employment in the ATL sectors and employment in other sectors of the economy that indirectly depend on exports of ATL products.

Throughout the year, New Zealand and other APEC coordinators for the various proposals, including the United States, held numerous informal discussions on the ATL sectors in Geneva and in capitals with over 40 WTO Members. The proposals for new negotiations on the broad area of non-agricultural tariff and non-tariff measures also were discussed as part of the preparatory process for the 1999 Ministerial under the auspices of the General Council.

Updates to the Harmonized System nomenclature. In 1993, the Customs

Cooperation Council (now known as the World Customs Organization, or WCO) agreed to approximately 400 sets of amendments to the HS, which were to enter into effect on January 1, 1996. These amendments result in changes to the WTO schedules of tariff bindings. In keeping with their WCO obligations, most WTO Members have implemented the HS96 changes in their national customs nomenclature. The Committee previously had developed procedures for identifying possible effects on the scope of WTO tariff bindings due to the HS96 updates. Members have the right to object to any proposed nomenclature affecting bound tariff items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Unresolved objections can trigger a GATT 1994 Article XXVIII process.

Most WTO Members were unable to carry out the procedural requirements related to the introduction of HS96 changes in WTO schedules prior to implementation of those changes. Waivers have been granted until the procedures can be finalized. These waivers, which currently affect 32 Members, were extended by successive decisions of the General Council until April 30, 2000, at which time issues related to the adoption of HS96 are expected to be completed for all WTO Members. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members which had adopted the HS in the years following its introduction on January 1, 1988. Technical assistance is being provided to some Members to assist in the transposition of their pre-Uruguay Round schedules into the HS and in the preparation of documents required for the HS96 updates.

Integrated Data Base (IDB). The Committee addressed issues concerning the IDB, which is to be updated annually with information on the tariffs, trade data and non-tariff measures maintained by WTO Members. The U.S.

objectives are to achieve full participation in the IDB by all WTO Members and, ultimately, to develop a method to make the trade and tariff information publicly available. In recent years, the United States has taken an active role in pushing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members.

In 1997, the Committee agreed to a complete restructuring of the IDB from a mainframe environment to a personal computer-based system (PC IDB). The Committee also recommended that all WTO Members be mandated to supply tariff and trade information on an annual basis. After review by the Council on Trade in Goods, the General Council adopted the Decision in July 1997, with initial implementation to occur beginning in December 1997. As of September 1999, 65 Members and 3 acceding countries had provided IDB submissions. To facilitate the development and updating of the data, the Committee adopted guidelines on the operation and modalities for the IDB, in particular the submission and dissemination of the data. The Committee also continued its discussion of the technical assistance that might be provided to facilitate submission of the data.

Consolidated schedule of tariff concessions. The establishment of a PC-compatible structure for tariff and trade data also will facilitate the Committee's ongoing work to establish electronically each Member's consolidated "loose-leaf" schedule of tariff concessions. This highly technical task is essential in order to generate an up-to-date schedule in current tariff nomenclature of the tariff bindings for each WTO Member that reflects Uruguay Round tariff concessions, HS96 updates to tariff nomenclature and bindings, and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The Committee also reviewed a technical assistance project undertaken by the Secretariat designed to facilitate the preparation of loose-leaf schedules by developing countries.

The objective of the project is to develop draft consolidated loose-leaf schedules for all developing countries by spring of 2000. Developed countries will prepare their own schedules, within the same time frame. The consolidated schedule will be the vehicle for conducting future tariff negotiations in the WTO, such as the mandated negotiations on agriculture that are underway and any new negotiations on non-agricultural tariffs.

Work for 2000

The ongoing work program of the Committee, while highly technical, is the first step needed for any new negotiations on goods market access. The work program will provide the tariff schedules and data needed for new negotiations on agriculture or non-agricultural market access. The Committee will continue work on the consolidated tariff schedules so electronic schedules of tariff bindings for each Member will be forthcoming in current tariff nomenclature, including assistance to developing countries in preparing their schedules through the WTO's technical cooperation programs. Committee efforts to secure updated data on applied tariffs and trade also will continue. The United States also seeks analyses by the Secretariat on the structure of WTO bindings and applied tariff rates of WTO Members to assist in monitoring compliance with existing WTO commitments, assessing the current situation with regard to market access in goods and preparing for new negotiations on tariffs, such as negotiations underway in agriculture and possible new negotiations on non-agricultural market access. In addition to finalizing the HS96 updates, the Committee also needs to develop procedures to facilitate the adoption of updates to the harmonized tariff nomenclature in 2002, as agreed in the World Customs Organization. The United States will seek to ensure that the new HS2002 procedures will be electronically-based, transparent and easy to implement, in order to minimize disruptions to any ongoing negotiations on tariffs (e.g., in agriculture).

7. Committee on Rules of Origin

Status

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade regimes.

The Agreement establishes a WTO Committee on Rules of Origin to oversee the work program on harmonization. The Committee also served as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the harmonization work program.

Assessment of the First Five Years of Operation

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices such as non-transparency, discrimination, and a lack of certainty. The Agreement on Rules of Origin provides important disciplines for conducting preferential and non-preferential origin regimes-- such as the obligation to provide binding origin rulings upon request to traders within 150 days of request. For the past five years the Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the Committee has been active in its review of the Agreement's implementation.

The ongoing work program leading to the multilateral harmonization of nonpreferential

product-specific rules of origin has attracted a great deal of attention and resources. Significant progress has been made toward completion of this effort, despite the sheer volume and magnitude of complex issues which must be addressed for literally hundreds of unique specific products.

Major Issues in 1999

The WTO Committee on Rules of Origin met formally six times in 1999, and also conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. As of the end of 1999, 72 WTO Members had made notifications concerning non-preferential rules of origin, and 75 had made notifications concerning preferential rules of origin.

Much of the focus of the WTO Committee on Rules of Origin continued to be on conducting the harmonization work program. Work proceeded throughout 1999 in accordance with a July 1998 Committee decision, endorsed by the General Council, to continue the harmonization effort. The Committee has been assisted in this work by the Technical Committee on Rules of Origin that was established at the World Customs Organization. The Technical Committee has been responsible for developing technical interpretations and opinions on harmonization proposals for consideration by the WTO Committee on Rules of Origin. In June 1999, the Technical Committee finished this phase of its work, forwarding to the WTO Committee several hundred product-specific issues that could not be resolved on a technical basis. In 1999, the WTO Committee on Rules of Origin also began addressing several complex issues of broad application to the harmonization work program, including undertaking important work toward a common understanding as to the implications of applying harmonized rules consistent with the rights and obligations under other WTO agreements.

Work for 2000

U.S. proposals for the WTO origin harmonization negotiations are developed under the auspices of a Section 332 study being conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The proposals are formulated utilizing the input received from the private sector, with ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the WTO Committee on Rules of Origin.

The harmonization program will continue to be conducted by the Committee through a sector-by-sector approach, in accordance with the Agreement, as defined in various HS chapter groupings in the Harmonized Tariff Schedule. The work will continue on the development of product-specific rules by focusing primarily on methodologies involving change in tariff classification, although, where appropriate, the work program has also been giving consideration to other possible requirements, beyond a change of tariff classification methodology. The Committee will maintain momentum toward completing the work program while also ensuring results that are sound from both a technical and policy standpoint. Progress in the harmonization work program will be contingent on obtaining appropriate resolution of several complex issues concerning the overall structure and operation of the harmonized rules, as well as their future application consistent with the rights and obligations under other WTO agreements.

Increased attention will continue to be given to the implementation of the Agreement's important disciplines related to transparency, which are recognized elements of what are considered to be "best customs practices."

8. Committee on Safeguards

Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994.

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

Among its key provisions, the Agreement:

- ▶ requires a transparent, public process for making injury determinations;
- ▶ sets out clearer definitions of the criteria for injury determinations;
- ▶ requires safeguard measures to be steadily liberalized over their duration;
- ▶ establishes an eight year maximum duration for safeguard actions, and requires a review and determination no later than the mid-term of the measure;
- ▶ allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and,
- ▶ prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements, which had been utilized by countries to avoid GATT disciplines and which adversely affect third-country markets. Measures of this type in existence when the Agreement entered into force were required to be phased out over four years.

Assessment of the First Five Years of Operation

Effective safeguards rules are important to the viability and integrity of the multilateral trading system. Armed with the assurance that they can act quickly to help industries adjust to temporary import surges, the availability of a safeguards mechanism provides WTO Members a flexibility they otherwise would not have to open their markets to international competition. At the same time, WTO safeguards rules ensure that such actions are of limited duration and are gradually less restrictive over time. With the Uruguay Round Safeguards Agreement, the United States succeeded in raising multilateral procedural and substantive requirements for safeguard actions up to a level commensurate with U.S. standards, as embodied in section 201 of the Trade Act of 1974. Other important accomplishments of the Uruguay Round negotiations include clarifying that it is permissible to impose a safeguards measure in response to a *relative* increase in imports; permitting the imposition of a measure for an initial three years, in response to an *absolute* increase in imports, without having to worry about payment of compensation or facing retaliation; and the elimination of voluntary export restraint agreements and orderly marketing arrangements which had previously undermined the integrity of safeguards rules and disciplines.

Over the past five years, WTO Members have made increasing use of the safeguards provisions. Thirty-four safeguards investigations have been instituted since the Agreement came into effect, of which seven were initiated by the United States. The United States has actively used the provisions for bilateral consultation and Committee review to raise concerns about certain safeguard measures imposed and procedures followed by U.S. trading partners. By the same token, in certain cases where increasing imports into the United States have substantially caused or threatened serious injury to a U.S. industry, the injured

U.S. industry has benefitted significantly from the provision of WTO-sanctioned relief that affords the time and opportunity needed to adjust to the emergency situation. Often, the causes and circumstances of an import surge are such that safeguard measures are the only or best-suited remedy available to address the situation. Thus, to date, the Agreement has generally operated so as to provide the combination of structure, balance and flexibility that a full defense of U.S. commercial interests requires. In the future, the United States intends to continue to make vigorous use of the Safeguards Committee both to defend U.S. actions and to ensure that the actions of U.S. trading partners conform to the applicable multilateral requirements.

Major Issues in 1999

During its two meetings in 1999, the Committee continued its review of Members' laws, regulations and administrative procedures, based on notifications required by Article 12.6 of the Agreement. As of early October 1999, 84 Members had notified the Committee of their domestic safeguards legislation. Thirty-five Members had not yet made Article 12.6 notifications. As in prior years, the Committee discussed the extent of non-compliance with the notification obligation and the implications of the situation during both meetings in 1999. Attention is also being paid to safeguard actions that are being initiated by Members who have not complied with their Article 12.6 obligation to notify their safeguards legislation.

The Committee was updated on the status of progress in phasing out previously notified pre-existing Article XIX measures, and measures subject to prohibition and elimination under Article 11.1 of the Agreement. As of late October 1999, the only such measures still in force were the use of minimum import prices for dried grapes and preserved cherries, and a voluntary export restraint on Japanese automobiles, by the European Communities, which were scheduled to be eliminated as of

December 31, 1999. Nigeria had notified, in 1998, that its import prohibitions on wheat flour, sorghum, millet, gypsum and kaolin were “pre-existing Article XIX measures,” and asked the Committee for a waiver of its notification obligations under Article 12.7 of the Safeguards Agreement. The Committee did not act on that request in 1998 or 1999, and Nigeria had not provided any information, as of late October 1999, on the elimination date for these import prohibitions.

The Committee reviewed Article 12.1(a) notifications of the initiation of and reasons for an investigatory process relating to serious injury or threat thereof from: Colombia (taxis), the Czech Republic (sugar), Ecuador (sandals), India (phenol and acetone), Latvia (swine meat), the Slovak Republic (swine meat), and the United States (lamb meat, steel wire rod and line pipe). Some additional Article 12.1(a) notifications, to be reviewed in 2000, were received from: Chile (tires), Egypt (fluorescent lamps) and India (white/yellow phosphorous).

The Committee received Article 12.1(b) notifications of a finding of serious injury or threat thereof caused by increased imports from: Australia (frozen boneless pork), the Czech Republic (sugar), Egypt (safety matches), India (high density board, propylene glycol, slabstock foam and phenol), and the United States (lamb meat and steel wire rod). All but the Czech Republic (sugar) notifications were reviewed during the year.

The Committee received Article 12.1(c) notifications of a decision to apply (or, in the case of the U.S. measure on wheat gluten, modify) a safeguard measure from: the Czech Republic (sugar), Egypt (safety matches), India (acetylene black, carbon black, propylene glycol, and slabstock foam) and the United States (lamb meat and wheat gluten). All but the Czech Republic (sugar) notifications were reviewed during the year. The Committee received two notifications, from India (hard board) and Australia (swine meat), of the

termination of a safeguard investigation with no safeguard measure imposed.

The Committee reviewed Article 12.4 notifications of the application of a provisional safeguard measure from: the Czech Republic (sugar), Latvia (swine meat), the Slovak Republic (swine meat) and Slovenia (swine meat).

Among other business taken up by the Safeguards Committee in 1999 were two items raised for discussion by Japan concerning possible amendments to U.S. safeguards legislation and the relationship of undertakings instituted pursuant to the Agreement on Subsidies and Countervailing Measures (e.g., U.S. suspension agreements in countervailing duty proceedings) and the provisions of Article 11 of the Safeguards Agreement concerning prohibited measures.

Work for 2000

The Committee has substantially completed its reviews of the laws and regulations of the 84 Members who have notified their safeguards regimes. With the December 31, 1999, expiration of pre-existing Article XIX and Grey Area Measures, the Committee’s work in 2000 will focus on the reviews of safeguard actions that have been notified to the Committee and on the notification of new or amended safeguards laws.

9. Committee on Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures to ensure measures are based in science and developed through systematic risk assessment procedures. At the same time, the SPS Agreement preserves every WTO Member’s right to choose the level of protection it considers to be appropriate.

Sanitary and phytosanitary measures protect against risks associated with plant- or animal-borne pests or diseases, or with additives, contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs.

The Committee on SPS Measures⁶ serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This consultation includes discussion of specific SPS measures that are perceived to violate the Agreement and the exchange of information on implementation of the obligations in the Agreement. The Committee's work also encompasses an ongoing review of the Agreement's operational provisions related to transparency in the development and application of SPS measures.

Assessment of the First Five Years of Operation

The SPS Agreement was an important evolution in international rules and disciplines for agricultural products. The SPS Agreement serves as a compliment to the WTO Agreement on Agriculture by seeking to ensure that as tariffs, export subsidies and other more traditional measures affecting international trade in agricultural products are liberalized,

⁶Participation in the Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. Representatives of a number of international organizations are invited to attend meetings of the Committee as observers: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the FAO International Plant Protection Convention Secretariat (IPPC); the International Office of Epizootics (OIE); the International Organization for Standardization (ISO) and the International Trade Center (ITC).

governments do not replace the traditional tools of agricultural protection with capricious sanitary and phytosanitary barriers.

The SPS Agreement, for the first time, established multilaterally recognized rules and disciplines for the development and application of measures taken to protect human, animal or plant life or health. The Agreement accomplishes this by requiring that SPS measures be transparent, based in science and developed through systematic risk assessment procedures.

At the same time, the Agreement preserves each WTO Member's right to choose the level of protection it considers to be appropriate with respect to food safety, animal and plant health, and other SPS risks, even if a Member's chosen level of protection is higher than the level of protection that would be provided by a comparable international standard. Since the Agreement was adopted, for example, the Administration has launched a number of important initiatives to ensure, in a manner that is fully consistent with the Agreement, that domestic and international food products sold to U.S. consumers continue to meet the highest standards in the world.

The Agreement's notification procedures are an important tool, allowing the Administration to identify and seek to resolve potential problems with new SPS measures before they are implemented. Members are required to provide information on proposed SPS actions for comment before they are finalized. Concerns regarding proposed or ongoing SPS actions may be addressed through bilateral consultations and/or raised for more general discussion and scrutiny in the SPS Committee. The most important benefits have been the result of steps that governments have taken, both independently and on the basis of consultations, to implement the Agreement and address particular concerns before potential international differences rise to the level of

formal WTO consultations and dispute settlement procedures.

In the cases brought to the WTO Dispute Settlement Body by the United States and other Members, the DSB's decisions have consistently upheld the Agreement's emphasis on science and risk assessment, further reinforcing the need for all WTO Members to ensure that their SPS measures are based on those principles and procedures. At the same time, these decisions have affirmed the right of WTO Members to determine what levels of protection are appropriate, even when they differ from the levels that would be afforded by international standards.

The Administration has pushed aggressively, in the SPS Committee, the WTO Dispute Settlement Body, and a wide range of bilateral and multilateral fora, for full implementation of the Agreement by all current Members and by countries that are in the process of acceding to the WTO. The combination of the SPS Agreement's framework of rules – with its strong emphasis on transparency, science and systematic risk assessment – and the efforts by the United States and other Members to ensure effective implementation of those rules has helped the Administration open up and preserve major export markets for U.S. agricultural products throughout the world.

Throughout the past five years, the WTO Secretariat has organized numerous seminars on the operation of the SPS Agreement in many regions of the world in order to assist WTO Members in complying with the provisions of the Agreement. The Administration also provides technical assistance to individual WTO Members and countries acceding to the WTO on the SPS Agreement. U.S. government agencies such as the Food Safety Inspection Service (FSIS) also provide information and training at permanent centers such as the FSIS facility in College Station, Texas.

Major Issues in 1999

The Committee held three meetings in 1999 to continue monitoring the implementation of the SPS Agreement.

Review of Implementation of the Agreement: Article 12.7 of the SPS Agreement provides that “[t]he Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.” The report of the first triennial review contains a section-by-section analysis of the SPS Agreement, reflecting discussion that took place in the Committee during the review. The report identifies several areas for improvement in implementing the Agreement, as well as follow-up activities by the Committee. At no time during the triennial review did any Member suggest the reopening of the text of any Article or negotiation of any new text. The SPS Committee adopted by consensus the final report of the triennial review of implementation of the SPS Agreement on March 11, 1999.

Transparency: A key opportunity resulting from the SPS Agreement is the ability to obtain information on WTO Members' proposed SPS regulations, controls, and inspection and approval procedures, and to provide comments on those proposals before they are finalized. These opportunities have proved to be extremely useful in preventing problems associated with SPS measures before trade is affected. The United States continued to encourage all WTO Members to establish an official notification authority, as required by the Agreement, and to ensure that the Agreement's notification requirements are fully and effectively implemented.

The SPS Agreement requires each Member to establish a central contact point, known as an inquiry point. This inquiry point serves two primary functions. First, it provides notice to the SPS staff of the WTO Secretariat of a Member's proposed SPS measures and serves as a contact point for questions from other WTO Members. Second, the inquiry point receives notifications from the Secretariat of other Members' proposed SPS measures and circulates them to interested parties for comment.

Prior to the November meeting, the WTO Secretariat conducted a workshop on SPS inquiry points to provide technical assistance and information exchange on the operation of inquiry points. Approximately one-fourth of WTO Members have not yet designated an inquiry point and notified the Committee.

U.S. INQUIRY POINT

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

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

Guidelines for the Practical Implementation of Article 5.5: The Committee also was charged with developing guidelines to further the practical implementation of each Member's obligation to avoid arbitrary or unjustifiable distinctions in the levels of SPS protection that the Member considers to be appropriate in different situations (Article 5.5). The Committee has held extensive consultations and Members have generally been satisfied with the considerable progress that has been made on draft guidelines.

In 1999, the Committee continued to discuss practical issues associated with implementation of Article 5.5 regarding consistency in the application of appropriate levels of protection. The Committee informally reviewed suggestions by Members and various drafts of the Secretariat. While progress has been made, discussions continue on three important issues: the role of international standards in the implementation of measures versus in decisions related to the appropriate level of protection; the differentiation between disciplines related to decisions on the appropriate level of protection and the disciplines related to its application through measures; and the differentiation between approaches for food safety and human health, and approaches for animal and plant life and health. Discussions will continue on these issues.

Monitoring Procedures for the Use of International Standards. The Committee also was given responsibility for developing procedures to monitor international harmonization and the use of international standards, guidelines or recommendations (Articles 3.5 and 12.4). Accordingly, there was an exchange of information on national regulatory procedures and the use of risk assessment in the development of SPS measures. The Committee also established a provisional procedure, which was extended in 1999 for two years, to monitor the use of international standards. The procedure additionally seeks to identify international standards that may have a major impact on trade and that may warrant review because they are out of date, or otherwise technically inappropriate, or because they have not, for other reasons, been adopted by WTO Members. The Secretariat's report (document G/SPS/W/94/Rev.2 at www.wto.org) details specific international standards considered under this review.

Specific Trade Concerns. The Committee reviewed a number of specific trade concerns,

including several related to individual notifications. These included measures related to dioxin; measures related to maximum levels of aflatoxins in food; measures related to antibiotics in feed; and measures affecting raw milk cheeses, other dairy products, beef, poultry products, bovine semen, horses, gelatine, potatoes and milled rice. A number of these matters were resolved following discussions in the Committee or bilaterally.

Work for 2000

In 2000, the Committee is expected to continue discussions on the guidelines called for in Article 5.5 of the Agreement. The Committee also will continue to monitor implementation of the SPS Agreement by WTO Members. The increase in disputes in this area is evidence of the importance which Members place on the effective operation of the Agreement.

10. Committee on Subsidies and Countervailing Measures⁷

Status

The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action – to address subsidized trade that causes harmful commercial effects.⁸ The Agreement

⁷For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2000.

⁸Another WTO body which carried out work of relevance to subsidies disciplines in 1999 is the Committee on Trade and Environment (CTE). The United States played

divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies. Export subsidies and import substitution subsidies are prohibited. Green light subsidies consist of certain circumscribed government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes. All other subsidies are permitted, yet are actionable (through CVD or dispute settlement action) if they are (i) limited to a firm, industry or group thereof within the territory of a WTO Member (i.e., “specific” subsidies) and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. However, certain subsidies, referred to as dark amber subsidies, are presumed to cause serious prejudice: subsidies to cover an industry’s operating losses; repeated subsidies to cover a firm’s operating losses; the direct forgiveness of debt (including grants for debt repayment); and when the *ad valorem* subsidization of a product exceeds five percent. In such cases, if challenged in a WTO dispute settlement proceeding, the subsidizing government has the

a leading role in the CTE, and elsewhere, in identifying areas where reduction or elimination of subsidies can yield both trade and environmental benefits. A clear example is in the fisheries sector, where subsidies have played a major role in exacerbating the problems of overcapacity and over-fishing. The United States has worked closely with like-minded countries to build a consensus for the development of stronger WTO disciplines to address this problem. The United States will continue to pursue this initiative, as well as to explore other opportunities where strengthened subsidies disciplines can yield trade and environmental benefits.

burden of showing that serious prejudice has not resulted from the subsidy.⁹

In 1999, a review was conducted under Article 31 of the Agreement with respect to whether to extend beyond 1999 the application of Article 6.1 (the dark amber subsidies) and Articles 8 and 9 (the green light subsidies). Because a consensus could not be reached on whether or how these provisions might be extended beyond their five-year period of provisional application, they expired at the turn of the year.

Assessment of the First Five Years of Operation

Rules and disciplines covering industrial subsidies have evolved over time in the multilateral trading system to ensure that the artificial competitive advantages which they can confer do not disrupt the market signals which guarantee the most efficient allocation of resources, both within and among countries – forces at the heart of the generation of wealth for producers, consumers and workers. The WTO disciplines subsidies in order to prevent the erosion of comparative advantage and the undermining of market access expectations conferred through reciprocal concessions to reduce tariffs and other barriers at the border. In short, subsidy rules help to make the field of competition more even, so private actors need not worry about having to compete with government treasuries. At the same time, however, WTO subsidy rules recognize that all governments do – indeed, must – intervene in their economies in some fashion to pursue legitimate objectives for the society at large. The WTO rules, accordingly, are intended to prohibit or discourage the most distortive kinds of subsidies, and to encourage governments to use less distortive subsidies in order to achieve

⁹As explained below, the green light and dark amber provisions mentioned here are no longer in effect.

the broader social or economic objectives of interest to them.

This historical balance has served U.S. interests well. The orientation of multilateral subsidy rules has tended to reflect the balances struck within the United States on these same issues: a low toleration for the more distortive types of government intervention, yet with a flexibility which permits a variety of approaches to address the different social, economic, technological, developmental and environmental needs of a Member. It is also a balance that has served the multilateral system well, e.g., during the financial crisis, it provided a model which discouraged the kind of targeted industrial policies and non-commercial government support that exacerbated the crisis, but saved room for the broadly available industry and worker assistance that could be important in overcoming the crisis. Finally, it is a framework which holds promise for creating greater complementarities between the goals of trade policy and environmental policy, as the United States identifies sectors in which the reduction or elimination of subsidy practices can alleviate both adverse trade and environmental effects.

The Uruguay Round Subsidies Agreement brought important new disciplines to address the more egregious subsidy practices, and for the first time extended the coverage of disciplines from the 25 to 30 signatories of the Tokyo Round Subsidies Code to all 135 Members of the WTO. Its remedies and methodological concepts reflect, in most instances, the very concepts and standards which the United States developed over the course of decades in administering its own anti-subsidy trade statutes. With some exceptions, the outcome of subsidy-based disputes brought since entry into force of the WTO has tended to reinforce the strict standards which the United States believed at the conclusion of the Uruguay Round were embodied in the Agreement. Even with the expiration last year of certain important

elements of the Agreement, it continues to offer a strong yet balanced solution to the impact of subsidies on international trade.

Major Issues in 1999

The Committee held two regular and two special meetings in 1999. In addition to its routine activities concerned with clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee gave special attention to reviewing general subsidy notifications and to the process by which such notifications are made to and considered by the Subsidies Committee. Particular attention was devoted to the review of 1998's new and full subsidy notifications, including that of the United States,¹⁰ which is the second series of such notifications made since entry into force of the WTO. Pursuant to its own "built-in agenda," as set forth in Article 31, the Committee also conducted its review of the operation of the green light and dark amber rules. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as updating subsidy

¹⁰As noted in last year's report, the 1998 notification of the United States included for the first time information on over 200 measures at the sub-federal level. This innovation was welcomed by many other Members, and has permitted the United States to probe for or provide information about similar measures maintained at the sub-central government level in other WTO Members' territories.

notifications, were reviewed and discussed by the Committee at both of its regular meetings. New and full subsidy notifications for the 1998 reporting period were, in turn, considered at the two special meetings. In reviewing notified CVD legislation and subsidies, the Committee procedures provide for the exchange of written questions and answers to clarify the operation of the notified measures and their relationship to the obligations of the Agreement. For the first time, the Committee agreed to special procedures for conducting its review of full subsidy notifications in order to allow adequate time for a written exchange of questions and answers prior to the meeting, thereby permitting a more probing and free-flowing discussion of issues at the meeting itself.

Among the notifications of CVD laws and regulations reviewed in 1999 were those of Argentina, Australia, Dominica, Egypt, the European Union (EU), Fiji, Ghana, Indonesia, Jamaica, Latvia, Maldives, Trinidad and Tobago and the United States (including the most recent substantive CVD regulations of the Department of Commerce). As for CVD measures, reports were submitted by 68 Members last year, and the Committee reviewed actions taken by Argentina, Barbados, Canada, the EU, Egypt, Mexico, Peru, South Africa, Sri Lanka, the United States, and Venezuela. With respect to subsidy notifications, the Committee examined the notifications of 36 Members (counting the 15 member states of the EU as one). Most were new and full notifications submitted for 1998, the beginning of the second triennial notification cycle under the Agreement, but update notifications for 1997 and 1999 were also reviewed. The table contained in Annex II shows the WTO Members whose subsidy notifications were reviewed by the Committee in 1999.

The United States has long pressed not only for better compliance with subsidy notification obligations, but also for improvements aimed at streamlining the notification process. In 1999,

the Subsidies Committee considered an EU proposal drawn from earlier suggestions of the United States and other Members that new and full notifications be made biennially rather than triennially, and that updating notifications be eliminated. Such a change, the United States has argued, would not only lessen administrative burdens, but would rationalize the review process by permitting a Member to shift resources from preparing its notification in one year to reviewing notifications in the next. This would, in fact, heighten transparency through better organization and fewer delays. Whereas many delegations expressed interest in or support for this proposal, a number of developing countries requested additional time to study the idea. The Committee will continue to consider this and other proposals for streamlining the notification process in 2000.

Sunsetting of Green Light & Dark Amber Rules: When the Subsidies Agreement was negotiated, the green light and dark amber rules were considered to be the most novel, and therefore unpredictable, aspects of the Agreement. As a result, the Agreement provided that these rules should apply only for the first five years. Under Article 31 of the Agreement, the Subsidies Committee was charged with reviewing their operation with a view toward extending them for a further period, with or without modifications, but the Agreement made clear that the provisions would expire at the end of 1999 unless an explicit decision was made to keep them in force.

Pursuant to the URAA, the Administration conducted extensive consultations on this issue with a broad spectrum of interested U.S. parties throughout 1998 and 1999. On the basis of those consultations, the United States took the position that it could join a consensus to extend the application of Articles 6.1, 8 and 9, as written, for another reasonable period of time (e.g., up to another five years). This was consistent with the vast majority of the advice that the United States had received from its

statutorily-mandated advisory committees, other private sector and state/local government representatives and interested members of the Congress. It reflected the mixed views which the United States has always held about the value and danger of these provisions, and the relative lack of experience with their use since establishment of the WTO.

Although many WTO Members supported an extension, a number of developing country Members asserted that the provisions worked exclusively to the advantage of developed countries, and opposed an extension unless certain modifications were made to these provisions, other parts of the Subsidies Agreement and even other WTO agreements. The United States argued that the Article 31 issue had to be judged on its own merits, and the United States could not accept changes which would substantively dilute subsidy or other WTO disciplines as a price for extension. Other Members expressed similar views, while a handful of developing countries voiced doubts that there could be any basis acceptable to them for extending the application of Articles 6.1, 8 and 9. Accordingly, the Committee was unable to take a decision on this matter by the end of 1999, and the provisions automatically lapsed as of January 1, 2000.

Pursuant to the requirements of the URAA, USTR plans to submit by no later than June 30, 2000, a separate report to the Congress identifying the provisions of U.S. law that are affected by these developments. As set forth in section 251 of the URAA, the green light provisions of U.S. CVD law will no longer have effect as of July 1, 2000, unless new legislation is enacted before that date which alters that status.

Work for 2000

Implementation will continue to be the hallmark of Subsidies Committee work this year. First, as noted above, the United States will continue

to work towards agreement on ways to streamline the burdens of subsidy notification for all WTO Members without taking away from the substantive benefits of that obligation. Second, certain developing country Members raised concerns in both the Committee and the Third Ministerial preparatory process last year about the problems of Subsidies Agreement implementation. The United States agrees that the Committee should assume a more active role in addressing the variety of pending, and impending, implementation issues. Among these, from a U.S. perspective, are certain leading examples:

- ▶ *IMPLEMENTATION OF ARTICLE 27.3:* On January 1, 2000, the phase-out period ended for all developing countries except the least-developed with respect to “subsidies contingent . . . upon the use of domestic over imported goods,” measures which are prohibited under Article 3.1(b) of the Agreement. Without prejudice to any Member’s dispute settlement rights, the United States believes that the Committee should monitor Members’ implementation efforts in order to ensure compliance with this obligation.
- ▶ *IMPLEMENTATION OF ARTICLE 27.2/27.4:* In the course of the past year, many developing countries have raised concerns about their ability to meet the transitional obligations in various WTO Agreements by the prescribed deadlines. Under the Subsidies Agreement, the transition period for most developing countries to phase out their export subsidies expires on January 1, 2003. Although the United States and other Members have asked certain developing countries to report on the status of their phase-out plans during the review of general subsidy notifications under Article 26, little information has typically been

supplied in response. Notwithstanding that the deadline is roughly three years away, and individual requests for extension need not be made until January 1, 2002, the Agreement does prescribe that these subsidies are to be phased out “in a progressive manner” and within a shorter period where “the use of such . . . subsidies is inconsistent with [a country’s] development needs.” Given this, there are reasonable grounds for the Committee to consider this year creating a special reporting and monitoring process to facilitate these phase-outs.

- ▶ *ARTICLE 27.6 REVIEW:* The Subsidies Agreement provides that a developing country which has reached 3.25 percent of world trade in a given product over two consecutive years must accelerate the phase-out of its export subsidies on that product. The product scope is defined as a section heading of the Harmonized System nomenclature, and application of this provision can be triggered either by a notification made by the developing country or a computation done by the WTO Secretariat at the request of another Member. Pursuant to Article 27.6 of the Agreement, the Subsidies Committee began reviewing the operation of this provision at the end of last year. Although the provisions have yet to be invoked, the United States believes that a number of issues relating to the scope, structure and likely operation of these provisions are topics worthy of more rigorous consideration.
- ▶ *OPERATION OF ANNEX VII:* Annex VII to the Agreement identifies two specific groups of developing countries which receive treatment more generous than that given to other developing countries with respect to both export

subsidy obligations and the application of CVD rules.¹¹ Over the past year, a number of developing countries have raised concerns about the scope and operation of Annex VII. While there is no justification for arbitrarily expanding the scope of this Annex, in terms of either countries covered or the exceptions provided from normal Agreement rules and disciplines, some legitimate questions have been raised about the manner in which Annex VII (as it is currently written) may have operated or been interpreted. The United States agrees that the Committee

¹¹If a developing country WTO Member is identified in Annex VII, Article 27 of the Agreement provides it with more generous treatment than is provided for other developing countries, *i.e.*, they are not immediately subject to export subsidy phase-out requirements and, for a limited remaining period, their exports benefit from higher *de minimis* subsidy rates in countervailing duty investigations. Annex VII identifies two groups of the poorest developing countries: (i) the least developed countries as designated by the United Nations and (ii) certain other specifically named countries whose annual GNP per capita was below \$1000 at the conclusion of the Uruguay Round negotiations. The specifically named countries are: Bolivia, Cameroon, Congo, Côte d'Ivoire, the Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, the Philippines, Senegal, Sri Lanka and Zimbabwe. Annex VII indicates that this latter group of countries shall continue to benefit from the more generous treatment described here until such time as their annual per capita GNP reaches \$1000. Over the past five years, World Bank data has indicated that the annual per capita GNP of the Dominican Republic, Egypt, Guatemala, Indonesia, Morocco and the Philippines rose above \$1000 (although, for some, it has since dropped below \$1000).

could profitably review the status and operation of this Annex, with the possibility of drawing up recommendations for improvements and clarifications should any be identified.

11. Committee on Technical Barriers to Trade

Status

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

The TBT Committee¹² serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

¹²Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed by the General Council. Representatives of a number of international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

Assessment of the First Five Years of Operation

The TBT Agreement seeks to ensure that as tariffs are liberalized, governments do not replace tariff protection with capricious technical barriers. The TBT Agreement, for the first time, established multilaterally recognized rules and disciplines for the development and application of standards, technical regulations and conformity assessment procedures applied to all WTO Members. Although a form of the Agreement had existed since 1979 as a result of the Tokyo Round of trade negotiations, the expansion of its applicability to all Members was significant. Under the WTO, all Members assumed obligations for non-discrimination and transparency in the development and application of measures covered by the TBT Agreement.

The Agreement's notification procedures secure the right for interested parties in the United States to obtain early information on standards, technical regulations, and conformity assessment procedures in all WTO Members. It provides interested parties the ability to influence the development of such measures by providing written comments on proposed measures. Among other things, this helps to prevent the establishment of technical barriers to trade. The Agreement has functioned well in this regard, though discussions on how to improve the operation of the provisions on transparency are ongoing.

Other disciplines and obligations, such as the prohibition of discrimination and the call for measures to be no 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 monitoring and oversight by the Committee has been critical. It has served as a constructive forum for discussing and resolving issues, and this oversight has perhaps reduced the need for more formal dispute settlement proceedings. To date, there has been no dispute settlement panel finding concerning

the rights and obligations of the TBT Agreement.

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

U.S. Inquiry Point

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

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

The NIST maintains a reference collection of standards, specifications, test methods, codes and recommended practices. This reference material includes U.S. government agencies' regulations, and standards of U.S. private standards-developing organizations and foreign national and international standardizing bodies. The inquiry point responds to all requests for information concerning federal, state and private regulations, standards and conformity assessment procedures. This office circulates to interested parties in the United States notifications of proposed regulations from foreign governments received under the TBT Agreement. The NIST also will provide information on central contact points for information maintained by other WTO

Members. On questions concerning standards and technical regulations for agricultural products, including SPS measures, the NIST refers requests for information to the U.S. Department of Agriculture, which maintains the U.S. inquiry point under the Sanitary and Phytosanitary Agreement.

A number of documents relating to the work of the TBT Committee are available to the public from the WTO website: www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/..." Notifications by Members of proposed technical regulations and conformity assessment procedures which are available for comment are issued as "G/TBT/Notif/..." (followed by a number). Parties in the United States who submit comments to foreign governments on their proposals are encouraged to provide a copy of those comments to the U.S. inquiry point at the address above. Minutes of the Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (e.g., statements; informational documents; proposals; etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public.

Major Issues in 1999

The TBT Committee met three times in 1999. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. For example, in 1999, the United States expressed concerns with early drafts of European Commission Directives on Batteries and on Waste from Electrical and

Electronic Equipment (WEEE). The United States also raised concerns with the EU's proposal to restrict the use of hushkitted and re-engined aircrafts (G/TBT/Notif.99.75; G/TBT/W/101); its Regulation 881/98 on "Traditional Terms" which would restrict the use of commonly-used wine labeling terms (G/TBT/W/119); and EC Regulation 1139/98 regarding the labeling of foods and food ingredients produced from genetically modified soy or maize (G/TBT/W/94; see also G/TBT/W/115 for a summary of related notifications). During the year, no Member raised a question about U.S. compliance with the TBT Agreement.

The Committee conducted its fourth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/7, and its Fourth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in WTO TBT Standards Code Directory, G/TBT/CS/1/Add.3 and G/TBT/CS/2/Rev.5. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.6.

A primary focus of the Committee in 1999 was the work program arising from its First Triennial Review of the Operation and Implementation of the Agreement (G/TBT/5). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of the rights and obligations. The review, which was concluded in November, 1997, highlighted a number of areas for further consideration by the Committee. The following summarizes the issues identified in the first triennial review and work in the Committee in 1999:

- ▶ *Implementation and Administration of the Agreement by Members (Article 15.2):* Committee members agreed to

make detailed presentations on the arrangements they have in place domestically to assure effective and continued compliance with the Agreement. This exchange is intended to assist all Members seeking ways to improve compliance, and should help to identify specific needs for technical assistance. To date, 57 notifications as required by Article 15.2 have been made by 72 Members containing information on the implementation and administration of the Agreement (G/TBT/2/Add.1-57). Ninety-six Members have notified the existence of their inquiry points in document G/TBT/ENQ/15.

- ▶ *Preparation, Adoption and Application of Technical Regulations:* The Committee emphasized that good regulatory practice is essential to ensure technical regulations do not unnecessarily impede trade. For example, it is important to avoid promulgating technical regulations where they are not necessary. Where they are necessary, their preparation, adoption and application should be in accordance with the provisions of the Agreement. This requires coordination among trade and regulatory officials. In 1999, the Committee continued its exchange of information on Members' approaches to regulation.
- ▶ *Operation and Implementation of Notification Procedures (Articles 2, 3, 5 and 7):* The Committee highlighted the importance for product suppliers and other interested parties of obtaining early information on proposals for new technical regulations and conformity assessment procedures, providing comments on them while still in draft, and having those comments considered before a final rule is adopted. It

therefore agreed that the procedural aspects of notification should be the subject of ongoing review.

In 1999, the Committee accepted a U.S. proposal to conduct a survey of Members to ascertain the extent to which they had access to electronic means for information exchange. The survey confirmed that a broad range of Members' inquiry points did have the facilities for electronic exchange of information and the Committee agreed on recommendations to encourage greater use of this medium (e.g., electronic publication of work programs on voluntary standards foreseen in Annex 3 of the Code of Good Practice).

- ▶ *Code of Good Practice by Standardizing Bodies (Article 4; Annex 3):* The Committee noted that compliance with the Code of Good Practice was necessary to ensure that voluntary standards, whether developed by governments or private or regional bodies, do not create unnecessary barriers to trade. It also noted that the provisions of the Code were not applicable to the activities of international bodies. The Committee invited Members to share experiences on difficulties associated with voluntary standards and the nature of and reasons for deviations from relevant international standards. It agreed that the obligation to publish notices of draft standards containing voluntary labeling requirements was not dependent upon the kind of information provided on the label.

In 1999, the Committee continued its discussion of whether there should be an obligation to encourage private standardizing bodies to recognize equivalent standards of bodies in other

Members' territories (along the lines of the obligation on Members in Article 2.7). Several Members have offered specific proposals that are under consideration. A proposal to change the recommended 60 days to be allowed for public comment on draft standards was also discussed.

- ▶ *International Standards, Guides and Recommendations:* The Committee acknowledged that the Agreement accords significant emphasis to the development and use of international standards for preventing unnecessary trade barriers. It recognized, however, that trade problems could arise through, *inter alia*, the absence of international standards or their non-use due to possible outdated content. Further examination of such issues was warranted and Members were encouraged to bring specific examples to the Committee. The Committee also agreed to intensify its exchange of information with international bodies, with a view to ensuring that such standards emanate from processes consistent with the objectives of the Agreement (e.g., that standards be developed in an open and transparent process).

In November 1998 the WTO held an "Information Session of Bodies Involved in the Preparation of International Standards" to improve Committee Members' understanding of the procedures by which international standards are developed and the ongoing activities of these bodies, and to enhance these bodies' awareness of the ongoing discussions on international standards in the TBT Committee. The U.S. paper (G/TBT/W/64) outlined our interest in clarifying the Committee's understanding that, for purposes of the

Agreement, international standards must result from a fair process of openness, transparency and consensus. A specific proposal is contained in G/TBT/W/75/Rev.1. Other Members also introduced proposals on this topic and on other issues relating to the development and use of international standards, all of which remain under consideration. In addition, Members continue to provide statements and written information on their experience in developing and using international standards, guides and recommendations.

- ▶ *Conformity Assessment Procedures:* The Committee noted the growing concern with the restrictive effect on trade of multiple testing, certification and other conformity assessment procedures, and the call by industry for “one standard, one test.” The Committee noted that the supplier’s declaration of conformity was recognized as saving costs, and that the recognition of the results of conformity assessment could be achieved through different approaches which might have different effects on trade. There was an emerging interest in concluding mutual recognition agreements (MRAs) as a means of facilitating trade, yet it was also noted that such agreements raised concerns for non-participants and overall questions about their utility in solving the problems of multiple testing and conformity assessment procedures. The Committee urged the use of common procedures for conformity assessment, such as international guides, as an essential basis for building confidence among parties.

The Committee continued to examine various approaches for solving the problems and costs of multiple requirements for conformity

assessment. In June 1999, the WTO held a “Symposium on Conformity Assessment Procedures” to develop an improved understanding of the issues. The Symposium enabled Committee Members to learn from the perspectives and experience of a broad range of experts on the use of conformity assessment procedures for business transactions in the marketplace and as a tool to promote regulatory compliance. Information was obtained on agreements and arrangements which are evolving to facilitate trade and reduce compliance costs. In addition to the information received at the Symposium, Members have continued to provide information on their national experience and practice (e.g., the United States provided a paper on its use of Supplier’s Declaration of Conformity in G/TBT/W/75). Members have also introduced proposals relating to the obligations concerning conformity assessment procedures which are under consideration.

- ▶ *Technical Assistance (Article 11) and Special and Differential Treatment (Article 12):* The Committee agreed to continue to exchange information on assistance provided by Members, as well as to examine the specific needs of Members for assistance. Discussion of developing country needs and interests were also considered in the topics above.

At the Committee’s request, the WTO Secretariat prepared a paper (G/TBT/W/103) to record the state of knowledge concerning the technical barriers to the market access of developing country suppliers, especially small and medium sized enterprises, as a result of standards, technical regulations and conformity assessment procedures.

The Agreement (Article 10.6) requires the WTO Secretariat to draw to the attention of developing country Members any notification relating to products of particular interest to them. In light of the information obtained in the Survey on the Electronic Facilities Available in National TBT Inquiry Points, the Committee agreed on an approach to facilitate implementation of this provision through the use of electronic mail.

Work for 2000

Second Triennial Review: In 2000, the TBT Committee is required to complete its second triennial review of the Agreement. Article 15.2 obliges the Committee to "...review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations...Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods." The mandate for this review provides an additional incentive for the Committee to draw conclusions on the range of issues under discussion and to determine what action, if any, needs to be taken to improve or enhance compliance with the Agreement.

The United States will work in the second triennial review to resolve the issues of transparency and openness in the development and application of international standards; improve the understanding of various approaches to conformity assessment and the consideration of cost-saving approaches to establishing conformity with technical regulations; assess the special needs of developing country Members (in concert with the Integrated Framework); and establish practical approaches to ensure effective implementation by all Members. USTR intends to solicit from the U.S. public additional views

on U.S. objectives for the second triennial review in 2000.

The first triennial review in the TBT Committee, General Council discussions held in preparation for the 1999 Ministerial, and discussions at the Ministerial itself revealed significant interest (by developing countries in particular) in addressing the issues associated with participation in the development of international standards, and their use, when appropriate, as a basis for technical requirements applied domestically. These concerns will need to be addressed on a priority basis to secure ongoing compliance with the TBT Agreement and its continued relevance in addressing potential technical trade barriers.

12. Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligations to treat imports no less favorably than domestically produced products, or the GATT Article XI obligation to remove quantitative restrictions on imports. The Agreement thus expressly eliminates measures such as those that require the incorporation of local inputs or "local content requirements" in the manufacturing process, or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns ("trade balancing requirements"). It also includes an illustrative list of measures that violate its requirements. The Agreement requires that any such measures existing as of the date of entry into force of the WTO (January 1, 1995) be notified and eventually eliminated. Developed countries were required to bring notified measures into conformity by January 1, 1997. Developing countries had until January 1, 2000, and the least developed countries have until January 1, 2002.

Assessment of the First Five Years of Operation

The TRIMS Agreement successfully provided for the first time an unambiguous method for addressing investment measures such as local content and trade balancing requirements. Previously, a Member interested in pushing for the removal of such practices would have recourse only through GATT Articles III and XI; the interpretation of which had been under dispute. Additionally, the notification process provided a listing of measures that are not in compliance with the Agreement, which will prove useful as transition periods expire at the end of 1999.

The TRIMS Agreement has been supported by U.S. labor groups, who consider that the measures that the Agreement prohibits lead to increased overseas production at the expense of U.S. employment and to increased competition from imports as firms strive to meet trade balancing requirements. U.S. industry has also advocated for the Agreement as a general rule because it allows exporters and investors to overcome certain measures that would otherwise inhibit their ability to operate. The eventual removal and prohibition of such practices can help a company increase export sales, reduce transactions costs, enhance productivity and efficiency and increase profitability.

Since its establishment in 1995, the Committee on TRIMS has been a forum for the United States and other Members to address concerns, gather information, and to raise questions about the maintenance, introduction or modification of TRIMS by certain WTO Members, particularly in the automotive sector. Twenty-four WTO Members submitted notifications of inconsistent measures to the TRIMS Committee, as required by the terms of the Agreement, to enjoy the benefit of the grace periods described above. Three developing countries eliminated inconsistent measures ahead of the January 2000 deadline to remove notified TRIMS.

In 1997, the United States, along with the EU and Japan, brought a WTO dispute against two Indonesian automotive programs that included local content requirements. In 1998, the DSB adopted the panel's finding that the local content aspects of the automotive programs were inconsistent with the TRIMS Agreement. By July of 1999, Indonesia eliminated the inconsistent measures in compliance with the DSB's recommendation.

The United States also challenged Brazilian automotive measures, which the United States asserted were inconsistent with the Agreement since certain measures entered into force after the Agreement came into effect and without proper notification. In March of 1998, after consultations with the United States, Brazil reached a bilateral agreement to accelerate removal of the measures.

Major Issues in 1999

The Committee met twice during 1999. The United States, supported by a number of other Members, used the forum to raise questions regarding developing country Members' plans to comply with the developing country deadline to remove inconsistent measures by January 1, 2000.

The United States also challenged a number of Members' existing TRIMS, which appeared inconsistent with the terms of the Agreement. In particular, the United States questioned a new Indian law that appeared to expand a previously notified measure in the automotive industry. The United States subsequently requested consultations with regard to this measure under the WTO Dispute Settlement Understanding. (See section on the Dispute Settlement Body.)

The Committee also discussed the timing and content of the coming review regarding the operation of the Agreement mandated by Article 9. The Article states that the Council for Trade in Goods (CTG), no later than five years after entry into force of the WTO Agreement, must

begin a review of the operation of the TRIMS Agreement and, as appropriate, propose amendments to the Agreement's text. In the course of this review, the CTG also must consider whether provisions on investment policy and competition policy should be added. While the CTG has begun discussing the nature of the review, no decisions on these matters have been taken.

Work for 2000

The Committee will have two major areas of work in 2000. First, regarding implementation, Article 5.3 of the Agreement provides authority for the Council on Trade in Goods (CTG) to extend the transition period for the elimination of notified TRIMS of developing and least developed country Members which demonstrate particular difficulties in implementing the provisions of the Agreement. Eight Members have requested the CTG to extend their transition periods in accordance with this provision. These Members are Romania, Chile, Argentina, Malaysia, Pakistan, Colombia, the Philippines, and Mexico. The CTG's consideration of these requests has already begun. Consultations among interested Members have taken place, and written questions and answers have been exchanged with respect to some of the requests and the respective measures.

The second area of work will involve the Article 9 review. The educative work already undertaken on investment and competition policy by the working groups established at the Singapore Ministerial (discussed in more detail separately in this report) will provide a strong background to draw upon as the review gets underway. Accordingly, the Committee can be expected to support the work of the CTG as needed in the consideration of the requests for extension and in the review of the operation of the Agreement.

The general subject of implementation and compliance with the Agreement will be an issue

at the core of both of these areas of work. The matter of specific requests for extension must be addressed, in addition to the issue of Members' noncompliance with the terms of the Agreement. Some developing countries have expressed the need for the Article 9 review to consider the question of relief from the obligations of the Agreement for development reasons. On the other hand, Article 9 is also an opportunity for Members to consider provisions that might strengthen the Agreement's objectives to reduce the trade-restrictive and distorting effects of investment measures and to facilitate international investment.

13. Textiles Monitoring Body

Status

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervises the implementation of all aspects of the Agreement. In 1999, TMB membership was composed of appointees and alternates from the United States, the EU, Japan, Canada/Norway, Slovenia/Turkey, Costa Rica, Thailand, Pakistan/Macau, India/Egypt, and Hong Kong/Republic of Korea. Each TMB member serves in a personal capacity.

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

Assessment of the First Five Years of Operation

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

Under the ATC, the United States is required to “integrate” products which accounted for specified percentages of 1990 imports in volume over three stages during the course of the transition period, that is, to designate those textile and apparel products for which it will henceforth observe full GATT disciplines. Once it has “integrated” a product into the GATT, a WTO Member may not impose or maintain import quotas on that product other than under normal GATT procedures, such as Article XIX. As required by Section 331 of the Uruguay Round Agreements Act, the United States selected the products for early integration after seeking public comment, and published the list of items at the outset of the transition period, for purposes of certainty and transparency for U.S. industry and trading partners. The integration commitments for stages 1 and 2 were completed in 1995 and 1998, and the list may be found in the *Federal Register*, volume 60, number 83, pages 21075-21130, May 1, 1995. Also keyed to the ATC “stages” is a requirement that the United States and other importing Members increase the annual growth rates applicable to each quota maintained under the Agreement by designated factors. Under the ATC, the weighted average annual growth rate for WTO Members’ quotas increased from 4.9179 percent in 1994 to 5.7048 percent in 1995 and 9.1231 percent in 1998.

Article 5 of the ATC requires that Members cooperate to prevent circumvention of quotas by illegal transshipment or other means. The United States has actively worked with trading partners to improve cooperation and information sharing, and concluded a new agreement with Hong Kong to this end. The United States has also established a Textile Transshipment Task Force at Customs, to improve enforcement of textile quotas at U.S. borders, and has tightened enforcement actions vis-a-vis other trading partners where an improved bilateral agreement was not possible.

The ATC requires that all Members take actions to abide by WTO obligations so as to achieve improved access to markets for textiles and clothing. The United States initiated WTO dispute resolution cases against Argentina’s use of alternative specific duties and a statistical tax on imports; these measures primarily affected the textile, apparel and footwear sector. The United States prevailed in that instance through the WTO Appellate Body. In another instance, the United States initiated a WTO dispute over India’s lack of justification for use of trade measures (largely affecting the textile and apparel sector) under balance of payments grounds, and again prevailed in the Dispute Settlement Body and at the Appellate Body. (For further details on these cases, please see the description of the activities of the WTO Dispute Settlement Body in this Chapter.)

Most of the significant exporters of textile and apparel products to the United States are WTO Members. For these Members, bilateral quota arrangements are governed by the provisions of the ATC. Approximately 84 percent of U.S. imports of textiles and apparel are from WTO Member countries, and approximately 98 percent (in value) of U.S. exports of textiles and apparel are destined for WTO Member countries. Members with whom the United States maintains bilateral quota arrangements under the provisions of the ATC are: Bahrain, Bangladesh, Brazil, Bulgaria, Burma/Myanmar, Colombia, Costa Rica, Czech Republic,

Dominican Republic, Egypt, El Salvador, Fiji, Guatemala, Hong Kong/China, Hungary, India, Indonesia, Jamaica, Kenya, the Republic of Korea, Kuwait, Macau, Malaysia, Mauritius, Pakistan, Philippines, Poland, Qatar, Romania, Singapore, Slovak Republic, Sri Lanka, Thailand, Turkey, United Arab Emirates and Uruguay.

Major Issues in 1999

Safeguard Restraints: A special three-year safeguard is provided in the ATC to control surges in uncontrolled imports that cause or threaten to cause serious damage to domestic industry. Actions taken under the safeguard are automatically reviewed by the TMB. In 1998, the United States determined that domestic producers of category 301 (combed cotton yarn) had been seriously damaged or threatened with serious damage as a result of imports from Pakistan and issued a request for consultations under the safeguard provisions of Article 6 of the ATC. As the United States and Pakistan were unable to reach an agreement on the matter, the TMB reviewed the measure in 1999 and found the restriction was not justified in accordance with the provisions of Article 6 of the ATC. As provided for under Article 8 of the ATC, the United States provided the TMB with the reasons why it was unable to comply with the TMB's findings. The TMB reviewed the reasons put forward by the United States and reiterated its original conclusion. Consistent with its rights under the WTO, the United States has decided to keep the measure in place despite the position taken by the TMB.

The TMB also reviewed an Article 6 action taken by Argentina on imports of man-made fiber fabric from Brazil. In this case, the TMB found that Argentina had not demonstrated serious damage or actual threat thereof, and recommended that Argentina rescind the restraint. Argentina disagreed with the TMB's finding and the measure remains in place. As in the U.S.-Pakistan case cited above, Argentina disagreed with the TMB's finding and informed

the TMB of its reasoning. The TMB reiterated its original conclusion and Argentina chose to keep the measure in place.

In 1998, the TMB reviewed an Article 6 action taken by Colombia on man-made fiber yarn from the Republic of Korea and Thailand. The TMB concluded, in 1999, that Colombia had not demonstrated serious damage or actual threat thereof, and recommended that Colombia rescind the restraint. Subsequently, Thailand requested a panel under the WTO Dispute Settlement Understanding to review Colombia's restraint. Because Colombia had already removed the restraint at the time of the request and after further consultations between the parties, Thailand agreed to drop the request from the agenda before the Dispute Settlement Body.

In another matter, Turkey had imposed new textile quotas on imports from India in order to align its regime with the EU in accordance with their customs association. As these restraints were notified to the TMB for its information, the TMB did not review the action. India challenged the new restraints before a WTO panel and the Appellate Body, prevailing in both cases. Turkey had tried to justify its new textile restraints under the GATT 1994. Turkey's restraints were found to be inconsistent with GATT 1994 and the ATC.

Notifications and Other Issues: A considerable portion of the TMB's time was spent reviewing notifications made under Article 2 of the ATC dealing with textile products integrated into normal GATT rules and no longer subject to the provisions of the ATC. WTO Members wishing to retain the right to use the Article 6 safeguard mechanism were required in 1998 to submit a list of products comprising at least 17 percent by trade volume of the products included in the annex to the ATC. A number of these notifications were defective for various reasons and the TMB's review carried into 1999 in a number of cases. The TMB expressed concern that a number of countries that have announced

their intention to retain the right to use Article 6 safeguards failed to make the required integration notification. On its own initiative, the TMB raised the issue of a new restraint on category 352/652 (underwear), as reported in the U.S. *Federal Register*, with the United States and Turkey. The United States and Turkey provided the TMB with a joint communication containing information concerning this restraint. The TMB's consideration of this matter had not been completed by the end of 1999.

TMB documents are available on the WTO's web site, "www.wto.org." Documents are filed in the Document Distribution Facility under the document symbol "G/TMB." The TMB's annual report to the General Council for 1999 appears as document G/L/318.

Work for 2000

The United States will continue to monitor compliance of market opening commitments by trading partners and will raise concerns regarding these commitments in the TMB or other WTO fora, as appropriate. The United States will also pursue further market openings, including in the negotiation of new Members' accessions to the WTO. In addition, the United States will continue to respond to surges in imports of textile products which cause or threaten serious damage to U.S. domestic producers. The United States will continue efforts as well to enhance cooperation with U.S. trading partners and improve the effectiveness of customs measures to ensure that restraints on textile products are not circumvented through illegal transshipment or other means. Finally, the United States maintains textile restraint agreements that are scheduled to expire on December 31, 2000, including China, Taiwan, Nepal, Laos, Macedonia, Oman, Ukraine, and Russia. To the extent that these countries do not, by that time, become Members of the WTO to whom the United States applies the Agreement Establishing the WTO, the United States will seek to renegotiate these bilateral agreements.

14. Working Party on State Trading

Status

Article XVII of the GATT 1994 requires governments to place certain restrictions on the behavior of their trading firms and on private firms to which they accord special or exclusive privileges to engage in importation and exportation. Among other things, Article XVII requires governments to ensure that these "state trading enterprises" act in a manner consistent with the general principle of non-discriminatory treatment, e.g., to make purchases or sales solely in accordance with commercial considerations, and to abide by other GATT disciplines. To address the ambiguity regarding which types of firms fall within the scope of "state trading enterprises," agreement was reached in the Uruguay Round on "The Understanding on the Interpretation of Article XVII." It provides a working definition and instructs Members to notify all firms in its territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

A WTO Working Party was established to review the notifications and their adequacy and to develop an illustrative list of relationships between governments and state trading enterprises, and the kinds of activities engaged in by these enterprises. All Members are required under Article XVII of GATT 1994 and paragraph 1 of the Understanding to submit annually notifications of their state trading activities.

Assessment of the First Five Years of Operation

The Uruguay Round ensured, for the first time, that the operation of agricultural state trading entities would be subject to international scrutiny and disciplines. Agricultural products were effectively outside the disciplines of GATT 1947, thereby limiting the scrutiny of state trading entities since many state trading entities direct trade in agricultural products. For

example, the lack of tariff bindings on most agricultural products in most countries also limited the scope of GATT 1947 disciplines that could be brought to bear on state trading entities (e.g., importing state trading entities could capriciously adjust the import duty and/or domestic mark-up on imported products.)

The WTO Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to industrial products. All agricultural tariffs (including tariff-rate quotas) are now bound. While further work is needed on the administration of tariff-rate quotas, bindings do act to limit the scope of state traders to manipulate the tariff import system. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading entities. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading entities, particularly single-desk importers or exporters of agricultural products.

The “working definition” of state trading entities in the Uruguay Round along with the establishment of a Working Party on State Trading also significantly increased the scrutiny of these entities in the WTO compared to GATT 1947. New and full notifications were first required in 1995 and subsequently every third year thereafter, while in the intervening years an updating notification is to be made indicating any changes since the full notification. While notification requirements for state trading entities existed after 1960 in GATT 1947, no body was established specifically to review the notifications, in part due to the situation on agriculture. Little, if any, attention was given in the Council to compliance with the notification requirement or the content of the notifications, and differences existed among countries as to what type of entities actually fell under Article XVII obligations.

Under the WTO, 58 Members provided new and full notifications of state trading enterprises for 1995 and 32 Members for 1998 (the European Communities submits a single notification covering all 15 Member States). More than 30 Members submitted updating notifications for 1996 and 1997, and 13 Members for 1999. The Working Party on average met four times a year since 1995 to review these notifications, including the formal submission of questions and answers on the operation of specific entities reported in the notifications. This improved scrutiny and transparency also set the stage for in-depth examination of certain activities of agricultural state trading entities in the Agricultural Information and Exchange exercise under the auspices of the WTO Committee on Agriculture that laid the groundwork for issues to be addressed in the mandated negotiations on agriculture.

The Working Party also completed two other tasks mandated in the Uruguay Round “Understanding on the Interpretation of Article XVII”: review of the 1960 notification questionnaire and development of the illustrative list. Prior to September 1998, submissions followed a notification format developed in 1960. A review of the notifications tabled since 1995 revealed a need for more extensive work on updating the 1960 questionnaire. The United States worked to broaden the notification requirements. In April 1998, the Working Party approved an improved notification format that requires more extensive qualitative and quantitative information than the 1960 version. The new format provides more transparent information about the operation of state trading entities than the 1960 version.

The Working Party also agreed to continue its work, consistent with its mandate, including the examination of what further information might be appropriate to notify to enhance transparency of state trading entities. In July 1998, the Council for Trade in Goods adopted the revised notification format which is now the basis for all

new and full notifications submitted in the future. As noted previously, in 1999, the Working Party completed its work on an illustrative list of relationships between governments and state trading enterprises and the kinds of activities engaged in by these enterprises. The illustrative list will assist Members in preparing notifications by providing examples of the types of activities and entities that were notified in the past. As a result of the Working Party, agriculture negotiators will benefit from the improved transparency and understanding of activities and measures utilized by agricultural state trading entities.

Major Issues in 1999

The Working Party held three formal meetings in 1999 to review the notifications and to continue work on the illustrative list. As of December 31, 1999, 32 Members provided new and full notifications for 1998, and 13 Members submitted updating notifications for 1999. During the year, the Working Party reviewed 26 of these notifications.

During 1999, the Working Party finished its work on the illustrative list. The illustrative list is not intended to refine or redefine the definition of state trading enterprise. Rather, it reflects many of the relationships and entities which had previously been included in notifications and, as such, may be useful in helping Members prepare their notifications. The illustrative list was approved by the Working Party in July and by the Council for Trade in Goods in October.

Work for 2000

The three areas of discipline in the WTO Agreement on Agriculture – market access, export competition and domestic support – provide the basis on which to pursue further reform in the mandated negotiations on agriculture. In the Agricultural and Information Exchange exercise, several countries identified issues to be addressed in the negotiations related

directly to measures used by state trading entities, such as in tariff-rate quota administration or export competition. The Working Party will contribute to the ongoing discussion of these and other state trading issues, including through its review of new notifications and its examination of what further information might be appropriate to notify to enhance transparency of state trading entities.

15. Working Party on Preshipment Inspection

Status

More than 30 developing country Members require, as a condition of importation, that an inspection of each shipment of goods be performed in the country of exportation by a private entity. The private preshipment inspection (PSI) entity generally provides to the importing country an opinion on customs classification and customs valuation. This situation often reflects inadequacies in the customs administrations of those countries that resort to the use of a PSI regime. The purpose of the WTO Agreement on Preshipment Inspection, which was achieved during the Uruguay Round, is to ensure that PSI operations are carried out in a transparent manner without giving rise to unequal treatment or unnecessary and costly delays.

Assessment of the First Five Years of Operation

The Agreement on Preshipment Inspection stands in a somewhat unique position among WTO agreements. While the Agreement's obligations pertain to WTO Members, the compliance with those obligations is largely contingent on the conduct of private entities (i.e., PSI entities under contract with WTO Members), rather than strictly the behavior of governmental entities. This situation presents certain challenges to ensuring proper operation of the Agreement. In this regard, it is notable that the Working Party's final report stated a

consensus view of WTO Members that “recourse to PSI is a transitional measure to be used only until national customs authorities are in a position to carry out these tasks on their own.” The Working Party also recommended various types of reforms for improving and modernizing the border transaction environment such as the use of risk management and selective inspection. These recommendations reflect an important shift brought about among WTO Members in the past five years, giving focus not only on the operation of PSI regimes, but also on the broader question of the role of such regimes in view of ongoing efforts by many countries to improve the overall trade facilitation environment, particularly with regard to enhancing administrative transparency and efficiency. An important issue for all Members was the need for a continuing forum for regular oversight and to address any day-to-day implementation issues. One of the key recommendations, endorsed by the WTO General Council as part of its adoption of the Working Party’s report, established PSI as a standing agenda item for the WTO Committee on Customs Valuation.

Major Issues in 1999

The Agreement did not provide for a standing WTO Committee on Preshipment Inspection. The WTO Working Party on Preshipment Inspection was established in 1997 as a means to conduct a review of the Agreement’s implementation and operation. The General Council extended the operation of the Working Party through March 1999, after adopting the Working Party’s initial report which had been issued in December 1997. The Working Party’s final report, issued March 18, 1999, reflected the efforts by the Working Party to address a wide range of issues in order to bring improvements in transparency and to diminish irregularities resulting from the operation of PSI regimes.

C. Council for Trade in Services

Status

The General Agreement on Trade in Services (GATS) consists of a framework agreement that lays out the general obligations for trade in services in much the same way that the General Agreement on Tariffs and Trade does for trade in goods. Most-favored-nation treatment (MFN), market access and national treatment are three of the important principles included in the general framework of the GATS. Thus, the GATS provides a legal framework for addressing barriers to trade and investment in services, and it includes specific commitments by WTO Members to restrict their use of those barriers. These commitments are contained in national schedules, similar to the national schedules for tariffs. The Council for Trade in Services oversees implementation of the GATS and reports to the General Council.

All Members of the WTO are signatories to the GATS framework agreement and have made sector-specific commitments pertaining to national treatment, market access, and MFN treatment. Ministerial Decisions at the conclusion of the Uruguay Round had called for negotiations on further liberalization in, *inter alia*, the financial services and basic telecommunications sectors, the results of which entered into force in 1999 and 1998, respectively, as well as a work program in professional services, which completed its work with respect to accountancy in 1999.

The GATS also provides a forum for further negotiations to open services markets around the world. The GATS Article XIX calls for additional rounds of market-opening negotiations. The first such round began on January 1, 2000, and, consistent with GATS provisions, was preceded by a program of preparatory work in the Council.

Assessment of the First Five Years of Operation

The GATS is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. Its objective is to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership, while at the same time maintaining regulators' ability to meet legitimate objectives. Trade in services includes all economic activities whose outputs are other than tangible goods, including, but not limited to, banking, insurance, telecommunications, distribution services (retail and wholesale trade), computer and related services, advertising, professional services, private education and training, private health care, audiovisual and tourism services.

The past five years have focused on improving the ground-breaking framework agreement created in the Uruguay Round. This work has taken place in three arenas: sectoral negotiations, elaboration of important provisions of the framework agreement, and specific commitments of new WTO Members.

As discussed in previous Annual Reports, since 1995 there have been GATS negotiations in four sectors (financial services, basic telecommunications, professional services, and maritime transport services) and one "mode" – temporary entry of natural persons. While outcomes have varied in these negotiations, each has served to establish important precedents that reinforce the objective of the GATS: removal of restrictions and establishing disciplines to ensure *effective* market access for trade in services.

In the cases of financial services and basic telecommunications, negotiations that had been twice extended since the Uruguay Round finally were concluded only when a "critical mass" of

important trading partners demonstrated their willingness to include new commercial opportunities in their scheduled commitments. By contrast, in the case of maritime transport services, negotiations failed to conclude when almost without exception no WTO Member proposed to remove restrictions in that sector; to the contrary, many wanted to use their GATS schedules to legitimize existing, restrictive regimes.

The negotiations on professional services produced "Guidelines for Negotiation of Mutual Recognition in Accountancy" to facilitate mutual recognition of licensed accountants and "Disciplines for Regulation in the Accountancy Sector" to address unnecessarily trade-restrictive regulation of the profession. Moreover, this work serves as a starting point for examination of other professions with the ultimate goal of improving portability of professional credentials worldwide.

The post-Uruguay Round period also has seen progress in expanding the scope of certain GATS provisions, in particular to help ensure that regulation of trade in services supports trade liberalization. Resulting from the Agreement on Basic Telecommunications Services, 67 countries have effectively expanded the scope of existing GATS provisions addressing transparency, monopolies, and restrictive business practices and agreed to apply these strengthened, sector-specific disciplines to their liberalized telecommunications markets. Separately, as noted below, the Working Party on Domestic Regulation is building on the achievements in accountancy to develop new disciplines aimed at promoting transparency and fairness in regulation in all service sectors. Finally, the nomenclature work, described below, in the Committee on Specific Commitments, is aimed at improving the framework of the GATS through sectoral commitments that encompass real-world commercial activities and interests.

Major Issues in 1999

As it had the previous year, in 1999 the Council devoted the bulk of its time to preparing for the coming round of services negotiations. First, the Council continued the “information exchange,” the first required step in the preparations, ultimately covering over 15 services sectors and the four GATS “modes of delivery.” During the information exchange, the WTO Secretariat produced over 20 background papers, with information on and analysis of the economic importance of each of the sectors, regulatory and other restrictions, and existing commitments by WTO Members. The Council quickly agreed to derestrict the papers, which are publicly available at www.wto.org/wto/services/w65.htm.

The information exchange helped to develop a common understanding among Members of the important role that services can play in their own economic growth, the importance of further liberalization in services, the need for appropriate regulation to safeguard legitimate domestic social and other concerns, the evolution in the nature of trade in services since the Uruguay Round, and, in many cases, the very limited nature of country commitments in these sectors.

In a more immediate sense, the information exchange helped Members identify additional technical work needed to lay the basis for improved commitments in the next negotiation. As in 1998, nomenclature, regulatory, and other issues that emerged in the course of the information exchange fed into work in two of the Council’s subsidiary bodies, the Committee on Specific Commitments, and the Working Party on Domestic Regulation.

In 1999, the Council also took up other required preparatory steps for the new GATS round, including an “assessment of trade in services.” Drawing on background documentation by the Secretariat, other international organizations and

individual Members, the Council took note of developmental aspects of trade in services, as well as major statistical deficiencies in measuring such trade and its impact. In view of the preliminary nature of these conclusions, Members agreed to continue the “assessment” into the negotiations themselves in 2000.

The Council also discussed “negotiating guidelines and procedures,” as provided for in the GATS. Some 25 Members submitted views to the Council for Trade in Services or the General Council or both and, in the end, achieved a very high degree of unanimity on these provisions, which ultimately was reflected in the draft text at Third Ministerial. In addition, the Council began two reviews required by the GATS, regarding the current exclusion of most air transport services from the scope of the GATS and Members’ exemptions from most-favored-nation treatment. Both reviews will continue in 2000.

Work for 2000

In pursuing the mandated negotiations on services, the Council, and its subsidiary bodies, will continue the technical work already underway: improvements in nomenclature, development of appropriate regulatory disciplines – applicable to all sectors and, where desirable, applicable to individual sectors – and review of scheduling guidelines. Discussion will continue on timing and modalities for the negotiations.

1. Agreement on Basic Telecommunications Services

Status

The Agreement on Basic Telecommunication Services, which came into force in February 1998, opened up over 95 percent of the world telecommunications market (by revenue) to competition. The range of services and technologies covered by the agreement is

vast—from submarine cables to satellite systems, from broadband data to cellular services, from business networks based on the Internet to technologies designed to bring low-cost access for under-served rural communities. The majority of WTO Members have made regulatory as well as market access commitments, ensuring adherence to a multilateral framework for promoting competition in this sector.

Assessment of the First Five Years of Operation

Prior to this Agreement, only 17 percent of the top 20 telecommunications markets were open to U.S. firms. Today, over 95 percent of the world telecommunications market is open. The market access opportunities cover the entire spectrum of innovative services and technologies pioneered in the United States that continue to drive the growth of this sector.

Through the Agreement on Basic Telecommunications Services, the United States has largely succeeded in shaping an international consensus, unthinkable five years ago, that telecommunications monopolies must be replaced with competitive markets for any economy to enjoy the benefits of the digital era.

Through this agreement, the United States successfully exported a model based on the U.S. experience of telecommunications liberalization, focused on unimpeded market access, fair rules, and effective enforcement of key regulatory principles. Based on these principles, WTO Members around the world are rewriting rules to permit effective competition and promote the growth of new markets. The results, as predicted from the experience of the United States, have exceeded our trade partners' expectations: usage of telecommunications networks has boomed as prices have dropped, fueling new services and introducing new efficiencies throughout economies. With demand for advanced services including the

Internet not being met by traditional suppliers, new entrants willing to innovate with different technologies are creating markets that simply would not have developed had control of other nations' networks remained in the hands of monopolists.

As a result of this Agreement, U.S. firms have invested billions of dollars abroad, extending their networks, bringing down the cost of communications for U.S. consumers and businesses, and laying the infrastructure for global electronic commerce. The experience U.S. firms have gained in developing competitive markets in the United States has provided an enormous advantage in these newly opened markets, allowing them to bring to these markets the same innovation and efficiency U.S. consumers have long enjoyed.

Opening foreign markets has had immediate benefits on U.S. consumers and businesses as well. Prices for international phone calls fell 25 percent between 1996 and 1998, and in 1999, prices for calls to several competitive markets differed little from domestic long-distance prices.

Growth in demand for international voice and data services, especially for the Internet, has led to massive investments in submarine cable and the development of new radio-based mobile systems. These new infrastructures will provide quantum increases in transmission capacity. The lower prices made possible by this increased capacity are in turn fueling further demand for telecommunications services, setting the stage for global growth in this sector over the next five years of several hundreds of billions of dollars.

Often overlooked is the fact that the growth in new services stimulated by open markets has stimulated a boom in equipment sales. U.S. manufacturers have been major beneficiaries in the growth of a global equipment market expected to reach \$345 billion in the next three

years—spending largely dedicated to investment in new networks, or upgrades to existing networks, driven by competitive pressures.

Major issues in 1999

The Agreement's pro-competitive policies led to deep reductions in end-user prices for international and other services around the world, and to the explosion in global capacity made available for Internet and other services in 1999. Investment opportunities increased dramatically in developed countries thanks to the Agreement's open-market requirements. In the developing world, newly-acceding WTO Members made broad-based telecommunications commitments in 1999. In addition, a number of current Members unilaterally liberalized further (e.g., Hong Kong, Korea, Singapore, India) to keep pace in the global competition for investment in this sector. Implementation problems encountered in Japan, Germany and Mexico were addressed in ongoing bilateral consultations, using WTO disciplines as the framework for resolving market access issues. The United States played a key role in instituting a dialogue in the WTO between trade and regulatory officials and in increasing coordination between the WTO and other multilateral institutions, such as the World Bank and the International Telecommunication Union, enlisting the help of these institutions in building global support for more vigorous competition in the global telecommunications marketplace.

Work for 2000

The global appetite for investment in this sector and U.S. firms' interest in meeting this demand show no sign of abating. Demand for high-capacity (broadband) services on wireline networks and the development of advanced wireless services (e.g. so-called Third Generation services) ensure that competitive opportunities, and the importance of the

Agreement as framework for ensuring market access, will increase.

Given the recent trend in unilateral liberalization, prospects are good that the WTO services negotiations now under way will expand existing commitments to cover a broader range of telecommunications sub-sectors with fewer market access limitations. In regions that were previously not a major market focus (e.g., in less developed countries) there is substantial room for improved commitments.

2. Agreement and Committee on Trade in Financial Services

Status

Negotiations in the financial services sector (banking, securities, insurance, and other financial services), extending beyond the end of the Uruguay Round, were successfully concluded in December 1997 under U.S. leadership. Of the 70 WTO Members that made improved commitments in financial services during these negotiations, 53 countries met the original deadline of January 29, 1999 for completing domestic ratification procedures and notifying their acceptance of the 1997 Agreement – the Fifth Protocol to the GATS. Another 7 Members have completed these procedures since then, meaning that the number of countries whose 1997 commitments have entered into force stands at 60.

Assessment of the First Five Years of Operation

The WTO Financial Services Agreement, which entered into force in March 1999, represents an impressive package of commitments that stands on its own merits as a major success for the United States and the world trading system. The final agreement includes commitments that cover an overwhelming share of global trade from 102 countries, with new and improved from 70 countries from both the developed and

developing world. Already 60 of those 70 countries have ratified their commitments. Financial services is one of the fastest growing areas of the world economy, and its liberalization has tremendous significance for a number of other related sectors, including electronic commerce. Financial services also is one of the United States' most competitive industries and is a major contributor to growth in U.S. domestic employment.

The 1997 Financial Services Agreement has served as a key first step in opening world financial services markets to U.S. suppliers of insurance, banking, securities and financial data services. The Agreement extends to the most important international financial services markets, encompassing \$38 trillion in global domestic bank lending, \$19.5 trillion in global securities trading, and \$2.1 trillion in worldwide insurance premiums. This Agreement has opened world financial services markets to an unprecedented degree. Fifty-two countries guaranteed broad market access terms across all insurance sectors – encompassing life, non-life, reinsurance, brokerage and auxiliary services. Another fourteen countries committed to open critical sub-sectors of their insurance markets of particular interest to U.S. industry. Fifty-nine countries committed to permit 100 percent foreign ownership of subsidiaries or branches in banking. And forty-four countries guaranteed to allow 100 percent foreign ownership of subsidiaries or branches in the securities sector.

The Agreement also is fostering the development of financial markets, especially in emerging markets and developing countries, by helping to lay the foundation for sustained growth. Many countries had begun to process of financial services liberalization but had hesitated to lock in those measures. The 1997 Agreement “binds” these improvements under the GATS system which contributes to the overall stability of economic and trade regimes and results in further economic growth. The Agreement will provide an extremely effective

launching pad for further negotiation on a wide range of financial services issues in “GATS 2000.

The Committee on Financial Services has been instrumental in overseeing post-Uruguay Round negotiations on financial services that culminated in the December 1997 Agreement. The Committee also has been a useful venue to discuss and reach agreement on issues related to ratification and acceptance of Members' commitments under the Fifth Protocol. Finally, the Committee also has held initial discussions on various technical issues as they affect financial services which could prove useful in the GATS 2000 negotiations.

Major Issues in 1999

The United States worked intensively through bilateral channels and in the WTO to ensure that the 10 remaining countries that have not accepted the Fifth Protocol ratify their commitments and accept the Protocol as quickly as possible. The Committee on Trade in Financial Services (CTFS) held three formal meetings in 1999 that to a large extent focused on this issue. At the request of several Members, the Chairperson sent letters to those countries that had not yet accepted the Fifth Protocol requesting information on the status of their ratification efforts. In a related development, the GATS Council agreed on February 15, 1999 to renew the standstill commitment made by participants in the 1997 negotiations not to take any measures inconsistent with their services schedules annexed to the Fifth Protocol.

Work for 2000

The United States will continue to work through bilateral means and in the WTO to ensure that the 10 countries that have not accepted the Fifth Protocol do so as quickly as possible. The 10 countries generally have reported that they intend to ratify their commitments under the

Protocol and are working to ensure passage of necessary legislation. The WTO Members will have to decide on a case-by-case basis how to open the window for Fifth Protocol acceptance. The United States also will be an active participant in other work of the Committee, including recommendations concerning the financial services component of issues explored as part of the new services negotiations.

3. Working Party on Domestic Regulation

Status

The GATS Article VI (Domestic Regulation) directs the Council to develop any necessary disciplines “with a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services.” A 1994 Ministerial Decision had assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997, and completed Disciplines on Domestic Regulation in the Accountancy Sector, adopted in December 1998. (The text of both are publicly available on the WTO website at www.wto.org/wto/new/press73.htm and www.wto.org/wto/new/press118.htm, respectively).

With the adoption of the Disciplines, in May 1999 the Council established a new Working Party on Domestic Regulation which also took on the work of the predecessor WPPS. The new Working Party’s mandate is as cited above. These disciplines may be generally applicable and may also apply to individual sectors. The Working Party is to report its recommendations to the Council not later than the conclusion of the coming round.

Assessment of the First Five Years of Operation

The work program on accounting was an important step in the multilateral liberalization of this important sector. While the United States was disappointed that Members ultimately were not able to agree to early application of the accountancy disciplines, the disciplines remain open for improvement before their adoption at the conclusion of the current GATS round. They further provide a reference point for the cross-sectoral work begun in 1999.

Major Issues in 1999

With respect to development of generally applicable regulatory disciplines, on the basis of a background paper prepared by the Secretariat, Members have discussed needed improvements in GATS transparency obligations. Members also have begun discussion of possible disciplines aimed at ensuring that regulations are not more trade restrictive than necessary to fulfill legitimate objectives.

To continue work on professional services, Members agreed to solicit views on the accountancy disciplines from their relevant domestic professional bodies, addressing whether those other professions would favor use of the accountancy disciplines with appropriate modifications. Members agreed to share information on the results of these consultations by March 2000. In addition, Members asked the Secretariat to consult with appropriate counterpart international organizations, to be identified by Members.

Work for 2000

The Working Party will continue development of possible regulatory disciplines, both horizontally and sector-specific, to promote the GATS objective of effective market access. The Working Party also will discuss extending the accountancy disciplines to other professions.

4. Working Party on GATS Rules

Status

The Working Party on GATS Rules was established to determine whether the GATS should include new disciplines on safeguards, government procurement and subsidies. The Working Party met six times in 1999. As these are complex issues, their discussion remains at a relatively conceptual stage.

Assessment of the First Five Years of Operation

The Working Party has provided a useful forum for discussions on whether the GATS should include new disciplines on safeguards, government procurement and subsidies. This is the first time that WTO Members have explored whether concepts, originally formulated for trade in goods, are needed for the GATS. Work on these concepts remains in a preliminary stage with most Members, including the United States, needing further domestic consultations to develop more specific positions and examine the relationship with work in other WTO bodies. For example, during 1999 the WTO Working Group on Transparency in Government Procurement also examined similar concepts.

Major Issues in 1999

Regarding safeguards, Members continue to express differing views on the desirability, feasibility, and possible form of an emergency safeguard mechanism for services. Without prejudice to such differences of view, in recent meetings, Members continued discussion of basic issues that would have to be considered in the application of any future safeguard actions, including MFN treatment, advance notice, temporary and degressive application, and protection of acquired rights of established suppliers.

The safeguards negotiations were set to conclude in July 1999. However, some

developing countries and other WTO Members were interested in continuing this mandate. The Council approved a recommendation of the Working Party to extend negotiations on the question of whether emergency safeguards measures are needed until December 15, 2000. The WTO Members also agreed that the results of the negotiations will enter into effect no later than the date of entry into force of the next round of services negotiations.

Regarding government procurement, discussions focused on the range of activities and entities which may be covered by GATS Article XIII. Recently, Members started giving thought to the scope and depth of any procurement disciplines which might be agreed upon at the end of the negotiating process.

With respect to subsidies negotiations, three Members have now tabled submissions describing their subsidies regimes as part of an information exchange program. Discussions have continued on the potential for subsidies extended under one mode to distort trade under other modes, and the effects of export subsidies on services trade. In addition, Members are reviewing a proposal that Members provide information on subsidy-related problems experienced in foreign markets.

Work for 2000

Information-gathering and discussion of all three issues will continue. The Working Party faces a December 15, 2000 deadline with respect to the question of emergency safeguards measures.

5. Committee on Specific Commitments

Status

The Committee on Specific Commitments examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the coming round of GATS

negotiations, and oversees application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in country schedules in sectors for which there is no sectoral body, currently all sectors except financial services.

Assessment of the First Five Years of Operation

The Committee has taken on four technical, complicated, resource-intensive tasks and has produced results that improve prospects for clear, commercially-valuable commitments in the coming negotiations (in the case of work on nomenclature and on scheduling guidelines), usefully elaborate on GATS provisions (in the case of Article XXI procedures), and promote accessibility and clarity in GATS schedules in the case of the electronic schedules.

Major Issues in 1999

Much of the Committee's work in 1999 was in support of the new negotiations. First, the Committee continued its work on developing an agreed classification system for use in scheduling sectoral commitments, using as a resource technical issues raised in the Council's sectoral "information exchange." Led by Member submissions, the Committee has been examining proposed changes in nomenclature for environmental services, energy services, express delivery services, legal services, and construction services.

Second, the Committee began to examine proposed revisions to scheduling guidelines that were developed by the GATT Secretariat for use in scheduling country commitments during the Uruguay Round. Members agreed that revision of these guidelines can help improve transparency and consistency of new commitments.

Also in 1999, the Committee reached agreement on procedures for modification of schedules

under GATS Article XXI. The Council subsequently adopted the agreed procedures, pursuant to GATS Article XXI:5.

Finally, the Committee directed the Secretariat to continue work on an electronic "looseleaf" version of each Member's GATS schedule, incorporating, for example, the results of the financial services and basic telecommunications negotiations in single, consolidated country schedules. This version would primarily be for ease of reference and would not have legal status in the WTO; it would be made available to the public in CD-ROM format. Members received drafts of their respective schedules in December and will provide comments by March 2000.

Work for 2000

The Committee's work will continue to play an important role in the first phase of the GATS round. The United States and other countries will propose nomenclature changes in additional sectors, and Members will work to conclude discussions on the five sectors now under discussion. These new sectoral definitions then would be available for use in the GATS round. Members also recognize the importance of completing any revisions to the scheduling guidelines early in the round.

Depending on comments on the draft version of Members' schedules, the Committee may be able to direct the Secretariat to prepare a final version of the electronic "looseleaf" schedules in the first half of 2000.

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

Status

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is a multilateral agreement that sets minimum standards of protection for copyrights

and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. Minimum standards are established by the TRIPS Agreement for the enforcement of intellectual property rights in civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO Members must also provide national and most-favored-nation treatment to the nationals of other WTO Members in regard to the protection of intellectual property. In addition, the TRIPS Agreement is the first multilateral intellectual property agreement that is enforceable between governments through WTO dispute settlement provisions.

Although the TRIPS Agreement entered into force on January 1, 1995, most obligations are phased in based on a country's level of development (developed country Members were required to implement by January 1, 1996; developing country Members generally were to implement by January 1, 2000; and least-developed country Members must implement by January 1, 2006). The TRIPS Agreement also provides a general "standstill" obligation, and mandates that those Members that avail themselves of the transition period for providing patent protection for pharmaceuticals and agricultural chemicals must provide a "mailbox". This mailbox is for filing patent applications claiming pharmaceutical and agricultural chemical inventions and providing exclusive marketing rights for such products in certain circumstances. All Members were obligated to provide "most-favored-nation" and national treatment beginning January 1, 1996.

Assessment of the First Five Years of Operation

The TRIPS Agreement has yielded enormous benefits for a broad range of U.S. industries, including producers of motion pictures, sound

recordings, software, books, magazines, pharmaceuticals, agricultural chemicals, and consumer goods; and individuals, including authors, artists, composers, performers, and inventors and other innovators. As mentioned above, the Agreement establishes minimum standards for protection and enforcement of intellectual property rights of all kinds and provides for dispute settlement in the event that a WTO Member fails to fulfill its obligations fully and in a timely fashion. Much of the credit for ensuring that the benefits of the TRIPS Agreement are realized by U.S. industries should be given to the operation of the TRIPS Council.

During 1997 and 1998, the TRIPS Council conducted reviews of the implementation of obligations by developed country Members. Implementation by newly acceding Members was reviewed during 1999. The reviews in the TRIPS Council provide an opportunity for WTO Members to ask detailed questions about the way in which other WTO Members have implemented their obligations. All questions are asked and answered in writing, creating a useful record that can be used to educate domestic industries about acquiring and exercising rights in other countries and that also can alert Members in instances in which obligations have not been adequately implemented. Perhaps most important, the reviews have helped to establish certain expectations about the interpretation of the TRIPS Agreement by demonstrating that there is considerable similarity in implementation by those WTO Members that have met their obligations. The examples of implementation regimes and the rationales given for such implementation provided useful guidance for developing country Members as they worked to implement their obligations by January 1, 2000.

Of particular importance to U.S. intellectual property right holders was the review of the enforcement obligations of the Agreement. During this review, the United States drew special attention to obligations such as that

contained in Article 41.1 which requires Members to ensure that enforcement procedures sufficient to permit effective action against acts of infringement were available. Such procedures must include expeditious remedies which constitute a deterrent to further infringement. The United States stressed it was impossible to get a complete picture of the situation in a Member country without understanding how its enforcement remedies were applied in practice. If the procedures provided in legislative texts were not available in practice, they could not be effective or have the deterrent effect required by the Agreement.

The review of the provisions of Article 27.3(b) of the TRIPS Agreement during 1999 provided an opportunity for the developed country Members to compile information on the ways in which they have implemented any exceptions to patentability authorized by that section. The synoptic table compiled by the WTO Secretariat from the information provided by Members demonstrated that there is considerable uniformity in the protection afforded plants and animals among those Members that have implemented their obligations, even though the manner in which that protection is provided varies. The description of various regimes for protecting plants and animals also could assist developing country Members that were considering the best method to implement their obligations. In addition, the review provided an opportunity for the United States, along with other WTO Members, to submit papers that form the basis of discussion during Council meetings, helping to clarify issues related to the protection of plants and animals.

During 1998 and 1999, the TRIPS Council considered the articles of the Agreement, in particular those related to copyright and neighboring rights, for which emerging electronic commerce would likely have the greatest implications. The Council submitted a report to the General Council, identifying those articles and noting that the subject might be pursued further. The United States submitted a

paper, as part of the review, giving its views on the implications of electronic commerce for the TRIPS Agreement.

Over the last five years, the TRIPS Council has served as a valuable forum for discussion of issues related to intellectual property. The United States has used the opportunities provided by the built-in agenda and other agenda items, including electronic commerce, to explain its interpretation of the Agreement's provisions and to support its interpretation with appropriate examples of the benefits that flow from strong protection of intellectual property rights. It has worked to provide support for these views and will continue to do so in the future.

Major Issues in 1999

In the TRIPS Council meetings in 1999, the United States continued to press for full and timely implementation of the TRIPS Agreement by all WTO Members. In a number of instances where WTO Members have not implemented their obligations fully, the United States has employed the WTO dispute settlement system to secure compliance. Since the WTO was created, the United States has filed 13 complaints under WTO dispute settlement procedures to challenge foreign government practices affecting U.S. creative works and protection of U.S. intellectual property rights. In 7 of those cases, we have already obtained favorable results, either by obtaining a satisfactory settlement or by prevailing in WTO dispute settlement proceedings. We reached prompt settlements with Japan on protection of sound recordings, with Portugal and Pakistan on patent protection, with Sweden on enforcement of its intellectual property laws, and with Turkey on taxation of foreign films. We also got favorable results from WTO dispute settlement rulings against Canada on magazines and against India on exclusive marketing rights on pharmaceutical and agricultural chemical products. The remaining 6 cases are still pending, although progress has been made over

the last year. These achievements demonstrate that the WTO dispute settlement mechanism has already had a significant impact on our ability to protect the creative works of U.S. citizens.

A commitment to full and timely implementation of TRIPS obligations by all WTO Members was evident in a TRIPS Council recommendation to Ministers at Singapore “reaffirming the importance of full implementation of the TRIPS Agreement within the applicable transition periods” and stating that “each WTO Member will take appropriate steps to apply the provisions of the Agreement.” However, a series of recommendations for extending the transition period for developing country Members’ implementation were made prior to the 1999 Ministerial. In spite of such efforts, however, more than 26 developing country Members have already volunteered to undergo an implementation review in the TRIPS Council during the year 2000 and the Council Chairman is consulting with other developing country Members to establish the schedule for 2001.

Geographical Indications: In addition to reviewing the implementation of obligations of the Agreement by new Members including the Kyrgyz Republic and Latvia, the TRIPS Council reviewed the responses to a questionnaire reviewing, in depth, developed and newly acceding Members’ implementation of their obligations under section 3 of Part II of the TRIPS Agreement, i.e., obligations dealing with geographical indications. To facilitate this review, the WTO Secretariat prepared a synoptic table of the information contained in the responses. This information greatly enhanced Members’ negotiations in the Council, as provided for in Article 23.4, on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits, aimed at facilitating the protection of such geographical indications. The European Union submitted a proposal for such a system under which Members would notify the WTO of their

geographical indications and other Members would have one year in which to oppose any such notified geographical indications. If not opposed, the notified geographical indications would be registered and all Members would be required to provide protection as required under Article 23. The United States, Canada, Chile and Japan introduced an alternative proposal under which Members would notify their geographical indications for wines and spirits for incorporation in a register available to all Members on the WTO website. Under this proposal, Members choosing to participate in the system would agree to consult the notifications made on the website when making decisions regarding registration of related trademarks or otherwise providing protection for geographical indications for wines and spirits. Implementation of this proposal would not place obligations on Members beyond those already provided under the TRIPS Agreement or place undue burdens on the WTO Secretariat. The Council discussed the two proposals during its meetings in 1999. This negotiation will continue in 2000.

Review of Current Exceptions to Patentability for Plants and Animals: The TRIPS Council also reviewed the provisions of Article 27.3(b) of the Agreement that permits Members to exclude from patentability plants and animals and essentially biological processes for producing plants and animals. Any Member including such exclusions in its patent law must ensure that micro-organisms and non-biological and microbiological processes are patentable. The Council reviewed the practices of those Members that were already obligated to implement the provisions and the Secretariat, to facilitate the review, prepared a synoptic table so that the descriptions of Members’ practices could be compared easily. This portion of the review revealed that there was considerable uniformity in the practices of the Members that have implemented their obligations. During the discussion, the United States noted that the ability to patent micro-organisms and non-biological and microbiological processes, as

well as plants and animals *per se*, has given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment. The United States submitted a paper giving its views of the importance of providing patent protection for plants and animals and responding to some of the concerns raised by other WTO Members. It is expected that the review will remain on the agenda of the TRIPS Council in 2000.

Electronic Commerce: The TRIPS Council considered the Articles of the Agreement for which emerging electronic commerce might have the greatest implications. The Council submitted a report to the General Council, identifying those Articles and noting that the subject might be pursued further. To facilitate the Council's work, the Secretariat prepared a paper identifying provisions which electronic commerce might affect. The United States submitted a paper giving its views on the implications of electronic commerce for the TRIPS Agreement.

Non-violation: The TRIPS Council considered the scope and modalities of possible non-violation nullification and impairment disputes that might arise in connection with the TRIPS Agreement after expiration of the five-year proscription against such cases that expired on January 1, 2000. Both Canada and the United States submitted papers explaining their views on the issue. A number of proposals were submitted for the Third Ministerial seeking to extend the moratorium. No consensus was reached on extending the moratorium. The U.S. view was that an extension was unnecessary.

Implementation: The United States continued to pursue implementation questions with a number of developed countries, including Denmark, regarding its failure to provide provisional relief in civil enforcement proceedings, and Ireland, for its failure to amend its copyright law to comply with TRIPS. Ireland passed a number of amendments to its existing copyright law to resolve major problems and was working to

enact a comprehensive revision of its copyright law by the end of 1999. The United States continued to pursue a dispute settlement case with Greece regarding its failure to take appropriate action to stop television broadcast piracy in that country and considerable progress has been made in eliminating such piracy on the airwaves. The United States initiated dispute settlement procedures with the European Communities regarding its failure to provide protection for certain geographical indications of other WTO Members. Another was filed against Canada regarding its failure to ensure that all inventions protected by patent in Canada on January 1, 1996 had a term of protection that did not end before a period of twenty years measured from the date on which the patent application was filed. (The details of these cases are discussed in the Dispute Settlement Body section.)

Work for 2000

In 2000, the TRIPS Council will continue to focus on its built-in agenda and on the implementation of the obligations of the Agreement by developing country Members. The reviews of implementation by 26 developing country Members will take considerable time at the June and November meetings. As part of those reviews, Members give written questions to the country under review on the manner in which it has implemented its obligations and written responses to those questions must be provided. Each Member being reviewed is afforded an opportunity during the TRIPS Council meetings to give an oral presentation highlighting responses to questions or particular points regarding its implementation of the Agreement that it wishes to draw to the attention of other Members. The Council will continue the negotiations under Article 23.4 aimed at establishing a multilateral system of notification and registration for geographical indications for wines and spirits. The United States will work to ensure that any such system established accommodates the varied regimes of Members

for the protection of geographical indications. Finally, as noted above, the review of the provisions of Article 27.3(b) will continue as an item on the agenda of the TRIPS Council.

The Council and developed country Members, including a review of the United States, will continue to provide technical assistance to developing country Members as they implement their obligations under the Agreement.

U.S. objectives for 2000 include:

- ▶ Evaluation of the implementation of the TRIPS Agreement, particularly by developing countries;
- ▶ Pursuit of dispute settlement consultations and panels where appropriate;
- ▶ Review of formal notifications of intellectual property laws and regulations to ensure their consistency with TRIPS obligations by other country Members; and
- ▶ Consideration of the relationship between the TRIPS Agreement and e-commerce.

E. Other General Council Bodies/Activities

1. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines national trade policies of WTO Members on a schedule designed to cover all WTO Members on a frequency determined by trade volume. The process starts with an independent report on a Member's trade policies

and practices that is written by the WTO Secretariat on the basis of information provided by the subject Member. This report is accompanied by the report of the country under review. Together the reports are subsequently discussed by WTO Members in the TPRB at a session at which representatives of the country under review appear to discuss the reports on its trade policies and practices and to answer questions. The purpose of the process is to strengthen Member observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system.

The current process reflects changes in the instrument, which was created in 1989, to streamline it and to give it more coverage and flexibility. Reports now cover services, intellectual property and other issues addressed by WTO Agreements.

During 1999, the TPRB conducted twelve trade policy reviews, including the United States. Reviews also were held for Argentina, Togo, Guinea, Egypt, Bolivia, Israel, Philippines, Romania, Nicaragua, Papua New Guinea, and Thailand. Four countries were reviewed for the first time, including two least developed countries, Togo and Guinea. By the end of 1999, 120 reviews (113 if grouped reviews were counted as single reviews) have been conducted since the formation of the TPR covering 71 Members, counting the European Union as one. The Members reviewed represent 84 percent of world merchandise trade and 63 percent of the total Membership of the WTO. Of the Members reviewed since 1995, 10 are least developed countries.

Assessment of the First Five Years of Operation

The TPRM has served as a valuable resource for improving transparency in WTO Members' trade and investment regimes and ensuring commitment to WTO rules. The reports are published after the review is conducted and made available to the public through the WTO.

For many lesser developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws, and regulations and have implications and uses beyond the meeting of the TPRB. Some Members have used the Secretariat's Report as a national trade and investment promotion document, while others have indicated that the report has served as basis for internal analysis of inefficiencies and overlaps in domestic laws and government agencies. For other trading partners and U.S. businesses, the reports are a dependable resource for assessing the commercial environment of the majority of WTO Members.

The United States has participated in every Trade Policy Review and developed for each Member under review a detailed list of questions and comments designed to urge, where necessary, compliance with certain WTO/GATT obligations or to obtain better information on issues that are of particular concern to interested parties in the United States. The biennial Reviews of the European Union, Canada, and Japan have provided a regular forum for updates and analysis of policies and measures undertaken by the United States' largest trading partners. During the two Reviews of the United States since 1995, the administration has emphasized the openness of the U.S. market and the important role the U.S. economy plays in the global trading system. The U.S. Trade Policy Reviews also have afforded the opportunity to defend WTO consistent trade practices and reduce misunderstandings about certain U.S. trade policies and laws. Thus, the TPRM has met the expectations of the United States to provide greater transparency, understanding and consistency in the trade policies of WTO Members, and to better ensure compliance with the rules-based system.

Major Issues in 1999

Reviews have emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade

reforms, transparency with respect to the formulation and implementation of policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives; in particular, the priorities given to multilateral and regional arrangements have been important systemic concerns. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfilment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing countries of customs valuation methods, and the adaptation of national legislation to WTO requirements.

Trade Policy Review of the United States: In July 1999, the United States underwent its second Trade Policy Review under the WTO. The meeting offered the opportunity for the United States to point to its traditionally open trade and investment regime and to the important role the strong U.S. economy has played in the stabilization of the global economy during the Asian economic crisis and in contributing through imports to the growth of developing economies. The United States also emphasized the importance it places on compliance by all Members with their WTO commitments and discussed U.S. implementation of commitments in the areas of Agriculture and Sanitary/Phytosanitary Standards, Services, Intellectual Property Rights, and the Agreement on Clothing and Textiles. The importance of improving and opening up the Dispute Settlement Understanding was emphasized, while the United States also explained the important links between trade, labor and the environment.

Five-Year Appraisal: As required under the Marrakesh Agreement, the TPRB undertook an appraisal of the operation of the TPRM, which

was issued as a report to the Ministers at the 1999 Ministerial. The appraisal confirmed that the TPRM continues to function effectively and remains relevant to its mandate, particularly in its contribution to transparency. The appraisal also noted that the Mechanism has operated as a catalyst for Members to reconsider their policies, has served as an input into policy formulation and has helped to identify technical assistance needs. The TPRB examined resource-savings initiatives, highlighting efforts to utilize, where possible, information from other divisions of the WTO Secretariat and trade-related macroeconomic information from other intergovernmental organizations, such as the World Bank and the International Monetary Fund. The appraisal also examined dissemination, reporting and meeting procedures and offered recommendations towards improvements in each area, including improved access through the WTO website. A second appraisal was recommended not more than five years after the Third Ministerial or as requested by a Ministerial Conference.

Trade and Core Labor Standards: An important U.S. achievement at the Singapore Ministerial Conference was the inclusion of language in the Ministerial Declaration whereby Trade Ministers from all WTO Members recognized a commitment to the observance of internationally recognized core labor standards. Considering that Trade Ministers' reaffirmation of this commitment in Singapore made observance of labor standards a legitimate topic for discussion in the WTO, the United States delegation routinely made observations and raised questions relative to labor standards with nearly all those WTO Members which underwent reviews in 1999.

Work for 2000

The TPRM is an important tool for monitoring and surveillance, in addition to encouraging WTO Members to meet their GATT/WTO obligations and to maintain or expand trade liberalization measures. The program for 2000

contains provision for reviews of 15 Members, including Kenya, Iceland, Tanzania, Singapore, Bangladesh, Peru, Norway, Poland, European Union, the Republic of Korea, Bahrain, Brazil, Japan, Switzerland and Canada. Although the TPRM continues to meet its goals, limited resources and a growing list of countries to be reviewed annually – in addition to a number of new accessions – makes it important to keep the Mechanism functioning as efficiently as possible. In particular, the continued active cooperation between Members and the Secretariat plays an essential role in the success of the Mechanism and must be maintained to ensure that the review process continues to run smoothly; that deadlines are met; and that the quality of the report is maintained. Implementation of the recommendations proposed in the five year appraisal also will help to address these issues.

2. Committee on Trade and Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995 pursuant to the Marrakesh Ministerial Decision on Trade and Environment. The mandate of the CTE is to make appropriate recommendations to the Ministerial Conference as to whether, and if so what, changes are needed in the rules of the multilateral trading system to foster positive interaction between trade and environment measures and to avoid protectionist measures.

Assessment of the First Five Years of Operation

The CTE has played an important role in bringing together government officials from trade and environment ministries to build a better understanding of the complex links between trade and environment. Among other things, this has helped to address the serious problem of lack of coordination between trade

and environment officials in many governments. In addition, the CTE has produced useful recommendations calling for transparency in ecolabeling and launching the creation of a data base of all environmental measures that have been notified under WTO transparency rules.

The CTE has also engaged in important analytical work, helping to identify areas where trade liberalization holds particular potential for yielding environmental benefits. Win-win opportunities that have been identified thus far include the elimination or reduction of agriculture subsidies that promote unsustainable farming practices and fisheries subsidies that contribute to over fishing, and the elimination of barriers to environmental goods and services.

Major Issues in 1999

The WTO Committee on Trade and Environment met three times during 1999, pursuant to its mandate. The United States contributed to this process by, *inter alia*, working to build a consensus that both important trade and environmental benefits can be achieved by addressing agricultural subsidies, fisheries subsidies that contribute to overfishing and the liberalization of trade in environmental goods and services.

Multilateral Environmental Agreements (MEAs): Inclusion of trade measures in MEAs has been and will continue to be essential to meeting the objectives of certain agreements but may raise questions with respect to WTO obligations. Over the course of the year, the CTE helped strengthen WTO Members' understanding of MEAs and trade by holding the third in a series of meetings with representatives from a number of MEA Secretariats at which those representatives briefed the committee members on recent developments in their respective agreements. There continue to be sharp differences of view within the CTE on whether there is a need to clarify WTO rules in this area. The United

States holds the view that the WTO broadly accommodates trade measures in MEAs.

Market Access: Work in this area continued to focus on the environmental implications of reducing or eliminating trade-distorting measures. There is a broad degree of consensus in the Committee that trade liberalization, in conjunction with appropriate environmental policies, can yield environmental benefits. Discussion continued over the course of the year on the potential for such a "double dividend" in the agriculture sector. The Committee also discussed in depth the potential environmental benefits of reducing or eliminating fisheries subsidies, drawing on a previously tabled paper on this subject by the United States. Further work in the area was taken up at the Third Ministerial. Discussion also took place on the benefits of improving market access for environmental services and goods. The Committee also discussed the environmental implications of trade liberalization in other sectors, including forestry and energy.

TRIPS: The Committee had a brief discussion of the relationship between the TRIPS Agreement and the environment. As in the past, a few countries advanced arguments for consideration of changes to the TRIPS Agreement to address "contradictions" between the WTO and the Convention on Biological Diversity. The United States once again made clear its view that there are no contradictions between the WTO and the Convention on Biological Diversity.

Relations with NGOs: The United States, joined by several other Members, emphasized the need for further work to develop adequate mechanisms for involving NGOs in the work of the WTO and adequate public access to documents. Following through on this work, in the Third Ministerial process the United States proposed that the WTO General Council's 1996 agreement on Guidelines for Relations with NGOs be reviewed and substantially improved, and the United States continues to lead efforts at

enhancing the WTO's transparency, including derestriction of documents.

3. Committee on Trade and Development

Status

The Committee on Trade and Development was established in 1965 to strengthen the GATT's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the Committee on Trade and Development is a subsidiary body of the General Council. The Committee addresses trade issues of interest to Members with particular emphasis on the results in the Uruguay Round and on the operation of the "Enabling Clause" (the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries). This included areas such as the Generalized System of Preferences (GSP) programs, the Global System of Trade Preferences among developing countries and regional integration efforts among countries. The Committee also has a role in advising the WTO Secretariat on technical assistance programs.

Assessment of the First Five Years of Operation

The Committee has historically functioned as a forum for developing countries to discuss the broad range of issues of special interest to development, in contrast to the other committees in the WTO structure which are responsible for the operation and implementation of particular agreements. Thus, the Committee offers a unique venue for Members to discuss trade issues in the broader context of development. The Committee's discussion of development-related issues has generated considerable interest, debate, and a variety of viewpoints. But, one thing that is abundantly clear from the Committee's work is that, while all developing countries are interested in development, the

precise meanings of and methods to achieve development are unique to each country.

The Committee's work has contributed positively to the WTO's discussions on electronic commerce. For example, Committee discussions on the development dimensions of electronic commerce in 1999 were generally viewed as useful in educating developing country Members on the potentially large benefits of opening their markets to the high technology sector. The initiative to equip least developed and developing countries with computers and internet access was very positive, and complemented the Leland Initiative of the United States. Under the auspices of the U.S. Agency for International Development, the Leland Initiative facilitated the improvement of telecommunications infrastructures, including internet infrastructure, in a number of Sub-Saharan African countries. The Leland Initiative enabled the Trade Reference Centers to connect to the Internet.

The Committee's involvement in two successful High Level Meetings – the 1997 High Level Meeting on the Least Developed Countries and the 1999 Symposium on Trade and Development – are two additional examples of the CTD's positive contribution to the overall WTO work program. These meetings brought attention to the concerns of many countries while, at the same time, provided an opportunity for non-governmental organizations, observers and other entities to participate in the discussion. The Committee has been instrumental in helping to shape the debate about the benefits of trade liberalization to development prospects and the role of technical assistance and capacity building in this effort. The work on the Integrated Framework of Technical Assistance (discussed in detail below) was the result of initiative undertaken by the Committee to ensure better coordination among donor agencies and countries.

Major Issues in 1999

The Committee held five formal meetings in 1999. Its work focused on the following areas: preparations for the March 1999 High Level Symposium on Trade and Development; review of the special provisions in the Multilateral Trading Agreements and related Ministerial Decisions in favor of developing country Members, in particular least-developed countries; the development dimension of trade facilitation; the development dimension of electronic commerce; and technical assistance and training.

High Level Symposium on Trade and Development: Following requests from several Members, the WTO held the High Level Symposium on Trade and Development March 17-18, 1999. The purpose of the symposium was to hold an informal, high-level dialogue on trade and development issues in order to address the development dimension of international trade issues and trade-related concerns of developing countries, including least developed countries, and to highlight the role of the WTO in promoting developmental objectives set out in the Preamble to the Marrakesh Agreement.

Development Dimensions of Trade Facilitation and Electronic Commerce: Throughout the year, the CTD held useful discussions and did valuable work on these two important areas that offer substantial potential benefits to developing countries. On trade facilitation, the Committee held several discussions of the relevance of this issue to development. With respect to electronic commerce, Members discussed a wide range of issues relating to electronic commerce and development including potential benefits from electronic commerce for developing countries and potential problems developing countries might face with respect to electronic commerce. The Committee also held a one-day seminar on Electronic Commerce and Development on February 19, 1999 which was widely attended by government officials and private sector representatives from several countries to allow

for informal exchanges of views on this important topic.

Technical Assistance: One element of the Plan of Action for Least Developed countries agreed by Ministers at the 1996 Singapore Ministerial Meeting was the desire to foster an integrated approach to trade-related technical assistance activities for the least-developed countries with a view to improving their overall capacity to respond to the challenges and opportunities offered by the trading system. The result was the Integrated Framework for Trade-related Technical Assistance (“Integrated Framework”) that seeks to coordinate the trade assistance programs of six core international organizations (the International Monetary Fund, the International Trade Center, the United Nations Conference on Trade and Development, the United Nations Development Program, the World Bank and the WTO). In addition, least developed countries can invite other multilateral and bilateral development partners to participate in the Integrated Framework process. The Committee devoted considerable time to reviewing the experiences to date with the implementation of the Integrated Framework and discussing possible ways to improve its ability to serve the needs of developing countries. Building upon the experiences with the Integrated Framework, the United States and six developing countries tabled proposals in the Third Ministerial process concerning ways to improve capacity building and technical assistance efforts in the WTO.

A particularly important and successful element of the WTO technical assistance program in 1999 was its initiative to establish “Trade Reference Centers” in each least developed country and a variety of developing countries. Established in a government ministry, usually the trade ministry, the “center” is designed to allow officials better access to WTO resources, the resources of the Integrated Framework and other trade resources. This is accomplished through placement of a personal computer, appropriate software, printer, internet

connection, and support in the center. To date, Trade Reference Centers have been installed in 56 countries. The United States contributed financially to this project.

Work for 2000

The Committee will continue its function as the forum for discussion of development issues within the WTO. Particular emphasis is likely to be placed on two topics: the application of special and differential treatment in existing agreements and potential scope for different approaches in new negotiations; and improved technical assistance and capacity building. Any further debate on special and differential treatment will need to address the growing divergences among developing countries and the least-developed in their ability to participate effectively in further trade negotiations and benefit from new agreements.

On technical assistance, the Director-General has already pledged greater efforts to work with specialized agencies to address the growing needs of WTO Members. The Committee will be expected to look carefully at proposals and consult with Members on new approaches. In this connection, the Committee will work closely with the WTO Secretariat to devise a method to regularly evaluate the Secretariat's technical assistance activities. Members have committed to improve and enhance the Integrated Framework, and are likely to extend some concepts of that program to other developing countries.

4. Committee on Balance of Payments Restrictions

Status

Pursuant to the GATT 1947 and the GATT 1994, any Member imposing restrictions for balance of payments purposes is required to consult regularly with the BOP Committee to determine whether the use of restrictive measures is necessary or desirable to address its

balance of payments difficulties. Full consultations involve a complete examination of a country's trade restrictions and balance of payments situation, while simplified consultations provide more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in the balance of payments. The Uruguay Round results strengthened substantially the provisions on balance of payments.

Assessment of the First Five Years of Operation

The Committee on Balance of Payments has had extraordinary success during the past five years. In contrast to the pre-WTO period, the Committee and its Members, particularly the United States, have ensured that the BOP provisions of the GATT 1994 are used as originally intended: to enable countries undergoing a balance of payments crisis to impose temporary measures until their situation improves. In the past, Members resorted to BOP measures to provide protection to domestic industries when such action was not warranted. The BOP Committee works closely with the International Monetary Fund (IMF) in conducting its BOP consultations; BOP provisions provide for close coordination with the IMF on BOP matters.

This situation has changed, due to both the improved rules that were established in the Uruguay Round and better enforcement, including use of the dispute settlement provisions. The Uruguay Round Understanding on Balance of Payments Provisions made a number of clarifications to the two primary articles dealing with balance of payments in the GATT 1947 and now GATT 1994: Article XII (Restrictions to Safeguard the Balance of Payments) and Article XVIII:B (Governmental Assistance to Economic Development). The Understanding confirmed that price-based measures, i.e., import surcharges, are preferred, that the use of quantitative restrictions is

allowed only under exceptional circumstances and that measures taken for BOP reasons may only be allowed to protect the general level of imports, i.e., applied across-the-board, not to protect specific sectors from competition. Additionally, the Understanding established strict notification deadlines and explicit documentation requirements, and permitted “reverse notification” by Members concerned with measures instituted, but not notified, by other Members.

Over the course of the last five years, the WTO’s BOP provisions have become more important, in large part due to the increased level of tariff bindings that resulted from the Uruguay Round market access negotiations. The bound tariff rates ensure that Members cannot breach the bound rates without consequences. WTO rules ensure that when bound rates are breached, the Member taking the action must comply with the rules governing trade in goods. Accordingly, more stringent BOP rules, particularly the new limitation on the use of quantitative restrictions, the strong preference for price-based measures and the inability of countries to protect only specific sectors, have dissuaded most countries from resorting to BOP measures. In spite of the Asian financial crisis, no country resorted to BOP measures.

The improved Uruguay Round rules have been enhanced by stronger and more successful enforcement of the provisions. Two particular examples are illustrative. In 1995, the first case seeking approval of new measures that came before the WTO BOP Committee concerned Brazil’s desire to impose quantitative restrictions on autos. The Committee rejected the request as unnecessary and inconsistent with the WTO rules. In the intervening five years, no requests for new quantitative restrictions or sector-specific measures have been presented.

A lingering problem from the GATT period was countries which maintained quantitative restrictions or prohibitions, generally applying

only to specific sectors and of long-standing duration. The situation with respect to India’s use of BOP measures is the best example of such a case. India’s trade policy since the 1950s had featured quantitative restrictions for BOP reasons. Beginning in 1995 in the BOP Committee and continuing into dispute settlement in 1997, the United States and others challenged India’s need to maintain measures for balance of payments reasons. A panel and the WTO Appellate Body agreed that India was not justified in its use of BOP measures. India will eliminate one-half of its remaining measures by April 1, 2000 and the remainder by April 1, 2001.

But beyond these two major cases, WTO Members acting through the BOP Committee, have a strong record of enforcing the new rules. In 1995, South Africa, Egypt and Israel disinvoked Article XVIII:B and agreed to complete the elimination of all BOP-justified measures. Egypt and Israel had maintained BOP-justified measures for many years. In that same year, Hungary imposed an import surcharge, and was asked to present a concrete timetable for the reduction and elimination of the surcharge; this surcharge was subsequently eliminated in 1997. In 1996, Poland, Slovak Republic, Philippines, Turkey, and South Africa eliminated all BOP-justified restrictions. In 1997, Tunisia and Bulgaria committed to the elimination of BOP-justified measures. Due to severe economic problems, the Slovak Republic temporarily re-introduced an import surcharge. In 1998, the Slovak Republic, Sri Lanka, and Bulgaria and, in 1999, Nigeria eliminated all BOP-justified restrictions.

Major Issues in 1999

Since entry-into-force of the WTO on January 1, 1995, the WTO BOP Committee has demonstrated that the hard-won new WTO rules provide Members additional, effective tools to enforce obligations under the BOP provisions. During 1999, the Committee held consultations with the Slovak Republic, Bangladesh and

Romania, and saw Nigeria eliminate all BOP-justified restrictions. While India maintains import restrictions that were once justified on balance of payments grounds, these measures are no longer under the jurisdiction of the BOP Committee, but have moved to the dispute settlement arena.

In a dispute brought by the United States, a panel and the Appellate Body ruled during 1999 that India's restrictions were not justified on balance of payments grounds and were thus illegal. Under the terms of an agreement reached by the United States and India, India will phase out one half of its restrictions by April 1, 2000 and all remaining restrictions by April 1, 2001.

Work for 2000

In 2000, the Committee will consult with the following countries maintaining BOP-related restrictions: Pakistan, the Slovak Republic, and Romania. Additionally, should Members resort to BOP measures, the WTO provides for a program of rigorous consultation with the Committee. The United States expects the Committee will make further progress in ensuring that the WTO BOP provisions are used as intended to address legitimate, serious BOP problems through the imposition of temporary, price-based measures. The Committee will continue to rely upon the close cooperation with the IMF.

5. Committee on Budget, Finance and Administration

Status

WTO Members are responsible for working with the WTO Secretariat on the budget for the organization, and the Budget Committee has traditionally taken a "hands on" approach to the financial matters confronting the institution. Compared to other international institutions, the WTO has a relatively small budget that it manages despite the dramatic increase in

activity since establishment of the WTO in 1995. The U.S. budget assessment for 2000 is 15.7 percent or about \$13 million dollars. Details on the WTO's budget required by Section 124 of the URAA are provided in Annex II.

Assessment of the First Five Years of Operation

Despite the increase in the WTO's activities over the past five years, the U.S. assessment to the WTO has remained relatively unchanged. As the world's largest exporter – accounting for more than \$200 billion in trade last year – the cost of WTO Membership for the United States is very small. WTO Members are assessed budget contributions according to a Member's share in world trade. In the GATT, contributions were based on a contracting party's share of world trade in goods. With the expansion of the WTO to include services and intellectual property rights beginning in 1996, the assessment was revised to take into account statistics as reported in balance of payments statistics from the International Monetary Fund. In the case of goods, gold held as a store of value is excluded from the statistics and in the case of services, statistics relate to the definition of commercial services as applied in the WTO. The addition of services and intellectual property rights statistics to the calculation methodology marginally increased the relative share of the budget paid by the United States, which in 1996 was 15.87 percent.

The Committee has had a difficult task during the past five years, from ensuring that the administrative and financial aspects of the move from the GATT 1947 to the WTO were accomplished in good order to transfer smoothly the Secretariat staff from the UN Common System to an independent WTO salary and pension system. The Committee's work over the years in managing the financial and personnel growth the organization has required, all the while ensuring that the organization uses

its resources wisely and efficiently, is perhaps its greatest achievement.

Major Issues in 1999

Continuing the discussions begun in 1998, the Committee continued to examine the previous year's policy of holding the WTO to a zero nominal growth budget. A constantly expanding workload, resulting from new initiatives and a dramatic increase in dispute settlement activity, combined with the need to fund "on-budget" certain spending categories which had heretofore been funded out of extraordinary surplus accounts, created a situation in which a good deal of the Committee's work in 1999 was devoted to discussion of how to handle proposed increases in 2000 spending. Other significant issues discussed in the Committee in 1998 included: (i) implementation of the new conditions of service system for the WTO Secretariat; (ii) a review of the methodology employed in determining Members' share of the budget; (iii) various efforts to streamline operations and reduce costs in the WTO; and (iv) distribution of the extraordinary surplus from 1998, which resulted from the United States paying its 1997 assessment in 1998.

Agreed Budget for 2000: After considerable debate and delays in reaching a consensus, the Committee proposed and the General Council approved a 2000 budget for the WTO Secretariat and Appellate Body of Swiss Francs 127,697,010. While this amount represents a nominal increase over the approved 1999 budget of 4.3 percent, the real increase is far lower due to the inclusion in the regular budget of certain spending categories previously funded "off-budget." The 2000 budget reflects the Committee's continuing efforts to ensure that the real base of WTO activity is more apparent. In addition, a certain amount of the increase is due to the need to fund fully the new staff approved in 1999 in certain categories (such as lawyers and translators) where existing resources were inadequate to keep pace with the level of activity, especially in dispute

settlement-related work. For 2000, the United States owes Swiss Francs 19,890,887 (about \$13 million). Members' assessments are based on their share of WTO Members' trade in goods, services and intellectual property. The current U.S. contribution accounts for 15.727 percent of the total assessments on WTO Members, a share far lower than the U.S. assessment in other international organizations. As the WTO adds new Members, the U.S. assessment will automatically be reduced. At the end of 1999, the accumulated arrears of the United States to the WTO amounted to Swiss Francs 3,205,232 (\$2,257,200).

Establishment of WTO Secretariat: At the October 1998 meeting of the General Council, it was agreed to proceed with the establishment of the WTO Secretariat on an independent basis separate from the United Nations Common System. As a result, from January 1, 1999, the WTO Secretariat withdrew from the UN Joint Staff Pension Fund and established the WTO Pension Plan. The funds transferred from the UN fund to the new WTO fund were considerably more than the minimum required to set up the plan on a viable basis. The new system operates exclusively in Swiss Francs, a factor which will dramatically reduce the exchange rate risk in future WTO budgets. This change and the resulting savings are already reflected in the 2000 Secretariat budget.

Determination of Members' Share of the Budget: With the creation of the WTO in 1995, Members' share of the budget was recalculated to capture their relative share of world trade in services as well as trade in goods (goods trade alone had been the basis for GATT assessment calculations). It was agreed that the operation of the methodology should be reviewed in 1998 and a working group was formed for this purpose. The working group concluded that the methodology was essentially sound and should be retained. However, at least one Member questioned the inclusion in the calculation of services trade of receipts for traffic in a major canal. The discussion also revealed least

developed countries' collective opposition to being assessed at a minimum rate (0.03 percent) – an amount which is often higher than their share of world trade. As part of the approval of the 2000 Secretariat budget, WTO Members agreed to reduce the minimum contribution for least-developed countries to 0.015 percent.

Efforts to Reduce Costs and Improve Efficiencies: The Committee and Secretariat continued efforts designed to keep costs down, eliminate duplicative activities and do away with inefficient operations. For example, the Secretariat has enhanced its coordination with UNCTAD, the International Trade Center and a variety of other international organizations with regard to elements of technical assistance to avoid duplication of activities. As noted above, a certain number of efficiencies and cost savings over time will also be the result of the introduction of a WTO-specific salary and pension system.

Work for 2000

Development and Agreement on a Budget for 2001: Given new multilateral trade negotiations will be launched in 2000 and the continued growth in dispute settlement activities, it is expected that there will again be pressure put on the WTO's resources and budget. The Committee will likely devote considerable time to the development of a budget for 2001 that considers these factors.

6. Committee on Regional Trade Agreements

Status

All regional trade agreements in the WTO system are reviewed for compliance with WTO obligations and for transparency reasons. Prior to 1996, these reviews were typically conducted in a "Working Party." The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was formed in early 1996 as a central body to

oversee all regional agreements in the WTO system. The Committee is charged with conducting the reviews of all agreements, seeking ways to facilitate and improve the review process, particularly the conclusion of each review, to implement the biennial review requirement established by the Uruguay Round agreements, and to consider the systemic implications of such agreements and regional initiatives for the multilateral trading system.

Free trade areas (FTAs) and customs unions (CUs), both exceptions to the principle of MFN treatment, are allowed in the WTO system if certain requirements are met. In the GATT 1947, Article XXIV (Customs Unions and Free Trade Areas) was the principal provision governing FTAs and CUs. 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 less-than-comprehensive agreements between or among developing countries. The Uruguay Round added two more provisions: Article V of the General Agreement on Trade in Services (GATS), which governs the services-related aspects of FTAs and CUs; and the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV.

Assessment of the First Five Years of Operation

The Committee's work has improved the process reviewing and understanding regional trade agreements in the context of the multilateral trading system. For the first time, most agreements are reviewed in a single forum. All FTAs and CUs must fulfill several requirements in the WTO. First, substantially all of the trade between the parties to the agreement must be covered by the agreement, i.e., tariffs and other regulations of trade must be eliminated on substantially all trade. Second, the incidence of duties and other regulations of commerce applied to third countries after the

formation of the FTA or CU must not, on the whole, be higher or more restrictive than was the case in the individual countries before the agreement. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional cases. With respect to a CU, in which by definition common regulations of trade, including MFN duty rates, are adopted toward third countries, the parties to an agreement must notify WTO Members and begin compensation negotiations prior to the time when any tariff bindings, services commitments or other obligations are violated.

Before the Committee was established, agreements were reviewed in isolation. One result of this new, single forum review process is a focus on the varying quality and consistency of individual agreements or groups of agreements with WTO rules. Now WTO Members have the opportunity to compare and contrast the agreements. While providing an important oversight and transparency function, the Committee does not have the power to nullify agreements or find that the agreement is out of compliance with WTO rules. Members still have the option to address compliance problems via dispute settlement. The debate in the Committee more recently has been the extent to which the Committee should have more power to find agreements “consistent” with WTO rules. Thus far there has been no consensus on moving in this direction. Nonetheless, identification of problematic aspects of individual agreements have made many WTO Members more attentive to their WTO obligations.

Another area for further consideration is the review of developing country agreements. The United States, along with other trading partners has sought to bring such agreements under the purview of the new Committee. Currently, a number of developing countries argue that the Committee on Trade and Development, which is responsible for the “enabling clause” under

which some agreements may be justified, is the more appropriate venue.

Major Issues in 1999

The Committee met four times during 1999. By the end of 1999, the Committee started or continued examination of 72 regional trade agreements (A list of all regional integration agreements notified to the GATT/WTO and currently in force is included in Annex II.) The North American Free Trade Agreement was among the accords reviewed. Detailed discussions were conducted on procedures and objectives for the biennial review of each agreement. The Committee held extended discussions on ways to improve the notification and review process. Finally, the Committee had substantial, but inconclusive, discussions on systemic effects of regional agreements on the multilateral trading system.

Work for 2000

During 2000, the Committee will continue to address all aspects of its mandate. Particular emphasis will be placed on completing the reviews of regional trade agreements that have already been notified, including the NAFTA, improving compliance with notification requirements, and establishing and implementing procedures for the biennial review process. Further discussions on improving the review process and the systemic effects of regional agreements will also be part of the work program for the coming year.

7. Accessions to the World Trade Organization

Status

Countries seeking to join the WTO must negotiate the terms of their accession, as mandated by Article XII of the WTO Agreement. The WTO Members are considering thirty-three applications for WTO Membership. This is a record high level. The

Kyrgyz Republic and Latvia became Members on January 20, 1999 and February 11, 1999, respectively, after their parliaments ratified the negotiations completed in October 1998. Estonia followed as the 135th WTO Member on May 21. Georgia and Jordan completed negotiations and submitted to their parliaments the accession package which had been approved by the General Council in October and December 1999, respectively. Both countries intend to become Members by the end of March 2000. Croatia and Albania substantially completed negotiations on accession terms in 1999, but were not able to see the process through to completion that year. Armenia, China, Lithuania, Moldova, Oman, Chinese Taipei (Taiwan), and Vanuatu are relatively advanced in the accession process, and may complete negotiations in 2000, along with Croatia and Albania.

The General Council accepted new accession applications from Lebanon, Bhutan, and Bosnia-Herzegovina during 1999. Cape Verde also requested initiation of accession negotiations, but the application had not been acted upon before the end of the year. Azerbaijan, Cambodia, and Sudan activated their accession negotiations by submitting initial information on their trade regimes, reducing to six the number of accession applicants that had not yet activated negotiations. Working Party meetings were convened for Andorra, Armenia, China, Croatia, Estonia, Georgia, Jordan, Lithuania, Moldova, Oman, Russia, Saudi Arabia, Chinese Taipei (Taiwan), Vanuatu, and Vietnam. The chart included in the Annex to this section reports the status of each accession negotiation.

Accession Process

Article XII of the WTO Agreement states, that to become a WTO Member, applicants must negotiate terms of accession to the organization with current WTO Members. After accepting the application, the WTO General Council establishes a Working Party to review information on the applicant's trade regime and

to conduct the negotiations. Accession negotiations are time consuming and technically complex. They involve a detailed review of an applicant's entire trade regime by the Working Party. Applicants must be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make specific commitments on market access for goods and services.

The terms of accession developed with Working Party members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Working Party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service suppliers, and agriculture schedules that contain commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation to the General Council or Ministerial Conference for approval. The United States conducts domestic consultations during the course of negotiations. Prior to General Council approval of the protocol package, the USTR transmits the package to Congress for consideration, as provided for in section 122 of the Uruguay Round Agreements Act. Any WTO Member intending to invoke the non-application provisions of the WTO Agreement must notify the WTO prior to General Council approval of the protocol package. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the instrument of ratification is received in Geneva, accession to the WTO occurs. Ultimately, the pace of the accession process is up to the applicant, and depends on the ability to comply with WTO provisions and agree on market access terms.

Assessment of the First Five Years of Operation

While the broad outlines of the WTO accession process are the same as they were under GATT 1947, the scope of the negotiations has broadened and the requirements strengthened to reflect the expansion of obligations that occurred when the WTO was created. The WTO accession negotiations give current Members, including the United States, an opportunity to seek from the applicant elimination of barriers to trade and to ensure that WTO provisions are observed. In addition, tariff and other requirements on trade in goods and services in the applicant's trade regime can be liberalized and bound as part of the terms of accession. The United States's participation in WTO accession negotiations has supported U.S. export interests, helped improve bilateral trade relations with applicants, and strengthened the WTO as an institution through enhanced trade liberalization and observance of WTO provisions. Since the establishment of the WTO in 1995, 26 countries have either become Members, completed negotiations for membership, or have made substantial progress on the terms of WTO membership. This figure accounts for over one-sixth of the total membership.

During 1995, some WTO Members acceded under simplified negotiations reserved for former contracting parties to the GATT, but all subsequent applicants have been subject to full Article XII accession procedures for the terms of their accession. Negotiations completed under these procedures have resulted in fully bound tariff schedules and broad services commitments. WTO Members have placed great emphasis on securing comprehensive tariff bindings, low bound tariff rates on priority items, and participation in the Information Technology Agreement, the Chemical Tariff Harmonization initiative, and other sectoral tariff-cutting initiatives initially negotiated during and after the Uruguay Round. Elimination of agricultural export subsidies and

progressive reduction of other agricultural supports have been major U.S. priorities, as has the establishment of broad sectoral coverage for commitments in services for cross-border and commercial presence, with emphasis on financial services, telecommunications services, professional and other business services, environmental services, tourism, construction, audiovisual services, and other services sectors.

Major Issues in 1999

During 1999, in response to concerns expressed by some WTO Members that the accession process was too difficult for developing country applicants, the General Council reviewed the results of WTO accessions since 1995.

Discussions focused on how the process could be streamlined and made more transparent, less expensive for small countries, and overall less complex. While no definitive answer to these concerns emerged from the discussions, WTO Members agreed that more technical assistance should be provided to assist developing countries in the accession process and that ways should be found to minimize the number of meetings needed to complete the negotiations. This is particularly relevant with regard to eight countries currently seeking accession, i.e., Bhutan, Cambodia, Cape Verde, Laos, Nepal, Samoa, Sudan, and Vanuatu and to a number of prospective applicants that are least developed countries with extremely low levels of income and economic development.

Of the 33 current accession applicants, 12 are countries that enjoy "normal trade relations (NTR) (called "most-favored-nation" treatment in the WTO) with the United States subject to the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade Act of 1974. Under GATT 1947 and the WTO, the United States has invoked the non-application provisions of these agreements.¹³

¹³Prior to 1999, the United States invoked nonapplication when Romania became

During 1999, the United States invoked nonapplication with respect to Georgia for this reason. Pursuant to legislative authorization, the President granted Mongolia permanent NTR in 1999, and the United States established WTO relations with that country. Legislation was proposed during 1999 to grant permanent NTR status to Albania, Armenia, Georgia, Kyrgyz Republic, and Moldova.

Work for 2000

Demands on WTO delegations and WTO Secretariat resources for accession negotiations can be expected to remain strong during 2000. A number of the WTO applicants that made substantial progress in their negotiations but were unable to complete all aspects of their accession negotiations in 1999 will resume negotiations with a view to finishing the process. A number of the applicant governments have declared WTO accession a priority issue and will press to complete negotiations expeditiously. The United States also expects that countries currently outside the WTO system will seek to initiate accession negotiations. (A more detailed discussion of China's accession negotiations may be found in Chapter V.)

an original Member in 1995, and when the accession packages of Mongolia and the Kyrgyz Republic were approved by the WTO General Council in 1996 and 1998, respectively. Congress subsequently authorized the President to grant Romania and Mongolia permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries. The remaining WTO accession applicants covered by Title IV are: Albania, Armenia, Azerbaijan, Belarus, China, Kazakhstan, Moldova, Russia, Ukraine, Uzbekistan, and Vietnam.

8. Working Group on Trade and Competition Policy

Status

At the December 1996 Singapore Ministerial Conference, Ministers established a working group "to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework." Whereas the Ministers took note of the fact that certain existing WTO provisions are relevant or relate to competition policy, they were careful to specify that the aim of this Working Group was educative and not intended to prejudge whether, at some point in the future, negotiations would be initiated to establish multilateral disciplines in this area. The Working Group on the Interaction between Trade and Competition Policy (WGTCP) was directed to draw upon the work of a companion working group, also established at Singapore, that was mandated to examine the relationship between trade and investment. The WGTCP was also encouraged to cooperate with UNCTAD and other intergovernmental organizations examining similar trade and competition policy issues in order to make the best use of available resources and to ensure that the development dimension is fully considered. The WTO General Council oversees the work of the WGTCP. While, in December of 1998, the General Council approved an extension of the Group's work into 1999, it remains to be seen whether further work on competition policy will be done in a continuation of the WGTCP in 2000 and beyond.

Assessment of the First Three Years

The Working Group only started its work in 1997. The United States has long been interested in addressing the extent to which anti-competitive conduct and restrictions on competition in foreign markets – as well as the inappropriate or inadequate application of

foreign antitrust laws – act as barriers to the export of U.S. goods and services. The dispute with Japan over trade in photographic film is only one example where these kinds of issues have been relevant to the pursuit of U.S. trade policy goals. In reflection of these interests and concerns, the United States joined other WTO Members in authorizing establishment of the WGTCP. Although the educative work has been distracted at times by the efforts of some to dwell on issues such as antidumping, which are properly the responsibility of other WTO bodies, the Group by and large performed its work well. It did a good job of improving the WTO membership's understanding of competition policy and of its supportive, complementary relationship to trade liberalization and economic growth. The United States has encouraged this aspect of the work program, as we know that the institution of competitive market structures not only helps the economies and consumers of other countries, it can also help assure better market access opportunities for firms exporting to those countries.

The proposal of some, such as the EU and Japan, to move on to the negotiation of multilateral competition rules has been opposed by many developing countries. The United States has expressed its own concerns about moving on to the negotiation of comprehensive competition rules, but the key consideration is not *whether* to consider and to address competition issues in the trade context, but *how* to do so most effectively and sensibly. The United States is prepared to work with its partners to determine the best way to move forward in this area. In any event, much can still be done in the WTO and elsewhere to address selective competition-related issues which arise in the course of negotiating market-opening agreements. The adoption of pro-competitive regulatory principles was an important feature of the WTO Agreement on Trade in Basic Telecommunications. Where similar approaches make sense in other sectors

and industries, they should continue to be pursued.

Major Issues in 1999

The WGTCP held three meetings in 1999, the last of which was devoted to the preparation of an annual report to the General Council. The Group continued to organize its work on the basis of written contributions from Members, supplemented by discussion and commentary offered by delegations at the meetings and, where requested, factual information from the WTO Secretariat and observer organizations such as the OECD, the World Bank and UNCTAD. In light of the new mandate given it by the General Council in December 1998, the Group's agenda was more focused than in previous years. Specifically, the General Council directed the WGTCP to explore new issue areas not addressed in its first two years of work. These were: (i) the relevance of fundamental WTO principles of national treatment, transparency and most-favored-nation treatment to competition policy; (ii) approaches to promoting cooperation and communication among Members, including in the field of technical cooperation; and (iii) the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade. All three areas of focus were addressed at the Group's two substantive meetings, and WTO Members shared a wide variety of views and experience – particularly as to whether trends recorded and observations to be made in these areas were or were not indicative of a need to negotiate a multilateral framework for competition rules.

Work for 2000

WTO Members have actively debated the question of whether the issue of trade and competition policy is ripe for negotiations in the WTO and, if so, what the nature of those negotiations might be. Differing views prevail, and Members will undoubtedly need to continue their consultations to determine what should be

the next steps on competition issues. The United States remains prepared to consider this matter with other WTO Members as other work moves forward and the broader WTO agenda is fashioned.

9. Working Group on Transparency in Government Procurement

Status

Drawing largely on proposals made by the United States, Ministers agreed at the 1996 Singapore Ministerial Conference to establish a Working Group on Transparency in Government Procurement. The Working Group's mandate called for: (1) conducting a study on transparency in government procurement; and (2) developing elements for an appropriate WTO agreement on transparency in government procurement.

Assessment of the First Three Years of Operation

Since its first meeting 1997, the Working Group has made an important contribution to the United States' longstanding efforts to bring all WTO Members' procurement markets within the scope of the international rules-based trading system. During its first two years, the Working Group identified and analyzed a set of core principles of transparency and due process in procurement which are generally accepted and applied throughout the WTO membership. These principles tracked very closely with the non-binding principles on transparency in government procurement that the United States and its Pacific Rim trading partners developed simultaneously within the Asia Pacific Economic Cooperation (APEC) forum. The strong similarities between these two sets of principles confirmed that there is broad international agreement on essential principles of transparency in procurement and widespread recognition of the benefits that all governments derive from implementing those principles.

In 1999, the Working Group moved forward rapidly with the development of concrete provisions for potential international commitments in this area. On this basis, WTO Members are now poised to conclude a multilateral agreement on transparency in government procurement. This work provides a strong foundation for continuing to pursue U.S. procurement objectives in bilateral and regional negotiations, as well as in the WTO.

An eventual WTO agreement in this area would be an important contribution towards development of predictable and competitive procurement environments throughout the world. Although government procurement is of great commercial significance – the global procurement market is estimated to be worth over \$3.1 trillion annually – only 26 WTO Members presently belong to the plurilateral WTO Government Procurement Agreement due to its more stringent requirements. Transparency provisions would address a substantial number of concerns and build support for broader cooperation on procurement over the long term.

The United States also views this initiative as an important part of broader international efforts to promote the rule of law and combat international bribery and corruption. WTO commitments to ensure a transparent procurement environment could significantly reduce opportunities for the solicitation of bribes, and could therefore complement other international efforts – such as the OECD Convention on Combating Bribery – to criminalize the offering of bribes. Work in this area would also build on the good governance practices that many WTO Members have adopted as part of their overall structural reform programs. This would help to prevent the mis-allocation of resources, which inhibits the ability to address other social needs, and would promote fiscal and financial stability in countries affected by the Asian financial crisis.

Major Issues in 1999

In order to facilitate continued progress on the development of concrete elements for a potential WTO agreement on transparency in government procurement, the United States, Hungary and Korea jointly submitted a draft text for an agreement in July 1999. Australia, the European Union and Japan subsequently submitted separate draft texts. Those submissions contained many similar provisions, including in relation to:

- ▶ Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;
- ▶ Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;
- ▶ Clear specification in tender documents of evaluation criteria for award of contracts;
- ▶ Availability to suppliers of information on contracts that have been awarded; and
- ▶ Availability of mechanisms to challenge contract awards and other procurement decisions.

Between September-November 1999, the United States organized a series of intensive negotiations aimed at narrowing differences on concrete commitments in these and other key issues. Those negotiations resulted in converging views on most procedural elements of transparency in government procurement. At the end of the year, however, significant differences remained on several key elements, in particular:

- ▶ the appropriate scope and coverage of a Transparency Agreement; and

- ▶ the appropriate application of WTO dispute settlement procedures to such an Agreement.

Work for 2000

In 2000, the United States will continue to work with other WTO Members, in bilateral and regional fora as well as in the WTO, to resolve the remaining issues and build a consensus for conclusion of an Agreement in this area.

10. Working Group on Trade and Investment

Status

At the December 1996 Singapore Ministerial Conference, Ministers decided to establish a working group “to examine the relationship between trade and investment.” The Ministers additionally specified that the aim of this Working Group was educative and not intended to prejudice whether, at some point in the future, negotiations would be initiated to establish multilateral disciplines in this area.

The Working Group on Trade and Investment (WGTI) was directed to draw upon the work of a companion working group, also established at Singapore, that was mandated to examine the relationship between trade and competition policy. The WGTI was also encouraged to cooperate with UNCTAD and other intergovernmental organizations examining similar trade and investment policy issues in order to make the best use of available resources and to ensure that the development dimension is fully considered. The WTO General Council oversees the work of the WGTI and, in December of 1998, approved an extension of the its work beyond the initial two-year mandate. It remains to be seen whether further work on investment will be done in a continuation of the WGTI.

Assessment of the First Three Years of Operation

The WGTI provided a multilateral forum for the consideration of investment liberalization and international investment agreements and their relationship to trade and to economic development. The forum provided an opportunity for the United States to present the benefits it has derived from open investment policies and programs and to advance international understanding of these benefits.

The three years available to the group permitted it to analyze the full range of investment agreement models currently in use, and to consider the implications of the differences. The group assessed the advantages and disadvantages of the variety of approaches, including as they affected development.

The United States believes that while the last three years of the WGTI's work significantly raised the group's understanding of investment rules, the work also raised a number of important questions to which the group has not developed sufficient answers. The United States also believes that a number of pertinent subjects have not been adequately addressed, such as the relationship between high standard investment rules and national regulation for public purposes such as health, safety and the environment. Accordingly, the United States is prepared to give further consideration to a renewal of the mandate of a Working Group on investment as other work in the WTO moves forward.

Major Issues in 1999

The WGTI met three times in 1999. Drawing from the checklist of issues developed during the initial two years of its work, and relying primarily on written submissions from Members, the WGTI reviewed: the economic relationship between trade and investment; advantages and disadvantages of entering into investment agreements, including from a

development perspective; the rights and obligations of home and host countries and of investors and host countries; and the relationship between investment and competition policy. At each meeting, the WGTI also continued its stocktaking and analysis of existing instruments, standards and activities regarding international investment rules, including WTO provisions, and bilateral, regional, plurilateral and multilateral agreements and initiatives.

Work for 2000

There remains widespread interest in the WTO to continue work in the area of trade and investment, but differences of view also remain as to what the next steps should be.

11. Electronic Commerce

Status

Based on the mandate from the May 1998 Ministerial Declaration on Electronic Commerce, the WTO in 1999 completed an initial examination of the trade-related aspects of electronic commerce. Building on this report, WTO Members began developing consensus principles to promote integrating electronic commerce into the WTO's trade-liberalizing agenda. Work on expanding market access for electronic commerce will continue through services negotiations in 2000.

Major Issues in 1999

Based on work from September 1998 through July 1999, WTO working bodies identified areas of general consensus on how WTO rules apply to electronic commerce and ensure a trading environment supportive of its growth. As part of this process, the WTO also began a dialogue with private sector representatives (in the form of two symposiums) to educate trade officials on how electronic commerce is transforming trade and commerce and how it can contribute to economic development. Building on these

activities, WTO Members began developing consensus principles for integrating the promotion of the global growth of electronic commerce into the WTO's trade-liberalizing agenda. Principles on which broad-based agreement was reached included:

- ▶ Maintenance of a moratorium on customs duties on electronic transmissions;
- ▶ Applicability of WTO rules to electronic commerce;
- ▶ Avoidance of unnecessary restrictions on electronic commerce that would hamper its growth; and
- ▶ Continued work to ensure that trade rules and commitments adapt to electronic commerce and that the trading system promote electronic commerce as a means of development.

While not yet formally adopted by the WTO, the broad support among WTO Members for these principles underscored the degree to which WTO Members see a liberalized trade environment for electronic commerce as the best means of promoting its growth and attracting the necessary infrastructure investment.

Work for 2000

The year 1999 was a watershed year for electronic commerce, dispelling any doubts that it represents a fundamental change in how business is conducted across all sectors of the economy. At the same time, the rapid expansion of the Internet's global reach brought into focus the vast trade opportunities – and challenges – created by the greater use of electronic networks. Ensuring that the global trade environment supports the unimpeded growth of electronic commerce is broadly recognized as a key goal shared by all WTO Members.

There appears to be solid support among WTO Members for completing the work program identifying how WTO disciplines apply to electronic commerce and where further clarification is necessary. Areas such as how to classify electronic commerce, i.e. as a good or a service, deserve particular attention, given the market access implications involved. There is also ongoing demand among WTO Members for further education on the trade and development benefits of electronic commerce. Integrating these activities into work of WTO bodies is likely to be a priority for many WTO Members and is an opportunity to ensure that the WTO plays a positive, trade-liberalizing role in the global development of electronic commerce.

As the current round of services negotiations begin in the WTO, a special focus will be on ensuring that new commitments expand trade opportunities for all services that can be supplied electronically, and ensuring that the infrastructure for electronic commerce – information networks and related services – are adequately covered by trade rules and commitments. Work will also continue on ensuring development of competitive telecommunications markets through adherence to the basic telecommunications agreement; on ensuring a regulatory environment conducive to alternative electronic commerce platforms such as cable and satellite; on ensuring global coverage of intellectual property protection for digital products; promoting adherence to market-based standards and expanding a mutual recognition agreement on testing and certification of telecommunications equipment.

12. Trade Facilitation

Status

The 1996 Singapore Ministerial Declaration requested the Council for Trade in Goods “to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope

for WTO rules in this area.” In 1999, the Council continued its work under this mandate, following up on the 1998 WTO Trade Facilitation Symposium by conducting several informal sessions that largely focused on issues related to customs and other administrative requirements pertaining to the movement of goods across borders. As part of this process, other WTO bodies also examined relevant aspects of various WTO Agreements and GATT Articles and provided reports to the Council.

Major Issues in 1999

In July 1999 the United States submitted to the General Council a proposal for launching WTO negotiations in the area of trade facilitation, with an objective of achieving an Agreement on the publication and administration of trade transactions, and on the formalities connected with importation and exportation. The U.S. proposal envisions strengthening and developing new WTO disciplines that focus on two key elements: (i) ensuring greater transparency in procedures for conducting trade transactions; and (ii) providing for increased efficiencies in how goods cross borders, such as through the rapid release of goods from the custody of customs administrations. At the core of future rule-making would be building upon relevant provisions of GATT Article VIII (“fees and formalities connected with importation and exportation”) and GATT Article X (“Publication and Administration of Trade Regulations”).

An important element of the U.S. proposal sets forth a new path for integrating work on capacity building into the negotiating process, through a concurrent process of developing the necessary technical assistance programs to ensure implementation of the results of the negotiations. This type of approach would include important preparatory work that would survey the trade facilitation environment in developing countries – particularly with regard to the important core elements related to transparency and efficiency – and also assess

technical assistance needs. Moving forward in such a manner will provide an important opportunity for the WTO to work collaboratively with other International Organizations such as the World Bank, the International Monetary Fund, and UNCTAD, ensuring greater coherency and efficient use of resources.

Work for 2000

While a definite momentum developed in 1999 toward launching WTO negotiations in trade facilitation, a certain resistance also continued to be exhibited on the part of some developing country Members. In most cases this was based upon an unfortunate continuing perception that associated further WTO rule-making in this area as involving a traditional-type trade concession, rather than a “win-win” undertaking that would develop an overall rules-based framework for stimulating investment, production, and trade – particularly for developing country Members. The continuing WTO work in this area has made clear that, in an era of just-in-time manufacturing and distribution, a rules-based environment for conducting trade transactions is a necessity for securing continued growth in the economic output of all WTO Members. Small and medium size enterprises are particularly poised to take advantage of opportunities provided by today’s instant communications and ever-improving efficiencies in the movement of physical goods. These enterprises have thereby become important stakeholders in further WTO contributions to improving the Trade Facilitation environment. In addition, systemic rules-based reforms related to increased transparency and efficiency diminishes corruption, while also providing the benefit of enhancing administrative capabilities that ensure effective compliance with customs-related requirements or laws concerning health, safety, and the environment.

The United States views further work in this area as ultimately leading to one of the most important systemic negotiations to be

undertaken by the WTO. The United States will remain active to ensure the continuation of effective preparatory work, which includes ongoing complementary initiatives involving existing Agreements, such as with regard to implementation of the WTO Agreement on Customs Valuation. Important educative efforts will continue within the WTO, increasing the understanding of the important linkages between a rules-based trade transaction environment and a stable economic infrastructure. The United States will also be prepared to join with other Members in advancing an agenda that will begin to address capacity building issues in this area, particularly by undertaking an examination of administrative systems and measures related to providing transparency and the rapid release of goods, in order to identify potential technical assistance programs that would be developed in conjunction with planning for implementation as part of overall negotiations.

F. Plurilateral Agreements

1. Committee on Government Procurement

Status

The WTO Government Procurement Agreement (GPA), which entered into force on January 1, 1996, 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 it in Marrakesh or that subsequently acceded to it. The GPA's current membership includes the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore and Switzerland. Iceland, Kyrgyz Republic, Latvia, and Panama are in the process of negotiating accession to the GPA; Chinese Taipei, as a part of its broader WTO

accession package, has initiated negotiations for membership.

Assessment of the First Five Years of Operation

The conclusion of the expanded Government Procurement Agreement (GPA) opened up tremendous new opportunities for U.S. exporters to compete on a level playing field for foreign governments' procurement contracts. Consistent with the United States' broader Uruguay Round objective to bring services within the rules based international trading system, the Parties agreed that the GPA would cover procurement of a wide range of services and construction contracts – where U.S. suppliers often enjoy a significant competitive advantage in international markets. They also agreed, for the first time, to include procurement by designated sub-central authorities within the scope of the Agreement. As a result of these new commitments, the WTO estimates that the value of trade opportunities created by the GPA increased by ten times, to over \$300 billion per year.

So that the expansion of trade in this sector will be balanced and fair, the United States has ensured that GPA coverage commitments are firmly based on the principle of reciprocity. For example, U.S. GPA commitments relating to the procurement of any particular category of services only apply to foreign suppliers whose governments have agreed to provide non-discriminatory treatment to U.S. suppliers competing for the same category of services in that country's own procurement markets. Similarly, the agreement by 37 U.S. states to participate in the GPA does not apply to countries that have not opened up their own sub-central government procurement markets to U.S. suppliers.

This emphasis on reciprocity provides an ongoing incentive for other countries to open up additional procurement markets to international competition. After the conclusion of the

Uruguay Round negotiations, the Administration reached bilateral agreement with six other GPA Parties (Austria, Switzerland, Norway, Sweden, Finland and Japan) to open up major sub-central procurement markets in those countries (i.e., procurement by Swiss cantonal and Japanese prefectural governments) to U.S. exporters. In 1995, Singapore's interest in being able to continue participating in U.S. procurement markets was a key factor in its decision to re-join the GPA.

In October 1998, the European Union and Japan used the WTO dispute settlement procedures to challenge a Massachusetts statute which regulated participation in Massachusetts procurements by firms that do business in or with Myanmar (Burma). The Administration strongly opposed this action by the EU and Japan, and pledged to vigorously defend the Massachusetts statute in the WTO, if necessary.

In response to an unrelated domestic suit, however, the U.S. District Court of Massachusetts found the Massachusetts statute to be unconstitutional and, in December 1998, issued an injunction against its implementation. In June 1999, this decision was upheld by the U.S. First Circuit Court of Appeals. In November 1999, the Supreme Court agreed to review the Circuit Court's decision, and scheduled oral argument for March 22, 2000. However, because the EU and Japan did not reinitiate proceedings within 12 months, the authority of the panel lapsed in February 2000.

It is important to note that, like other WTO and NAFTA agreements, the GPA *cannot* preempt or invalidate state or local laws – even if a dispute settlement panel were to find a state or local measure inconsistent with such an agreement. The United States is free to determine how it will conform with those agreements at the national or sub-national level.

Major Issues in 1999

In its Report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an “early review” of the GPA starting in 1997. The review would be aimed at the implementation of Article XXIV:7(b) and (c) of the GPA, which call for further negotiations to achieve the following objectives:

- ▶ simplification and improvement of the GPA, including, where appropriate, adaptation of the rules to advances in the area of information technology and streamlined procurement methods;
- ▶ expansion of coverage of the GPA; and
- ▶ elimination of discriminatory measures and practices which distort open procurement.

The Parties to the Agreement have also agreed that an additional objective of the review is to promote expanded membership of the GPA by making it more accessible to non-members.

In 1998, the Committee approved a provisional time-table for this review process, including “a target of the third WTO Ministerial for the completion of the negotiations, at least on the simplification and improvement of the Agreement.” However, as the review proceeded in 1999, the Committee became aware that more time would be required in order to adequately address a number of complex issues that have been raised, such as the growing use of certain types of procurement procedures that were not in widespread use at the time the GPA was originally negotiated. The Committee also continued to consider the potential simplification of GPA statistical reporting requirements, an issue that is of particular interest to members' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

In 1999, some delegations continued to press for progress on the simplification of the GPA annexes, particularly through the removal of reciprocity reservations and product- or program- specific exceptions. The United States and other delegations noted that these issues were inextricably linked to the overall balance of negotiated coverage commitments, and would have to be addressed in that context.

As provided for in the GPA, the Committee continued the process of monitoring members' implementing legislation. This included follow-up discussions on issues raised during the review of the EU's and Korea's implementing legislation in 1998, and the initiation of discussions relating to the implementing legislation of the United States, Canada and Switzerland.

Work for 2000

In 2000, the Committee will continue its review of the text of the GPA, focusing on the Parties' efforts to "streamline" the Agreement, where appropriate, and ensure that it addresses the types of procurement procedures, including those that make use of modern telecommunications and information technologies, that are commonly used by the Parties' procuring entities today. In addition, the Parties are likely to step up their efforts to resolve issues that have led them to include reciprocity-based reservations to their coverage commitments in the Annexes to the Agreement, and to explore other opportunities for expanding the Agreement's coverage.

2. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement), was concluded in 1979 as part of the Tokyo Round of multilateral trade negotiations and last amended in 1986. While the Aircraft Agreement was not renegotiated

during the Uruguay Round, it remains fully in force and is included in Annex 4 to the WTO Agreement as a Plurilateral Trade Agreement.

The Aircraft Agreement requires signatories to eliminate duties on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on an NTR basis to all WTO Members. On non-tariff issues, the Aircraft Agreement establishes international obligations concerning government intervention in aircraft and aircraft component development, manufacture and marketing, including:

Government-directed procurement actions and mandatory subcontracts: The Agreement provides that purchasers of civil aircraft (including parts, subassemblies, and engines) will be free to select suppliers on the basis of commercial considerations and governments will not require purchases from a particular source.

Sales-related inducements: The Agreement states that governments are to avoid attaching political or economic inducements (positive or negative linkages to government actions) as an incentive to the sale of civil aircraft.

Certification requirements: The Agreement provides that civil aircraft certification requirements and specifications on operating and maintenance procedures will be governed, as between Signatories, by the provisions of the Agreement on Technical Barriers to Trade.

Under Article II.3 of the Marrakesh Agreement, the Aircraft Agreement is part of the WTO Agreement, but only for those Members who have accepted it and not for all WTO Members. As of December 1, 1999, there were 24 Signatories to the Agreement: Bulgaria, Canada, the European Communities, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Egypt, Japan, Macau, Norway, Romania, Switzerland

and the United States. Albania, Croatia, Chinese Taipei and Latvia, Lithuania, Estonia, and Georgia have indicated that they will become parties upon accession to the WTO and Oman within three years of accession. Those WTO Members with observer status in the Committee are Argentina, Australia, Bangladesh, Brazil, Cameroon, Mauritius, Nigeria, Poland, Singapore, the Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition, China, the Russian Federation and Chinese Taipei have observer status in the Committee. The IMF and UNCTAD are also observers.

Assessment of the First Five Years of Operation

While the 1979 GATT Agreement on Trade in Civil Aircraft was not strengthened through renegotiation during the Uruguay Round, civil aircraft were brought under the stronger disciplines of the WTO Agreement on Subsidies and Countervailing Measures. This was the major objective of the U.S. aerospace industry, whose competitors have in the past benefitted from huge government subsidies.

Since the conclusion of the Uruguay Round, there have been some additional negotiating efforts in Geneva to substantively revise the Aircraft Agreement. The United States proposed revisions along the lines of the 1992 U.S.-EU bilateral Large Aircraft Agreement, which sets limits on government support and clarifies provisions of the GATT Aircraft Agreement that apply to government intervention in aircraft marketing. There has been little progress in those negotiations.

The Aircraft Agreement has been incorporated without revision into the WTO. Therefore there have been efforts by the Signatories to update or rectify the Agreement to correctly reference WTO instruments. The United States supports those efforts, so long as the current balance of rights and obligations are preserved, and the

relationship between the Aircraft Agreement and other WTO agreements is maintained.

The Aircraft Agreement is plurilateral trade agreement under the auspices of the WTO. Thus, not all WTO Members are signatories of the Aircraft Agreement.

Major Issues in 1999

The Aircraft Committee, permanently established under the Aircraft Agreement, affords the Signatories an opportunity to consult on the operation of the Agreement, to propose amendments to the Agreement and to resolve any disputes. During 1999, the Committee met twice. At those meetings the Committee discussed an array of aircraft-related trade matters including technically updating the Annex of aircraft items to be accorded duty-free treatment, conforming the language in the Agreement to the WTO, end-use customs administration and a proposal to define “civil” aircraft by initial certification rather than by registration. The United States also raised certain activities by other Signatories that might result in trade barriers or market distortions, such as the failure to promptly certify large civil aircraft at full seating capacity, government exchange rate guarantees for some aircraft component manufacturers and regulations restricting the operation of aircraft, otherwise compliant with International Civil Aviation Organization Stage III noise standards, based solely on a design standard that targets U.S.-origin engines and environmental equipment.

Work for 2000

The United States will continue to seek to conform the Aircraft Agreement with the new WTO framework while maintaining the existing balance of rights and obligations. The United States will also continue to make it a high priority for countries with aircraft industries that are seeking membership in the WTO to become a Signatory to the existing Aircraft Agreement. In addition, other countries that might procure

civil aircraft products, but are not currently significant aircraft product manufacturers, are being encouraged to become members of the Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products solely based upon product quality, price, and delivery.

Economic Assessment

Economic Benefits of the Uruguay Round and the WTO for the United States in the Last Five Years

A. Quantification of Benefits

The statistics for the last 5 years show that the United States was well positioned to take advantage of the gains secured in the Uruguay Round, which in turn help lay a good foundation for strong growth into the 21st century. In years when sharp deterioration of foreign economic conditions were not creating strong headwinds for U.S. exports, they expanded rapidly: up 13.0 percent in 1995, 7.1 percent in 1996 and 10.4 percent in 1997. When foreign economic conditions deteriorated after late 1997 for reasons unrelated to the Uruguay Round or the WTO, the countries most negatively affected continued to abide by their Uruguay Round concessions to phase in their market opening commitments, thus buffering U.S. trade from a more serious impact than that which actually occurred. In 1998, U.S. exports fell by 0.5 percent, but grew in 1999 by 2.6 percent. With Uruguay Round obligations and the WTO promoting U.S. trade interests, even as U.S. trade was buffeted by economic crisis abroad, the United States was able to record two back-to-back years of strong economic growth: a 4.3 percent increase in real GDP in 1998 (year-over-year) and 4.0 percent in 1999.

In addition to the Uruguay Round, of course, many other factors have influenced U.S. trade and economic performance over the past five years. Prominent among such factors are: (i) the

overall strength of the U.S. economy over this period; (ii) the specific strength of technology and business investment, attracting foreign lending and investment to the U.S. market; (iii) the Asian financial crisis of 1998-99 and its consequences for U.S. trade and investment flows; (iv) growth substantially slower for many U.S. trading partners than for the United States during the period, most notably Japan; (v) the North American Free Trade Agreement and its stimulation of trade among the United States, Canada and Mexico; and (vi) the ongoing shift of relatively simple consumer and electronic product imports into the United States from higher skilled Asian producers to exporters in the People's Republic of China, currently not a Member of the WTO. Although it would be ideal to do so, attempting to differentiate the effects of the Uruguay Round and WTO from these and other important developments affecting U.S. trade and the economy would be a virtually impossible task.

Another type of approach, however, is widely used in estimating the impact of the trade agreements like the Uruguay Round while holding other factors constant. Both before and at the time of the WTO's creation, a number of studies estimated its expected future effects on the U.S. and world economy. These studies considered how trade and the economy would have been different in a recent historical year, if the Uruguay Round had been in place, fully implemented, with all long term economic adjustments made instantaneously. In such an analysis, all other factors that might independently affect trade or the economy are automatically held constant, since only a single year is used both as the baseline for measuring the performance of trade and the economy absent the impact of the Uruguay Round, as well as for analyzing full implementation of the Round's results. The effect of the Round is therefore measured as the difference between the year as it was, in fact, and the year as it would have developed with full implementation and no other independent factor being altered. A number of the original such comparative

static studies done at the time of the Uruguay Round's conclusion have since been updated.

The Council of Economic Advisers has recently reported on these academic studies that evaluate gains from the Uruguay Round. These comparative static studies capture only some of the effects of certain conceptually quantifiable features of the Uruguay Round (reducing tariffs globally by one-third, reducing export subsidies in agriculture, and reducing or eliminating quotas in the textile, apparel and agricultural sectors). They do not capture gains from provisions for services liberalization, dispute settlement, intellectual property rights protection or other rules changes improving the predictability and reliability of international trade commitments. They do not capture the enhanced commercial predictability of binding previously unbound tariffs in the agricultural and industrial sectors – an extremely important gain from the Uruguay Round with respect to the trade policy regimes of low and middle income countries. These studies, at best, capture only some of the possible dynamic or growth effects of Uruguay Round trade liberalization. Finally, because the studies generally deal with highly aggregated product categories and cannot measure economic gains from the reduction of barriers among products within categories, a so called “product aggregation bias” is likely to result in yet another source of benefit underestimation in such modeling efforts.

Nevertheless, these recent studies of some of the potential Uruguay Round benefits estimate that annual global income could rise between \$171 billion and \$214 billion (1992 dollars) upon full implementation. For the United States alone, the increase could amount to \$27 billion to \$37 billion each year with good prospects for even further gains. Post Uruguay Round negotiations yielded additional market access commitments in financial services, basic telecommunications services and information technology, areas of undoubted and substantial benefit. Similarly, the WTO provides the United States the

assurance of still more opportunities for U.S. export expansion through resumption this year of negotiations aimed at additional liberalization in services and agriculture.

B. Other Considerations Concerning Benefits From the Uruguay Round

Other aspects of the Uruguay Round and the WTO, not readily quantifiable, have also proven beneficial to the United States. These aspects include providing a framework within which the world reversed the Asian financial crisis; facilitating the rapid growth of technology and U.S. competitiveness; and providing a robust system for managing and resolving international trade disputes.

The Asian Financial Crisis: In 1998, with Japan in recession, real GDP dropped nearly 6.0 percent in the Republic of Korea, 7.5 percent in Malaysia, 10 percent in Thailand and 13.2 percent in Indonesia. Declines in national consumption levels were substantially greater and much human suffering occurred. Against such a background, it is remarkable that not only did these middle income countries avoid the reimposition of import barriers, but they also continued to honor their Uruguay Round market opening commitments made in 1994 and those made later for financial services. A similar, though less severe, situation was playing out in 1999 in Latin America. In both sets of circumstances, the WTO system aided U.S. interests doubly. First, it helped to avoid an additional market access loss from new trade restrictions in the affected markets that would have magnified the already considerable effects of the Asian financial crisis on U.S. exports in 1998 and 1999. Second, the existence of real international obligations as a result of the WTO helped affected governments resist calls for import protection; as a result, these countries tended to recover more quickly than would otherwise have been the case and the global economy was aided in avoiding the 1930's cycle

of protectionism and depression. With the exception of Indonesia, all the Asian countries involved returned to significant positive growth in 1999. Indonesia stabilized its economy in 1999 and is likely to return to positive growth this year. In part, as a result of this rapid stabilization U.S. exports to the Asian Pacific Rim, excluding Japan and China, increased by 8.2 percent in 1999, compared to a decline in such exports of over 17 percent in 1998.

Technology and U.S. Competitiveness: Much of the fastest growth in the U.S. economy is occurring in technology driven sectors such as computing and telecommunications, and in sectors, like financial services, where productivity and output can be greatly enhanced by advanced computer and telecommunications equipment and services. Favoring the rapid advance of these technologies and industries, and the jobs that they support, is the ability to finance research and development on a sales base that is global, rather than national, in size. The United States leads the world in international sales of many high technology goods and services. Unquestionably, developments in the WTO – from the Uruguay Round and more recent agreements – help the United States to finance research and investment and to achieve or maintain preeminence in many high technology sectors. The Information Technology Agreement (ITA), for example, includes 52 countries representing over 95 percent of trade in the \$600 billion global market for information technology products. Under the ITA, participants will eliminate tariffs, largely by the year 2000, on products of interest to the United States such as computers, computer equipment, semiconductors, telecommunications equipment, semiconductor manufacturing equipment and computer based-analytical instruments. The Agreement on Basic Telecommunications Services opened up 95 percent of the world telecommunications market (by revenues) to competition. Prior to this agreement only 17 percent of the top 20 telecommunications markets were open to U.S. firms. The market access opportunities opened

up by this Agreement cover the full range of innovative services and technologies pioneered in the United States that continue to propel growth in this sector. The WTO Financial Services Agreement includes commitments that cover an overwhelming share of the global trade from 102 countries. The Agreement encompasses \$38 trillion in global domestic bank lending, \$19.5 trillion in global securities trading and \$2.1 trillion in worldwide insurance premiums. Financial services is one of the United States' most competitive industries, contributing importantly to the growth of U.S. employment opportunities. Also, more recent work on electronic commerce has included an agreement to a moratorium on the imposition of customs duties on electronic transmissions.

Good trade agreements strengthen U.S. technological preeminence. First, increased and bound market access commitments under the WTO are essential not only in opening foreign markets for such U.S. export sales, but also for assuring certainty that, once open, such markets are not likely to be arbitrarily closed. Second, commitments to protect intellectual property made with respect to traded goods greatly reduce the likelihood of theft of benefits that would otherwise accrue on U.S. export sales of products whose research and development entail often large financial outlays. Commitments on intellectual property rights protection in the WTO help support the financial basis without which the healthy reinvestment in new technologies and products would become move difficult to achieve.

Dispute Settlement: While the U.S. record in WTO dispute settlement is impressive – having obtained favorable results on 23 of the 25 U.S. complaints that have been acted upon so far – the system for managing and resolving disputes has been more successful than is suggested by the mere number of cases brought and resolved. With the new assurance that cases brought can be pursued to their ultimate end – a panel ruling, compliance measures if appropriate, and legal suspension of proportional benefits in the case

of non-compliance – the dispute settlement mechanism of the WTO acts as a stronger deterrent against trade restrictive government actions than the prior, less effective GATT mechanism. While it is virtually impossible to estimate the economic benefits of such deterrence, such economic benefits are real and protect the interests of U.S. exporters, producers and workers every day.

C. Performance of the U.S. Economy Enhanced Over the Last Five Years

Since implementation of Uruguay Round commitments began and the WTO came into force, the U.S. economy has shown remarkable strength. The U.S. real gross domestic product (GDP) grew at a strong average annual rate of 3.9 percent during this period (fourth quarter 1994 to fourth quarter 1999). This average rate, in fact, represents some acceleration in GDP growth when compared to the 3.2 percent average for the early part of the recovery from the 1991-1992 recession (first quarter 1991 to fourth quarter 1994). Industrial production in the United States rose rapidly from 1994 to the end of 1999, more rapidly, in fact, than in any of the other major economies of the G-7 group of countries. Over this period, real industrial production in the United States increased by nearly 29 percent, compared to an 11 percent increase for Germany and a 6 percent increase for Japan.

Another notable feature of U.S. economic performance since 1994 has been the importance of business investment. Gross domestic investment (including investment in housing) in real terms has risen at an annual rate of 7.9 percent since the fourth quarter of 1994, double the rate of GDP growth. Such investment accounted for over 30 percent of total U.S. GDP growth in the five-year period. Looking more narrowly at non-residential fixed, or business investment, standing at over \$1.2 trillion in 1999's fourth quarter, its average

annual rate of increase over the period has been a strong 10.8 percent. Its share of current dollar GDP has risen from 10.6 percent in the fourth quarter of 1994 to 12.5 percent in 1999's fourth quarter. Such high levels and strong expansion of investment in plant and equipment are widely viewed as contributing importantly to the great advancement in a wide variety of growth-enhancing technologies in recent years, the strengthening of productivity and wage growth in the United States.

Turning to employment, net job expansion in the United States totaled nearly 14 million between 1994 and 1999 (December to December), and the unemployment rate dropped from 6.1 percent for 1994 to 4.1 percent in December 1999, the lowest rate since 1969. Manufacturing employment, however, declined by 151,000 from December 1994 to December 1999. The weakness in manufacturing employment was largely attributable to strong productivity growth in U.S. manufacturing production rather than any overall weakness in output growth. At the end of 1999, U.S. industrial output stood 27.9 percent higher in real terms than it was in 1994 – this being by far the strongest growth among the G-7 economies.

Under the impact of stronger business investment, new technologies and more open markets, U.S. labor productivity accelerated. The productivity of U.S. workers rose from an average annual rate of 1.8 percent in the 1990-1994 period, to 2.2 percent in 1994-1998, the first four years of the WTO's existence, and most recently to a 3.3 percent annual gain between the fourth quarter of 1998 and the fourth quarter of 1999. Productivity growth is widely regarded as the key to the enhancement of real labor compensation, and the experience of the last few years is broadly consistent with that view. After stagnating for the early part of the 1990s, including 1995, real compensation per hour entered a period of significant growth, rising at a 2.4 percent real average annual rate between the first quarter of 1996 and the fourth quarter of 1999. Even real average hourly

wages for non-supervisory workers in December 1999 stood 6 percent higher than they had been in 1996.

A recent study by the Council of Economic Advisers and the Department of Labor (December 1999), while looking at a somewhat more extended period than the five-year review of the WTO (January 1993 to November 1999), argues that strong U.S. job growth in this period has been dominated by jobs likely to be higher paying and that the benefits of enhanced compensation for U.S. workers have been widely shared. Among other things, the study shows that 81 percent of job growth has been in industry and occupation categories paying above-median wages, that the gains have not been concentrated among higher wage workers, as in some recent past experience, that job displacement rates have declined and that the poverty rate in the United States has fallen to its lowest level since 1979. The study also suggests that job gains have been strong for all major subgroups of the population, with the proportion of the population with jobs at record highs and unemployment rates at record lows for African Americans and Hispanics.

The growth and success of the U.S. economy over the last five years has been such that World Bank data show the United States sustaining and even expanding its per capita income lead. According to World Bank data, U.S. per capita real GDP (using purchasing-power-parity exchange rates) in 1998 exceeded the average for the handful of the world's other high income countries by more than 40 percent. U.S. per capita real GDP exceeds the average for the rest of the world combined – high, middle and low income countries – by nearly five fold.

The Uruguay Round, and nearly 300 other U.S. trade Agreements during the two Administrations of President Clinton, have contributed to this outstanding performance of the U.S. economy in recent years. The reduction of foreign trade barriers has helped the United States to increase production and

exports of the products in which it excels. Export-related jobs are concentrated in higher wage, higher skill fields that raise the living standards for U.S. families; U.S. workers and families benefit as a result of this export expansion. The purchasing power of workers' pay checks is further enhanced by the availability of a wider variety of high quality, competitively priced goods and services in the U.S. market. The estimated number of jobs supported by U.S. exports from 1994 to 1998 (latest year available) has increased by 1.4 million to a level of 11.7 million. These jobs tend to be good jobs. Jobs supported by goods exports in the United States are estimated to pay 13 percent to 16 percent more than the U.S. national average wage.

The export slowdown in 1998 and 1999 associated with the Asian financial crisis and the slow to negative economic growth experienced by a number of U.S. trading partners over this period temporarily halted export expansion and the growth of export supported jobs. Recovery in Asia and the strengthening growth prospects elsewhere have recently been reflected in the return of U.S. exports to growth in the latter half of 1999. Recovery and expansion abroad, particularly if complemented with additional efforts through the WTO to remove foreign trade barriers, will help strengthen the expansion of U.S. trade and the contribution trade makes to U.S. economic performance.

D. Changes in Trade Flows During the First Five Years of the WTO

Goods exports from the United States rose by more than a third in nominal value from 1994 through 1999, despite the Asian financial crisis and other economic problems abroad, in part due to U.S. foreign trading partners honoring their Uruguay Round and WTO commitments. U.S. goods exports flattened in 1998 and much of 1999 due to the Asian financial crisis, recessions in Latin America and weak growth in

many of U.S. trading partners. Nevertheless, the value of U.S. exports rose in nominal dollar terms by 36 percent between 1994 and 1999. (See Annex I, Table 1). Non-automotive capital goods, the largest U.S. export category, accounting for 45 percent of the \$695 billion in U.S. goods exports in 1999 (under Census definitions), grew by 51.5 percent between 1994 and 1999. High technology products, many of which are capital goods, recorded the fastest growth between 1994 and 1999, at 65.7 percent. At just over \$200 billion in 1999, high technology products accounted for just under 29 percent of U.S. goods exports. Under the impact of price weakness, anemic foreign demand associated with economic conditions abroad, and still highly restricted global markets, agricultural exports stagnated between 1994 and 1999, growing by only 4.1 percent. At \$48.2 billion, U.S. agricultural exports accounted for just under 7 percent of U.S. goods exports in 1999.

Exports expanded to a range of countries. Regionally, the growth of U.S. exports between 1994 and 1999 was about evenly split between high income countries (up 35.5 percent) and, despite the Asian financial crisis, middle and low income countries (up 35.9 percent; see Annex I, Table 2). Among major countries and regions, exports to Mexico experienced the fastest growth, at 70.8 percent, while exports to Canada, China, and the EU followed, at 43.5 percent, 41.4 percent and 40.7 percent, respectively. Strongly affected by weak economic conditions and an outright recession in that country, exports to Japan rose a mere 7.5 percent between 1994 and 1999.

Goods imports, reflecting the strong growth of the U.S. economy, increased by 54.7 percent from 1994 (under Census definitions; See Annex I, Table 3). With the exception of industrial supplies and materials (a category dominated by the price weakness of crude petroleum in much of this period), all categories of imports rose substantially. The largest category, capital goods (except automotive),

accounting for just under 29.0 percent of goods imports, rose by 61.0 percent. The overlapping category of high technology, accounting for just over 17.6 percent of imports, recorded the strongest growth (except for a small “other” category) of 84.1 percent. Consumer goods, at 23.4 percent of goods imports, rose by 63.8 percent; autos and parts with a 17.5 percent share of imports, rose 51.7 percent; and agricultural products, with a 3.6 percent share of imports, rose by 41.4 percent.

Regionally, import growth in 1994-1999 was stronger from low and middle income countries (up 69.6 percent) than from other high income countries (up 43.7 percent; see Annex I, Table 4). As with exports, the strongest growth in U.S. goods imports was recorded with Mexico (121.7 percent) and China (110.9 percent). Following were the EU at 63.5 percent and Canada at 54.5 percent.

In 1999, services exports, at \$275.5 billion, were just over 40 percent of the value of goods exports, while services imports, at \$199.7 billion were just 19.4 percent of the value of goods imports (See Annex I, Table 5, Table 6). The growth in services exports between 1994 and 1999 (37.9 percent) slightly exceeded that of goods (36.0 percent), while growth of services imports (51.4 percent) slightly lagged the growth of goods imports (54.1 percent).

Despite U.S. trade surpluses in the areas of agriculture, high technology products, capital goods and services – all areas of particular U.S. competitive strength in international commerce – the U.S. trade deficit for goods and services rose from \$98.4 billion in 1994 to \$271.3 billion in 1999 (see Annex I, Table 7). In the period 1995-1997, the goods and services trade deficit had been fairly stable at 1.3 percent to 1.4 percent of the U.S. GDP, rates less than half of those of the late 1980s. However, the U.S. trade deficit moved sharply higher in 1998 and 1999 under the impact sharp increases in incomes, household wealth and consumer demand in the United States; the increased desire of foreign

lenders and investors to participate in buoyant U.S. financial markets (or to invest directly); the Asian financial crisis; recessions in Latin America and Japan; and weaker growth in many other countries than in the United States. The goods and services deficit rose to 2.0 percent of GDP in 1998 and 2.9 percent in 1999. This latter rate was still below the record level of 3.3 percent in 1987.

At the end of the period, U.S. goods and services exports showed signs of recovery as the effects of the Asian financial crisis abated and economic growth picked up in some regions. On a year over year comparison, U.S. exports showed a decline in 10 out of the 11 months between May 1998 and March 1999, a period near the height of the Asian financial crisis. Average monthly exports during this period were 2.1 percent lower than in the same month of the preceding year. In the succeeding nine month period of April 1999 to December 1999, however, U.S. exports were higher in every month than a year earlier for every month but one. In the average month for this latter period, U.S. exports were 4.1 percent higher than in the preceding year.