



TRADE POLICY DEVELOPMENTS PAPER NO. 5

REPORT ON THE UNITED STATES

(for the period April 2011- June 2011)

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List of Abbreviations

ABI- Automated Broker Interface

ACE- Automated Commercial Environment

ACS- Automated Commercial System

ACTA- Anti-Counterfeiting Trade Agreement

ACTE- African Competitiveness and Trade Expansion

AD- Anti-dumping duty

AGOA- African Growth and Opportunity Act

AIFP- Automotive Industry Financing Program

AIP- Airport Improvement Program

AMT- Alternative minimum tax

APEC- Asia-Pacific Economic Cooperation

APHIS- Animal and Plant Health Inspection Service

ARRA- American Recovery and Reinvestment Act of 2009

ASPA- American Shrimp Processors Association

ATO- Air Traffic Organization

ATPA- Andean Trade Preference Act

BEA- Bureau of Economic Analysis

BEER Act- Brewer's Employment and Excise Relief Act

BIP- Broadband Initiative Program

BIS- Bureau of Industry and Security

BIT- Bilateral Investment Treaty

CARS- Consumer Assistance to Recycle and Save

CBERA- Caribbean Basin Economic Recovery Act

CBO- Congressional Budget Office

CBP- Customs and Borders Protection

CCC- Commodity Credit Corporation

CDCI- Community Development Capital Initiative

CIP- International Communication and Information Policy

CIT- U.S. Court of International Trade

CITA- Committee for the Implementation of Textile Agreements
CNL- Competitive Need Limitation
COAC- Commercial Operations of Customs and Border Protection
CPSC- Consumer Product Safety Commission
CVD- Countervailing duty
DARS- Digital audio radio services
DBS- Direct Broadcast Satellite (DBS)
DNSSEC- Domain Name System Security
DOE- Department of Energy
DOJ- Department of Justice
DTH- Direct-to-Home
EDA- Economic Development Administration
EESA- Emergency Economic Stabilization Act
EESA- Emergency Economic Stabilization Act of 2008
EGTRRA- Economic Growth and Tax Relief Reconciliation Act of 2001
EPA- Environment Protection Agency
FAA- Federal Aviation Administration
FAR- Federal Acquisition Regulation
FCC- Federal Communications Commission
FDA- Food and Drug Administration
FDA- Food and Drug Administration
FMC- Federal Maritime Commission
FMCSA- Federal Motor Carrier Safety Administration
FRS- Federal Reserve System
FSIS- Food Safety and Inspection Service
FTA- Free Trade Agreement
FTAAP- Asia-Pacific Free Trade Agreement
FTC- Federal Trade Commission
GAO- Government Accounting Office
GAP- Agreement on Government Procurement

GATS- General Agreement on Trade in Services
GATT- General Agreement on Tariff and Trade
GHG- Greenhouse gas emissions
GLBA- Gramm-Leach-Bliley Act (Financial Services Modernization) of 1999
GM- General Motors
GSP- Generalized System of Preferences
HHS- Department of Health and Human Services
HTSUS- Harmonized Tariff Schedule of the United States
IEEPA- International Emergency Economic Powers Act
IP- Intellectual Property
IPEC- Intellectual Property Enforcement Coordinator
IPO- Initial Public Offering
ITA- International Trade Administration
JCCT- Joint Commission on Commerce and Trade
JGTRRA- Jobs and Growth Tax Relief Reconciliation Act of 2003
LTFV- Less- than-fair-value
MALIAT- Multilateral Agreement on the Liberalization of Air Transport
MARAD- Maritime Administration of the Department of Transportation
MID- Manufacturer Identification Code
MRL- Maximum Residue Limits
MTB- Miscellaneous Tariff Bill
NAFTA- North-Atlantic Free Trade Agreement
NAMA- Non-Agricultural Market Access
NCFRR- National Commission on Fiscal Responsibility and Reforms
NIST- National Institute of Standards and Technology
NIST- National Institute of Standards and Technology
NME Non market economy
NMPF- National Milk Producer's Federation
NPR- Naval Petroleum Reserves
NTI- National Telecommunications and Information Administration

NTIA- National Telecommunications and Information Administration

OAQ- Overall Allotment Quantity

OEA- Office of Enforcement Analysis

OECD- Organization of economic cooperation and development

OFAC- Office of Foreign Assets Control

OFAC- Office of Foreign Assets Control

OMB- Office of Management and Budget

OSRA- Ocean Shipping Reform Act

PHTWG- Health Technical Working Group

PNTR- Permanent Normal Trade Relations

PRO-IP- Prioritizing Resources and Organization for Intellectual Property

PTA- Preferential Trade Agreements

QE- Quantitative Easing

SAVE- Systematic Alien Verification Entitlements

SEC- Securities and Exchange Commission

SPS- Sanitary and Phytosanitary agreement

SSPP- Strategic Sustainability Performance Plan

TAA- Trade Adjustment Assistance

TALF- Term Asset-Backed Securities Loan Facility

TBT- Technical Barriers on Trade

TIP- Treasury's Targeted Investment Program

TMODT- Management, and Operational Development Training

TPCC- Trade Promotion Coordinating Committee

TRIPS- Trade related aspects of Intellectual Property Rights

TRQ- Tariff Rate Quota

TRQ- Tariff-Rate Quota

TTB- Alcohol and Tobacco Tax and Trade Bureau

URAA- Uruguay Round Agreements Act

US- United States

USDOC- US Department of Commerce

USITC- United States International Trade Commission

USPTO- U.S. Patent and Trademark Office

USTDA- United States trade and development agency

USTR- United States Trade Representative

VEETC- Volumetric Ethanol Excise Tax Credit

WTO- World Trade Organization

\$- Dollar

Summary

The review report aims to track the developments during the review quarter, in the below-mentioned areas of trade policy. The forthcoming issues in these areas shall be closely monitored in the subsequent quarterly reports.

1. The progress of the Trans Pacific Partnership Agreement entered into force by 9 countries, which aims at culminating into Asia-Pacific Free Trade Agreement (FTAAP), shall be closely monitored. The US-China growing ties in sectors including intellectual property shall be analysed and compared to the co-operation efforts with India in aviation and food sectors as reported during the review quarter.
2. The increasing ties between US and Africa under AGOA and the progress of initiatives such as African Competitiveness and Trade Expansion (ACTE) developed during the review quarter shall be further studied and its probable impact on India shall be looked into.
3. Development in the US GSP scheme introduced in the year 2011.
4. The impact of changes in the customs procedure in US introduced in the review quarter, which mandate importers of textile and apparel products to identify the manufacturer through a manufacturer identification code reflecting the entity performing the origin-conferring operations with respect to commercial importations, meaning personal use shipments shall be studied.
5. The impact of the new Harmonized Tariff Schedule on Indian exporters and developments therein shall be reported.
6. The impact of Executive Order 13126 potentially impacting Indian exports of textiles, stones, bricks and zari to US shall be further analysed with reference to actual affect on sales of these products in the US.
7. The impact of Health and Compensation Act of 2010 which imposes 2% excise tax on certain payments received by foreign persons pursuant to contracts with the U.S. federal government, with respect to Indian contractors shall be further studied during subsequent reports.
8. The future of sunset review of Sulfanilic Acid conducted by US against (Docket no. A-533-806; ITC case no. 731-TA-561) shall be monitored. The progress of other administrative reviews against India especially of steel products, initiated during the review quarter shall be studied.
9. The developments in the American Recovery and Reinvestment Act of 2009 shall be closely monitored with special focus on introduction of any “Buy American” provisions favouring local product, content or labor in various units. The developments relating to repayment scheme under TARP shall also be focussed upon.
10. The impact of the introduction of Dairy COOL Act requiring country of origin labeling on liquid milk, cheese, yogurt, ice cream, butter, and “any other dairy product”, especially on Indian manufacturers will be analysed in detail.
11. The progress of stringent policy of standards with respect to testing methods of pressed and toughened glassware; admissibility process of imported medical devices into the US introduced during the review quarter shall be monitored and its impact on Indian manufacturers would be assessed.
12. The progress of the international tax agreements of the US with special focus on the Double Taxation Avoidance Agreement between US and India shall be further monitored in the subsequent reports.
13. The impact of deep cuts in farm subsidies as well as ethanol subsidies which can have a great impact on world market prices for these products and other allied agricultural products shall be studied and its affect on Indian farmers shall be assessed.

14. In the field of Intellectual Property, India shall closely monitor the developments under reviews of S. 301 report by USTR and S. 337 report under US tariff Act. The developments of the ACTA where the US is playing a crucial role, shall also be monitored as its impact on developing countries at large can affect India as well.
15. The impact of the Overall Allotment Quantity under the Sugar Marketing Allotment Program as well as reassignment of surplus cane sugar allotment to imports shall be analysed with respect to the Indian sugar exporters.

Part-I

I. Economic Environment: Macro-Economic Fundamentals

IA. Overview of the economy

The United States with a per capita GDP of \$47,200 is the largest national economy in the world. Its nominal GDP was estimated to be nearly \$14.7 trillion in 2010. The GDP share of the world total in terms of purchasing power parity for United States amounted to 19.77 percent in the year 2010, which makes the economy 18.12 percent ahead of the world average of 1.62%.¹

The US economy experienced a severe and protracted recession from 2008 to early 2010 following a sharp decline in the U.S. housing market. The economy showed signs of recovery in 2010 with the rate of growth reaching almost 3.1%. However, in the first quarter of 2011, the US economy grew at 1.8% (at an annualized rate), much lower than earlier predicted by IMF and other US agencies. The GDP growth projection for the second quarter of 2011 is between 1.7 percent and 2.3 percent based on initial estimates.

It is reported that the US economy lost 8.3 mn jobs during the 2007-09 recession. The labour market conditions were considered to be improving in the US, but at a very slow rate. Around 13 million jobs were reported to be created in the last 12 months, but were not clearly enough to alleviate unemployment. Employment numbers released by the U.S Department of labour indicate that non-farm payroll enrollment has grown by a modest 950,000 since 2009. A study by the consulting firm Deloitte indicates that even if the economy is able to create 200,000 jobs every month, it would take until the year 2020 to get the unemployment rates decline from the current rate of 9.2 percent to 6 percent.²

The tepid growth in unemployment figures has marked a shadow in the US housing market as well. The slow pace of job creation heightens uncertainty and the housing prices continue to fall in most metropolitan towns and inner cities. The worsening of the employment situation and the decline in home prices have a dampening effect on consumer spending. For several years before the onset of the recession in 2007, the US household spending was the leading engine of growth. According to the results available for the first quarter, the US consumer spending slowed down by 2.2 percent. Although these developments could be “transitory” as the Federal Reserve would like to call it, it does not augur well for the US economy and for the global economy.

As a result of the accumulating budget deficit, the share of public federal debt in the GDP continues to rise. According to current estimates, the federal debt amount to almost \$14 trillion. The US government borrowing is already touching its borrowing ceiling determined under the Federal Reserve Act, and further borrowing may not be possible without US Congressional authority. A widespread concern is

¹ *Economy Investment & Finance Reports, United States, Economic Statistics and Indicators*, ECONOMY WATCH, <http://www.economywatch.com/economic-statistics/country/United-States/year-2011/>.

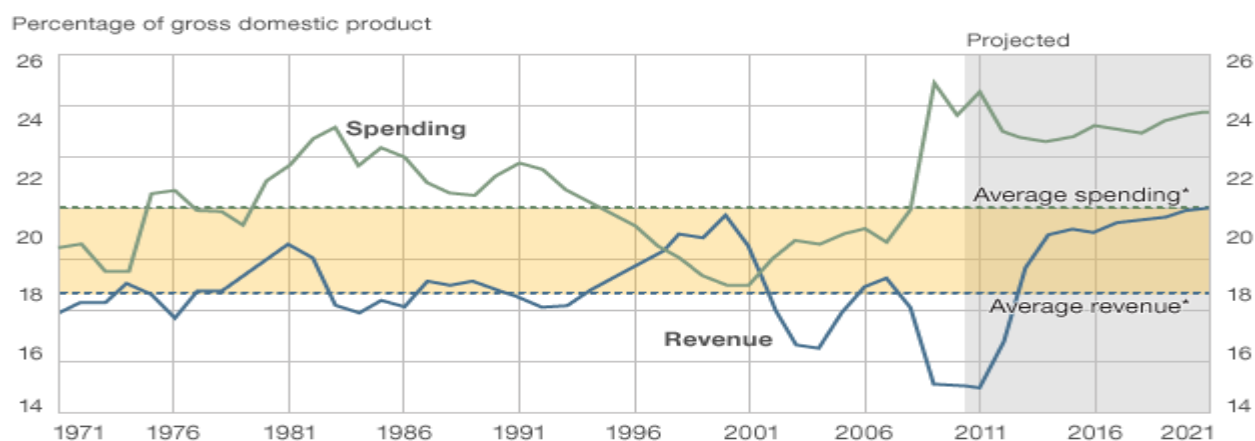
² *Economic and Financial Indicators*, THE ECONOMIST, June 25- July 1st, 2011.

whether the US government would be able to repay its debts in the midst of rising debts and slow economic growth.³ (See Chart I). Using 2010 figures, the International Monetary Fund places the total U.S. debt at 96.3% of GDP, which is far in excess of the 90% debt-to-GDP ratio—the so called “Maginot Line.”⁴ It is reported that in the absence of an agreement to enhance the borrowing ceiling, some of the credit rate agencies may downgrade the credit rating of the US from “AAA”.⁵ *The Economist* Magazine wrote in May 2009, long before the debt levels in the US arose to the current levels:

“Having spent a fortune bailing out their banks, Western governments will have to pay a price in terms of higher taxes to meet the interest on that debt. In the case of countries (like Britain and America) that have trade as well as budget deficits, those higher taxes will be needed to meet the claims of foreign creditors. Given the political implications of such austerity, the temptation will be to default by stealth, by letting their currencies depreciate. Investors are increasingly alive to this danger.”

Chart-I

US budget gap 1971 - 2021



On the aspect of BOP, the first quarter of 2011 was not very encouraging with respect to the export performance of the manufacturing industry. The international trade deficit in goods and services increased to \$50.2 billion in May from \$43.6 billion (revised) in April, as imports increased and exports decreased. The primary catalyst for the increase was a decline in earnings from foreign investments and the sharp increase in the cost of imported oil and gasoline. The US current account deficit is continuing to be quite high. The United States reported a current account deficit equivalent to 119 billion USD in the first quarter of 2011.⁶ The current account deficit is 3.1 percent of the GDP in the year 2011.

The U.S. dollar depreciated in nominal and real terms until 2011, extending a period of depreciation that began for well over a decade. The Federal Reserve policy over several years beginning from 1970s has been supportive of a decline in the value of the dollar since it could help the United States achieve a lower

³ US hits \$14.3tn debt ceiling, GUARDIAN NEWS, <http://www.guardian.co.uk/business/2011/may/16/us-government-hits-debt-ceiling>, Retrieved, 29 June, 2011

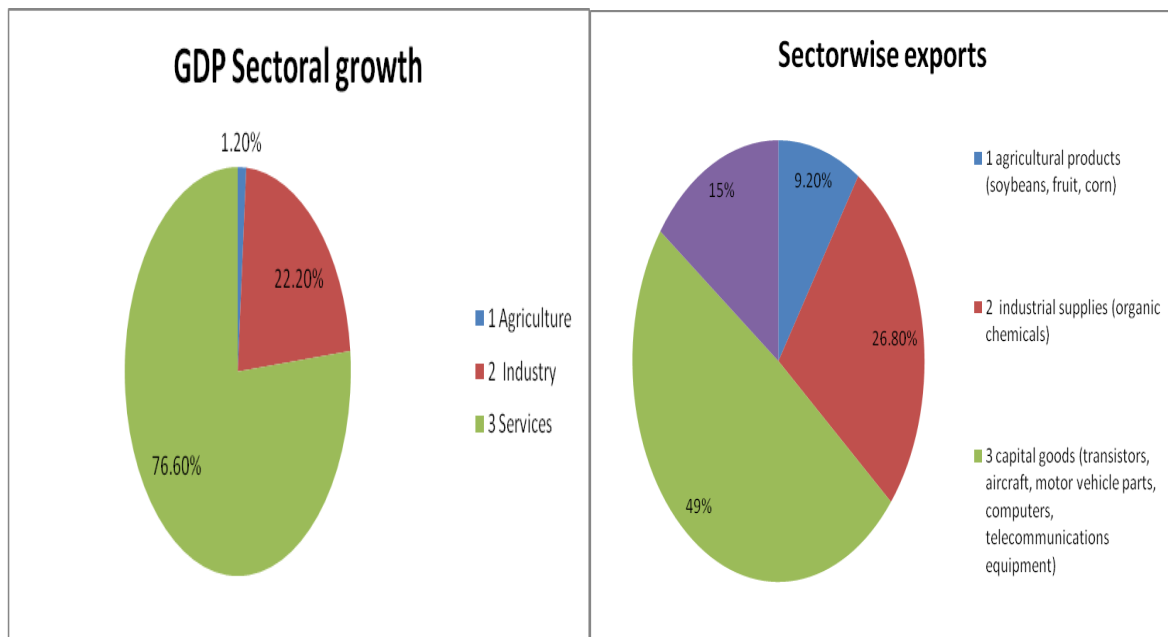
⁴ Kenneth Rogoff and Carmen Reinhart, *A Decade of Debt*, NBER Working Paper No. 16827, February 2011

⁵ Jackie Calmes. *Fight Over Debt Ceiling Risks Credit Rating, Moody's Warns*, THE NEW YORK TIMES. Retrieved 3 June 2011

⁶ Data from US Bureau of Economic Analysis, available at: <http://www.bea.gov/>

balance of payments deficit; such a monetary policy was considered to encourage exports and reduce the imports into the US. Since the dollar was floated in 1971, the value of the dollar against major currencies has declined by 35 percent. But, the United States lost the surplus it had in its balance of payments and moved into a deficit position in the early 1980s. It was almost balanced around 1991 but then the deficit grew throughout the rest of the 1990s reaching its lowest point around 2007. Throughout this time, the declining value of the dollar did not seem to help correct the movement of the balance of payments situation.⁷

The United States has used a wide range of monetary and fiscal policy instruments to address these harsh economic conditions and stabilize financial markets. One of the major economic stimuli was the \$700 billion Troubled Asset Relief Program (TARP) announced in October 2008. In January, 2009 the US Congress signed another bill providing an additional \$787 billion fiscal stimulus to be used over 10 years two-thirds on additional spending and one-third on tax cuts in order to create jobs and to help the economy recover. In July 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, in order to promote financial stability by protecting consumers from financial abuses, ending taxpayer bailouts of financial firms, dealing with troubled banks and improving accountability and transparency in the financial system. This Trade Policy Monitoring report highlights the progress of these newly introduced legislations and measures thereby analysing their current impact on the economy.



Source: *Bureau of Economic Analysis*

IB. US Institutional Framework

Legislative and Executive Framework

⁷*The dollar and the deficits*, COUNCIL ON FOREIGN AFFAIRS PUBLICATION, (December 2009), available at: <http://www.foreignaffairs.com/articles/65446/c-fred-bergsten/the-dollar-and-the-deficits>.

Established by Article I of the Constitution, the Legislative Branch consists of the House of Representatives and the Senate, which together form the United States Congress. The Constitution grants Congress the sole authority to enact legislation and declare war, the right to confirm or reject many Presidential appointments, and substantial investigative powers. The Executive branch of the government is headed by the President of the United States, who is responsible for implementing and enforcing the laws written by Congress. The Cabinet and independent federal agencies are responsible for the day-to-day enforcement and administration of federal laws. These departments and agencies have wide set of responsibilities towards different sections of the government. The Council of Economic Advisers is an agency within the Executive Office of the President, charged with offering the President objective economic advice on the formulation of both domestic and international economic policy.⁸

The important Ministries in the US which deal which have a bearing on the trade policy and enforcement measures would include:

Department of Agriculture- The U.S. Department of Agriculture (USDA) develops and executes policy on farming, agriculture, and food.⁹

Foreign Agricultural Service (FAS)- FAS is an agency within USDA which works to improve foreign market access for U.S. products. This USDA agency operates programs designed to build new markets and improve the competitive position of U.S. agriculture in the global marketplace.

Department of Commerce- The Department of Commerce gathers economic and demographic data, issues patents and trademarks, aims to improve understanding of the environment and oceanic life, and ensures the effective use of scientific and technical resources.¹⁰ The agency also formulates telecommunications and technology policy and promotes U.S. exports by assisting and enforcing international trade agreements. The prominent agencies working within the Department dealing with trade and commerce include: Bureau of Economic Analysis (BEA);¹¹ Bureau of Industry and Security (BIS);¹² Economic Development Administration (EDA);¹³ International Trade Administration (ITA);¹⁴ National Telecommunications and Information Administration (NTIA);¹⁵ National Institute of Standards and Technology (NIST);¹⁶ U.S. Patent and Trademark Office (USPTO).¹⁷ A brief highlight of some of these agencies is as follows:

The International Trade Administration- ITA functions to strengthen the competitiveness of U.S. industry, promote trade and investment and ensure fair trade through the rigorous enforcement of our trade laws and agreements. ITA is one of the principal organs supporting President Obama's recovery agenda and the National Export Initiative to sustain economic growth.¹⁸ ITA is organized into four complementary business units:

U.S. and Foreign Commercial Service- Promotion of U.S. exports, particularly by small and medium-sized enterprises and providing commercial diplomacy support for U.S. business interests around the world.

⁸ COUNCIL OF ECONOMIC ADVISERS, <http://www.whitehouse.gov/administration/eop/cea/about>

⁹ http://www.usda.gov/wps/portal/usda/usdahome?navid=AGENCIES_OFFICES_C

¹⁰ <http://www.commerce.gov/>

¹¹ <http://www.bea.gov/>

¹² <http://www.bis.doc.gov/>

¹³ <http://www.eda.gov/>

¹⁴ <http://trade.gov/>

¹⁵ <http://www.ntia.doc.gov/>

¹⁶ <http://www.nist.gov/index.html>

¹⁷ <http://www.uspto.gov/>

¹⁸ <http://trade.gov/about.asp>

Manufacturing and Services- Strengthening of U.S. competitiveness abroad by helping shape industry-specific trade policy.

Market Access and Compliance- Assistance to U.S. companies and helping to create trade opportunities through the removal of market access barriers.

Import Administration- Enforcing effectively the U.S. unfair trade laws including AD and CVD measures and to develop and implement other policies and programs aimed at countering foreign unfair trade practices. Import Administration also administers the Foreign Trade Zones program, the Statutory Import Program and certain sector-specific agreements and programs, such as the Textiles and Apparel Program and the Steel Import Monitoring and Analysis licensing system.¹⁹

The United States Patent and Trademark Office- USPTO is the Federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the Executive branch "promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries." The USPTO also registers trademarks based on the Commerce Clause of the Constitution (Article 1, Section 8, Clause 3).²⁰

Bureau of Economic Analysis- BEA is an agency of the Department of Commerce which prepares economic accounts statistics assisting the government and business decision-makers to understand the performance of the US economy. The cornerstone of BEA's statistics is the national income and product accounts (NIPAs), which feature the estimates of gross domestic product (GDP) and related measures.²¹

Department of Energy- The DOE is tasked with promotion of the energy security in US by encouraging the development of reliable, clean, and affordable energy. It administers federal funding for scientific research to further the goal of discovery and innovation.²²

Department of the Treasury- The Department primarily performs the functions of production of coin and currency, disbursement of payments to the public, collection of taxes, and the borrowing of funds. The Department co-ordinates its functions with federal agencies, foreign governments, and international financial institutions including: Alcohol and Tobacco Tax Bureau, Bureau of Public Debt, Internal Revenue Service, US Mint etc.

The Alcohol and Tobacco Tax and Trade Bureau- TTB, as an organ of Treasury Dept. oversees the labeling, taxes and other import-export requirements of alcohol and tobacco products.²³

Department of Homeland security- The chief roles of the department include protection of the state against terrorist attacks, managing infrastructure, natural resources etc.

US Customs and Borders Protection- CBP is one of organs within the Department of Homeland Security's, responsible for securing and facilitating trade and travel while enforcing U.S. regulations, including immigration and drug laws.²⁴ It facilitates the trade policy by formulating rules on automated support

¹⁹ <http://trade.gov/ia/>

²⁰ <http://www.uspto.gov/about/index.jsp>

²¹ <http://www.bea.gov/about/mission.htm>

²² www.energy.gov

²³ <http://www.ttb.gov/about/index.shtml>

²⁴ <http://www.cbp.gov/xp/cgov/about/>

and handling systems, cargo security, importing and exporting strategies along with several trade programs.

Department of Health and Services- The Department of Health and Human Services (HHS) is the United States government's principal agency for providing essential human services, conducting health and social science research, works to prevent disease outbreaks, assure food and drug safety, and provide health insurance.

Food and Drug Administration- The FDA is an agency within the HHS responsible for protecting the public health by assuring that foods are safe, wholesome, sanitary and properly labeled; human and veterinary drugs, vaccines and other biological products and medical devices intended for human use are safe and effective.²⁵

The Judicial Framework- Article III of the Constitution, which establishes the Judicial Branch, leaves Congress significant discretion to determine the shape and structure of the federal judiciary. Constitution also grants Congress the power to establish courts inferior to the Supreme Court, and to that end Congress has established the United States district courts, which try most federal cases, and 13 United States courts of appeals, which review appealed district court cases.

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices.²⁶ The 94 U.S. judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. Bankruptcy Appellate Panels (BAPs) were established under the Bankruptcy Reform Acts of 1978 and 1994. These acts set forth jurisdiction for appeals of bankruptcy decisions and authorizes the establishment of BAPs upon the order of the circuit judicial councils. These panels are a unit of the federal courts of appeals.

There are two special trial courts that have nationwide jurisdiction over certain types of cases.

The Court of International Trade addresses cases involving international trade and customs issues. Established under Article III of the Constitution, the Court has nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States. The mission of the Court is to resolve disputes by: providing cost effective, courteous, and timely service to those affected by the judicial process; providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and fostering improvements in customs and international trade law and practice and improvements in the administration of justice.²⁷

The United States Court of Federal Claims has jurisdiction over most claims for money damages against the United States, disputes over federal contracts, unlawful "takings" of private property by the federal government, and a variety of other claims against the United States.²⁸

Trade Institutional Framework

The United States International Trade Commission- USITC is an independent, quasi judicial federal agency with broad investigative responsibilities on matters of trade. The agency investigates the effects of dumped and subsidized imports on domestic industries and conducts global safeguard investigations. The

²⁵ <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194877.htm>

²⁶ www.supremecourt.gov

²⁷ <http://www.cit.uscourts.gov/informational/about.htm>

²⁸ www.uscfc.uscourts.gov

Commission also adjudicates cases involving imports that allegedly infringe intellectual property rights. The Commission serves as a Federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis are provided to the President, the Office of the United States Trade Representative (USTR), and Congress to facilitate the development of informed U.S. trade policy. The mission of the Commission is to (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, USTR, and Congress with independent analysis, information, and support on matters of tariffs, international trade, and U.S. competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States (HTS).²⁹

United States trade and development agency- USTDA is an independent U.S. Government foreign assistance agency that is funded by the U.S. Congress. USTDA provides grant funding to overseas project sponsors for the planning of projects that support the development of modern infrastructure and an open trading system. USTDA provides development assistance by building partnerships between U.S. companies and overseas project sponsors thereby bringing private sector solutions to developmental challenges.³⁰

The Office of the United States Trade Representative- USTR is the key agency that negotiates directly with foreign governments to create trade agreements, resolve disputes, and participate in global trade policy organizations. It was created in 1962 and has offices at Washington, Geneva, and Brussels. USTR officials meet governments, business groups, legislators and public interest groups to gather input on trade issues and to discuss the President's trade policy positions.

The USTR works in close consultation with Congress and other executive agencies on trade policy matters. The Trade Policy Review Group and the Trade Policy Staff Committee, administered and chaired by the USTR along with 21 federal agencies and offices are principal organs of USTR. The advisory committee system consists of 28 advisory committees, with a total membership of approximately 700 citizen advisors.³¹

US Customs and Immigration Enforcement- Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, this body is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within and out of the United States.³²

Other Institutions in the US

The Federal Reserve System- Often referred to as the Federal Reserve or simply "the Fed," it is the central bank of the United States. It was created on December 23, 1913, when President Woodrow Wilson signed the Federal Reserve Act into law to provide the nation with a safer, more flexible, and more stable monetary and financial system. The chief functions of the central bank include supervision of market, maintenance of the stability of the financial system financial services to the U.S. government, U.S. financial institutions, and foreign official institutions.³³

²⁹ http://www.usitc.gov/press_room/about_usitc.htm

³⁰ <http://www.ustda.gov/about/>

³¹ www.ustr.gov

³² <http://www.ice.gov/about/overview/>

³³ http://www.federalreserve.gov/faqs/about_12594.htm

Congressional Budget Office- CBO aids the government in economic and budgetary decisions on the wide array of programs covered by the federal budget and with the information and estimates required for the Congressional budget process. In late January of each year, CBO reports on the economic and budget outlook, including estimates of spending and revenue levels for the next 10 years under current law. This budget baseline serves as a neutral benchmark against which Members of Congress can measure the budgetary effect of proposed legislation. The baseline is constructed according to rules set forth in law, which generally instruct CBO to assume that current spending and revenue laws continue without change. Thus, the baseline is not a prediction of future budget outcomes. Rather, it reflects CBO's best judgment about how the economy and other factors will affect federal revenues and spending under existing laws. Each summer, CBO updates its baseline projections, incorporating a new economic forecast and the effects of laws that have been enacted to date in that session of Congress.³⁴

The U.S. Consumer Product Safety Commission- This Commission is charged with protecting the public from unreasonable risks of injury or death from thousands of types of consumer products under the agency's jurisdiction. The CPSC protects consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children.³⁵ The CPSC is responsible for developing voluntary safety standards with industry; issuing and enforcing mandatory standards; banning consumer products if no feasible standard would adequately protect the public; arranging the recall or repair of products by manufacturers; conducting research on potential product hazards; informing and educating consumers through the media, local and state governments, and private organizations; and responding to consumer inquires.

Environment Protection Agency- The EPA is an agency under the federal government of the government of United States. It has primary responsibility for enforcing the environmental statutes and regulations of the United States. It also develops and implements policies and written guidance in order to encourage compliance with environmental requirements. EPA performs the functions of coordinating EPA planning efforts and preparing EPA's Strategic Plan, developing and managing the EPA budget suggested to the government in matters of environmental policy decisions.³⁶ It focuses on the key issues of air and water pollution, waste-control, clean living and climate change by publishing climate change indicators in US.³⁷ EPA is also responsible for reviewing Environmental Impact Statements of other federal agencies' projects, under the National Environmental Policy Act (NEPA).

³⁴ <http://www.cbo.gov/aboutcbo/budgetprocess.cfm>

³⁵ <http://www.cpsc.gov/about/about.html>

³⁶ <http://www.epa.gov/planandbudget/>

³⁷ <http://www.epa.gov>

National Commission on Fiscal Responsibility and Reforms-The commission is a Presidential Commission created in 2010 by President Barack Obama to identify "*policies to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run*". The Commission is charged with identifying policies to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run. The Commission is entrusted with the duty of proposing recommendations designed to balance the budget, excluding interest payments on the debt, by 2015. In addition, the Commission shall propose recommendations that meaningfully improve the long-run fiscal outlook, including changes to address the growth of entitlement spending and the gap between the projected revenues and expenditures of the Federal Government.³⁸

Securities and Exchange Commission- is a federal agency which holds primary responsibility for enforcing the federal securities laws and regulating the securities industry, the nation's stock and options exchanges, and other electronic securities markets in the United States. In addition to the 1934 Act that created it, the SEC enforces the Securities Act of 1933, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes-Oxley Act of 2002 and other statutes. The SEC is responsible for implementing regulatory initiatives required under the Dodd-Frank Wall Street Reform and Consumer Protection Act. They also prepare annual reports and statistics based on the Securities Act of 1933; Trust Indenture Act of 1939; Investment Advisers Act of 1940 and Securities Investor Protection Act of 1970.³⁹

IC. Economic Environment

Introduction of new legislations

The advancement in the U.S. economy, post economic recession has been supported by the fiscal stimulus of the American Recovery and Reinvestment Act, along with the Financial Stability Plan, housing-related programs, and actions taken by the Federal Reserve to ease monetary and financial conditions. The Tax Relief Act, Unemployment Insurance Reauthorization and Job Creation Act of 2010 have also received President's approval in December, 2010. The employment legislation includes a 2 percent payroll tax cut and the extension of unemployment benefits through 2011.⁴⁰ Another initiative of the US government has been the introduction of the Troubled Asset Relief Program (TARP), which the Congress established on October 3, 2008 under Emergency Economic Stabilization Act (EESA). Under the original TARP legislation, the Department of the Treasury had the authority to purchase or insure \$700 billion in troubled assets held by financial institutions. The Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law on July 21, 2010 set a new spending ceiling for TARP, in effect prohibiting Treasury from incurring any additional obligations for programs that had not been initiated prior to June 25, 2010.

Impact of the American Recovery and Reinvestment Act

According to the estimates of CBO estimates, the ARRA's policies had the following effects in the first quarter of calendar year 2011:

³⁸ <http://www.fiscalcommission.gov/about>

³⁹ <http://www.sec.gov/about.shtml>

⁴⁰ *Report to Congress on International Economic and Exchange Rate Policies*, U.S. Department of the Treasury Office of International Affairs, (February 2011), available at [.http://www.treasury.gov/resource-center/international/exchange-ratepolicies/Documents/Foreign%20Exchange%20Report%20February%202011.pdf](http://www.treasury.gov/resource-center/international/exchange-ratepolicies/Documents/Foreign%20Exchange%20Report%20February%202011.pdf)

- (1) They raised real (inflation-adjusted) gross domestic product (GDP) by between 1.1 percent and 3.1 percent,
- (2) Lowered the unemployment rate by between 0.6 percentage points and 1.8 percentage points,
- (3) Increased the number of people employed by between 1.2 million and 3.3 million
- (4) Increased the number of full-time-equivalent jobs by 1.6 million to 4.6 million.

The effects of ARRA on output peaked in the first half of 2010 and have since diminished. The effects of ARRA on employment and unemployment are estimated to lag slightly behind the effects on output. CBO estimates that the employment effects began to wane at the end of 2010 and continued to do so in the first quarter of 2011.⁴¹

Impact of Troubled Relief Asset Program

According to the report released by CBO in March, 2011, TARP transactions mainly fall into four categories:

- Capital purchases and other support for financial institutions
- Financial assistance to the automotive industry
- Investment partnerships designed to increase liquidity in securitization markets
- Mortgage programs

AIG, one of the biggest recipients of the program, initially received financial assistance in two forms through the TARP: The Treasury purchased \$40 billion in preferred stock from AIG and established a \$30 billion line of credit for the company. The Treasury subsequently received another \$8 billion in preferred stock in exchange for providing \$8 billion to AIG pursuant to that line of credit.⁴²

In addition to receiving funds from the Capital purchase program, two financial institutions, Citigroup and Bank of America also received supplementary support through the Treasury's Targeted Investment Program (TIP). General Motors (GM) and Chrysler, along with their associated financing intermediaries, received just over \$79 billion in TARP funds. In addition, the federal government offered to guarantee \$5 billion in loans to parts manufacturers for GM and Chrysler; only \$413 million of such loans was actually disbursed, however, bringing the total assistance to the automotive industry to about \$80 billion. The total subsidy cost for assistance to the automotive industry is expected to be \$14 billion, in CBO's estimation.⁴³ Though the report as well as Treasury defend these bailouts and justify the program on a cost-benefit analysis as per what has been already repaid and future projections, there lie several grounds of scepticism to the future of this program. Initially, some financial institutions wishing to return their share of TARP funds were met with reluctance on the part of the Treasury to accept repayment of funds. The comments made by Treasury Secretary Tim Geithner in 2009 indicated that even re-paid funds could, and likely would, be re-disbursed under the TARP program⁴⁴ with no end in sight causes concern for taxpayers.⁴⁵

⁴¹ *Estimated Impact of the ARRA on employment and economic output from January 2011 through March 2011*, Congressional Budget Office, (May 2011), available at: <http://www.cbo.gov/ftpdocs/121xx/doc12185/05-25-ARRA.pdf>.

⁴² The maximum amount that could be borrowed under the line of credit was \$30 billion minus \$165 million for retention bonus payments made to employees of AIG Financial Products Corp. and AIG Trading Group, Inc., in March 2009.

⁴³ Report on TARP, CBO, (March 2011) available at: <http://www.cbo.gov/ftpdocs/121xx/doc12118/03-29-TARP.pdf>.

⁴⁴ *US Treasury Secretary dampens TARP repayment hopes*, THE TELEGRAPH, April, 2009, available at <http://www.telegraph.co.uk/finance/financialcrisis/5192039/US-Treasury-Secretary-Tim-Geithner-dampens-TARP-repayment-hopes.html>.

⁴⁵ TARP: A case study, Centre for Fiscal Accountability, available at: <http://www.fiscalaccountability.org/index.php?content=cog09-12>

For further information on the status of companies supported under the TARP program and their status of repayment, refer to Annexure II.

ID. Macroeconomic trends

National Income and Economic Balances during the review period⁴⁶

1.8 % increase in Real GDP at an annual rate in the first quarter of 2011 (Jan-April)

Downturn in Consumer spending, reflecting a slowdown in spending for goods which was partly offset by a slight pickup in spending for services

Downturn in non-residential fixed investment especially in power and communications sector, however an upturn observed in transportation equipment

Downturn in exports especially in foods, feeds, and beverages and nonautomotive consumer goods and capital goods

Upturn in overall imports despite a smaller decrease in imports of services

Source: Bureau of Economic Survey

Employment Situation

Increase in private sector payrolls by 268,000 during April, 2011. Recorded as the strongest monthly growth in five years

Addition of 2.1 million private sector jobs over 14 consecutive months, including more than 800,000 jobs since the beginning of 2011

Rise in unemployment rate to 9.0 percent, but it remained 0.8 percentage point below its November, 2010 level

Increase in the private sector payrolls by 83,000 during May, 2011 and slight rise in unemployment up to 9.1 percent.

Source: *Bureau of Economic Survey*

Source: *Council of Economic Advisers*⁴⁷

FY 2012 Budget Highlights⁴⁸

⁴⁶ *GDP and the Economy, Advance Estimates for the First Quarter of 2011*, Bureau of Economic Survey, May- 2011, available at http://www.bea.gov/scb/pdf/2011/05%20May/0511_gdpecon.pdf. The results of the annual revision of the national income and product accounts (NIPAs) together with the advance estimate of gross domestic product (GDP) for the second quarter of 2011, by the Bureau of Economic Analysis, are due to be released on July 29, 2011.

⁴⁷ Austan Goolsbee, *Employment situation in April*, Council of Economic Advisers, (May 6), available at <http://www.whitehouse.gov/blog/2011/05/06/employment-situation-april>; Austan Goolsbee, *Employment situation in 3rd June, 2011*, Council of Economic Advisers, available at <http://www.whitehouse.gov/blog/2011/06/03/employment-situation-may>

FY 2012 budget released on February 14, 2011 for (October 2011–September 2012)

Budget projects that the deficit will reach \$1,101 billion

Focused on a proposal to freeze non-security discretionary spending through FY2015 and increasing investments in various sectors. The budget proposal also included various tax proposals including the permanent extension of the 2001/2003/2010 tax cuts for families making less than \$250,000 and changes in the estate tax parameters. The President also proposes a fee on the financial services industry over at least the next 10 years to recoup the cost of TARP

The analysis of the Congressional budget office indicates that, of the various initiatives that the President is proposing, tax provisions would have been, by far the largest budgetary impact. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Act) extended through December 2012 many of the tax reductions originally enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). The President proposes to extend those reductions permanently, with some modifications, and to permanently index for inflation the amounts of income exempt from the alternative minimum tax (AMT), starting at their 2011 levels. In addition, the President proposes that, beginning in January 2013, estate and gift taxes return permanently to the rates and exemption levels that were in effect in calendar year 2009. Those policies would reduce tax revenues and boost outlays for refundable tax credits by a total of more than \$3.0 trillion over the next decade relative to the amounts projected in CBO's baseline. That total exceeds the \$2.7 trillion net increase in the deficit over the next 10 years that would result from the President's budget as a whole and President's other proposals would reduce the deficit, on balance, over 10 years.

There are other initiatives under the budget which could either narrow or widen the deficit. President's proposal to freeze Medicare's payment rates for physicians at the current level through the 2012–2021 projection period would boost outlays by \$0.3 trillion relative to the amount under current law which calls for sharp reductions in payments to physicians. Higher spending on transportation programs would add another \$0.2 trillion to the total deficit between 2012 and 2021. In contrast, the President's budget includes a total of \$0.9 trillion less in spending for defense over that period than the amount projected in CBO's baseline. The main reason for the difference is that the baseline incorporates the assumption that funding for war-related activities will continue at \$159 billion a year (the amount provided so far for 2011, annualized) with adjustments for inflation, whereas the President's budget includes a request for appropriations of \$127 billion for such activities for 2012 and a placeholder of \$50 billion a year thereafter. In addition, the President's proposal to cap at 28 percent the rate at which itemized deductions reduce a taxpayer's income tax liability would decrease the deficit by \$0.3 trillion over the next decade.⁴⁹

Fiscal and Monetary Policy

⁴⁸ Mindy R. Levit, *The Federal Budget: Issues for FY2011, FY2012, and Beyond*, Congressional Research Service Report, (April 29, 2011), available at <http://fpc.state.gov/documents/organization/162752.pdf>.

⁴⁹ *Preliminary Analysis of the President's Budget for 2012*, CBO, (March 2011), available at: <http://www.cbo.gov/doc.cfm?index=12103>.

As a measure to combat the effects of economic recession, the US Central Bank has adopted an unconventional form of monetary policy in the form of quantitative easings (QE). Under quantitative easing, the central bank buys assets in an effort to drive down long-term interest rates once it has already cut short-term rates to zero. In November 2010, the Fed announced an increase in the second part of quantitative easing by buying \$600 billion of Treasury securities by the end of the second quarter (June) of 2011. On June 7, 2011, Fed Chairman, Ben Bernanke suggested that, rather than buy more assets, the Fed is more likely to respond to the slowdown by holding on to the assets that it has for a longer period, thereby indicating the initiation of the third round of quantitative easing.⁵⁰ On the fiscal side, there have been proposals by the Republicans for \$2.5 trillion cuts over the coming decade. However these policies of the government are much under scrutiny as critics question the impact of QE as unemployment for the review quarter has not been promising. On the proposal of short-term cuts on discretionary spending by the Republicans, the critics remark that this could affect economy's growth and the policy could remain unsuccessful as it cannot counter the long term crisis.⁵¹

Part- II

II. Trade and Investment Policy Framework

Under the U.S. Constitution, Congress has the authority to regulate international trade, while the President has the authority to conclude international agreements.⁵² The executive branch's main agency on trade policy matters is the Office of the United States Trade Representative (USTR). The USTR is responsible for "*developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries*".⁵³ Under the U.S. federal structure of government, state governments have considerable independent regulatory authority. Public procurement, and some services sectors, such as insurance and professional services are regulated mostly at the state level. States may also adopt technical regulations and sanitary and phytosanitary measures. Focussing on innovation, infrastructure and education, the President's address to State of Union, 2011 highlights issues of export promotion, emerging ties with China, South Korea, reduction of barriers to growth and investment but at the same time enforcing "common-sense safeguards to protect the American people".

The Trade Policy agenda developed by the USTR and delivered by the President to the Congress by March 1 of each year is an important trade document which reviews the Administration's progress on trade issues and outlines future objectives. A brief highlight of the 2011 Trade Policy Agenda includes:

⁵⁰ *Bernanke signals no new round of easing*, FINANCIAL TIMES, June 7, 2011 available at <http://www.ft.com/cms/s/0/2b82bade-912c-11e0-9668-00144feab49a.html#axzz1TJZPbQj5>.

⁵¹ *Policy Fatigue*, THE ECONOMIST, June 11-17, 2011.

⁵² The Constitution of the United States of America, Article I Section 8 and Article II Section 2.

⁵³ USTR online information, "*Mission of the USTR*", Viewed at: <http://www.ustr.gov/about-us/mission>.

U.S.-Korea Free Trade Agreement (FTA) as an important vehicle to expand U.S. trade along with discussions on the pending Colombia and Panama FTAs

Review of Trans-Pacific Partnership (TPP), priorities for the Doha negotiations include sectoral liberalization in non-agricultural market access (NAMA) and market access for services trade

Focus on Russia's and other countries' WTO accession negotiations

Protection of American intellectual property by enforcing the Anti-Counterfeiting Trade Agreement (ACTA) in 2011. With regard to China, the Agenda envisions continued negotiations under the auspices of the Joint Commission on Commerce and Trade (JCCT), as well as other levels of engagement for IP rights

U.S.-African two-way trade and further boost to economic development in Africa. Administration also aims to open markets with great potential for U.S. exporters and investors (such as Turkey, Ukraine and South Africa)

Review of the U.S. "Model Bilateral Investment Treaty" in order to strengthen investment tools in 2011

Source: USTR

IIA. WTO commitments

The United States is a founding member of the WTO. It undertook commitments as a result of the post-Uruguay Round negotiations on telecommunications and financial services. The United States is a party to the Agreement on Government Procurement and a participant in the Information Technology Agreement.

Uruguay Round Agreements Act was an Act of the Congress which came into effect in 1995. This Act provides for regulations and tariff modifications which carry out the comprehensive international trade provisions of the Uruguay Round Agreements. Several changes were made to the patent and copyrights regime in US, in pursuance of the Act.⁵⁴

Under the Act, the U.S. Trade Representative is required to consult with Congressional committees regarding: adoption of an interpretation or amendment of the WTO or any other multilateral trade agreement; WTO dispute settlement panels; adoption of any decision that affects the rights or obligations of the U.S. or changes any federal or state law. The Act provides that no provision of the Uruguay Round Agreements that is inconsistent with a law of the U.S. shall have any effect. The President must consult with the states to achieve conformity of state laws and practices with the Agreements, and the U.S. Trade Representative must establish a state participation process to address issues relating to the Agreements that directly relate to or impact the states. No state law, however, may be declared invalid on the ground that the provision or application is inconsistent with the Agreements. The Act sets up a framework for federal-state cooperation to assist the states in complying with the Agreements. It however excludes all federal laws from application of the Agreements unless specifically provided. The Trade Representative must report annually to Congress, the major activities and work programs of the WTO; each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding federal or state law; each proceeding before a panel or the Appellate Body that was initiated during the previous year regarding federal or state law; other enumerated items. Every five years, the report to Congress must

⁵⁴ Office of administrator for policy and External affairs, URAA, USPTO, http://www.uspto.gov/ip/global/patents/ir_pat_uruaguay.jsp.

include an analysis of, the effects of the WTO Agreement on U.S. interests; the costs and benefits to the U.S. of its participation in the WTO; the value of continued U.S. participation.⁵⁵

The last report submitted by the US was a part of the 2010 Trade Policy Agenda and the 2009 Annual Report which was published on 1 March 2010.

IIB. Preferential Trade Agreements and Arrangements

Bilateral and regional preferences

The U.S. has 12 agreements in force with 17 countries: Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore. Agreements with three countries—Colombia, Panama, and South Korea currently await Congressional approval. The United States is also in the process of negotiating a regional FTA, the Trans-Pacific Partnership, with Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam.⁵⁶

The U.S. FTA policy addresses a wide variety of government activity. One example is the eventual elimination of tariffs charged on all products coming from the other country, if the product meets the rules of origin spelled out in the agreement. For instance, a country that normally charges a tariff of 5% of the value of the incoming product will eliminate that tariff for products they can certify come from the United States.⁵⁷ The rules of origin can make using the FTA negotiated tariffs a bit more complicated, but help to ensure that U.S. exports, rather than exports from other countries, receive the benefits of the agreement. Some other types of commitments frequently found in FTAs include: the right of a U.S. company to bid on certain government procurements in the FTA partner country; the right of a U.S. investor to get adequate compensation if its investment in the FTA partner country is taken by the government (e.g., expropriated); the right of U.S. service suppliers to supply their services in the FTA partner country; protection and enforcement of American-owned intellectual property rights in the FTA partner country; and the right of U.S. exporters to participate in the development of product standards in the FTA partner country.⁵⁸

Developments during the review quarter

A brief highlight on the on-going negotiations of FTAs during the reporting period is as follows:

US-Korea - It will be the second largest trade agreement in terms of volume, next to NAFTA. The agreement proposes relaxation of US car tariffs in South Korea by full elimination of tariff on passenger cars and trucks by the end of 5 years from the implementation of this agreement. Phase out /tariff elimination on electric and hybrid cars is also proposed. It aims to eliminate 40% tariff on US beef muscle meat in 15 years and enhance the confidence of Korean consumers on other beef products from US. Korea managed to exclude import of rice from US. It also proposes a duty free trade of 60% of textile

⁵⁵ Uruguay Round Agreements Act, 19 U.S.C. §§ 3501-3624, December 8, 1994, as amended 1996 available at: <http://wildlifelaw.unm.edu/fedbook/uruguayr.html>

⁵⁶ *Free Trade Agreements*, INTERNATIONAL TRADE ADMINISTRATION, <http://trade.gov/fta/>.

⁵⁷ US/TPR/S/235

⁵⁸ *US trade agreements*, EXPORT.GOV, <http://export.gov/FTA/index.asp>.

and apparels. It aims at formation of a consultative committee on review of trade remedies of both nations.⁵⁹

US-Columbia - This agreement focuses on services, investment, IP, labour and environment as the core areas incorporates certain non-social clauses. On June 15, 2011, Columbia finalized an action plan relating to labour rights in order to facilitate better labour conditions and their rights. It aims at eliminating 80% duty on consumer and industrial export. It also proposes elimination of certain rules of origin principles.⁶⁰

US-Panama- Issues in this agreement revolve around labor standards, environmental agreements and access to generic drugs. US-Panama tax enforcement and exchange agreement (measure to curb money laundering and drug trafficking) was implemented in Panama via a legislation. The US government plans to implement the same before finally negotiating the FTA. As per White House fact sheet of April 19, 2011, the discussion on FTA, in US parliament will begin soon. The agreement proposes formation of committee on trade capacity building. Other key areas include: Agro industry, Information and communication technology, artisans products.⁶¹

However the negotiations on the on-going FTA's met a halt the during last week of May when US administration insisted that the US Congress reauthorize the Trade Adjustment Assistance (TAA) programme before ratifying any of these agreement. President Obama's announcement was followed by a public letter of support signed by 41 Senate Democrats who stated that, despite their "differing views on elements of the trade agenda," they were still "unified in their belief that the first order of business, before they should consider any FTA, is securing a long-term TAA extension." The TAA provides support for US workers who lose jobs as a result of foreign competition. The programme underwent a series of reforms in 2009, but later expired in February of this year. The reforms expanded the programme to cover both services workers and those workers displaced by import competition from non-FTA countries, among other changes. The 2009 reform and reauthorization was part of the American Recovery and Reinvestment Act of 2009. Given this situation, the deadline of August, 2011 when these FTAs could be ratified would get extended.⁶²

(2) During May, 2011, the United States Trade Representative Ron Kirk and Mexican Secretary of Economy Bruno Ferrari signed an agreement under the NAFTA that seeks to ease burdens on U.S. companies, especially smaller manufacturers, seeking to export telecommunications products to Mexico, while maintaining high levels of safety protection and facilitating cross-border trade. Under the Mutual Recognition Agreement between the Government of the United States and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment, Mexican regulatory authorities will accept tests performed by recognized U.S. laboratories to determine the

⁵⁹*Congressional Research Service report on ongoing US-Korea FTA*, (May 2011), <http://fpc.state.gov/documents/organization/164269.pdf>

⁶⁰*Congressional Research Service report on ongoing US-Columbia FTA*, (April 2011), <http://fpc.state.gov/documents/organization/164272.pdf>

⁶¹*Congressional Research Service report on ongoing US- Panama FTA*, (March 2011), <http://fpc.state.gov/documents/organization/162768.pdf>

⁶²ICTSD reporting; "Trade Votes Needed in U.S. Congress by August, Hatch Says," BLOOMBERG, 26 May 2011; "Senate Democrats support White House on trade deals delay," THE HILL, 23 May 2011; "Republican senator presses Obama on trade deal delay," REUTERS, 26 May 2011, [EPAs](#), [Volume 15](#), [Number 20](#), 1st June 2011; US Trade Pacts with Colombia, Korea, Panama Face New Setback *available at* <http://ictsd.org/i/news/bridgesweekly/107862/>

conformity of telecommunications equipment with Mexican technical requirements, rather than requiring additional testing before the American products can be sold in Mexico.⁶³

(3) With regard to the pre-existing FTAs there were no specific developments during the reporting period. The issue of discrimination in labor rights in Bahrain violating the letter and spirit of the FTA signed between the countries however surfaced in unofficial reports. The probe in this matter continues.⁶⁴

(4) As a part of the Trade Policy agenda, the following strategic talks and trade co-operation efforts of the US are also to be noted:

Trans-Pacific Partnership Agreement- Trans-Pacific Partnership Agreement is a multi-lateral agreement which aims at integrating the economies of 9 nations including: United States, Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam towards an efficient business infrastructure which in time could possibly culminate into an Asia-Pacific Free Trade Agreement (FTAAP). The US committed to the agreement in its full force on November 14, 2009. The agreement concluded its sixth and seventh rounds of negotiations during the review quarter. The sixth round took place in April at Singapore and the seventh round at Vietnam in June, 2011.

The TPP provides for the complete elimination of tariff lines among Chile, New Zealand, and Singapore, and 99% liberalization with Brunei, all to be phased out over time. The services schedule follows a negative-list approach, meaning that a category of services trade is covered in the agreement unless specifically excluded. The services schedules reportedly represent a significant expansion on the parties' services commitments to the WTO. The agreement contains chapters addressing potential non-tariff barriers such as customs valuation procedures, SPS standards, TBT, competition policy, intellectual property rights, government procurement policy, temporary movement of business persons, provisions governing the settlement of disputes, labor and environmental cooperation as well as financial services and investments.⁶⁵

During the negotiations held during the review quarter, the parties discuss on intellectual property, transparency, telecommunications, customs, environment, industrial goods, sanitary and phytosanitary issues, technical barriers to trade, and environment. In addition, the United States tabled legal text on regulatory coherence, a new issue to feature for the first time in a trade agreement that is aimed at making the regulatory systems of the TPP countries operate more seamlessly and addressing so-called "behind the border" issues that are increasingly the key barriers U.S. business face in trying to access foreign markets. Prior to the start of the sixth round, the TPP teams exchanged initial offers on services and investment, government procurement, and product-specific rules of origin, as well as requests on for improvements in the initial offers on goods. In order to accelerate the process, the TPP countries agreed in during the seventh round of negotiations to redouble their efforts in the months ahead. They agreed to intensify their intersessional work, including consulting on existing proposals internally, providing revised offers on the various market access areas, and working to develop proposals to address outstanding issues. In addition, the teams agreed to identify issues on which to focus at the next round in

⁶³ Press Release, *New U.S.-Mexico Telecommunications Agreement Will Ease Burdens on U.S. Manufacturers*, May 2011, available at <http://www.ustr.gov/about-us/press-office/press-releases/2011/may/new-us-mexico-telecommunications-agreement-will-ease-b>.

⁶⁴ U.S. to probe Bahrain labor rights concerns - AFL-CIO, (June 16, 2011), <http://www.reuters.com/article/2011/06/16/usa-bahrain-trade-idUSN1623851320110616>.

⁶⁵ *Trans Pacific Economic Agreement*, Congressional Research Service, (June 2009), <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA512782>.

the United States in early September, and to seek to reach agreement on as many of those issues as possible at the next round.⁶⁶

However, several controversial issues including: National Milk Producer's Federation (NMPF) of New Zealand's exclusion for the dairy industry in any potential FTA negotiations with New Zealand; US cattle industry's concerns over speculated removal of New Zealand's tariff rate quota (TRQ) and government procurement issues between US and New Zealand raise serious concerns. One of the most controversial aspects of the agreement attracted huge criticisms in the light of the leak of US chapters on Intellectual Property Rights. Two broad IPR negotiating objectives elucidated in the U.S. trade promotion authority (P.L. 107-210) in effect between 2002-2007 included: (1) Applying the existing IPR protection to digital media and (2) Negotiating trade agreements in terms of IPR that "reflect a standard of protection similar to that found in U.S. law." The inclusion of several stringent IP norms include: Creation of an 'importation right' preventing the parallel importation of books, music and movies, that will increase costs and potentially jeopardize the proposed World Blind Union Treaty; Mandating protection of geographical indications with an open ended extension of trademark laws to the detriment of local producers; Extending the term of copyright protection to 70 years after death of the author, or if the term is determined by publication, 95 years after first publication, or if not published 25 years after creation, 120 years from creation; Enhancing the ban on circumventing technological protection measures preventing the legitimate uses of works by making it harder for people to legally break digital locks; Criminalizing small scale or personal infringement and involving the state in civil affairs; Allowing the seizure of small scale suspected infringing goods, particularly by customs officers at airports; High obligations to qualify for safe harbor limitations to liability, which have an overall impact that lacks due process in administration and overly favours copyright holders.⁶⁷

The agreement also becomes strategic for India from the geo-political point of view. United States though not being a formal part of the East Asia Summit (EAS) has started increasing ties with the Asian economies via TPP, trilateral security discussions with Japan and Australia and increasing co-operation ties with India.

US- China, strategic and economic dialogue: On 10th May, 2011 China pledged to Implementing better IP enforcement norms, revising government procurement, level playing field for export financing, strengthen norms against money laundering, counterfeit, opening of services sector to US and continued exchange rate adjustment in China. ⁶⁸

APEC meeting- As part of his efforts to help create more American jobs by increasing U.S. exports to fast-growing markets, Senate Finance Committee Chairman Max Baucus (D-Mont.) headed to the Asia-Pacific Economic Cooperation (APEC) meetings. By connecting U.S. businesses with the Trade and Small-and-Medium-Sized Enterprises Ministers attending the APEC meetings in Montana, Baucus is working to increase trade between the United States and the 20 other APEC member economies and making it easier for American small businesses to export to the quickly-expanding region.⁶⁹

US's support to Russia's accession in WTO- During the review quarter, there were many developments in US's support towards Russia as it plans to become a part of WTO by the end of this

⁶⁶ Sixth and Seventh Rounds of Progress of TPP, USTR, (June 2011), <http://www.ustr.gov/about-us/press-office/press-releases/2011/april/strong-sixth-round-progress-propels-tpp-negotiations>.

⁶⁷ *TPP Agreement: Carrying the water for America*, EAST ASIA FORUM, (April 17, 2011), <http://www.eastasiaforum.org/2011/04/17/trans-pacific-partnership-agreement-carrying-the-ater-for-america/>.

⁶⁸ <http://www.treasury.gov/press-center/press-releases/Pages/TG1172.aspx>

⁶⁹ <http://finance.senate.gov/newsroom/chairman/release/?id=78518ffa-8e18-466c-ac3a-42c53b8edee7>

year. As an integral part of its “reset” strategy for relations with Russia, US President Barack Obama’s administration is making a concerted diplomatic effort to help Russia finalize its 17-year track to the WTO. The EU, along with Russia’s BRICS partners - Brazil, China, India, and South Africa - is also strongly pushing for the move. The issues for Russia mainly range around: industrial car assembly rules, phytosanitary and veterinary controls, concerns over rule of law, especially regarding the Russian investment scheme and respect for intellectual property rights. US in considering the restoration of permanent normal trade relations (PNTR) with Russia which could create better market opportunities for American businesses and investors. US Vice President Joe Biden has also been conducting talks with Georgian President Mikheil Saakashvili over Georgia’s position on Russian accession, and Switzerland is currently involved in mitigating the conflicts between Russia and Georgia.⁷⁰

Other Economic initiatives:

US-India co-operation in aviation training in India- USTDA support will partially fund a Technical, Management, and Operational Development Training (TMODT) Program that is intended to provide an avenue for the DGCA to enhance the skills of its officers in order to meet the growing need for aviation regulatory oversight in India, as well as provide DGCA officials with hands-on experience in the regulatory oversight practices and standards utilized by U.S. industry and the U.S. aviation system managed by the Federal Aviation Administration (FAA).⁷¹

US-India co-operation in agriculture and food security- In response to President Obama's call for increased cooperation in agriculture during his trip to India in November, USTDA is supporting a reverse trade mission to the U.S. for twelve Indian representatives to learn about modern cold chain technologies and U.S. practices and standards. Because of the lack of cold chain infrastructure to keep fruit and vegetables fresh in India, a quarter or more of agricultural produce is wasted in a country where many go hungry. The trade mission will aim to introduce the technology necessary to improve India's cold chain infrastructure, which would enhance the country's ability to maintain the value and quality of its agricultural production. An efficient cold chain system is an important component of India's agricultural economy and is vital for the country's development.⁷²

IIC. Unilateral preferences

The United States continues to grant unilateral preferential tariff treatment under the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Economic Recovery Act (CBERA), and the Andean Trade Preference Act (ATPA).

"Competitive Need Limitations" require the termination of a country's GSP eligibility with respect to a specific product if U.S. imports from that country account for 50% or more of the value of total U.S. imports of that product, or exceeded a certain threshold (US\$135 million in 2008) in the previous

⁷⁰ *Russian Billionaires Criticize US, EU on WTO Delays That Slow Investment*, BLOOMBERG, (June 17, 2011); *Obama wants Russia trade vote before WTO deal: trade official*, REUTERS, (June 22, 2011); *Russia accession to WTO to be delayed if 3 issues in 3 weeks not solved*, RIA NOVOSTI, (June 16, 2011); *Russia can join WTO this year but only on right terms - Medvedev*, RIA NOVOSTI, (June 17, 2011); *Russia to ignore all WTO commitments until admitted - Putin*, RIA NOVOSTI, (April 8, 2011); *BRICS nations call for Russia to be admitted to WTO*, RIA NOVOSTI, (April 14, 2011); *Russia in WTO - reasonable compromise with Georgia is possible*, TREND, (March 10, 2011). *Russia Finds US Support in WTO Accession Efforts, Though Obstacles Remain*, BRIDGES WEEKLY TRADE NEWS DIGEST, Volume 15, Number 24, (June 29, 2011), available at <http://ictsd.org/i/news/bridgesweekly/109707/>.

⁷¹ http://www.ustda.gov/news/pressreleases/2011/SouthAsia/India/IndiaAviationTraining_050511.asp

⁷² http://www.ustda.gov/news/pressreleases/2011/SouthAsia/India/IndiaColdChainRTM_042611.asp

calendar year. However, the President may grant a waiver of these limitations, and the product may continue to be eligible for duty-free treatment.

In December 2006, the President signed into law the Africa Investment Incentive Act of 2006, which extends, until September 2012, duty-free treatment on imports of clothing produced in "lesser developed" AGOA beneficiaries, regardless of the origin of the fabric or yarn.⁷³ The quantity of clothing that can benefit from this treatment each year is capped at 3.5% of U.S. annual clothing imports.⁷⁴ The U.S. authorities note that Africa has never achieved the 3.5% cap. Under the "abundant supply provision", no benefits were available if the third country fabric or yarn was available in "commercial quantities" in AGOA countries.

Developments during the review quarter

Since the GSP scheme of USA expired after a decade on December 31, 2010, the U.S. Trade Representative Ron Kirk and Secretary of State Hillary Clinton sent a letter on April 7, 2011 to leaders of Congress, urging them to reauthorize the Generalized System of Preferences, the Andean Trade Preference Act, and the Trade Adjustment Assistance program.⁷⁵

However, even till May, 2011 the renewed GSP scheme was not finalized and the Senate Committee was still reviewing it.⁷⁶

In the meanwhile, a report published by USITC in April, 2011 entitled: "*Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences: 2010 Review of Competitive Need Limitation Waivers*" was submitted to the USTR for the consideration of the president.⁷⁷ This report provides advice related to the effect of granting competitive need limitation (CNL) waivers on four products. The countries, articles, and Harmonized Tariff Schedule of the United States (HTS) subheadings for the proposed CNL waivers are as follows: lysine and its esters from Brazil (HTS 2922.41.00); certain construction and industrial tires from Sri Lanka (HTS 4011.93.80); seamless rubber gloves other than medical gloves from Thailand (HTS 4015.19.10); and calcium-silicon ferroalloys from Argentina (HTS 7202.99.20). These products are all currently eligible for duty-free treatment under the provisions of the U.S. Generalized System of Preferences (GSP).⁷⁸ As requested by the United States Trade Representative (USTR), this report provides (1) advice on whether any industry in the United States is likely to be adversely affected by a CNL waiver; (2) advice as to the probable economic effect of waiving the CNL on U.S. industries producing like or directly competitive articles, on total U.S. imports, and on consumers; and (3) information as to whether like or directly competitive products were being produced in the United States on January 1, 1995.

⁷³ Lesser developed beneficiary sub-Saharan African countries are defined as countries with a per capita gross national product of less than US\$1,500 a year in 1998 as measured by the World Bank.

⁷⁴ 19 USC 3721(c)(1)(B).

⁷⁵ Ambassador Kirk and Secretary Clinton Urge Congress to Reauthorize Three Important Trade Programs, United States Dept. Of State, April 2011 available at: <http://www.state.gov/secretary/rm/2011/04/160279.htm>.

⁷⁶ SUNDAY TIMES REPORT, (May 1, 2011), <http://sundaytimes.lk/110501/BusinessTimes/bt29.html>.

⁷⁷ <http://www.usitc.gov/publications/332/pub4228.pdf>.

⁷⁸ These products are currently designed as eligible for duty-free treatment under the GSP program; however, the President's authority to provided duty-free treatment to articles designated as eligible for such treatment expired on December 31, 2010, and as of April 5, 2011 this authority had not been extended. USTR, "GSP Expiration: Frequently Asked Questions," http://www.ustr.gov/webfm_send/2465 (accessed April 5, 2011).

III. Investment Agreements and Arrangements

IIIA. Investment Regulation

Apart from the GATS, under which the United States has made commitments regarding the supply of services through commercial presence, the United States is a party to the OECD Code of Liberalization of Capital Movements⁷⁹, and the OECD National Treatment Instrument, which is not legally binding.⁸⁰ The United States has 40 bilateral investment treaties (BITs) in force (June 2011).⁸¹ None was signed or entered into force during the period under review. The NAFTA and most FTAs signed by the United States contain separate chapters on foreign investment, which are substantively identical to the provisions of U.S. BITs. The United States reviewed "model" BIT, which it uses as a basis for BIT negotiations. The purpose of the review is to "ensure that the model BIT is consistent with the public interest and the overall U.S. economic agenda".⁸² The United States has 45 trade and investment framework agreements, which establish an institutional framework for consultations on bilateral trade and investment policies.⁸³

While there were no developments during the reporting period, with respect to investment policy or investment measures related to national security, some of the emergency measures which can have possible trade impacts were noticed:

At the end of April 29, 2011, Treasury continued to hold investments of a cumulative amount of USD 570 million in 84 financial institutions under the Community Development Capital Initiative (CDCI), a component introduced under TARP on 3 February 2010. The investments had been concluded on 30 September 2010; none of the investments had been repaid as of April 29, 2011. Investments in individual banks under the programme range from USD 7000 to almost USD 80.9 million. No fixed date is set for repayment of the capital.⁸⁴

IIIB. Investment promotion measures

None specifically reported during the period. There have been measures/schemes with respect to different FTA's being negotiated, which have been highlighted above.

IIIC. Aid-For-Trade

Aid for trade is a component of the economic growth pillar of U.S. foreign assistance.⁸⁵ At the Sixth WTO Ministerial Conference in 2005, the United States pledged to double aid for trade support from US\$1.3 billion to US\$2.7 billion annually by 2010. U.S. foreign assistance is given primarily on a bilateral

⁷⁹ The Code of Liberalization contains legally binding obligations regarding the liberalization of specified capital movements, including foreign direct investment, subject to certain exceptions and country-specific reservations.

⁸⁰ The National Treatment Instrument contains a commitment, which is not legally binding, to accord national treatment to foreign-owned or controlled firms in the post-establishment phase.

⁸¹ For further information on the treaties, see: http://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp.

⁸² Federal Register, 74 FR 34071, 14 July 2009.

⁸³ USTR online information, "Trade and Investment Framework Agreements", Viewed at: <http://www.ustr.gov/trade-agreements/trade-investment-framework-agreements>.

⁸⁴ TARP Transaction Report 18 April 2011 for period ending 14 April 2011.

⁸⁵ For a description of the U.S. foreign assistance framework, see: <http://www.state.gov/f/c23053.htm>. The terms "aid for trade", "trade capacity building assistance", and "trade related assistance" are used interchangeably by the United States to describe its aid-for-trade activities.

basis.⁸⁶ The Office of the Director of U.S. Foreign Assistance at the Department of State has overall responsibility for foreign assistance policy, including the preparation of budgets. The USTR has a mandate to ensure the effectiveness and coherence of trade capacity building activities. It works with two lead agencies, USAID and the Millennium Challenge Corporation (MCC), and several other federal agencies. Committees to coordinate trade-capacity-building activities exist under CAFTA-DR and the FTA with Peru. The United States also maintains the African Global Competitiveness Initiative to help African exporters benefit from AGOA.

Developments during the review quarter

In June, 2011, during a trip to Lusaka, Zambia for the 2011 African Growth and Opportunity Act (AGOA) Forum, United States Trade Representative Ron Kirk announced a new Obama Administration initiative to build trade capacity called the African Competitiveness and Trade Expansion (ACTE) initiative. ACTE will provide \$120 million over four years to build on the success of Africa's regional trade hubs and help African nations to realize AGOA's full potential.⁸⁷ This venture will expand the production of tomato paste for local and regional markets, and will eventually source all inputs from local Zambian farms. Currently, FreshPikt-owned farms supply 50 percent of the factory's inputs, with the rest coming from nearly 1,200 small-scale Zambian farmers. Officials on both sides were pushing for the US Congress to renew the bill prior to its expiration on 30 September 2015. Thirty-seven sub-Saharan countries currently benefit under AGOA, with the Democratic Republic of Congo having recently lost its eligibility; the Obama Administration announced the decision in a presidential proclamation in December, which took effect on 1 January.⁸⁸

IV. Trade policies and practices by measure

IVA. Measures Directly Affecting Imports

Customs procedures

U.S. Customs and Border Protection (CBP), part of the U.S. Department of Homeland Security, is in charge of administering and enforcing customs legislation. The Advisory Committee on Commercial Operations of Customs and Border Protection, also known as COAC, is the formal venue for consultations with the private sector on customs matters.⁸⁹

Customs regulations are contained in title 19 of the Code of Federal Regulations. CBP maintains a searchable database of its rulings.⁹⁰ It also publishes the Customs Bulletin, a weekly compilation of decisions, rulings, regulations, and regulatory proposals on customs matters. Importers can request advance written rulings from CBP.⁹¹ Part 174 of title 19 of the Code of Federal Regulations specifies

⁸⁶ Figures from the OECD indicate that almost 90% of U.S. foreign assistance was provided on a bilateral basis in 2008. For details, see: <http://www.oecd.org/dataoecd/42/5/44285062.gif>.

⁸⁷ Press release, *USTR Kirk Announces \$120 Million Initiative to Build Trade Capacity in Africa, Concludes 10th Annual African Growth and Opportunity Act Forum in Zambia*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, (June 2011), available at <http://www.ustr.gov/about-us/press-office/press-releases/2011/june/ustr-kirk-announces-120-million-initiative-build-trad>.

⁸⁸ ICTSD reporting; Agence France-Presse, "Obama calls for ceasefire in Sudan," (June 15, 2011), available at: <http://ictsd.org/i/news/bridgesweekly/108713/>.

⁸⁹ Omnibus Budget Reconciliation Act of 1987, Public Law 101-203.

⁹⁰ Customs Rulings Online Search System. Viewed at: <http://rulings.cbp.gov>.

⁹¹ 19 CFR 177.

procedures for administrative review of certain customs decisions.⁹² The number of protests filed for administrative review totalled 37,485 in 2008, and 36,022 in 2009. Judicial review is conducted by the U.S. Court of International Trade (CIT), and beyond that, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Supreme Court. In 2009, 423 cases were filed in the CIT involving customs issues. There are no special registration requirements for importers; the use of a customs broker is optional. Only U.S. citizens can be licensed as customs brokers.⁹³

Under the SAFE Port Act of October 2006, CBP must operate a "single portal system" for the collection and distribution of "standard electronic import and export data".⁹⁴ The Act makes participation mandatory for federal agencies with import and export responsibilities, although the Office of Management and Budget (OMB) may exempt certain agencies. According to the authorities, the OMB has not exempted any agencies. In addition to CBP, 46 agencies participate in the single window. The single window is not yet fully operational due to delays in the implementation of the Automated Commercial Environment or ACE, the cargo processing system that will include the single window.⁹⁵ The authorities have not set a target date for the establishment of a fully operational single window.

Customs valuation

In 1996, the United States notified the WTO that its customs valuation legislation, as notified to the GATT, remained valid even after the entry into force of the WTO Customs Valuation Agreement.⁹⁶ Previously, the United States had notified the amendments to incorporate into U.S. law the provisions of the Agreement on Implementation of Article VII of the GATT.⁹⁷ Relevant provisions of custom law are contained in the Trade Agreements Act of 1979. The transaction value, which is the preferred valuation method under U.S. legislation, excludes international freight, insurance, and other c.i.f. charges. The transaction value method is used for approximately 86% of imports.⁹⁸

Developments during the review quarter

On April 1, 2011, CBP proposed a regulatory amendment providing that interest will accrue on outstanding duties owed to CBP associated with the purchase of equipment for, or repair to, a vessel while it is outside the United States. CBP indicated that this amendment would ensure CBP regulations reflect that CBP will collect interest in situations where an owner or master of a vessel fails to pay vessel repair duties within 30 days of CBP's issuance of a bill.⁹⁹

Rules of origin

The United States applies non-preferential and preferential rules of origin. All merchandise imported into the United States may be reviewed by CBP with respect to country of origin. Non-preferential rules of origin are applied for purposes of MFN treatment, government procurement, country of origin marking, and anti-dumping and countervailing measures. In administering non-preferential rules of origin, CBP uses "substantial transformation" as the primary test to determine the origin of an imported good with

⁹² 19 CFR 174.

⁹³ CBP (2005).

⁹⁴ Section 405.

⁹⁵ ITDS (2009).

⁹⁶ WTO document G/VAL/N/1/USA/1, (April 1, 1996). The reply by the United States to the checklist of issues on customs valuation is contained in GATT document VAL/2/Rev.1/Add.1, 16 July 1981.

⁹⁷ GATT document L/5005, (July 17, 1980)

⁹⁸ Based on a survey carried out by CBP between October 2008 and July 2009. See USITC (2009c).

⁹⁹ CBP Proposes Regulatory Amendment on Interest Accrual on Vessel Repair Duties in White & Case Newsletter.

components from more than one country. Under this test, a good is considered to originate in the last country where it underwent a process that resulted in a new and different article of commerce with a name, character, or use different from its components.¹⁰⁰ The substantial transformation test may be adapted and interpreted further by agencies other than CBP to fit the needs and purposes of the particular context in which non-preferential rules are applied.

Developments during the review quarter

(1) On March 17, 2011, CBP adopted a final rule related to CBP regulations on the country of origin textile and apparel products. The final rule eliminates the textile declaration requirement for all importations of textile and apparel products. Other amendments covered by the final rule reflect changes resulting from, in part, the 1 January 2005 expiration of the Agreement of Textiles and Clothing and the elimination of textile quotas from World Trade Organization (WTO) members. Under the final rule, CBP will require importers of textile and apparel products to identify the manufacturer through a manufacturer identification code (MID). The MID must reflect the entity performing the origin-conferring operations only with respect to commercial importations, meaning personal use shipments will be excepted. Additionally, products such as umbrellas, seat belts, parachutes, watchstraps and doll clothing are exempt from the MID requirement.¹⁰¹

(2) On April 11, 2011, CBP published notice of its final determination in CBP Headquarters concerning the country of origin of certain office workstations which may be offered to the US Government under a government procurement contract. CBP concluded that the assembly of the Vivo and Ethospace office workstations in the United States from parts made in China, Mexico and the United States constituted a substantial transformation and, thus, the origin of the workstations for purposes of US government procurement was the United States. In reaching its conclusion, CBP considered the fact that the two workstations contained 40 and 14 components, respectively, and that the major components of the workstations were of US origin.¹⁰²

(3) On March 25, 2011, the Committee for the Implementation of Textile Agreements (CITA) published in the Federal Register its determination that certain faux suede bonded with faux fur pile fabric is not available in commercial quantities in a timely manner from the US-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) countries. The product will therefore be added to Annex 3.25 of CAFTA-DR. Unrestricted quantities of fabrics, yarns and fibres listed in Annex 3.25 may be imported into the United States and receive preferential tariff treatment under CAFTA-DR.¹⁰³

(4) Customs procedures and rules of origin for the ongoing US FTAs are as follows:

US-Korea FTA- The USTR reports the following proposals:

- Agreement to establish expedited customs procedures for express shipments through the electronic submission of manifest and the release of express shipments before they physically arrive.

¹⁰⁰ See, for example, *Anheuser-Busch Brewing Assn. v. United States*, 207 U.S. 506 (1908); and *United States v. Gibson-Thomsen Co.*, 27 CCPA 267 (1940).

¹⁰¹ CBP Adopts Amendments to Regulations in *White & Case Newsletter*.
on Country of Origin of Textiles and Apparel in *White & Case Newsletter*.

¹⁰² CBP Determines Origin of Office Workstations for US Government Contracts in *White & Case Newsletter*.

¹⁰³ Unrestricted Imports of Faux Suede Eligible for Preferential Treatment Under CAFTA-DR in *White & Case Newsletter*.

- Agreement to allow importers, exporters and producers the ability to obtain binding advance rulings from each side's respective customs authorities on matters such as tariff classification, whether a good qualifies for preferential tariff treatment and country of origin marking, among a list of items.
- Agreed to trend-setting origin procedure commitments governing how importers will make claims for preferential tariff treatment. The United States and Korea agreed to allow importers to make claims based on the importer's knowledge that the good is originating, which reflects the fact that importers today have intimate knowledge of the production process, and the source of the inputs/components from which comprise their goods, and therefore possess the necessary information to make a claim for preferential treatment.
- Agreement to clear and comprehensive product-specific rules to determine which products can benefit from the preferential tariff treatment of the FTA.¹⁰⁴

US-Colombia FTA- The items mainly focus on: fungible goods and materials, accessories, spare parts and tools, set of goods, packaging materials and containers for retail sale, packaging material and materials for shipment.¹⁰⁵

Tariffs

MFN and other trading partners

The United States continues to apply the general policy of granting Normal Trade Relations (that is MFN) duty status to all trading partners¹⁰⁶ with the exceptions of Cuba and the Democratic People's Republic of Korea. Imports from these two countries are subject to the rate imposed by the Smoot-Hawley Tariff Act of 1930. The United States provides conditional MFN tariff treatment to several countries of the former Soviet Union, all of which have bilateral commercial agreements with the United States.¹⁰⁷

Applied MFN tariffs- In common with only a few other WTO Members, the United States levies customs duties on the basis of the f.o.b. value at the point of export, rather than c.i.f. value at point of entry.¹⁰⁸

WTO bindings- Following the Uruguay Round, the United States bound all tariff lines in Chapters 1-97, except two lines covering crude petroleum. In general the applied tariff is the same as the bound tariff and there is very little difference between the average bound and applied rates.¹⁰⁹

Preferential tariffs- Tariff preferences may be granted by the United States either unilaterally or in the context of bilateral or regional free-trade agreements.

Temporary tariff suspensions- Until recently, Congress has been in the practice of temporarily suspending or reducing tariffs on imports of a wide variety of goods (usually inputs for manufacturing) through miscellaneous tariff bills (MTBs). Proposals for temporary duty suspensions or reductions are reviewed

¹⁰⁴ Summary of the U.S.-Korea FTA, Office of United States Trade Representative, *available at*: <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/april/summary-us-korea-fta>.

¹⁰⁵ Summary of US-Colombia FTA, USTR, Ch. 4, Rules of origin *available at*: http://www.ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset_upload_file788_10154.pdf

¹⁰⁶ 19 USC 2136

¹⁰⁷ Azerbaijan, Belarus, Kazakhstan, Moldova, Russia, Tajikistan, Turkmenistan, and Uzbekistan.

¹⁰⁸ Calculations made by the WTO secretariat on United States, US/TPR/S/235 on p. 25.

by the relevant Congressional bodies, Executive Branch agencies, and the U.S. International Trade Commission.

Developments during the review quarter

- (1) On January 1, 2011, US government introduced a new Harmonized tariff schedule, 2011.¹¹⁰ This schedule introduced new tariff changes with respect to different countries. This schedule contains changes made as a result of the Committee for Statistical Annotation of Tariff Schedule, the 484(F) Committee; and annual stage rate reductions. HTS article descriptions and headings affected by the changes include the following:¹¹¹

Articles	HTS code
Child safety gates	3924, 4421, 7323
Gypsum plaster board	6809
Off-road vehicle labeled for use by persons 16 years or younger	8703
High chairs	9401
Cribs, toddler beds, bassinets, cradles	9403
Children's mattresses	9404
Tricycles, scooters and toys labeled for use by infants and children	9503
Greeting cards	4909.00.40
"Certified organic" for certain fruits/vegetables, coffee and grains	0709, 0804, 0808, 0810, 0901, 0902, 0901, 0902, and 1201
Re-melted stainless steel bars	7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00
Diamond saw blades	8202.39.00
Threshed or similarly processed tobacco	2401.20
Sub-bituminous coal	2701.19.00
Steel wind towers	7308.20.00

- (2) As reported by a Permanent Delegation of the United States to the WTO on May 2011, US Manufacturing Enhancement Act of 2010 "Miscellaneous Tariff Bill" extending until 31 December 2012 temporary suspensions of import tariffs on certain products used by manufacturers, i.e. raw materials, chemicals, yarns, and items not manufactured domestically

¹⁰⁹ *ibid*

¹¹⁰ USITC, available at: <http://www.usitc.gov/tata/hts/index.htm>.

¹¹¹ Harmonized Tariff Schedule for US, 2011, *available at*: <http://hts.usitc.gov/PDFs/1100chgs.pdf> ; see also, <http://hts.usitc.gov/PDFs/1100chgs.pdf>.

(items in HS Chapters 16; 20; 21; 28; 29; 30; 31; 32; 33; 34; 42; 44; 55; 62; 63; 64; 69; 71; 84; 85; 87; 90; 92)¹¹²

Non-tariff border measures (Use of Social clauses)

On May 27, 2011, the U.S. Department of Labor's Bureau of International Labor Affairs published a revised list of products that federal contractors must certify under Executive Order 13126 are not produced with forced or indentured child labor.¹¹³ The list appeared in the May 31 edition of the Federal Register. The products with respect to India have been highlighted as follows:

Product	Countries
Bricks	Burma, China, India , Nepal, Pakistan
Cottonseed (hybrid)	India
Embroidered Textiles (zari)	India , Nepal
Garments	Argentina, India , Thailand
Stones	India , Nepal

Implication of this list- Executive Order 13126 on the "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," was signed on June 12, 1999. The EO is intended to ensure that federal agencies enforce laws relating to forced or indentured child labor in the procurement process. It requires the Department of Labor, in consultation with the Departments of State and Homeland Security, to publish and maintain a list of products, by country of origin, which the three Departments have a reasonable basis to believe, might have been mined, produced or manufactured by forced or indentured child labor. Under the procurement regulations implementing the Executive Order, federal contractors who supply products on a list published by the Department of Labor must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed.¹¹⁴ Inclusion of items from India in the list, may affect its imports especially in the categories of textiles, stones, bricks and zari.¹¹⁵

Other charges affecting imports

Imports continue to be subject to a merchandise processing fee and a harbour maintenance fee. The merchandise processing fee applies to imports valued at more than US\$2,000.¹¹⁶ The fee is set at 0.21% of the import value; the statutory minimum and maximum are US\$25 and US\$485. Imports eligible for preferences under U.S. FTAs (except with Jordan and Morocco), ATPDEA, and AGOA's textile and apparel provisions are exempt. Imports from Israel, CBERA and lesser developed countries are also

¹¹² Report On G20 Trade Measures (Mid-October 2010 To April 2011), Issued by Director General WTO, 2011 [herein after G-20 report, 2011]

¹¹³ www.dol.gov

¹¹⁴ Executive Order, 13126 available at: <http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

¹¹⁵ Department of Labour, News on Updated list under EO 13126 , available at <http://www.dol.gov/opa/media/press/ilab/ILAB20110784.htm>.

¹¹⁶ 19 USC 58c.

exempt, regardless of whether they qualify for preferences. The application of the merchandise processing fee has been extended until October 2014, following the adoption of the American Jobs Creation Act of 2004.

Exported cargo is exempt from the harbour maintenance fee. This follows a 1998 decision by the U.S. Supreme Court that the harbour maintenance fee bore "the indicia of a tax", and that the value of the export cargo the basis on which the fee is determined did not "correlate reliably with the federal harbour services, facilities, and benefits used or usable by the exporter".¹¹⁷

The Tax Relief Act of 2010 temporarily extends the existing tax rate structure for two more years. Tax rates will change in the year 2013 unless new legislation is passed. The United States applies federal excise taxes on: fuels; crude oil and petroleum products; ozone depleting chemicals; sport fishing equipment; bows, quivers, broadheads, and points; arrow shafts; certain tyres; "gas guzzler" automobiles; heavy trucks, trailers, and tractors; vaccines; distilled spirits; tobacco products; cigarette papers and tubes; and firearms and ammunition.¹¹⁸ The tax is applied on both imports and domestic goods at the same rates. Beer is also subject to federal excise tax. A reduced rate of US\$7 is applied on the first 60,000 barrels of beer produced in a year by a domestic brewer with annual production of less than two million barrels of beer. Imported beer is subject to the rate of US\$18 per barrel of 31 gallons, the same rate as domestic beer that is not eligible for the reduced rate.¹¹⁹ Imported and domestic wine is subject to federal excise tax ranging from US\$0.226 to US\$3.40 per wine gallon.¹²⁰

The United States does not apply a value added tax. Sub-federal governments may impose sales taxes and additional excise taxes on imports and domestic products.

Developments during the review quarter

On January 2, 2011 President Obama signed into law the James Zadroga 9/11 Health and Compensation Act of 2010 (Act). The Act added to the Internal Revenue Code a 2% excise tax on certain payments received by foreign persons pursuant to contracts with the U.S. federal government (new Code section 5000C). The tax applies to payments received pursuant to contracts entered into on or after January 2, 2011.

The new excise tax applies to "*specified Federal procurement payments*" received by foreign persons. Section 5000C(b) defines the term "specified Federal procurement payment" as "any payment made pursuant to a contract with the Government of the United States for (1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or (2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States."¹²¹

¹¹⁷ United States v. United States Shoe Corp., 523 US 360 (1998), 31 March 1998. Section 11116(b)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (P.L. No. 109-59) amended the harbour maintenance tax to exempt exports.

¹¹⁸ 26 USC 4001 et seq.

¹¹⁹ 26 USC 5051.

¹²⁰ 26 USC 5041.

¹²¹ United States Tax Alert, 8 Feb, 2011 available at: http://www.deloitte.com/view/en_GX/global/services/tax/3c94850b8860e210VgnVCM3000001c56f00aRCRD.htm.

IVB. Trade Contingency measures

AD and CVD legislation is contained in title 19 of the U.S. Code (sections 1671-77). Regulations are included in Title 19 of the Code of Federal Regulations.¹²² The International Trade Administration in the U.S. Department of Commerce and the U.S. International Trade Commission (USITC) are responsible for the administration of AD and CVD legislation in the United States. Until its repeal in 2006, U.S. law included the Continued Dumping and Subsidy Offset Act of 2000 (known as the *Byrd Amendment*, or Title X of Pub. L. No. 106-387) which generally provided that anti-dumping and countervailing duties collected following a complaint from U.S. companies were to be distributed to those companies that filed the complaint. The WTO in January 2003 ruled that the *Byrd Amendment* was an illegal violation of certain trade agreements and that it was to be repealed. When it was not repealed, a WTO Panel in November 2004 granted authority to complainants (including the EU) to impose retaliatory measures against the United States for its failure to respect its international obligations. The *Byrd Amendment* was eventually repealed in February 2006. However, disbursements of amounts collected under the *Byrd Amendment* remained as issues to be addressed by the U.S. courts. The U.S. Court of Appeals for the Federal Circuit in 2009 upheld the constitutionality of the support requirement contained in the *Byrd Amendment*.¹²³ Under the petition support requirement, if a domestic company publicly expressed support for the imposition of an AD or CVD order, then it was eligible to receive some part of the funds collected as a result of the order. The Federal Circuit subsequently summarily reversed the U.S. Court of International Trade's decision that the "petition support requirement" was unconstitutional.¹²⁴ The U.S. Supreme Court was later asked to review this decision in late 2009.¹²⁵ On May 17, 2010, the U.S. Supreme Court denied review of a Federal Circuit decision upholding the requirement in the now repealed Continued Dumping and Subsidy Offset Act of 2000 (sometimes referred to as the "Byrd Amendment") that parties choosing not to petition for redress or to support a meritorious antidumping or countervailing duty petition are ineligible to receive any share of the duties collected. This Supreme Court's order denying review puts an end to the litigation and represents a major victory for domestic industries that have been harmed by injurious dumping.¹²⁶

On April 25, 2011, The CBP released a Priority Trade Issue, announcing the schedule for disbursements of withheld funds from fiscal years 2006-2010 under the Continued Dumping and Subsidy Offset Act of 2000. The portions of the funds would be distributed to affected domestic producers, beginning sometime after March 31, 2011 and continuing until disbursements for each fiscal year from 2006 through 2010 were completed. Distributions will be processed separately for each fiscal year and, if applicable, updated *Byrd Amendment* statements for each fiscal year will be issued to the most recent address on file. CBP also will post and update annual reports on its Web site. Lastly, CBP stated that several court cases challenging various provisions of the *Byrd Amendment* are still unresolved and that for

¹²² Parts 201, 207, 351, 353, and 355.

¹²³ SKF USA, Inc. v. United States, 556 F.3d 1337 (Fed. Circ. 2009).

¹²⁴ PS Chez Sidney, L.L.C. v. United States, 2010 U.S. App. Lexis 22584 (Fed. Circ. 2010).

¹²⁵ WTO Secretariat, based on USITC online information, <http://info.usitc.gov/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D?OpenDocument>; and information provided by the U.S. authorities. AD duty orders, Suspension agreements, WTO Secretariat, based on Import Administration online information, Viewed at: <http://ia.ita.doc.gov/stats/invinitiations-2000-current.html>.

¹²⁶ Supreme Court Denies Review Of Federal Circuit Decision Upholding Byrd Amendment, King & Spalding, April 18, 2010, available at: <http://www.kslaw.com/Library/publication/ca051810b.pdf>.

any pending litigation, CBP will continue to withhold the entity's alleged pro rata share of the funds, if any, currently being withheld for fiscal years 2006 through 2010.¹²⁷

Anti-dumping

Anti-dumping initiated during review quarter

Investigation details	Matter Involved	Countries concerned	Status of proceedings
(ITA) A-570-970	AD duty investigation of imports of multi-layered wood flooring at margins ranging from zero to 82.65 percent ad valorem	China	On May 20, 2011 DOC announced its affirmative preliminary determination in the matter. Commerce is currently scheduled to make its final determination in August 2011. The ITC is scheduled to make its final injury determination on or about September 16, 2011. ¹²⁸
731-TA-1186-1187 (P)	Claim of material injury by reason of imports of certain stilbenic optical brightening agents	China and Taiwan	The claim was made by USITC on May 16, 2011-08-18 All six Commissioners voted in the affirmative. As a result of the USITC's affirmative determinations, the U.S. Department of Commerce (USDOC) will continue to conduct its antidumping duty investigation on imports of these products from China and Taiwan, with its preliminary antidumping duty determinations due on or about September 7, 2011. ¹²⁹
701-TA-477 and 731-TA-1180-81 (P)	Material injury by reason of imports of bottom mount combination refrigerator-freezers	Korea and Mexico	On May 13, 2011 claimed injury. As a result of the Commission's affirmative determinations, the USDOC will continue to conduct its countervailing duty investigation on imports of these products from Korea and its antidumping duty investigations on imports of these products from Korea and Mexico, with its preliminary countervailing duty determination due on or about June 23, 2011, and its preliminary antidumping duty determinations due on or about September 6, 2011. ¹³⁰
ITC: 731-TA-1185 DOC: A-	AD investigation of imports of	United Arab Emirates, China and Taiwan	Investigation made on April 20, 2011. USITC made its preliminary injury determination on or about May 16, 2011. It found the possibilities of dumping and hence

¹²⁷ Disbursement of withheld funds from FY 2006-2010, CBP, April 25, 2011 available from: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/withheld_funds.xml.

¹²⁸ Fact Sheet, Commerce Preliminarily Finds Unfair Dumping of Multilayered Wood Flooring from the People's Republic of China, International Trade Administration, available at: <http://ia.ita.doc.gov/download/factsheets/factsheet-prc-mwf-prelim-20110520.pdf>.

¹²⁹ News Release 11-050, *USITC Votes To Continue Cases On Certain Stilbenic Optical Brightening Agents From China And Taiwan*, available at: http://www.usitc.gov/press_room/news_release/2011/er0516jj3.htm.

¹³⁰ News Release, 11-045, *USITC Votes To Continue Cases On Bottom Mount Combination Refrigerator-Freezers From Korea And Mexico*, available at: http://www.usitc.gov/press_room/news_release/2011/er0513jj1.htm.

	certain steel nails having a shaft length up to 12 inches		the preliminary determination in due for 7 September 2011. ¹³¹
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Sunset Reviews

Investigation No.	Matter involved	Countries concerned	Status of proceedings
731-TA-1089 (Review)	Full five-year sunset review concerning the antidumping duty order on orange juice	Brazil	<p>As a result of this vote, the Commission will conduct a full review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.¹³²</p> <p>The review follows just after Brazil and the United States requested the DSB to adopt the draft decision of the Panel in the Orange Juice dispute initiated by Brazil. Brazil challenged the 2005-2007 and 2007-2008 anti-dumping duty administrative reviews conducted by the USDOC on imports of certain orange juice from Brazil (“the First and Second Administrative Reviews”), as well as the USDOC's continued use of “zeroing procedures” in successive anti-dumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil. The panel report published on March 25, 2011 held such practice to be inconsistent with Articles 2.4, 2.4.2 and 9.3 of the AD Agreement, and Article VI:2 of the GATT 1994. The Panel concluded that the United States' “continued use“ of “zeroing” under the orange juice anti-dumping duty order was inconsistent with Article 2.4 of the AD Agreement. The Panel considered it was unnecessary, for the purpose of satisfactorily resolving the dispute, to make additional findings with respect to Brazil's claims that the same measures were also inconsistent with Articles 2.4.2 and 9.3 of the AD Agreement and Article VI:2 of the GATT 1994. On this basis, the Panel decided to exercise judicial economy and declined to make any findings in respect of these claims. The Panel recommended that the DSB request the United States to bring its measures into conformity with its obligations under the AD Agreement.¹³³</p>

¹³¹ News Release, 11-049, *USITC Votes To Continue Cases On Certain Steel Nails From The United Arab Emirates*, available at: http://www.usitc.gov/press_room/news_release/2011/er0516jj2.htm

¹³² News Release 11-044, *USITC Will Conduct Full "Sunset" Review Concerning Orange Juice From Brazil*, available at: http://www.usitc.gov/press_room/news_release/2011/er0509jj1.htm

¹³³ WTO/DS/382 available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds382_e.htm.

Inv. No. 731-TA-385 (Third Review)	Review concerning the antidumping duty order on granular polytetrafluoroethylene resin	Italy	On May 2, 2011, USITC voted to expedite the process. As a result of this vote, the Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. ¹³⁴
Inv. No. 731-TA-663 (Third Review).	AD order on paper clips	China	On April 8, 2011, the Commission voted to expedite the process. As a result of this vote, the Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. ¹³⁵
Docket no. A-533-806; ITC case no. 731-TA-561	Sunset review of Sulfanilic Acid	India	On April 1, 2011, DOC initiated the review. On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of a domestic interested party and an inadequate response (in this case, no response) from respondent interested parties, the Department conducted an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated the “Final Results of Review” section of this notice. ¹³⁶

Administrative Reviews against India

Investigation details	Matter involved	Status of proceedings
A-533-820	Antidumping Duty Administrative Review of certain hot-rolled carbon	On June 2, 2011, DOC released the preliminary results of 2009-2010 AD administrative review against India. The review was conducted in response to requests from petitioners (United States Steel Corporation Steel and Nucor Corporation) against manufactured products by Ispat Industries Limited, JSW Steel Limited, and Tata Steel Limited. The Period of Review covered by this review is

¹³⁴ News Release 11-043, *USITC Will Conduct Expedited Five-Year (Sunset) Review Concerning Granular Polytetrafluoroethylene Resin From Italy*, available at: http://www.usitc.gov/press_room/news_release/2011/er0502jj1.htm.

¹³⁵ News Release 11-035, *USITC Will Conduct Expedited Five-Year (Sunset) Review Concerning Paper Clips From China*, available at: http://www.usitc.gov/press_room/news_release/2011/er0408jj3.htm

¹³⁶ Federal Register /Vol. 76, No. 110 /Wednesday, June 8, 2011 /Notices, available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-06-08/pdf/2011-14187.pdf>.

	steel flat products	<p>December 1, 2009, through November 30, 2010. Ispat, Tata and JSW had submitted timely-filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR.</p> <p>On April 11, 2011, the Department preliminarily determined that Tata, Ispat, and JSW did not export subject merchandise to the United States during the POR. The following deposit rates would be effective upon publication of the final results on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Ispat, JSW, and Tata, and for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (2) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 23.87 percent, the all-others rate established in the LTFV, as amended, adjusted for export subsidies..¹³⁷</p>
A-351-838, A-533-840, A-549-822	Frozen warm water shrimp from Brazil, India, and Thailand	USDOC initiated administrative reviews of the AD orders from the Ad Hoc Shrimp Trade Action Committee the American Shrimp Processors Association (ASPA), and certain individual companies. Period of review is: 1 st Feb 2011- 31 st Jan 2011. The final results of these reviews are due by February 29, 2012.

Other initiations

Nature of initiation	Source
Initiation on 19 April 2011 of anti-dumping investigation on imports of steel wheels with a wheel diameter of 18 to 24.5 inches (HS 8708.70.05; 8708.70.25; 8708.70.45; 8708.70.60) from China	Permanent Delegation of the United States to the WTO (11 May 2011)

Termination measures¹³⁸

Nature of termination	Source
Termination on 29 December 2010 (no participation by domestic parties in SNR) of anti dumping duties on imports of top-of-the-stove stainless steel cooking ware (HS 7323.93) from Korea, Rep. of (imposed on 20 January 1987)	WTO document G/ADP/N/209/USA, 7 April 2011
Termination on 29 December 2010 (no participation by domestic parties in SNR) of anti	WTO document G/ADP/N/209/USA, 7 April 2011

¹³⁷ Federal Register Volume 76, Number 106 (Thursday, June 2, 2011) [Notices] [Pages 31938-31940] [FR Doc No: 2011-13706] available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-06-02/html/2011-13706.htm>.

¹³⁸ G-20 Report, 2011

dumping duties on imports of porcelain-on-steel cooking ware, top of the stove (HS 7323.94) from Chinese, Taipei (imposed on 2 December 1986)	
Termination on 23 January 2011 (no participation by domestic parties in SNR) of anti dumping duties on imports of forged stainless steel flanges (HS 7307.21.10; 7307.21.50) from India and Chinese, Taipei (imposed on 9 February 1994)	Permanent Delegation of the United States to the WTO (11 May 2011)
Termination on 3 February 2011 (no participation by domestic parties in SNR) of anti dumping duties on imports of granular polytetrafluoroethylene resin (HS 3904.61) from Japan (imposed on 24 August 1988)	Permanent Delegation of the United States to the WTO (11 May 2011)
Termination on 10 March 2011 of anti-dumping duties on imports of magnesium metal (HS 8104.11; 8104.19; 8104.30; 8104.90) from the Russian Federation (imposed on 15 April 2005)	WTO document G/ADP/N/202/USA, 22 September 2010) and Permanent Delegation of the United States to the WTO (11 May 2011)

Issue of zeroing in the US

In a case with potentially broad ramifications for U.S. trade practices, the U.S. Court of Appeals for the Federal Circuit recently questioned the Department of Commerce's strategy of "Zeroing," whereby Commerce "zeros out" non-dumped sales, rather than offsetting them against dumped sales. Commerce had applied the practice of "zeroing" when calculating dumping margins for decades because it enables Commerce to target illegal dumping when a foreign producer sells its products below fair value for some sales but not others. In January 2007, Commerce stopped zeroing in antidumping investigations in original investigations in response to these adverse WTO rulings, but it has continued zeroing in antidumping administrative reviews, which are yearly updates of antidumping orders and which Commerce had believed are dealt with differently under WTO rules.¹³⁹

In a March 31, 2011, decision, *Dongbu Steel Co. v. United States*, the Federal Circuit held that Commerce failed to adequately explain its zeroing practice in administrative reviews when it no longer uses the practice in antidumping investigations. The Federal Circuit held that the U.S. antidumping statute does not specify whether Commerce can employ its zeroing practice. As a result, the Federal Circuit has upheld Commerce's interpretation of the statute as permitting zeroing in past cases as a matter of its administrative discretion. In *Dongbu Steel*, however, the Federal Circuit stated that "the political branches' decision to comply with the WTO ruling only as to investigations does not mean that it is lawful to give inconsistent constructions to the same statutory language."¹⁴⁰ Therefore, Commerce can continue or discontinue its zeroing practice in administrative reviews, but it must provide a reasonable explanation for its decision. In response to the Federal Circuit's ruling, Commerce will now, in a remand, have the

¹³⁹ Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77,722 (December 27, 2006).

¹⁴⁰ Federal Circuit Rebuffs Commerce For Inconsistent New Zeroing Policy, King & Spalding, Trade & Manufacturing alert, May 2011 available at: <http://www.kslaw.com/library/newsletters/TradeManufacturingAlert/2011/May/article2.html>.

opportunity to change its practice or provide further explanation for zeroing in antidumping administrative reviews.¹⁴¹ As per unofficial channels, the case now might go to the Supreme Court.¹⁴²

Countervailing Duties

On April 28, 2011, the ITC reached a consensus regarding subsidized and dumped imports of aluminium extrusions from China. The imposition of anti-dumping and countervailing duty followed in the month of May after an initial order sent in October 2010. The AD and CVD orders will remain effective till May 2016.¹⁴³

Other initiations¹⁴⁴

Nature of initiation	Status
Initiation on 19 April 2011 of countervailing investigation on imports of bottom mount combination refrigerator-freezers (HS 8418.10.00; 8418.21.00; 8418.99.40; 8418.99.80) from Korea, Rep. of	Permanent Delegation of the United States to the WTO (11 May 2011)
Initiation on 19 April 2011 of countervailing investigation on imports of steel wheels with a wheel diameter of 18 to 24.5 inches (HS 8708.70.05; 8708.70.25; 8708.70.45; 8708.70.60) from China	Permanent Delegation of the United States to the WTO (11 May 2011)
Initiation on 20 April 2011 of countervailing investigation on imports of galvanized steel wire (HS 7217.20.30; 7217.20.45; 7229.20.00; 7229.90.50) from China	Permanent Delegation of the United States to the WTO (11 May 2011)

Double remedies dispute between US and China

Until 2007, the DOC had not imposed countervailing duties on imported products from NME countries when it imposed antidumping duties on the same products using the NME methodology. Under the NME methodology, the DOC uses surrogate values from third-party countries instead of actual home market values of respondents' countries in calculating normal value of these products. The DOC had refused to impose both antidumping and countervailing duties simultaneously in this situation on the ground that doing so would constitute double remedies. The U.S. Court of International Trade and an independent public research agency, the Government Accounting Office (GAO), have both recently reaffirmed this position.¹⁴⁵

However, the DOC has recently departed from this long-standing position and begun to impose both countervailing and antidumping duties on the same imported goods from NME countries. The DOC appears to attribute this policy change to the fact that "*market forces actually determine the prices of more than 90% of products in China.*"¹⁴⁶ Yet without according China a market economy status, the DOC instead

¹⁴¹ The CAFC and Inconsistent Zeroing, International Economic Law and Policy blog, April 2011, available at: <http://worldtradelaw.typepad.com/ielpblog/2011/04/the-cafc-and-inconsistent-zeroing.html>.

¹⁴² <http://ban2.org/news/2011/05/zeroing-at-the-supreme-court/>.

¹⁴³ ITC votes to imposed AD and CVD on China, Report by Kin and Spalding, available at: http://www.aec.org/assets/pdfs/ChinaImportUpdate_28Apr2011.pdf.

¹⁴⁴ G-20 Report, 2011

¹⁴⁵ . U.S. Government Accountability Office, "U.S. – *China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties*," GAO-05-474 (June 2005) [hereinafter GAO Report].

¹⁴⁶ Congressional Research Service (CRS), Trade Remedy Legislation: Applying Countervailing Action to Nonmarket Economy Countries, Apr. 19, 2007, at 17.

began simply to impose countervailing duties on Chinese imports in addition to previously imposed antidumping duties. USCIT rejected the DOC's new policy as an "unreasonable" interpretation of the U.S. subsidy statute, including provisions such as 19 U.S.C. § 1671, that permits the DOC to impose a countervailing duty only when there is a "*countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported . . . into the United States.*"¹⁴⁷ The dispute went before the WTO panel involving the DOC's four investigations since it adopted the new position.

With respect to China's "double remedy" claims, the Panel agreed with the United States that the measure challenged as part of China's "as such" claims, as well as these claims themselves, fell outside its terms of reference since China failed to include that measure in its request for consultations. On the merits, the Panel rejected China's "as applied" claims with respect to double remedies while it found that the use of an NME methodology in an AD investigation concurrently with the imposition of countervailing duties may give rise to "double remedies", the Panel found that China had failed to establish the inconsistency of such a double remedy with the provisions of the SCM Agreement upon which China relied.

The dispute moved to the Appellate Body which published its report on March 11, 2011. The AB reversed the Panel's finding that "double remedies" based on an NME methodology and countervailing duties, are not prohibited under the SCM Agreement. The Appellate Body found that "double remedies" are inconsistent with the requirement in Article 19.3 of the SCM Agreement that countervailing duties be levied in the appropriate amounts in each case. The Appellate Body completed the legal analysis and found that, by declining to address China's claims concerning double remedies in the four countervailing duty investigations at issue, the USDOC had failed to fulfil its obligation to determine the "appropriate" amount of countervailing duties within the meaning of Article 19.3 of the SCM Agreement and that, therefore, the United States acted inconsistently with its obligations under Article 19.3 and, consequently, with its obligations under Articles 10 and 32.1 of the SCM Agreement.¹⁴⁸

Safeguards

U.S. legislation on global safeguards is contained in title 19 of the U.S. Code (section 2251-54). The USITC conducts global safeguard investigations, and the President makes the final decision whether to provide relief, and about the form and amount. Safeguard measures by the United States may include tariffs, quantitative restrictions, tariff quotas, or other measures listed in legislation. Under NAFTA, Canada and Mexico must be excluded from the application of global safeguard measures, unless their imports, considered individually, account for a substantial share of total imports and make an important contribution to serious injury. None of the U.S.' other FTAs establish such a requirement.

Under Title 19 of the U.S. Code (section 2451), the USITC conducts safeguard investigations pursuant to the transitional product-specific safeguard mechanism contained in paragraph 16 of China's Protocol of Accession, and the President makes the final decision whether to grant relief. One such investigation, resulted in the application of additional duties on imports of passenger vehicle and light truck tyres from China, following a determination by the USITC that such tyres were being imported "*in such increased quantities or under such conditions as to cause market disruption to the domestic producers*".¹⁴⁹ The USITC determined that there was market disruption as a result of rapidly increasing imports of subject tyres from China that

¹⁴⁷ 19 U.S.C. § 1671(a)(1).

¹⁴⁸ United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China Report(s), DISPUTE DS379 adopted, with recommendation to bring measure(s) into conformity on 25 March 2011, Summary of the dispute to date, available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm.

¹⁴⁹ Presidential Proclamation 8414, Federal Register, 74 FR 47859, 17 September 2009, and USITC (2009a).

were a significant cause of material injury to the domestic industry. Following a Presidential decision additional duties were imposed on subject tyres imports for a three year period in the amount of 35 per cent *ad valorem* in the first year, 30 per cent *ad valorem* in the second year and 25 per cent *ad valorem* in the third year (the *tyres* measure). This measure took effect on 26 September 2009. According to China the higher tariffs are inconsistent with Article I:1 of the GATT 1994 and have not been properly justified pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards.

Panel and Appellate Body proceedings

At its meeting on 19 January 2010, the DSB established a panel pursuant to the request from China. The panel concluded that in imposing the transitional safeguards measure on 26 September 2009 in respect of imports of subject tyres from China, the United States did not fail to comply with its obligations under paragraph 16 of the Protocol and Articles I:1 and II:1 of the GATT 1994. The panel also found that there was no “as such” violation in respect of the US statute implementing the causation standard of paragraph 16 of the Protocol.

On May 24, 2011, according to the information from unofficial sources, China notified the Dispute Settlement Body of its decision to appeal the panel report of *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China* (WT/DS399).¹⁵⁰ The appeal remains pending during the review quarter. The appeal would raise issues pertaining to: interpretation of paragraph 16.4 of the Protocol and the term “increasing rapidly” and “significant cause”; ascertainment of an objective assessment period and not the period as “whole”.

IVC. Quantitative restrictions, controls, and licensing- Bans or approval requirements for foreign policy purposes are applied on most imports from two WTO Members: Cuba and Myanmar. Similar restrictions are applied on imports from the Democratic People's Republic of Korea, Iran, and certain areas of Sudan.¹⁵¹

Import controls for "public interest" reasons are applied on natural gas. Imports of basic steel mill products are subject to automatic licensing, irrespective of their origin. U.S. quantitative restrictions and controls to safeguard consumer health or protect public safety or the environment are implemented through non-automatic licensing requirements. They cover: fish, wildlife, plants, animals, plant and animal products, narcotic drugs, alcoholic beverages, tobacco, firearms, explosives, and nuclear facilities. The latest U.S. reply to the questionnaire on import licensing procedures, submitted in October 2009, contains details of these licensing schemes.¹⁵²

The United States amended the Lacey Act in 2008 to prevent trade in illegally harvested plants and products made from such plants. As amended, the Lacey Act prohibits, *inter alia*, imports of plants and products derived from plants taken in violation of a foreign plant protection law. To assist in the enforcement of that prohibition, the amended Lacey Act establishes a declaration requirement for

¹⁵⁰ Dustin Ensinger, *China Challenges WTO Ruling on Tyres*, (April 26, 2011), <http://www.economyincrisis.org/content/china-challenges-wto-ruling-tyres>.

¹⁵¹ Cuban Assets Control Regulations (31 CFR 515), Foreign Assets Control Regulations (31 CFR 500), Iranian Transactions Regulations (31 CFR 560), Burmese Sanctions Regulations (31 CFR 537), and Sudanese Sanctions Regulations (31 CFR 538).

¹⁵² WTO document G/LIC/N/3/USA/6, (October 14, 2009).

imports of certain plant and plant products. Enforcement of this requirement is subject to a phase-in period from December 2008.¹⁵³

Developments during review quarter

(1) On April 12, 2011, the US Department of Treasury's Office of Foreign Assets Control (OFAC) issued guidance concerning the application of US economic sanctions to the new state expected to be formed on July 9 2011 as a result of Southern Sudan's secession from the Republic of Sudan. OFAC's guidance precedes formal regulatory changes that are expected in the coming months. This change in legal status will not loosen the existing restrictions on certain activities of US persons in Southern Sudan which relate to Northern Sudan. US persons will continue to be prohibited from dealing in the property and interests in property of the government of Sudan (as opposed to the government of the Republic of South Sudan), and from performing services that benefit the government of Sudan. US persons will also continue to be prohibited from participating in exports or imports from the new state that transit through Northern Sudan (subject to certain existing exceptions). In addition, US persons will continue to be prohibited from engaging in transactions relating to the petroleum or petrochemical industry in Northern Sudan. OFAC noted that this restriction could affect business activities in Southern Sudan if a revenue-sharing arrangement is established whereby the government of the new state makes payments to the government of Sudan from the sale of Southern Sudanese petroleum.

(2) On February 25 2011, the United States also imposed economic sanctions against Libya in response to the growing violence there. These sanctions blocked the property and interests in property of the Libyan government, certain senior officials and others implicated in human rights abuses. According to OFAC, at least \$30 billion in Libyan assets has been blocked as a result of these sanctions.¹⁵⁴

IVD. Government Procurement

The United States is a party to the WTO Agreement on Government Procurement (GPA). Federal procurement is governed by several laws, including the Buy American Act of 1933, the Federal Property and Administrative Services Act of 1949, the Office of Federal Procurement Policy Act of 1974, the Competition in Contracting Act of 1984, the Federal Acquisition Streamlining Act of 1994, the Clinger-Cohen Act of 1996, the Small Business Act of 1953, and the Services Acquisition Reform Act. The Federal Acquisition Regulation (FAR) establishes uniform policies and procedures for the acquisition of goods and services by executive agencies with appropriated funds.

The American Recovery and Reinvestment Act of 2009 (ARRA), signed into law in February 2009, contains two "buy American" provisions. Under section 604 the Department of Homeland Security must acquire textile and apparel goods manufactured in the United States, subject to certain exceptions. Section 1605 establishes a domestic preference for iron, steel, and manufactured goods produced in the United States and used as construction material in public buildings and public works funded by the ARRA. To implement section 1605 of the ARRA, the United States has issued regulations and guidance.¹⁵⁵ The guidance was amended in March 2010.¹⁵⁶ Agencies that receive funding under ARRA may issue additional regulations or guidance, which are reviewed and approved by the OMB.¹⁵⁷

Access conditions to state procurement are defined in state legislation and 37 states participate in the GPA. Under reciprocity laws, many states increase the price of an out-of-state offer by the preference

¹⁵³ Federal Register, 74 FR 45415, (Sept. 2, 2009)

¹⁵⁴ Trade & Customs – USA, Newsletter of Sidney & Austin LLP, (May 6, 2011)

¹⁵⁵ 2 CFR 176, FAR 25.6, and OMB, "Interim Final Guidance for Federal Financial Assistance", Appendix 9 of the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, 3 April 2009

¹⁵⁶ WTO document GPA/98/Add.1, (April 1, 2010)

¹⁵⁷ WTO document GPA/W/307, (Oct 1, 2009)

margin granted in that state to resident bidders. Domestic preferences at the state level are in the form of preferences for specific products (e.g., coal in Illinois, Pennsylvania, and Virginia, and printing services in several other states), preferences to all or broad categories of in-state products (e.g., Alaska, Florida, New Mexico, New York, South Carolina, Louisiana, and Wyoming), and preferences to in-state firms (e.g., small businesses in Arizona, California and Illinois, all resident firms in Alaska). Sub-federal entities other than states may also grant domestic preferences.

Developments during the review quarter

On May 2, 2011, Emergent BioSolutions Inc. announced that it has signed a modification to its current procurement contract (200-2009-30162) with the U.S. government to supply an additional 3.42 million doses of BioThrax® (Anthrax Vaccine Adsorbed). This modification to the contract is valued at up to \$101 million for the delivery and shipping of additional doses of BioThrax beginning 3Q 2011. Delivery of these doses will commence immediately following early completion of final delivery of the original 14.5 million doses of BioThrax under the contract prior to this modification. Emergent anticipates completing all deliveries of these additional 3.42 million doses of BioThrax during the remainder of 2011.¹⁵⁸

IVE. Technical regulations and standards

Institutional Framework

Technical regulations and conformity assessment procedures are usually adopted administratively by federal agencies, on the basis of regulatory authority delegated by Congress. However, Congress may define specific parameters for technical regulations or conformity assessment procedures, or even establish technical regulations and conformity assessment procedures legislatively. Technical regulations and conformity assessment procedures may also be adopted by states in areas of their competence, including all areas not expressly pre-empted by federal legislation. .

Title IV of the Trade Agreements Act of 1979, as amended, is the legal basis for implementing the TBT Agreement in the United States.¹⁵⁹ The Trade Agreements Act designates the Office of the USTR as the lead agency within the federal Government for coordinating and developing international trade policy related to standards-related activities and in discussions and negotiations with foreign countries on standards-related matters; in this connection, the Trade Agreements Act requires the USTR to inform and consult with federal agencies with expertise in the matters under discussion and negotiation.¹⁶⁰ The United States submitted a notification on the implementation and administration of the TBT Agreement in February 1996.¹⁶¹ The U.S. enquiry point and notification authority under the Agreement is the National Institute of Standards and Technology (NIST) of the Department of Commerce. The Department of Transportation and the Department of Energy, the Food and Drug Administration, the Consumer Product Safety Commission, Department of Agriculture, and the Environmental Protection Agency are other regulatory bodies governing TBT commitments.

The rulemaking procedures for development of technical regulations and conformity assessment procedures by federal agencies are set out in the Administrative Procedure Act. As part of the process for the adoption of technical regulations and conformity assessment procedures, the agency responsible must publish a notice of proposed rulemaking and provide interested persons, regardless of nationality or

¹⁵⁸ Press Release, U.S. Government Expands BioThrax Procurement Contract to 17.92M Doses from 14.5M Increasing Contract Value by up to \$101 Million, (May 2, 2011), <http://www.reuters.com/article/2011/05/02/idUS185949+02-May-2011+BW20110502>

¹⁵⁹ 19 USC 2531 et seq.

¹⁶⁰ WTO document G/TBT/2/Add.2, (Feb. 19, 1996).

¹⁶¹ WTO document .G/TBT/2/Add.2, (Feb. 19, 1996).

residency, an opportunity for comment. With limited exceptions, Executive Order 12889 requires a comment period of at least 75 days for "*any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application*".¹⁶² The comment period must be, to the greatest extent practicable, at least 30 days for proposed technical regulations applied to perishable goods; a 75-day period is not required when proposed technical regulations or sanitary and phytosanitary measures are necessary to address "urgent" problems. Under the Administrative Procedure Act, a final technical regulation or conformity assessment procedure must be published at least 30 days prior to its effective date; a shorter period is possible if the final measure relaxes an existing measure. Rulemaking notices are published in the Federal Register.¹⁶³

A number of technical regulations establish requirements for the labelling or marking of goods with their country of origin.¹⁶⁴ Under the Tariff Act of 1930, imported items, with some exceptions, must be conspicuously and indelibly marked in English to indicate to their "ultimate purchaser" their country of origin.¹⁶⁵ The American Automobile Labeling Act requires that new passenger cars, pickup trucks, vans, and sport utility vehicles have labels specifying the percentage value of their U.S. and Canadian parts content, the country where they were assembled, and the countries of origin of their engine and transmission.¹⁶⁶ Textile and apparel articles must be labelled to show their country of origin in accordance with the Textile Fiber Products Identification Act and the Wool Products Labelling Act.¹⁶⁷ There are also country-of-origin labelling requirements for certain agricultural products and fish.

Developments during the review quarter

(1) On April 14, 2011, the CPSC approved new safety standards for toddler beds that regulate guardrail heights and warning labels, among other features, in order to protect children from injury. These mandatory standards will enter into effect six months after publication of the standards in the Federal Register with respect to toddler beds manufactured or imported into the United States after that date. Under the standards, the upper edge of a toddler bed's guardrail must be five inches above the mattress. Strength testing must be consistent with the testing for cribs. Separate warning labels that address entrapment and strangulation must be displayed on the beds. There are additional standards for testing the integrity of the guardrails.¹⁶⁸

(2) As per a press release of May 2, 2011, Senator Al Franken (Democrat of Minnesota) and four other senators had introduced the "Dairy COOL Act" (S.831) on April 14, 2011. The bill would require country of origin labeling (COOL) on liquid milk, cheese, yogurt, ice cream, butter, and "any other dairy product." Retailers would be required to display the country of origin of each dairy ingredient or component, as well as the country of origin of the processing of a covered dairy product or component. A dairy product, or product containing dairy ingredients produced entirely in the United States need only identify U.S. origin and does not require further designation of state, region or other sub-national identification.

¹⁶² Federal Register, 58 FR 69681, (Dec. 30, 1993)

¹⁶³ U.S. Government Printing Office online information, "GPO Access", Viewed at: <http://www.gpo.access.gov/fr/index.html>.

¹⁶⁴ WTO (2008).

¹⁶⁵ 19 USC 1304.

¹⁶⁶ 49 USC 32304. The regulations to implement the Act are contained in 49 CFR 583.

¹⁶⁷ 15 USC 68 and 70.

¹⁶⁸ CPSC Approves New Safety Protections for Toddler Beds in White & Case Newsletter.

(3) On May 24, 2011, the Panel released the report on the ongoing US-Mexico dispute on “dolphin label standards”. Mexico claimed that the US industry has used the dolphin safe logo as a technical (non-tariff) barrier to trade to discriminate against Mexican tuna imports, given Mexico’s fishing practices are in compliance with IATTC guidelines concerning dolphin by-catch (i.e. not breaching dolphin mortality caps and carrying observers on board vessels for catch verification purposes). The WTO panel verified Mexico’s concerns by ruling that US requirements violate Article 2.2 of the WTO Agreement on Technical Barriers for Trade, which prohibits implementing technical regulations that restrict trade “beyond the necessary to achieve a legitimate objective”.¹⁶⁹

IVF. Sanitary and phytosanitary measures- The U.S. enquiry point and national notification authority under the SPS Agreement is the International Regulations and Standards Division in the Foreign Agricultural Service of the USDA.¹⁷⁰

The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture USDA) regulates imports of plants, animals, and their products; The Food Safety and Inspection Service (FSIS) of the USDA regulates most imports of meat, poultry, and some egg products; The Food and Drug Administration (FDA) regulates imports of all other foods for human consumption and animal feed, and imported veterinary drugs. Under Section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act), the FDA must receive advance notice of shipments of imported food (other than meat, poultry, and eggs) into the United States.¹⁷¹ This can be done online through the Automated Broker Interface (ABI), the Automated Commercial System (ACS), or the FDA’s Prior Notice System Interface. The Environmental Protection Agency (EPA) is responsible for regulating imports of pesticides, and for setting limits on the amount of pesticides that may remain in or on imported food. The EPA registers pesticides for use in the United States and establishes maximum residue limits (MRLs) for pesticides in or on food sold in the United States. The term "pesticide" is broadly defined and includes herbicides and fungicides.

Developments during the review quarter

(1) According to the Sanitary and phytosanitary export database, it was reported on May 20, 2011 2011 that new types of plants and plant products cannot be imported into USA before the phytosanitary requirements are decided on by the USA plant health authorities and afterwards included in US import legislation. This is required for every type of fruit or vegetable, and for many plants for planting. The procedure may take several years. In particular, EU applications to export have been pending for plants in growing media (some more than 20 years) and for fruits and vegetables (some more than 10 years). USA has informed that the pest risk analysis, PRA, itself may take 2 - 3 years, however the capacity to develop PRAs is limited, leaving many applications long pending. In addition, where inter-agency consultations are necessary, no time frame is specified, and the evaluation appears not limited to phytosanitary considerations.

Barrier Status of the Action- Ongoing

Action Taken- This barrier has been raised by EU in the WTO SPS Committee as a specific trade concern. The status remains "unsolved". To facilitate progress on applications by Member States, EU participates

¹⁶⁹ El Economista 2001, ‘WTO Court Rules Against US Dolphin Safe Label Requirements’, ATUNA, (May 24, 2011), <http://www.atuna.com>.

¹⁷⁰ WTO documents G/SPS/ENQ/21/Add.1, 22 June 2007, and G/SPS/N/NA/11/Add.1 (June 22, 2007).

USTR Report on SPS and India
According to a report published by Office of USTR, during March, 2011, United States alleged certain Indian rules as being trade restrictive. The SPS Report raises concerns with respect to:
<ul style="list-style-type: none">➤ Certification that any milk destined has been treated to ensure the destruction of paratuberculosis, which is linked to Crohn’s Disease.➤ Importers to make an attestation that the imported pork does not contain any residues of pesticides.

in regular meetings with the US plant health authorities. The EU-US Plant Health Technical Working Group, PHTWG, was introduced in October 2008, and the first task was to list and prioritise the pending applications in order to do a frequent follow up.¹⁷²

¹⁷² http://madb.europa.eu/madb_barriers/sps_barriers_details.htm?barrier_id=105334&version=5

(2) On April 5, 2011, the USDA proposed a requirement that meat producers test their products for food-borne illnesses before selling them to consumers. The “test-and-hold” policy is followed on a voluntary basis by meat producers, but the proposal would make it mandatory. It would allow USDA inspectors to hold products from commerce until test results for harmful substances are received. Currently, the products are not required to be held and must be recalled in the event of a problematic test result. This occurred when 55,000 pounds of frozen, raw turkey burger products were recalled by Jeannie-O Turkey Store due to salmonella concerns. The USDA will accept comments on the proposed policy for 90 days. There is no specific date for implementation of the new rule.¹⁷³

V. Measures Directly Affecting Exports

VA. Customs procedures and documentation

There is no general registration requirement for exporters.

There is a single window, the Automated Export System (AES), for filing export data.¹⁷⁴ AES operates in all U.S. ports and is used for all modes of transport. Participants in this system include U.S. Customs and Border Protection (CBP), the U.S. Department of Commerce's Bureau of the Census and Bureau of Industry and Security, and the Directorate of Defense Trade Controls of the U.S. Department of State.

Developments during the review quarter

(1) On March 16, 2011 CBP modified its testing method of pressed and toughened (specially tempered) glassware. The new method would use macroscopic analysis, thermal shock testing and evaluation of temper to determine if a glassware item has been specially tempered. Macroscopic analysis includes visual inspection and dimensional measurement. Thermal shock testing involves the rapid heating and cooling of a sample. Finally, the temper is evaluated using a polariscopic examination for translucent glassware and a cutting test for opaque glassware. Additionally, CBP is re-introducing the centre punch test for situations in which the cutting test is inconclusive.¹⁷⁵

(2) On March 24, 2011, the FDA posted on its website certain recommendations to the medical devices industry for the purpose of expediting the admissibility process of imported medical devices into the United States. Specifically, the FDA warned that a number of imported medical devices do not contain entry information sufficient to allow the FDA to promptly decide upon admissibility at ports of entry in the United States. The FDA explained that when an imported product regulated by the FDA arrives in the United States and the entry information CBP sends to the FDA to evaluate whether the product meets FDA requirements is insufficient, the FDA must manually review each line of the product's entry. To expedite the review and release of entries, the FDA advised the medical devices industry to ensure that all products imported into the United States contain detailed and accurate information about the product, manufacturer, importer and premarket application. The FDA further advised that each entry line should contain an AofC code for: (1) device foreign manufacturer (DEV) or device foreign exporter (DFE); (2) device listing (LST); (3) device initial importer (DII); (4) premarket Application (premarket approval, humanitarian device exemption or product development protocol number); (5) premarket notification number (PMN); and (6) investigational device exemption (IDE).¹⁷⁶

¹⁷³ USDA Proposes Testing of Meat Products in White & Case Newsletter.

¹⁷⁴ AES, Viewed at: <http://www.aesdirect.gov>.

¹⁷⁵ CBP Modifies Testing Method of Pressed and Toughened Glassware in White & Case Newsletter.

¹⁷⁶ FDA Posts Recommendations for Expediting Imports of Medical Devices in White & Case Newsletter

VB. Border restrictions

On May 27, 2011, The United States lifted import duties on European luxury foods on Friday in return for a promise of bigger hormone-free beef sales to the European Union, signaling an end to one of the trading powers' oldest disputes.¹⁷⁷

VC. Export taxes and fees

The United States does not apply taxes on exports: the Constitution's Export Clause bars Congress from imposing any tax on exports.¹⁷⁸

VD. Export restrictions and controls

The main legal basis for export controls in the United States is divided across different legislative acts and the administration across different government agencies. The Office of Enforcement Analysis (OEA) in the Bureau of Industry and Security screens all export licence applications to ensure export control enforcement information is considered before any final licence decision is made. BIS also governs export restriction procedure. Specific procedures apply for: crude oil; petroleum products other than crude oil produced or derived from the Naval Petroleum Reserves (NPR) or that became available for export as a result of an exchange of any NPR-produced or derived commodities; unprocessed western red cedar; and horses exported by sea for slaughter. These products always require an export licence, regardless of their export destination.

Trade sanctions may be applied by the Department of the Treasury under the authority of, inter alia, the International Emergency Economic Powers Act (IEEPA), the Trading with the Enemy Act, and the United Nations Participation Act. The Department of the Treasury's Office of Foreign Assets Control (OFAC) administers economic and trade sanctions under these laws, and may, in this capacity, restrict exports to foreign countries and regimes and persons (entities and individuals) that are subject to such sanctions.

Developments during the review quarter

In May, 2011 Cheniere Energy Partners received approval from the US Department of Energy (DOE) to export domestic gas through the Sabine Pass LNG terminal. Under the terms of approval Cheniere can export up to 16 million tons per annum (mtpa). However, progress is still dependent on Federal Energy Regulatory Commission approval as the final regulatory hurdle left for the Sabine Pass LNG expansion project.¹⁷⁹

VE. Export promotion schemes

On March 9, 2011 Senators Mike Crapo (R-Idaho) and John Kerry (D-Massachusetts) introduced legislation to reduce the beer excise tax for America's small brewers. The Brewer's Employment and Excise Relief (BEER) Act will help to create jobs at more than 1,600 small breweries nationwide, which

¹⁷⁷ Melissa Lipman, US Lifts Sanctions Early In EU Beef Ban Dispute, 27 May, 2011 available at:

<http://www.law360.com/internationaltrade/articles/247752/us-lifts-sanctions-early-in-eu-beef-ban-dispute>

¹⁷⁸ The Export Clause states: "No Tax or Duty shall be laid on Articles exported from any State". Article I, Section 9, The United States Constitution, See *United States v. International Business Machines Corp.*, 517 U. S. 843 (1996)

¹⁷⁹ <http://www1.ijonline.com/infrastructurefinancenews/preview?articleid=69896>.

collectively employ nearly 100,000 people. Idaho and Massachusetts are home to dozens of small breweries.¹⁸⁰

Promotion and marketing assistance- The National Export Initiative creates an Export Promotion Cabinet consisting of the heads of several federal agencies. The Cabinet must work with the Trade Promotion Coordinating Committee (TPCC), a statutory body that coordinates the export promotion activities of 19 federal agencies.¹⁸¹

Developments during the review quarter

During the review period, it was found that President Obama signed a new law named Select US initiative on June 15, 2011. Unofficial sources reported that, the Select US Initiative (Initiative), is a Government-wide initiative to attract and retain investment in the American economy. The Initiative is to be housed in the Department of Commerce. The mission of the Initiative shall be to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness. The Initiative will provide enhanced coordination of Federal activities in order to increase the impact of Federal resources that support both domestic and foreign investment in the United States. In providing assistance, the Initiative shall work to maximize impact on business investment, job creation, and economic growth. The Initiative shall work on behalf of the entire Nation and shall exercise strict neutrality with regard to specific locations within the United States.¹⁸² This new initiative will target three types of firms: foreign firms looking to expand, domestic firms looking to expand, and foreign and domestic firms looking to reorganize or return their operations to the United States. SelectUSA.gov will therefore offer a one-stop portal for information about federal resources and incentives for business investment; general information about the U.S. economic climate; and access to economic development opportunities throughout the country.¹⁸³

VI. Measures Affecting Production and Trade

VIA. Taxation regime in US

The Treasury Department develops and implements tax policies and programs; provides the official estimates of all Government receipts for the President's budget, fiscal policy decisions, establishes policy criteria reflected in regulations and rulings and guides preparation of them with the Internal Revenue Service to implement and administer the Internal Revenue Code. It also negotiates tax treaties for the United States and represents the United States in meetings and work of multilateral organizations dealing with tax policy matters; and provides economic and legal policy analysis for domestic and international tax policy decisions.

Policy reforms

In December 2010, the President's National Commission for Fiscal Responsibility and Reform (Fiscal Commission) recommended significant reductions in the deficit through spending reductions and some tax increases. The Fiscal Commission also recommended significantly lower individual and corporate

¹⁸⁰ Small Brewery Tax Bill Would Create Jobs, Open Markets, Released on 13th June, 2011, *available at*: http://crapo.senate.gov/media/newsreleases/release_full.cfm?id=331763.

¹⁸¹ 15 USC 4727 et seq.

¹⁸² <http://politicsonpoint.blogspot.com/2011/06/select-usa-initiative.html>.

¹⁸³ Bringing and keeping business investment in America, 15th June, 2011, The Commerce Blog available at: <http://www.commerce.gov/blog/2011/06/15/bringing-and-keeping-business-investment-america>.

income tax rates paid for by base broadening achieved by eliminating or reducing “tax expenditures.” The report garnered support of 11 of the 18 commissioners and called for a corporate tax rate ranging from 23% to 29%, repeal of business tax expenditures and a transition to a territorial tax system. The Fiscal Commission report also proposed a trigger that would impose across-the-board reductions in tax deductions, exemptions and credits if tax reform and deficit reduction are not enacted by Congress by 2013.¹⁸⁴

The recent changes introduced by the Federal budget of FY 2012 with respect to the tax regime have been discussed in the earlier section of the report.

United States Tax Treaties

The United States has tax treaties with a number of foreign countries. Under these treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate, or are exempt from U.S. taxes on certain items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income. Under these same treaties, residents or citizens of the United States are taxed at a reduced rate, or are exempt from foreign taxes, on certain items of income they receive from sources within foreign countries. Most income tax treaties contain what is known as a "saving clause" which prevents a citizen or resident of the United States from using the provisions of a tax treaty in order to avoid taxation of U.S. source income. US has 71 such treaties in force and the latest was entered into with Venezuela in the year 2000.¹⁸⁵

India is negotiating a double tax avoidance scheme with the USA in pursuance to the Convention between the Government of the United States of America and the Government of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on September 12, 1989 and enforced in 1990.

VIB. Subsidies and other government assistance

General features

Government assistance to businesses is granted at the federal level, as well as by state and local governments. The main instruments of support are tax benefits, direct payments, and credit programmes. Tax benefits have traditionally been the main form of federal government support to business.

Developments during the review quarter

The United States had adopted several fiscal stimulus packages to stabilize consumption and investment, and help the U.S. economy recover from the financial and economic crisis. The largest was the American Recovery and Reinvestment Act of 2009 (ARRA), whose cost is estimated at US\$787 billion for fiscal years 2009-10.

The automotive and energy sectors have been among the largest recipients of government support; assistance to agriculture and financial services are two of the other largest recipients.

Assistance to the automotive industry

¹⁸⁴ 2011 Americas Tax and Policy Outlook, Ernst & Young, (2011) [http://www.ey.com/Publication/vwLUAssets/2011Americas_Tax_Policy_outlook/\\$FILE/Americas_Tax_Policy_outlook_29Mar11.pdf](http://www.ey.com/Publication/vwLUAssets/2011Americas_Tax_Policy_outlook/$FILE/Americas_Tax_Policy_outlook_29Mar11.pdf).

¹⁸⁵ <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>.

The Department of the Treasury (Treasury) established the Automotive Industry Financing Program (AIFP) in December 2008 to "prevent a significant disruption of the American automotive industry, which would pose a systemic risk to financial market stability and have a negative effect on the economy of the United States".¹⁸⁶ Another initiative involving assistance to the automobile industry is the Consumer Assistance to Recycle and Save (CARS) Act of 2009.

During the review quarter, Government Accountability Office released a report on May 10, 2011 analysing the effects of these subsidies. The report stated that Substantial federal assistance allowed GM and Chrysler to restructure their costs and improve their financial condition. Through federally-funded restructuring, GM and Chrysler reported lowering production costs and capacities by closing or idling factories, laying off employees, and reducing their debt and number of vehicle brands and models. These changes enabled both companies to report operating profits and reduce costs enough to be profitable at much lower sales levels than ever before. By participating in GM's November 2010 initial public offering (IPO), Treasury tried to fulfill both goals, selling almost half of its shares at an early opportunity. Treasury received \$13.5 billion through the IPO; yet, for Treasury to fully recoup its investment, over \$54 a higher price than industry analysts estimate over roughly a 6 to 18 month period. Chrysler's value would have to grow above historic levels for Treasury to recoup its investment.

Assistance to energy sector

The largest of the biofuel tax expenditures is the Volumetric Ethanol Excise Tax Credit (VEETC), which provides a US\$0.45 per gallon excise tax credit to blenders of ethanol and gasoline. The 45-cent-a-gallon tax credit and the 54-cent tariff which were to expire on December 31 got a one year extension by the Senate's voting in Dec 2010.¹⁸⁷

However as per a press release, on June 16, 2011, the Senate voted overwhelmingly to eliminate billions of dollars (\$6 billion a year in ethanol subsidies) in support for the U.S. ethanol industry, sending a strong message that the era of big taxpayer support for biofuels is ending. Yet, the senate measure still faces a long road to becoming final. The White House issued a statement saying it was against a full repeal of ethanol subsidies, indicating it could use its veto power if the amendment continued to advance in Congress. Previously, the World Bank and other international organizations also called on governments to stop their ethanol subsidies because of concerns they were driving up food prices. While more ethanol is good for corn farmers, U.S. livestock producers argue their feeding costs have gone up, which has raised food prices for consumers.

Other changes reported during the review quarter

A US federal budget proposal unveiled on April 5, 2011 by House Republicans provided for deep cuts to taxes and to domestic spending including farm subsidies. The proposal put forward by the chairman of the House Budget Committee, Paul Ryan, a Republican from Wisconsin, would cut \$30 billion out of farm payments over a decade. The cuts would represent 20 percent of projected farm spending based on Congressional Budget Office estimates, according to Reuters. The new long-term budget plan stood in contrast to the House Republicans' February proposal, which would have done nothing to slash farm payments, although it would have reduced spending on some nutritional programmes. The plan would reduce \$5 billion-a-year in 'direct payments' made to farmers each year irrespective of current production,

¹⁸⁶ Department of the Treasury online information, "*Road to Stability: Automotive Industry Financing Program*", (April 9, 2010). Viewed at: <http://www.financialstability.gov/roadtostability/autoprogram.html>.

¹⁸⁷ <http://www.reuters.com/article/2010/12/15/us-usa-ethanol-incentives-idUSTRE6BE4XY20101215>

price, or need. The budget committee also proposed to “reform the open-ended nature of the government’s support for crop insurance, so that agricultural producers assume the same kind of responsibility for managing risk that other businesses do.” Nutrition programmes such as food stamps - which account for some of the US agriculture department’s biggest outlays would be cut by 20 percent and the land conservation funding also would be reduced by a quarter. Ryan’s plan, with its controversial cuts to social programmes such as medical care for seniors and the unemployment, is however unlikely to receive the House, Senate, and presidential approval necessary to become law. Furthermore, any farm subsidy cuts would need to be written into a new US farm bill, due in 2012.¹⁸⁸

VIC. Regulatory reform

Bank Policy

On May 18, 2011, the Ex-Im Bank announced that the board of directors had doubled an existing working capital loan guarantee to MAG IAS, LLC, based in Sterling Heights, Michigan to \$20 million. This increase enables MAG to handle increased foreign demand for its products, which will increase their sales and help them maintain approximately 100 high quality manufacturing jobs related to their export business. MAG's Ex-Im Bank working capital loan guarantee currently enables them to support \$100 million in annual exports to customers in key markets including China, Brazil, and India. With Ex-Im's backing, MAG will now be able to hire additional workers in areas that have been hard hit by the economic recession. Potentially jobs could be added in Fond du Lac, Wisc.; Hebron, Ky.; Port Huron, Wisc.; and Sterling Heights, Mich.¹⁸⁹

On May 17, 2011, EXIM chief spoke about initiatives including direct loans, loans guarantee, **working capital guarantee**, export credit insurance taken by bank to create a level playing field for US companies.¹⁹⁰

Environment policy

(1) On June 3, 2011, the U.S. Department of Commerce updated its Strategic Sustainability Performance Plan (SSPP), a roadmap to increase its energy and environmental stewardship. The SSPP details the department’s current progress and plans for meeting targets in 8 key areas, from reducing greenhouse gas emissions and energy consumption to increasing on-site generation of renewable energy and recycling. Highlights from 2010 include the completion of a 120 KW solar array to power the National Institute of Standards and Technology’s Kauai, Hawaii WVVH radio station, which is projected to save nearly \$60,000 per year; the National Oceanic and Atmospheric Administration’s construction of two green buildings and plans for completion of four more; and completion of Commerce’s first ever inventory of its greenhouse gas emissions. As part of the SSPP update State Secretary Locke issued the department’s first ever climate change adaptation policy, which commits Commerce to considering climate change impacts when undertaking planning, setting priorities for scientific research and investigations, and making decisions regarding its resources, programs, policies, and operations. The new policy also commits Commerce to developing and publishing a department-wide Climate Adaptation Plan by June 4,

¹⁸⁸ ICTSD reporting; “*Cut farm subsidy, crop insurance by \$30 bln-US GOP*,” REUTERS, (April 5, 2011), BRIDGES WEEKLY TRADE NEWS DIGEST Volume 15, Number 12, (April 6, 2011), *House Republicans’ New Budget Proposal Would Cut Farm Subsidies*, <http://ictsd.org/i/news/bridgesweekly/103535/>.

¹⁸⁹ Information from EXIM Bank: <http://www.exim.gov/pressrelease.cfm/08B0C7F3-DEC6-1FAE-3EF45D49E127B244/>.

¹⁹⁰ Information from EXIM Bank: http://www.exim.gov/about/leadership/testimony_20110519.cfm.

2012, which will evaluate risks and vulnerabilities to climate change and define the department's strategy for managing climate change impacts in both the short and long term.¹⁹¹

(2) The US senate rejected four bills aimed at curbing the authority of country's Environmental Protection Agency (EPA) when it comes to regulating greenhouse gas (GHG) emissions. The most controversial bill, proposed by Republican Mitch McConnell, would have completely prevented the EPA from continuing to regulate emissions. Following the April 6, 2011 vote in the Senate, the Republican-dominated House of Representatives passed a bill on April 7, limiting the EPA's regulating capabilities and repeal the validity of its assertion that carbon dioxide and other greenhouse gases pose a threat to human health. However, the bill's passing was largely negated by the earlier vote in the Senate, which currently holds a Democratic majority. Analysts predict that this majority will continue to deter any efforts to curb the EPA's power.¹⁹²

There have been other initiatives as a part of the environment policy which can impact trade:

- The release of new fuel economy labels can have impact on imports.¹⁹³
- The new energy star standards for lighting can make products standards difficult.¹⁹⁴
- Recently, Indo-US clean energy research centre has been set up in India, for better and cleaner energy usage.¹⁹⁵
- There have been reports of bio fuel support to counter reliance on imports of oil.¹⁹⁶ U.S. Agriculture Secretary Tom Vilsack and U.S. Energy Secretary Steven Chu announced a total of \$42 million to fund eight research and development projects that will support the production of biofuels, bioenergy and high-value biobased products from a variety of biomass sources. These investments in clean, sustainable transportation fuels will help reduce U.S. oil imports, support economic development in rural America, create clean energy jobs for U.S. workers, and protect American families and businesses from future spikes in gas prices.

Immigration Policy

In his State of the Union address in January, 2011, President Obama confirmed his vision on U.S. immigration he originally outlined in July, 2010. President Obama's approach:

¹⁹¹ Commerce Blog, (June 15, 2011), available at: <http://www.commerce.gov/blog/2011/06/15/commerce-updates-strategic-sustainability-performance-plan-and-publishes-climate-ada>.

¹⁹² ICTSD Reporting; *House Nixes EPA Climate Rules but Senate Protects Them*, USA TODAY, (April 7, 2011); *Senate Rejects Bill to Limit E.P.A.'s Emissions Programs*, NEW YORK TIMES, (April 6, 2011); *Senate Rejects Measure To Stop EPA On Climate*, REUTERS, (April 7, 2011).

¹⁹³<http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/9f473e018a34205e8525789a005d3518!OpenDocument>.

¹⁹⁴<http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/4f1bccda2e664b56852578690050df28!OpenDocument>.

¹⁹⁵ <http://www.energy.gov/news/10332.htm>.

¹⁹⁶http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/05/0202.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent.

- Continue to make U.S. border security the responsibility and priority of the federal government;
- Hold accountable businesses that break the law by exploiting undocumented workers;
- Make those living in the U.S. illegally take responsibility for their actions; and,
- Strengthen our economic competitiveness by creating a legal immigration system that meets our diverse needs.

Obama Administration's budget priorities for immigration continues to enhance and expand its E-Verify and SAVE (Systematic Alien Verification Entitlements) Programs to promote employer compliance with immigration laws, and to prevent individuals from obtaining benefits for which they are not eligible by requesting \$137.4 million dollars from Congress for FY 2011.¹⁹⁷

The lack of a national policy for immigration in US has been one of the major criticisms, especially in the light of easing visa norms and citizen requirements for foreign students and entrepreneurs in the US.¹⁹⁸

VID. Trade related intellectual property rights

Introduction

The United States has a comprehensive and highly developed system for the protection of intellectual property rights and is active in protecting its rights abroad, including through dispute settlement in the WTO. Since 1995, it has started proceedings in 15 cases in the WTO and been the respondent in 4.¹⁹⁹ The United States continues to be active in the WTO TRIPS Council and the negotiations on TRIPS issues in the Doha Development Agenda. It updated its notification of the contact point in the United States for technical cooperation and for international cooperation (Article 69) of TRIPS as the Deputy Assistant USTR for IP and Innovation in the USTR.²⁰⁰ In June 2009, it also notified the text of the law Prioritizing Resources and Organization for Intellectual Property Act 2008.²⁰¹ In the DDA negotiations, in March 2010, the Chairman reported to the Trade Negotiations Committee that the United States continues to support the 2005 joint proposal on geographical indications for wines and spirits, along with a number of other delegations.²⁰²

The Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act 2008 aims to improve enforcement of intellectual property rights by increasing penalties and improving resources for investigation. In addition, the Act created the post of Intellectual Property Enforcement Coordinator (IPEC) in the Executive Office of the President to replace the national Intellectual Property Law Enforcement Coordination Council. The IPEC is responsible for formulating the Administration's strategic plan to combat intellectual property theft, and to work with the agencies responsible for IP enforcement to effectively and efficiently implement that plan. The Webcaster Settlement Act of 2008

¹⁹⁷ Dickson & Wright, *The Obama Administration's New Immigration Policy Initiatives*, (March 2011), <http://www.mondaq.com/unitedstates/x/131948/The+Obama+Administrations+New+Immigration+Policy+Initiatives+March>.

¹⁹⁸ *US immigration policy risks suicide*, (June 15, 2011), <http://www.bloomberg.com/news/2011-06-15/u-s-immigration-policy-risks-suicide-bloomberg-says-1-.html>.

¹⁹⁹ WTO online information, "Find disputes cases", Viewed at: http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm.

²⁰⁰ WTO documents IP/N/7/Rev.3 of 17 February 2010 and IP/N/3/Rev.11 of 4 February 2010.

²⁰¹ WTO document IP/N/1/USA/E/1 of 18 June 2009.

²⁰² WTO document TN/IP/20 of 22 March 2010 and TN/IP/W/10/Rev.2 of 4 July 2008 (originally distributed as TN/IP/W/10 in March 2005).

and the Webcaster Settlement Act of 2009 have also become law.²⁰³ These Acts allow internet radio stations and commercial webcasters and the recording industry to negotiate royalty rates.

Developments during the review quarter

(1) **301 Review-** On May 2, 2011, USTR released its annual Special 301 Report on the adequacy and effectiveness of U.S. trading partners' protection of intellectual property rights. The Special 301 Report provides a means for the United States to promote the protection and enforcement of IPR. This year, for the first time, USTR has issued an open invitation to all trading partners listed in the report to cooperatively develop action plans to resolve IPR issues of concern.²⁰⁴

(2) **337 Review-** Review of S. 337 conducted as per US tariff act, 1930, provides a list of infringement in IP that can affect trade relationships. List of investigations against India pending during April, 2011 are as follows:²⁰⁵

Patent infringement

Investigation No.	337-TA-766
In the Matter of Certain	Gemcitabine and Products Containing Same
Unfair Acts in Notice:	Patent Infringement
Patent, Copyright, Trademark Nos.	U.S. Patent No. 5,606,048
Country of Origin (Resp./Products):	China, India ²⁰⁶

(3) Another major development in the field of IP, has been the launch of The Anti-Counterfeiting Trade Agreement (ACTA) which seeks to improve the global enforcement of intellectual property rights through the creation of common enforcement standards and practices and more effective international cooperation. ACTA aims to achieve this by establishing shared international standards on how countries should act against large-scale infringements of intellectual property rights. ACTA aim at better coordination of International Cooperation; establishing best practice in enforcement methods and providing a more coherent legal framework in agreement with TRIPS.

ACTA negotiations were concluded in 2010 following 11 negotiating rounds. ACTA was negotiated by Australia, Canada, European Union, Japan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland and the United States. The text is now in the domestic stage of getting approval by each party. Analysts are however skeptical about the agreement as it incorporates several provisions which go TRIPS plus posing serious problems for developing countries.

²⁰³ For the texts of these Acts see: <http://www.copyright.gov/legislation/archive/>; and <http://www.copyright.gov/legislation/>.

²⁰⁴<http://www.ustr.gov/about-us/press-office/press-releases/2011/may/ustr-releases-annual-special-301-report-intellectual-p>.

²⁰⁵ http://www.usitc.gov/secretary/fed_reg_notices/337/.

²⁰⁶<http://info.usitc.gov/ouii/public/337inv.nsf/34ee115c5a9962e28525656a00601452/cf869473da7a97ae8525785600774fd5?OpenDocument&Highlight=0,India>.

Potential provisions under the legal framework of the ACTA may include civil and criminal enforcement, border measures, and enforcement issues related to the digital environment. The ACTA also would include a chapter on institutional arrangements necessary for implementing the ACTA. Though it is only a draft Agreement, with most parts of the text still in brackets, it can be foreseen that the current text intends to broaden the scope of piracy and counterfeit, enhance the standards of protection through a broadened scope of civil, criminal and border measures, as well as setting up regulating digital environment, all of which go beyond TRIPS enforcement measures. For example it will apply to goods not only in imports, but also to exports, in-transit consignments and goods under custom supervision. Moreover, the scope for ex-officio enforcement has been remarkably extended and standards for initiation significantly lowered. As a result, the proposed ACTA inappropriately restrict the built-in flexibilities and exceptions in TRIPs and intended to implement TRIPS-plus agenda outside the purview of the WTO. Although not participating in negotiations, developing country governments will nevertheless find their domestic policy space reduced by ACTA in terms of availing TRIPS flexibilities. In particular, this will impair the use of TRIPS flexibilities by the developing countries to access to affordable generic medicines and generic trade.²⁰⁷

VIE. Competition policy

General features and policy

The Sherman Act, Clayton Act, and the Federal Trade Commission Act are the main federal competition laws in the US. The Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) are major law enforcing bodies. According to the U.S. authorities, state courts generally interpret sub-federal competition legislation consistently with the federal law and federal and state competition enforcers cooperate closely to ensure that their actions are consistent, and to minimize unnecessary burdens on private parties.²⁰⁸ The Webb-Pomerene Act and the Export Trading Company Act of 1982 grant immunity from competition law to certain exporters.

Developments during the review quarter

On June 6, 2011 it was reported that the U.S. Federal Trade Commission issued a report analyzing the U.S. patent system from a competition policy perspective. The FTC believed that several aspects of the U.S. patent system could be improved to better achieve better innovation and consumer choices. In particular, the FTC focused on several situations where the patent system may provide certain patentees especially what the FTC referred to as “patent assertion entities” (i.e., “patent trolls”) legal remedies that are far out of proportion to the importance of their inventions. The FTC believed that this “patent hold-up” problem over compensates these patentees, which in turn distorts the competitive process and reduces overall innovation.

The FTC Report makes recommendations to address these concerns in two principal areas: notice and remedies. With respect to notice, the FTC recommends several changes in an effort to improve the ability of market participants to identify and assess the scope of relevant patents. The FTC’s recommendations would impose stricter rules against claims that are indefinite or overly broad, and include suggestions for procedures such as improving the patent examination record at the U.S. PTO that the FTC believes would provide outside parties with additional guidance in interpreting existing patent claims. The second

²⁰⁷ Sunil Kumar Agarwal, Navin Srivastava, Amita Agarwal, *TRIPS-Plus Agenda Through Anti-Counterfeiting Trade Agreement: Implications For India*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1868026.

²⁰⁸ WTO document WT/TPR/M/200/Add.1, (Sep. 9, 2008)

and potentially more far-reaching set of FTC recommendations relates to remedies. The FTC makes several suggestions in an effort to make sure that the damages awarded to a patentee are proportional to the value of the invention (i.e., that they replicate what would have been awarded in a competitive marketplace). One key element of the FTC Report is that infringement damages should reflect the value that the patent provides as compared to non-infringing alternative products. The FTC recommends that courts set this “hypothetical” negotiation at an early stage of product development, before the infringer has sunk costs into using the technology. The FTC also recommends that U.S. courts have greater authority to limit the admissibility of unreliable expert testimony on damages.

The FTC also made several recommendations about when a patentee should not be entitled to an injunction. The agency agreed with the standards set forth in the US Supreme Court decision in *eBay Inc v. MercExchange*,²⁰⁹ which will have the effect of reducing the ability of “*patent assertion entities*” to obtain injunctions in certain circumstances. The ability of such entities to obtain an injunction can, in some situations, lead to a serious patent hold-up problem. Although it believes that injunctions should ordinarily be awarded, the FTC suggests a few factors that might weigh against equitable relief. These include (i) where the alleged infringer did not actually copy the invention subject to the patent, and (ii) where the patented invention is a minor element of the product subject to the injunction, and has numerous alternatives that the infringer could have chosen instead had it been aware of the patent claim.²¹⁰

VII. Trade Policy by Sector

VIIA. Agriculture

Policy

Most agriculture policies in the United States are set out in the Food, Conservation, and Energy Act of 2008, which authorizes agricultural programmes for 2008-2013.²¹¹ The current law provides for a series of wide-ranging policies that cover almost all agriculture production but with very different programmes in different areas, not all of which provide support to producers. The Act, like previous Farm Acts, has a limited duration. In theory, if a new Act is not passed before the current one expires (in 2013) the legislation reverts to the permanent legislation, most of which is in the Agricultural Adjustment Act of 1938, the Agriculture Act of 1949, and the Commodity Credit Corporation Charter Act of 1948. However, in the past, the existing Act has been extended in these circumstances.

Tariffs and tariff-rate quotas for agricultural products are not covered in the Farm Act 2008. Based on the WTO definition of agricultural products, the Harmonized Tariff Schedule of the United States (HTSUS) has 1,791 tariff lines at the 8-digit national level. Some of these lines refer to in-quota tariff rates with other tariff lines for the same product giving the out-of-quota rate. There are 1,595 tariff lines for out-of-quota tariff rates for agricultural products.²¹²

²⁰⁹ L.L.C., 547 U.S. 388 (2006).

²¹⁰ Eric J. Stock, Hogan Lovells, *U.S. Federal Trade Commission Recommends Changes to U.S. Patent System*, KLUWER COMPETITION LAW BLOG, (June 6, 2011), <http://kluwercompetitionlawblog.com/2011/06/06/u-s-federal-trade-commission-recommends-changes-to-u-s-patent-system/>.

²¹¹ The Farm Act of 2008, Viewed at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2419enr.txt.pdf.

²¹² For more information see HTSUS at: <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1000gntoc.htm>.

For these 1,595, the average applied MFN tariff is 8.9%, which is relatively low compared with some other WTO Members. However, rates vary a lot from one product group to another, from 350% for some tobacco tariff lines to zero for 368 tariff lines. Of these 1,595 tariff lines, 696 have non-*ad valorem* duties. Ethyl alcohol used as fuel is also subject to "other duties or charges" and bound in HTSUS at US\$0.1427 per litre. The highest tariffs are on tobacco, sugar, peanuts, and dairy products, followed by beef, cotton, and certain horticultural products (such as mushrooms). The United States notifies the Committee on Agriculture for 44 tariff quotas covering 171 tariff lines, mostly for dairy products, sugar products, products containing sugar and/or dairy ingredients and cotton. The most recent notification is for 2007 and 2008.²¹³

Developments during the review quarter

(1) During June, 2011 the US House Appropriations Committee, which is tasked with allocating government expenditures, saw three cotton-related amendments to the Agriculture Appropriations bill for fiscal year 2012 pass by voice votes. Representative Rosa DeLauro, a Democrat, sponsored an amendment that would shift the US\$ 147.3 million being provided to Brazil Cotton Institute to the Women, Infants and Children (WIC) public nutrition programme for 2012.

The Brazil Cotton Institute, which acts as a technical fund for Brazilian farmers, was one of the conditions of the US-Brazil Framework Agreement that was finalised last year on June 23, 2010. The agreement put a temporary hold on Brazil's plans to impose WTO-authorized trade sanctions on the US, following a bitter trade dispute. The bilateral deal gives the US until the 2012 update of the Farm Bill, the omnibus legislation dealing with the federal farm subsidy programme to change its cotton subsidy regime. In the meantime, the US would provide Brazil with compensation to establish the fund.

Representative Jeff Flake, a Republican, introduced two other cotton-focused amendments. One of them would cut direct payments by the same amount necessary to fund the Brazil Cotton Institute in fiscal year 2013 - i.e. by US\$147.3 million. This would effectively take the burden of supporting the Brazil Cotton Institute off taxpayers and put it on cotton farmers. Flake also sponsored an amendment that would set an income limit for farmers receiving direct payments; only farmers earning less than US\$250,000 per year would be eligible for these subsidies. The Brazil Cotton Institute is currently receiving US\$12.275 million from the US on a monthly basis, which if these amendments do not pass will continue until the 2012 Farm Bill is finalised. Currently the Brazil Cotton Institute's funds come only from the US, as per the Memorandum of Understanding between the two countries. However, if the Agriculture Appropriations bill passes with the Flake and DeLauro amendments intact, the institute would be forced to alter its current business plan.²¹⁴

²¹³ WTO document G/AG/N/USA/72 of 1 March 2010.

²¹⁴ ICTSD reporting; *House panel OKs income limit for farm subsidy recipients*, DES MOINES REGISTER, (June 1, 2011); *Cuts to agriculture programs may be next in the House*, THE HILL, (June 6, 2011); *House panel OKs Appropriators approve agriculture cuts, target farm subsidies and Brazil*, THE HILL, (June 1, 2011); *House bill cuts U.S. farm aid, payment to Brazil*, REUTERS, (May 31, 2011).

Later during June, US House of Representatives, in a 223-197 vote, members passed an amendment to the Agricultural Appropriations bill for fiscal year 2012. If this bill is enacted into law, it could violate the terms of the 2010 WTO US-Upland Cotton agreement between the two countries.²¹⁵

(2) USDA's Commodity Credit Corporation (CCC) on June 22, 2011 announced an increase in the FY 2011 (October 1, 2010-September 30, 2011) (Overall Allotment Quantity) OAQ under the Sugar Marketing Allotment Program to 9,400,000 STRV and a reassignment of surplus cane sugar allotment to imports. The OAQ was increased due to an increase in estimated sugar demand since the FY 2011 OAQ was established in August 2010. The beet sugar allotment is now 5,108,900 STRV, and the cane sugar allotment is 3,366,100 STRV. The FY 2011 cane sector allotment and cane state allotments after the OAQ increase were larger than could be fulfilled by domestically-produced cane sugar; so the surplus was reassigned to raw sugar imports, as required by law. Upon review of the domestic sugarcane processors' sugar marketing allocations relative to their FY 2011 expected raw sugar supplies, CCC determined that all sugarcane processors had surplus allocation. Therefore, all sugarcane states' sugar marketing allotments are reduced with this reassignment. The new cane state allotments are Florida, 1,464,666 STRV; Louisiana, 1,526,050 STRV; Texas, 147,138 STRV; and Hawaii, 228,246 STRV. The FY 2011 sugar marketing allotment program will not prevent any domestic sugarcane processors from marketing all of their FY 2011 sugar supply.²¹⁶

(3) On May 31, 2011 a notice was published in the Federal Register which updated the quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products. As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Uruguay Round Agricultural Safeguard Trigger Levels published in the Federal Register of 1995.²¹⁷

(4) On April 12, 2011 The Secretary of Agriculture announced a reassignment of surplus sugar under domestic cane sugar allotments of 325,000 short tons raw value (STRV) to imports, and increased the fiscal year (FY) 2011 raw sugar tariff-rate quota (TRQ) by the same amount. USDA's Commodity Credit Corporation (CCC) announced the reassignment of projected surplus cane sugar marketing allotments under the FY 2011 (October 1, 2010-September 30, 2011). The FY 2011 cane sector allotment and cane state allotments are larger than can be fulfilled by domestically-produced cane sugar, so the surplus was reassigned to raw sugar imports as required by law. Upon review of the domestic sugarcane processors'

²¹⁵ICTSD reporting; *WTO cotton settlement ripped in ag budget debate*, ASSOCIATED PRESS, (June 20, 2011); *Food fight: how battles over turf and trade killed an increase in WIC funding*, CONNECTICUT MIRROR, (June 16, 2011); *Ethanol industry is unruffled by Senate vote against tax breaks*, NEW YORK TIMES, (June 17, 2011); *Brazil to retaliate if US ends cotton payments*, MARKETWATCH, (June 18, 2011); *Agriculture bill narrowly clears House*, POLITICO, (June 16, 2011); *UNICA vê avanço histórico em decisão do Senado dos EUA contra tarifa sobre etanol*, UNICA, (June 16, 2011); *US Attempt to Defund Brazil Cotton Institute May Reignite Trade Tensions*, BRIDGES WEEKLY TRADE NEWS DIGEST, Volume 15, Number 23, June 23, 2011, <http://ictsd.org/i/news/bridgesweekly/109159/>.

²¹⁶ USDA Increases the Domestic Sugar Overall Allotment Quantity, Reassigns Domestic Cane Sugar Allotments, and Increases the Fiscal Year 2011 Raw Sugar Tariff-Rate Quota, [Federal Register Volume 76, Number 120 (Wednesday, June 22, 2011)] [Notices] [Pages 36512-36513] From the Federal Register Online via the Government Printing Office [www.gpo.gov] [FR Doc No: 2011-15521]

²¹⁷ DEPARTMENT OF AGRICULTURE, Foreign Agricultural Service, WTO Agricultural Safeguard Trigger Levels, [Federal Register Volume 76, Number 104 (Tuesday, May 31, 2011)] [Notices] [Pages 31295-31297] From the Federal Register Online via the Government Printing Office [www.gpo.gov] [FR Doc No: 2011-13223]

sugar marketing allocations relative to their FY 2011 expected raw sugar supplies, CCC determined that all sugarcane processors had surplus allocation. Therefore, all sugarcane states' sugar marketing allotments are reduced with this reassignment. The new cane state allotments are Florida, 1,856,850 STRV; Louisiana, 1,577,810 STRV; Texas, 173,016 STRV; and Hawaii, 283,216 STRV. The FY 2011 sugar marketing allotment program will not prevent any domestic sugarcane processors from marketing all of their FY 2011 sugar supply.

This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis, and may make further program adjustments during FY 2011 if needed.²¹⁸

VII B. Financial Services

The Gramm-Leach-Bliley Act (Financial Services Modernization) of 1999 (GLBA) is the main law regulating the consolidated financial sector. The Financial Services Regulatory Relief Act of 2006 introduced changes to U.S. financial service legislation affecting banking, securities, and insurance. Under the McCarran-Ferguson Act of 1945 (U.S. Code Title 15, Chapter 20), regulation of insurance services is primarily at the state level. The Federal Reserve is the umbrella regulator for financial conglomerates that include a bank. The activities of subsidiaries of financial holding companies (FHCs) are regulated by several different regulators. Banking sector supervision is the responsibility of both federal and state regulators.²¹⁹

On October 3, 2008, the U.S. President signed into law the Emergency Economic Stabilization Act of 2008 (EESA), which provided budgetary authorization of up to US\$700 billion to respond to the crisis. This authorization was utilized through the Troubled Assets Relief Program (TARP), which enabled the Secretary of the Treasury to purchase, and to make and fund commitments to purchase troubled assets from any financial institutions. The Act defines "financial institution" as including "*any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States ... but excluding any central bank of, or institution owned by, a foreign government*". Foreign institutions established and regulated in the United States were therefore, in principle, eligible for relief. In May 2010, the Department of the Treasury notified Congress that the projected lifetime cost of TARP would total US\$105.4 billion.

To meet the goals of the EESA, the Treasury established several programmes under the TARP, and defined eligibility guidelines for each programme. According to the application guidelines for the Capital Purchase Program, the largest single program under TARP, and the TARP Capital Assistance Program, "*applicants must be established and operating in the United States and may not be controlled by a foreign bank or company*".

In addition to the TARP programmes, temporary liquidity guarantee programmes were implemented by the FDIC. These are the Transaction Account Guarantee Program (TAGP), which fully guarantees non-interest-bearing transaction deposit accounts above US\$250,000, and the Debt Guarantee Program (DGP), which guarantees eligible senior unsecured debt issued by eligible institutions Substantial liquidity

²¹⁸ Department Of Agriculture, Office of the Secretary, USDA Reassigns Domestic Cane Sugar Allotments and Increases the Fiscal Year 2011 Raw Sugar Tariff-Rate Quota, [Federal Register: April 12, 2011 (Volume 76, Number 70)] [Notices][Page 20305] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr12ap11-29]

²¹⁹ WTO/TPR/S/235 at 95

support over US\$1 trillion was provided by the Federal Reserve, both directly to the markets and via programmes such as the Asset-Backed Securities Loan Facility, or the Term Asset-Backed Securities Loan Facility (TALF); the Primary Dealer Credit Facility; and liquidity swaps with foreign central banks.²²⁰

VIIC. Transport Sector

Through the Airport Improvement Program (AIP) the FAA provides grants for the development of public airports, including airports with no scheduled passenger flights, which may be privately owned. The proportion of costs covered by grants from the AIP vary with the type of work and the size of the airport and can be as high as 95% of eligible costs for small primary, and general aviation airports. The Program is funded through taxes on passenger ticket sales and aviation fuel. Grants for airport improvement require airlines to be able to self-handle and use of airport facilities to be non-discriminatory. US\$3.9 billion was authorized for the AIP in FY2009.²²¹

Funds provided under the ARRA, specifically to the Federal Aviation Administration for airports, require that the steel and manufactured goods used in the project must be produced in the United States. A waiver may be sought when procuring a facility or equipment if the cost of components and subcomponents produced in the United States is more than 60% of the cost of all components, and final assembly is in the United States.

Within the Department of Transportation, the Office of the Assistant Secretary for Aviation and International Affairs is responsible for economic policy and regulation, while the Federal Aviation Administration is responsible for safety issues, regulation of commercial space aviation, and monitoring air carriers operating in the territory of the United States. The FAA's Air Traffic Organization (ATO) established in February 2004 to oversee the U.S. air traffic system. The FAA's War Risk Aviation Insurance Program provides war risk hull loss and passenger and third-party liability insurance to the domestic airline industry, as required by the Homeland Security Act of 2002 as amended by the FAA Extension Act of 2010. Since the end 2007 the United States has completed negotiations on "open-skies" agreements with Australia, Barbados Croatia, Kenya, Laos, Armenia, Zambia, Israel, and Trinidad and Tobago, and with the European Commission on further liberalization of air transport. It also initialled an MOU with Japan in December 2009, which would, upon signature, implement an open-skies agreement. The United States also forms part of the Multilateral Agreement on the Liberalization of Air Transport (MALIAT) concluded between various members of APEC (Brunei, Chile, Cook Islands, United States, New Zealand, Samoa, Singapore, Tonga, and Mongolia). Altogether, the United States has negotiated Open Skies agreements with 99 partners, (counting the EU as 27).

The second stage U.S.-EU Air Transport Agreement was signed on 24 June 2010.

In addition, the Maritime Administration (MARAD) of the Department of Transportation is responsible for certain maritime regulations, programmes that promote the use of waterborne transportation and its integration with other segments of the transportation system, and the viability of the U.S. merchant marine. The independent Federal Maritime Commission (FMC) is responsible for the regulation of ocean transportation intermediaries, ocean common carriers, cruise operators, and marine terminal operators. The FMC also operates a Consumer Affairs and Alternative Dispute Resolution programme. The FMC is responsible for the implementation of an alternative competition regime for ocean common carriers and

²²⁰ The TALF is a joint endeavour of Treasury (which contributed a US\$20 billion subordinated loan) and the Federal Reserve, whose objective was to fund buyers of asset-backed securities. On 31 March 2010 TALF ceased for issued asset-backed securities and legacy commercial mortgage-backed securities, see: *ibid*.

²²¹ *Ibid* at 100-102.

marine terminal operators, whose collaboration may qualify for exemption from the generally applicable antitrust laws under the Shipping Act. Under the mandates of the Controlled Carrier Act, Section 19 of the Merchant Marine Act, 1920, and the Foreign Shipping Practices Act, the FMC also monitors the laws and practices of foreign governments and carriers for unreasonable practices affecting U.S. ocean-borne foreign commerce.

The carriage of goods for international trade by liner services has traditionally been exempt from antitrust rules, and subject to regulation. Under the Ocean Shipping Reform Act (OSRA) of 1998, agreements among liner operators and marine terminal operators to discuss, fix, or regulate transportation rates, and other conditions of service, or cooperate on operational matters must be filed with, and examined by the Federal Maritime Commission. The Act also requires ocean carriers to publish tariff rates and charges for carriage for trade with foreign countries. The FMC also reviews the rates of government controlled ocean carriers to ensure that the commercial carriers with whom they compete are not unfairly disadvantaged.²²²

Developments during review quarter

(1) President Obama's \$129 billion budget for the U.S. Department of Transportation is proposed to lay a new foundation for economic growth and competitiveness by rebuilding the nation's transportation systems, enabling innovative solutions to transportation challenges and ensuring the highest level of safety for all Americans. The transportation investments proposed in President Obama's FY12 budget will put Americans to work repairing the bridges and repaving the roads we have now, while supporting the development of the new electric buses and high-speed rail lines of America's future. More than 55 separate highway programs will be streamlined into just five core programs, eliminating wasteful overlap and making it easier for communities to build the projects they need to spur economic growth. The Administration's six-year proposal will also provide \$336 billion, a 48 percent increase over the previous authorization, to rebuild America's roads and bridges, and \$119 billion, a 128 percent increase over the previous authorization, in funding for affordable, sustainable, and efficient transit options. The administration's budget also prioritizes innovative programs and technological solutions to address our transportation challenges. For the first time, the budget will establish a National Infrastructure Bank that will leverage private capital to build complex large-scale projects that hold significant economic benefits to a region or the nation as a whole. A new competitive incentive program, called the Transportation Leadership Awards, will reward unique projects that find new ways to connect people to opportunities and products to markets.²²³

(2) On April 13, 2011, the Federal Motor Carrier Safety Administration (FMCSA) announced, its intent to proceed with the initiation of a United States-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).²²⁴

VIID. Telecommunication Sector

²²² Ibid at 105.

²²³ DOT 20-11 Monday, U.S. Department of Transportation Budget Invests \$129 Billion in Restoring America's Economic Competitiveness, (February 14, 2011), *available at*: <http://www.dot.gov/affairs/2011/dot2011.html>

²²⁴ Department Of Transportation [4910-EX-P], Federal Motor Carrier Safety Administration, [Docket No FMCSA-2011-0097], Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions.

The United States' commitments on basic telecommunications attached to the Fourth Protocol of the GATS cover most services. Excluded from the commitments are one-way satellite transmissions direct-to-home (DTH), direct broadcast satellite (DBS) services, and digital audio radio services (DARS).

The United States has taken an exemption under GATS Article II (MFN) to allow for "*differential treatment of countries due to application of reciprocity measures or through international agreements guaranteeing market access or national treatment*" for DTH and DBS television services and digital audio services (DARS). The United States also reserved the right to "*allow the deduction for expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a U.S. market only where the broadcast undertaking is located in a foreign country that allows a similar deduction for an advertisement placed with a U.S. broadcast undertaking*". The purpose of this MFN exemption is to "encourage the allowance of advertising expenses internationally".

The Federal Communications Commission (FCC) is responsible for "*regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions.*" The FCC was established by the Communications Act of 1934, as amended, as an independent government agency. Intra-state basic telecoms services continue to be regulated by the state authorities.

The National Telecommunications and Information Administration (NTIA) of the Department of Commerce is the principal advisor to the President on telecommunications and information policy issues. The International Communication and Information Policy (CIP) Office in the Department of State, along with the FCC and NTIA, represent the United States in bilateral and multilateral affairs concerning telecommunications, the Internet, and information technology.

The principle legislation covering telecommunications is the Communications Act of 1934 and its amendments. The Telecommunications Act of 1996 was a major reform that sought to improve competition by: reducing barriers to entry for telecoms services; obliging incumbents to permit new entrants to connect with their networks; allowing the removal of restrictions on the provision of long-distance services by regional Bell operating companies when certain conditions had been met and adopting rules for intercarrier compensation.

Section 310 of the Communications Act, restricts the granting of a common carrier wireless licence to foreign governments, as well as to any non-U.S. citizens or corporations, or any corporation with more than 20% foreign ownership. However, the FCC may grant a licence to a U.S. company that is controlled by a holding company in which foreign individuals, corporations, or governments own or vote up to 100% of the capital stock. The American Recovery and Reinvestment Act of 2009 (the Recovery Act) requires the FCC to develop a plan to deliver broadband to everyone in the United States. The purpose of the FCC's plan, which was submitted to Congress in March 2010 and under review by the Executive Branch before the National Broad Band Plan's recommendations are formally adopted, is to "*include a detailed strategy for achieving affordability and maximizing use of broadband.*"

In addition, the Recovery Act states that up to US\$350 million may be used to implement the Broadband Data Improvement Act and to develop and maintain a broadband inventory map. It also permits the NTIA to transfer funds to the FCC for the purposes of creating a national broadband plan. The Recovery Act also allocates US\$2.5 billion to the Department of Agriculture to accelerate broadband deployment in rural areas of the country through the Broadband Initiative Program (BIP). Under the BIP, the Department of Agriculture's Rural Utilities Service will award grants, loans, and loan/grant combinations to fund broadband infrastructure throughout the country.

The authorities stated that, in June 2010, the President signed a Presidential Memorandum committing the United States government to make 500 megahertz of spectrum available for wireless technology by the end of the decade. This would nearly double the total amount of spectrum available for wireless technologies. This is also consistent with the FCC's recommendation in the National Broadband Plan that it should make 500 megahertz of spectrum newly available for broadband within 10 years. Amongst other things, the Presidential Memorandum requires that the National Telecommunications and Information Administration (NTIA), in collaboration with the FCC, complete a plan and timetable by October 1, 2010 for identifying and making available this additional 500 megahertz of spectrum over the next 10 years.

Developments during the review quarter

On June 8, 2011, the U.S. Department of Commerce released a report that proposed voluntary codes of conduct to strengthen the cyber security of companies that increasingly rely on the Internet to do business, but are not part of the critical infrastructure sector. The report, *Cyber security, Innovation and the Internet Economy*, focuses on the "Internet and Information Innovation Sector" (I3S) – these are businesses that range from small and medium enterprises and bricks-and-mortar firms with online services, to social networking sites and Internet-only business, to cloud computing firms that are increasingly subject to cyber attacks. The report, developed by the Department's Internet Policy Task Force, makes a number of specific recommendations for reducing I3S vulnerabilities:

Establish nationally recognized but voluntary codes of conduct minimize cyber security vulnerabilities- For example, the report recommends that businesses employ present-day best practices, such as automated security, to combat cyber security threats and that they implement the Domain Name System Security (DNSSEC) protocol extensions on the domains that host key Web sites. DNSSEC provides a way to ensure that users are validly delivered to the web addresses they request and are not hijacked.

Developing incentives to combat cyber security threats- The report also recommends exploring and identifying incentives that could include reducing "cyber insurance" premiums for companies that adopt best practices and openly share details about cyber-attacks for the benefit of other businesses.

Improve public understanding of cyber security vulnerabilities through education and research- Programs like the National Initiative for Cyber security Education should target awareness and training to the I3S and develop methods for cost/benefit analyses for cyber security expenditures.

Enhance international collaboration on cyber security best practices to support expanded global markets for U.S. products- This should include enhanced sharing of research and development goals, standards, and policies that support innovation and economic growth.

In April, the Administration released the National Strategy for Trusted Identities in Cyberspace, which seeks to better protect consumers from fraud and identity theft.²²⁵

Annexures

Annexure I

²²⁵ *Commerce Department Proposes New Policy Framework to Strengthen Cybersecurity Protections for Businesses Online*, Submitted on June 8, 2011, <http://www.commerce.gov/news/press-releases/2011/06/08/commerce-department-proposes-new-policy-framework-strengthen-cybersec>

WTO disputes involving US during the review period

(1) Consultations²²⁶

Consulting Nations	Date	Violations alleged	Agreements covered
	01.04.2011	Matter concerning anti-dumping measures imposed on imports of stainless steel sheet and strip in coils ("stainless sheet and strip") from Italy. EU requested consultations with respect to the impact of an arithmetic error, due to the application of the "zeroing methodology", allegedly made by the US Department of Commerce during the following USDOC proceedings: The original investigation of July 1999; The Section 129 proceeding of September 2007; The Ministerial Error Determination of October 2007; and The second sunset review of December 2010	Articles 2, 5.8, 6.8, 9.3, 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement, and Article VI:2 of the GATT 1994
	18.04.2011	Japan made a request to join the consultations.	
Indonesia	07.04.2011	With respect to a measure applied by the United States regarding the ban of clove cigarettes. Indonesia alleged that Section 907 of the legislation in question, which was signed into law on 22 June 2009, prohibits, among other things, the production or sale in the United States of cigarettes containing certain additives, including clove, but would continue to permit the production and sale of other cigarettes, including cigarettes containing menthol. On 9 June 2010, Indonesia requested the establishment of a panel. At its meeting on 22 June 2010, the DSB deferred the establishment of a panel.	Indonesia alleged that Section 907 is inconsistent, inter alia, with Article III:4 of the GATT 1994, Article 2 of the TBT Agreement, and various provisions of the SPS Agreement.

Other consultations in 2011

Consulting nations	Date	Description of Dispute
Republic of Korea	31.01.2011	Corrosion resistant carbon steel flat products from Korea
China	28.02.2011	Shrimp and Diamond sawblades from China

(2) Composition of Panel

²²⁶DISPUTE DS424, *United States - Anti-Dumping Measures on Imports of Stainless Steel Sheet and Strip in Coils from Italy*, WORLD TRADE ORGANIZATION, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds424_e.htm.

Respondent Nation	Date	Violations alleged	Agreements covered
China	13.05.2011	On 15 September 2010, the United States requested consultations with China with respect to measures imposing countervailing duties and anti-dumping duties on grain oriented flat-rolled electrical steel (“GOES”) from the United States as set forth in Ministry of Commerce of the People's Republic of China (“MOFCOM”) Notice No. 21 [2010], including its annexes. The subsidy that China determined to confer a benefit is the “Buy America” provisions of the American Recovery and Reinvestment Act of 2009 and also State government procurement laws.	Articles 10, 11.2, 11.3, 12.3, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.5, 19, 22.2(iii), 22.3 and 22.5 of the SCM Agreement, Articles 1, 3.1, 3.2, 3.5, 6.9 and 12.2 of the Anti-Dumping Agreement; and Article VI of the GATT 1994.

(3) Panel report under Appeal

Respondent Nation	Date of notification of Appeal	Description of Dispute	Agreements covered
China	24.05.2011	United States — Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China	Protocol of Accession: Art. 16.6, 16.1, 16.3, 16.4 GATT 1994: Art. I:1, II, XIX

(4) Measures following Panel/Appellate body reports

Concerned Nation	Date	Nature of Dispute	Report description
European Union & France, UK, Spain and Germany	Panel Report- 30.06.2010 and AB report- 18.05.2011	Airbus dispute- WT/DS316/R and WT/DS316/AB/R The EU and the four member States were asked to either withdraw the subsidies on account of violation of: Article 1, 2, 3.1, 3.2, 5, 6.3, 6.4 of SCM and certain GATT provisions.	The judgment can be said to be in favor of both the parties as the WTO Appellate Body confirmed that the EU was paying billions of dollars worth of illegal subsidies to aircraft manufacturer Airbus, but overturned the earlier panel’s finding that these payments were export subsidies. While the panel had determined the amount of EU subsidization to be \$20 billion, the Appellate Body reduced the amount to \$18 billion, finding some research and development and infrastructure subsidies to be legal. On specific issues, the Appellate Body reversed the Panel’s recommendation that the European Union withdraw prohibited subsidies within 90 days. The

		<p>The dispute becomes important as a separate WTO panel earlier held that US provides \$5.3 billion in illegal subsidies to Boeing mainly in the form of export subsidies. The matter is pending before the appellate body.</p>	<p>Appellate Body also found that the United States' claims regarding an alleged unwritten launch aid/member State financing programme were outside its jurisdiction. In addition, the Appellate Body reversed the Panel's findings regarding the rate of return that a market lender would have demanded for launch aid/member State financing loans because they were not based on an objective assessment; but found that a benefit was conferred even on the basis of the European Union's calculations. Finally, with respect to the actionable subsidies that have been found to cause adverse effects to the interests of the United States, the Panel's recommendation that the European Union "take appropriate steps to remove the adverse effects or ... withdraw the subsidy" stands.</p>
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(5) Compliance with US consultation

Concerned Nation	Date	Violations alleged	Compliance conduct
China	June, 2011	<p>USTR in response to a petition by the United Steelworkers (USW) filed petition under section 301 of the Trade Act of 1974. The investigation was initiated on October 15, 2010. It probed allegations relating to a variety of Chinese policies and practices affecting trade and investment in the clean energy technology sector, including subsidies. The United States held WTO consultations with China on February 16, 2011. Washington had argued that Beijing's grants were prohibited, as grants were given conditional on the use of local input. This requirement would be in violation of Article 3.1(b) of the Subsidies and Countervailing Measures (SCM) Agreement. The US had also taken issue with China's failure to notify the WTO of these measures. Moreover, Washington alleged that Beijing had violated the commitments it made when acceding to the WTO by not making available translations of the domestic legislation regarding the grant program in English, French, or Spanish - i.e. the official languages of the WTO.²²⁷</p>	<p>China took action formally revoking the legal measure that had created the Special Fund program for wind power subsidy.</p>

²²⁷ ICTSD reporting; "China to halt wind turbine subsidies," CHINA DAILY, 8 June 2011; "China To Promote Renewable Energy Through Subsidies," THE WALL STREET JOURNAL, 20 May 2011; "China's Promotion Of The Renewable Electric Power Equipment Industry," National Foreign Trade Council, March 2010. *Bridges Weekly Trade News Digest*, Volume 15, Number 21, 8th June 2011; "US Proclaims Victory in Wind Power Case; China Ends Challenged Subsidies", <http://ictsd.org/i/news/bridgesweekly/108230/>.

- (6) *Retaliation by Brazil in the US cotton subsidy case*- The “Brazil cotton case” is another landmark case of the WTO DS (276) which has shaped the agricultural policy of US to a large extent. It was initiated by Brazil, a major cotton export competitor in 2002 against specific provisions of the U.S. cotton program. In September 2004, the WTO dispute settlement panel made the following observations: It found that agricultural export credit guarantees are subject to WTO export subsidy disciplines and three United States export credit guarantee programmes are prohibited export subsidies which have no Peace Clause protection and are in violation of those disciplines; The United States also grants several other prohibited subsidies in respect of cotton and United States’ domestic support programmes in respect of cotton are not protected by the Peace Clause, and certain of these programmes result in serious prejudice to Brazil’s interests in the form of price suppression in the world market.²²⁸

In 2005, the United States made several changes to both its cotton and GSM-102 programs in an attempt to bring them into compliance with WTO recommendations. However, Brazil argued that the U.S. response was inadequate. A WTO compliance panel ruled against the United States in December 2007, and the ruling was upheld on appeal in June 2008.

In August 2009, a WTO arbitration panel, assigned to determine the appropriate level of retaliation announced that Brazil’s trade countermeasures against U.S. goods and services could include two components: (1) a fixed amount of \$147.3 million for cotton payments, and (2) a variable amount based on GSM-102 program spending. The arbitrators also ruled that Brazil would be entitled to cross-retaliation if the overall retaliation amount exceeded a formula-based variable annual threshold. Cross-retaliation involves countermeasures in sectors outside of the trade in goods, most notably in the area of U.S. copyrights and patents. Based on the arbitrators’ formulas, using 2008 data, Brazil announced in December 2009 that it would impose trade retaliation against up to \$829.3 million in U.S. goods, including \$268.3 million in eligible cross-retaliatory countermeasures. In March 2010, Brazil released a list of 102 goods of U.S. origin that would be subject to import tariffs of up to 100%, followed by a preliminary list of U.S. patents and intellectual property rights that it could restrict. Brazil announced an April 6 deadline for imposing the tariffs, which led to intense negotiations between Brazil and the United States to find a mutual agreement and avoid the trade retaliation. In early April, 2010, the United States offered a three-point proposal including establishment of a \$147.3 million annual fund to provide technical assistance and capacity-building for Brazil’s cotton sector, near-term modifications to the operation of the GSM-102 program, and special recognition for certain Brazilian beef imports into the United States. As a result, Brazil agreed to postpone the implementation of countermeasures until April 22. On April 20, the two parties signed a memorandum of understanding (MOU) that detailed the specifics of the \$147.3 million fund. As a result, Brazil extended the suspension of trade retaliation until mid-June. The aforementioned “Framework agreement” is intended to delay any trade retaliation until after the 2012 farm bill, when potential changes to U.S. domestic cotton subsidies will be evaluated.²²⁹

²²⁸ Summary of DS 267, United States- Subsidy on Upland Cotton, available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm

²²⁹ Brazil’s WTO case against the US cotton program, Congressional Research Service, (June 30, 2010), available at: <http://www.nationalaglawcenter.org/assets/crs/RL32571.pdf>