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## QUESTIONS FROM ARGENTINA

1. *In light of the sustained growth of bilateral trade since 2002—with the exception of 2009 when the impact of the global crisis unleashed in 2008 was felt—with Argentine imports from the U.S. increasing 12.3% on average over the last decade (18.5% in 2010 and 27.1% in 2011), while its exports to the U.S. market increased 5.6% on average (2.0% in 2010 and 19.9% in 2011), it is deemed fitting to ask about developing channels to access information on market opportunities for products with greater added value that contribute to the increasing number of such products in U.S. imports.*

**RESPONSE:** The U.S. Government has no centralized data source on opportunities available to foreign exporters interested in selling to the U.S. market. That is a service normally provided by the foreign government to its own exporters, typically through its embassies.

Numerous academic studies have shown that innovation, plant productivity and product quality – all of which are important for moving up the value chain – are significantly enhanced when firms have freer access to imported intermediate inputs. We would note that Argentina has put in place measures that would make it more difficult to import. This could be impacting Argentina’s ability to participate at higher levels within the global value chain.

*Report by the Secretariat WT/TPR/S/275 of 11/13/12*

### I. Questions regarding Section I on the Economic Environment.

1. *In Section 2 (Monetary Policy...) of the Report by the Secretariat, paragraph 9 outlines the fiscal stimulus measures adopted by the U.S. administration to buoy the economy. With regard to the Trouble Asset Relief Program, the Report mentions that funding for this program expired in 2010, but states that one quarter of the available funds are outstanding and are allocated to support public investment “in the auto industry,” among other sectors. Could the U.S. describe in detail the funds, recipients, programs and implications of said disbursements?*

**RESPONSE:** The Office of Financial Stability, which administers the TARP, maintains a website that provides comprehensive information about TARP, <http://www.treasury.gov/initiatives/financial-stability/Pages/default.aspx>, that includes pages with descriptions of each program, monthly reports that detail major transactions, and a chart updated daily that shows exactly how much has been expended or recovered in each program under TARP.

2. *In Section 2 (Monetary Policy...) of the Report by the Secretariat, paragraph 13 mentions that the U.S. Federal Reserve (FED) carried out quantitative easing (QE) to head off the effects of the financial crisis. Bearing in mind that to date there have been three rounds of quantitative easing (2009, 2010, and 2012), could the U.S. identify the external and internal factors and indicators that could lead to a new round of quantitative easing (QE4) on the part of the FED?*

**RESPONSE:** The Federal Reserve is an independent agency and responsible for U.S. monetary policy. The Federal Reserve released a Federal Open Market Committee statement in late October that reports the current monetary policy action. <http://www.federalreserve.gov/newsevents/press/monetary/20121024a.htm>

3. *In Section 2 (Monetary Policy) of the Report by the Secretariat, paragraph 14 discusses the adoption by the U.S. administration of initiatives to increase exports. As regards the Export Control*

*Reform Initiative, could the U.S. comment on the status of its implementation, request greater detail [sic] and the period provided for its application?*

**RESPONSE:** The United States has deployed a three-phase implementation plan. The United States has developed and applied a methodology for rebuilding the control lists, has already published a series of proposed rules for public comment in 2012, will publish the first final rules in early 2013, and will continue to publish the remaining proposed and final rules on a rolling schedule throughout 2013. Some aspects of implementation could require legislation to implement a government reorganization that would consolidate the current system into a single control list, single licensing agency, single primary enforcement coordination agency, and single information technology system. To follow developments on the reform initiative, visit [www.export.gov/ecr](http://www.export.gov/ecr) where details on all actions on the initiative are posted.

## **II. Questions related to Section III on Trade Policy and Practices by Measure.**

*1. Measures Directly Affecting Imports, Customs Procedures, paragraph 2: Taking into account the progress made in installing specialized equipment for pre-screening containers bound for the United States at the port of Buenos Aires, could the U.S. indicate when this pre-screening will begin and what estimates they have about its impact on Argentine exporters with regard to the costs and delays that could be caused by its application, based on the experience of the 58 ports where it currently is being done.*

**RESPONSE:** Buenos Aires is identified as one of ports that is a participant in the CBP program, the Container Security Initiative (CSI). CSI is a security regime to ensure all containers that pose a potential risk for terrorism are identified and inspected at foreign ports before they are placed on vessels destined for the United States. More information on the CSI program can be found through this link, [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/csi/csi\\_in\\_brief.xml](http://www.cbp.gov/xp/cgov/trade/cargo_security/csi/csi_in_brief.xml).

*2. As regards state aid and related fiscal measures, the Report by the Secretariat points out that the mission of the U.S. Import-Export Bank is, inter alia, to offer financing that is “comparable” to that which other governments provide to their exporters. Could the U.S. comment on the criteria and parameters used to determine what levels of financing are “comparable”?*

**RESPONSE:** Ex-Im Bank does not compare levels of financing offered; instead, the Bank compares the specific terms and conditions that our foreign ECA counterparts offer in a competitive situation. For financing aspects covered by the set of export credit guidelines known as the OECD Agreement on Export Credits or the “Arrangement” (e.g., minimum interest rates or fees, maximum repayment terms), Ex-Im Bank applies these terms.

For financing aspects not covered by the Arrangement (e.g., risk appetite), Ex-Im Bank compares proxies (e.g., cover policies). Ex-Im Bank publishes an Annual Competitiveness Report and it can be found at [www.exim.gov](http://www.exim.gov) in the Publications section and it will provide you with many details on its comparative analysis.

*3. Regarding specific trade measures (paragraph 47), the Report by the Secretariat indicates that of the anti-dumping orders in force since 1998, 738 were reviewed under the sunset review procedure by the end of 2011. 58% of said orders were maintained (i.e., not revoked). Could the U.S. comment on the factors that led it to maintain these orders?*

**RESPONSE:** In determining whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the USITC considers the factors set out in U.S. law at 19 U.S.C. 1675a. In determining whether revocation of a countervailing duty order or antidumping duty order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of a countervailable subsidy or sales of the subject merchandise at less than fair value, the Department of Commerce considers the factors set out in U.S. law at 19 U.S.C. 1675a.

### **III. Questions regarding Section IV on Trade Policy by Sectors, Agriculture, Section IV.1.**

*U.S. agricultural policy is particularly important to Argentina because of its global impact, relative size and integration in international markets, as is highlighted in paragraph 4. For this reason it is of vital importance that developed countries continue to reform agricultural policies in keeping with the mandate of the Doha Round. Furthermore, this explains the central role that reform of these policies plays in the context of the Doha Round.*

*The questions below (in addition to some clarifications and requests for information from the Secretariat) should be understood to refer to the period under review, unless otherwise indicated.*

#### ***1. Location of available information – Paragraphs 5 and 6 of Sections IV.1.i and IV.1.ii of the report***

*(a) Could the U.S. indicate the internet site or other sources that identify the agricultural producers of commodities and/or processors of said commodities that receive agricultural subsidies of any kind (i.e., price support payments or benefits or direct payments)?*

**RESPONSE:** The United States does not maintain a website of this nature.

*(b) Taking into account the current WTO rules, could the U.S. indicate the website or other sources that identify agricultural producers and/or commodities processors that receive any kind of export subsidy, including those that may stem from officially supported export financing or food aid?*

**RESPONSE:** The United States directs Argentina to the Dairy Export Incentive Program site: <http://www.fas.usda.gov/excredits/deip/deip.asp>

#### ***2. Location of the available information – Food Aid, Section IV.1.ii.b.***

*The questions below refer to non-emergency food aid.*

*a) Could the U.S. indicate the website or other sources that identify non-governmental organizations or persons that were involved in providing in-kind food aid?*

**RESPONSE:** One of the best sources about U.S. food aid programs is the International Food Aid Report, which is prepared annually. The latest report includes information about the non-government organizations that distribute the food aid. The report is found at the following website: [http://www.fas.usda.gov/info/Testimony/FY\\_2010\\_IFAR\\_10-3-11.pdf](http://www.fas.usda.gov/info/Testimony/FY_2010_IFAR_10-3-11.pdf).

*b) Could the U.S. indicate the website or other sources that identify the service provider firms that were involved in providing in-kind food aid?*

**RESPONSE:** The approved list of commodity suppliers is provided at the following website: [http://www.fsa.usda.gov/Internet/FSA\\_File/ipdqbl.pdf](http://www.fsa.usda.gov/Internet/FSA_File/ipdqbl.pdf)

#### ***3. Financing, guarantees and export insurance - paragraph 16 of Section IV.1.ii.a of the report.***

*a) Clarification: The last sentence in paragraph 16 incorrectly states that no financing would be available in the absence of GSM-102 payments exceeding fees and recoveries on default claims. To the extent that this official support program (with conditions that are different from those that could otherwise be obtained) remains active, it will influence decision-making by export firms. This sentence should be deleted from the Secretariat's report.*

**RESPONSE:** There is no declaration in paragraph 16 that no financing would be available in the absence of the GSM-102 program. The United States assumes this comment is in reference to the following statement: "Currently, no funding is provided to GSM-102 as fees and recoveries on default claim payments exceed losses." This means that program fees cover defaults net of recoveries. The statement is strictly related to U.S. Government budget estimates and has nothing to do with the decisions of export firms or whether financing would be available in the absence of the program.

*b) It is suggested that the Secretariat's report be completed by including information available on official U.S. sites or that the U.S. add information on the amounts of official support by product and country of destination. Notwithstanding the foregoing, given that this information has not been included in the Secretariat's report, could the U.S. provide it?*

**RESPONSE:** Program utilization by commodity and region is available at the USDA Foreign Agricultural Service website: <http://www.fas.usda.gov/excredits/Monthly/ecg.html>

*c) In light of the fact that the GSM-102 program has been recognized as circumventing the provisions on export subsidies, could the U.S. report on modifications to this program based on this conclusion, the status of discussions on further reforms, as well as the potential outlook for the program?*

**RESPONSE:** The WTO dispute settlement rulings and recommendations regarding the GSM-102 program related to the program in effect during fiscal year 2006 of the United States government. Since that time, the U.S. Government has made substantial changes to the GSM-102 program, including changes to program premia and repayment terms. Current U.S. budget estimates indicate that the program is covering its long-term operating costs and losses.

**4. Food aid - paragraph 16 of Section IV.1.ii.b. of the report**

*Could the U.S. comment on monetized food aid, i.e., in-kind food aid sold in recipient developing countries to obtain proceeds for the purpose of providing resources to cooperation projects?*

**RESPONSE:** Monetized food aid adds to the supply of food within food-deficit countries, and the sale proceeds fund development projects in agriculture, health, education, and nutrition. Proceeds may also be used to cover the costs of transportation and distribution costs within the recipient country. The amount of monetized assistance provided by the United States is extremely small compared to the total imports and consumption of grains and cereals by countries in Central America, Africa, and South Asia, which are the main recipients of food aid. The United States continues its analyses of markets and potential impacts of monetization in those markets. These efforts include the use of sophisticated market analyses, such as Bellmon Estimation Studies for Title II (BEST) and Market Information and Food Insecurity Response Analysis. The U.S. Government has also improved the oversight of monetization.

**5. Domestic support – paragraph 16 of the Section IV.1.ii.c of the report.**

*The questions below should not be understood as acceptance of the considerations made in the report or in the notifications of the United States regarding these programs, in particular on their proper classification under the different kinds of domestic support provided for in the Agreement on Agriculture.*

*a) ACRE Program:*

*(i) The Secretariat's report should be completed with information on the amounts of the subsidies available to agricultural producers, as they appear in other domestic support programs. Could the U.S. provide this information as of the last notification corresponding to 2009, indicating the products that have benefited therefrom?*

**RESPONSE:** The United States directs Argentina to review U.S. notification G/AG/N/USA/89 Supporting Table 6, which covers marketing year 2010 for the requested information.

*(ii) Bearing in mind that the ACRE program not only involves price supports, but also revenues to agricultural producers that allow this subsidy to be received even when prices are not low, wouldn't this support program be a new distorting agricultural subsidy that runs counter to the agricultural reform process?*

**RESPONSE:** The ACRE program is not a price support program, but rather a whole-farm revenue guarantee program. The ACRE program was implemented as part of the 2008 Farm Bill. The program was designed as an alternative to the countercyclical payments program, which is classified as an amber box program. A producer who elects the ACRE program is not eligible for countercyclical payments and must also take a reduction in direct payments and a reduction in the loan rate under the marketing assistance loan program. Payments under the program have been small, and the United States remains well within its commitments on amber box support.

*b) Domestic support programs for dairy products.*

*Could the U.S. comment on the status of domestic debate on these programs and their outlook for upcoming years?*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

*c) Relative significance of different kinds of support:*

*(i) Could the U.S. comment on the proportion of each one of the supports and their total with respect to the value of agricultural production for each product, including, in particular, the crop and revenue insurance programs, the SURE program, countercyclical payments, and the biomass crop assistance program?*

**RESPONSE:** The programs in question are reported by the United States as non-product specific support. Crop and revenue insurance programs are offered for more than 100 different commodities under essentially the same program rules, and additional commodities are regularly being added to the program; the SURE program is based on whole farm revenue, not individual commodities; countercyclical payments are provided on the basis of historical commodity production and are not linked to current planting; and biomass crop assistance provides support for harvest and delivery of categories of agricultural and forest waste products and production of certain categories of non-food grasses and legumes.

*(ii) If any of these supports benefit more than one product, without benefiting all agricultural products, could the U.S. comment on the proportion of each one of the supports and their total with respect to the group of products they benefit?*

**RESPONSE:** See answer to previous question.

**6. Tariff quotas – paragraph 13 of Section IV.1.ii.a of the report:**

a) Could the U.S. comment on imports (in value and physical quantities) of those agricultural products with most favored nation access subject to tariff quotas, according to whether they enter within the tariff quota or outside of it?

**RESPONSE:** Please see U.S. notification G/AG/N/USA/85 concerning imports under TRQs during 2010 and 2011.

b) Could the U.S. report on imports (in value and physical quantities) of agricultural products with preferential access that are attributed to the WTO tariff quota?

**RESPONSE:** Please see U.S. notification G/AG/N/USA/85 concerning imports under TRQs during 2010 and 2011.

### **7. Reciprocal trade agreements – agricultural products.**

In Section II.3 of the Secretariat's report regarding preferential trade agreements and arrangements, there is an interesting chart (n° II.2) that reports on U.S. imports for consumption by type of import regime.

a) Could the U.S. report on the proportions and value of imports for consumption of agricultural products by the import regime to which they are subject?

b) Could the U.S. provide this information for the following products: apples, pears, lemons, tangerines, oranges, grapefruits, grapes, blueberries, peaches, apricots, garlic, onions, olives, olive oil, wine, ethanol, processed food products, dairy products, beef and lamb?

#### **RESPONSE:**

| <b>U.S. imports for consumption from Argentina, by type of import regime, 2011 (\$)</b> |                      |                                    |                               |                     |              |
|---|----------------------|------------------------------------|-------------------------------|---------------------|--------------|
| <b>Group</b>  | <b>MFN duty free</b> | <b>Reciprocal trade agreements</b> | <b>Unilateral preferences</b> | <b>MFN dutiable</b> | <b>Total</b> |
| Apples  | 4,011,669            | 0                                  | 2,179,250                     | 426,978             | 6,617,897    |
| Apricots  | 0                    | 0                                  | 340,011                       | 0                   | 340,011      |
| Beef  | 24,264,098           | 0                                  | 33,426,969                    | 10,590,177          | 68,281,244   |
| Blueberries   | 70,251,725           | 0                                  | 0                             | 0                   | 70,251,725   |
| Dairy   | 26,289,277           | 0                                  | 32,261,457                    | 8,845,857           | 67,396,591   |
| Ethanol   | 0                    | 0                                  | 2,121,059                     | 801,828             | 2,922,887    |
| Garlic  | 0                    | 0                                  | 0                             | 7,555,127           | 7,555,127    |
| Grapefruits   | 0                    | 0                                  | 0                             | 0                   | 0            |
| Grapes  | 5,544                | 0                                  | 0                             | 4,510,678           | 4,516,222    |
| Lamb  | 0                    | 0                                  | 0                             | 0                   | 0            |
| Lemons  | 0                    | 0                                  | 0                             | 0                   | 0            |
| Olive oil   | 0                    | 0                                  | 29,022,267                    | 3,355,962           | 32,378,229   |
| Olives  | 0                    | 0                                  | 0                             | 0                   | 0            |
| Onions  | 0                    | 0                                  | 0                             | 0                   | 0            |
| Oranges   | 0                    | 0                                  | 0                             | 0                   | 0            |
| Peaches   | 68,990               | 0                                  | 0                             | 40,488              | 109,478      |
| Pears   | 0                    | 0                                  | 0                             | 0                   | 0            |
| Processed foods   | 5,065,919            | 0                                  | 4,282,855                     | 617,280             | 9,966,054    |



|            |             |   |             |             |             |
|------------|-------------|---|-------------|-------------|-------------|
| Tangerines | 0           | 0 | 0           | 0           | 0           |
| Wine       | 0           | 0 | 38,426,411  | 302,280,315 | 340,706,726 |
| Total      | 129,957,222 | 0 | 142,060,279 | 339,024,690 | 611,042,191 |

**8. The Food, Conservation and Energy Act of 2008 (point 10 of the Secretariat’s report):**

*Given that the above-mentioned law will soon expire, could the U.S. report on any bills under consideration to replace it, the bills’ features, scope, and impact on production, and international trade of said items and their effects on the environment?*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

**9. Agricultural-related services:**

*a) Could the U.S. comment on the relative significance that subsidies for crop and revenue insurance programs have on the earnings of businesses that provide insurance?*

**RESPONSE:** The payments made to the insurance companies as compensation for their administrative and operating expenses reflects the participation in the crop insurance program, and impacts the revenues generated by the companies from delivery of the U.S. crop insurance program.

*b) Could the U.S. comment on the involvement of foreign insurance businesses in the agricultural risks that are subsidized by the crop and revenue insurance program?*

**RESPONSE:** Foreign-based reinsurers have long been one of the primary commercial reinsurers of the U.S. based crop insurance companies. There also have been several recent acquisitions of U.S. crop insurance companies.

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| <b><i>Questions regarding the Report by the U.S. Government.</i></b> |
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*1. With regard to the support that U.S. SMEs receive through the coordinated action of government agencies and business entities (VIII. Point 155, Trade Policy Review, Report by the U.S.), it would be interesting to find out about the initiatives that the federal government is undertaking to incentivize trade in that business sector, in keeping with the objectives listed under point 5 regarding implementation of policies that promote not only the development of U.S. exports, but also bilateral trade in order to “fight poverty and expand opportunities.”*

**RESPONSE:** U.S. small businesses are key engines for economic growth, jobs and innovation. The Export Promotion Cabinet has developed recommendations to address the eight priorities for the National Export Initiative (NEI) set out in Executive Order 13534 on March 11, 2010. The recommendations cover the five components of the NEI -- access to credit, especially for small and midsize firms; trade advocacy and export promotion efforts; market access and removing barriers to the sale of U.S. goods and services abroad; enforcement of trade rules; and pursuing policies that will increase global economic growth. Details on the implementation of the NEI and recommendations related to small business may be found in the 2011 National Export Strategy at <http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf>.

The National Export Strategy also provides further details regarding the Administration's initiatives to reduce barriers to trade, including trade agreements and deeper engagement with emerging markets, which can lead to increased economic growth, reduced poverty, and expanded opportunities for the U.S. and its trading partners.

Eight Priorities Identified in the NEI Executive Order

Priority 1: Exports by Small and Medium-Sized Enterprises (SMEs)

Priority 2: Federal Export Assistance

Priority 3: Trade Missions

Priority 4: Commercial Advocacy

Priority 5: Increasing Export Credit

Priority 6: Macroeconomic Rebalancing

Priority 7: Reducing Barriers to Trade

Priority 8: Export Promotion of Services

## QUESTIONS FROM ASEAN

### 1) Pg. 12, Paragraph(s) 42-44

*The United States through the USTR has notably made great efforts in increasing its transparency with the public on specific issues and areas through dialogue, frequent consultations and by utilising electronic media to reach a broader array of public audiences. While also coming up with initiatives like SelectUSA, BusinessUSA and other trade-related tools for its business.*

*Can the United States clarify whether these initiatives and information-seeking tools are only available to interested businesses based in the US or can interested (foreign) investors utilise them as well?*

**RESPONSE:** Many of these tools are available to both domestic and foreign firms.

SelectUSA works with firms – both foreign and domestic – as well as U.S. economic development organizations to provide information, guidance, and counseling on the U.S. economic climate and federal rules and regulations impacting business investment in the United States. Housed in the Department of Commerce, SelectUSA is a part of the U.S. and Foreign Commercial Service (USFCS), which is located at U.S. embassies and consulates in over 70 worldwide markets and has a robust field operation through U.S. Export Assistance Centers across the United States. By coordinating resources across the federal government, SelectUSA provides both information assistance and ombudsman services to the global investment community.

The Free Trade Agreement (FTA) Tariff Tool combines complex tariff and trade data into a simple and easy-to-search public interface. Using the Tool, users can see how U.S. and FTA partner tariffs on individual products are treated under an agreement. The Tool allows the users to easily identify the share of trade or the share of tariff lines that fall within the various tariff elimination baskets. Users can also compare how particular sectors were treated across various FTAs. The FTA Tariff Tool is available at <http://export.gov/fta/ftatarifftool> and can be viewed outside of the United States.

USTR's websites, weekly e-newsletter, and the online posting of the *Federal Register* Notices soliciting public comment and input are all in the public domain.

## QUESTIONS FROM AUSTRALIA

### **PART 1: QUESTIONS ON THE WTO SECRETARIAT REPORT – WT/TPR/S/275**

#### **SUMMARY**

##### **Page x, Paragraph 10**

*Australia notes that the United States has one of the largest agriculture sectors in the world and is also the largest agriculture exporting country, as described in the Secretariat report. Australia agrees with the assessment that, given the United States' large share of world production, exports and imports of agricultural products, developments in United States agricultural policies have an important impact on world markets. Australia would add that the United States agricultural sector is characterised by substantial government policy intervention in some parts.*

*With this in mind, could the United States outline how the next US Farm Bill and broader US economic and trade policy will contribute to trade liberalisation in global agricultural and food markets in pursuit of our agreed long-term objective in the WTO Agricultural Agreement to establish a fair and market-oriented agricultural trading system?*

**RESPONSE:** The United States remains committed to the long-term objectives in the WTO Agreement on Agriculture to create a freer and more market-oriented agricultural trading system. Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill. However, the United States expects that any final legislation will be consistent with its WTO obligations.

##### **Page x, Paragraph 11**

*Can the US advise whether it has given consideration to amending or reforming the laws and regulations regarding rules of origin and marking requirements to make them more easily accessible and less cumbersome?*

**RESPONSE:** While the United States does not consider its laws and regulations either inaccessible or cumbersome, CBP, proposed a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. Based on the comments received in response to the proposed changes, in September 2011, CBP issued a final rule that did not adopt new origin and marking rules. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. See: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>.

## **II. TRADE POLICY AND INVESTMENT REGIMES**

### **(2) PARTICIPATION IN THE WORLD TRADE ORGANIZATION**

##### **Page 16, Paragraph 10**

*Could the US please respond to point in the Secretariat report that some trade laws or procedures would require updated or amended WTO notifications and which current notifications should be updated or amended as a result? When will these updated notifications be provided to the WTO?*

**RESPONSE:** The United States does not find the Secretariat's report to be update to date with regards to the U.S. notifications. The United States most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1. The United States notified on its GSP program via WT/COMTD/N/1/Add. 8, dated July 4, 2012. The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

With regards to the HS2012 changes mentioned on page 38 of the Secretariat's report, the United States acknowledges the need to delete subheadings 3702.91 to 3702.95 and to replace those with new subheadings 3702.96, 3702.97 and 3702.98. The failure to make this change was an accidental omission and steps are being taken to rectify the situation.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **Page 30, Paragraph 2**

*We note in paragraph 2 (page 30) that Automated Commercial Environment (ACE) is being implemented in phases. Australia would appreciate if the US could advise when ACE is expected to be fully operational, and how operational costs of ACE will be sourced.*

**RESPONSE:** Core functionality for the Automated Commercial Environment (ACE) is planned to be completed in approximately 3 years. This core functionality will establish the foundation for the import/export process. CBP is working to identify operations and maintenance savings that could be redirected to ACE development as well as looking for ways to go farther with the available funding.

##### **Page 31, Paragraph 4**

*We note in paragraph 4 (page 31) that in 2010, U.S. Customs and Border Protection (CBP) adopted new eligibility requirements, which slightly modified the rules for taking the license exam for customs brokers. Australia would appreciate if the US could elaborate on this change and the reason(s) behind the change.*

**RESPONSE:** CBP amended the customs broker eligibility to more closely align the basic requirements that an individual must satisfy to take the written examination for a customs broker's license with the basic requirements an individual must satisfy to obtain a customs broker's license. In order to be eligible to take the written examination, an individual must be a U.S. citizen on the date of examination, must not be an officer or employee of the U.S. Government, and must have attained the age of 21 prior to the date of examination. The amendments facilitate the overall licensing process by helping to ensure that those sitting for the examination are not automatically precluded from obtaining a license by reason of age, citizenship status, or employment. See: <https://federalregister.gov/a/2010-21254>.

##### **Page 32, Paragraph 6**

*Paragraph 27 of Commentary 22.1 on the text of the WTO Valuation Agreement – Technical Committee on Customs Valuation states that “the Technical Committee concludes that in a series of sale situation, the price actually paid or payable for the imported goods when sold*

*for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement.”*

*Could the United States clarify how its interpretation of the phrase ‘sold for exportation to the United States’ as being the ‘first (or earlier) sale’ is consistent with the WTO Technical Committee’s interpretation?*

*Further, in light of the WTOTC’s assessment, will the US reconsider its position on this issue to bring US practice in to line with the WTOTC’s interpretation?*

**RESPONSE:** The United States agrees with the WTO Valuation Agreement-Technical Committee on Customs Valuation position, and is of the opinion that the last sale in a series of sales generally represents the sale for exportation. However, in certain circumstances where a purchaser, middleman and foreign seller have arranged their transactions to show that merchandise is clearly destined for exportation to the United States and there is complete documentation, the first sale may be able to be used. The United States does not consider this position as inconsistent with the WTO Valuation Agreement-Technical Committee on Customs Valuation. The United States does not intend to reconsider this position.

**(iii) Rules of Origin**

**(c) Country-of-origin marking**

**Page 35, Paragraph 10**

*We note that labelling is a TBT rather than a ROOs issue, and in this context seek clarification of the United States country-of-origin labelling requirements. Specifically, are imported goods treated differently than domestic goods regarding origin labelling or is the impact of the requirements on imported goods different from the impact on domestic goods? If so, how do these requirements comply with the United States’ international trade obligations, including those in the WTO?*

**RESPONSE:** The United States marking requirements are found in 19 USC 1304, which requires that unless excepted, all foreign origin goods be marked so as to inform the ultimate purchaser in the United States of its country of origin. U.S. labelling requirements are consistent with WTO obligations.

**(v) Other Charges affecting imports**

**(iv) Tariffs**

**Page 42, Paragraph 30**

*We note in paragraph 30 (page 42) that certain watches, watch movements, and jewellery enter the US duty free from U.S. insular possessions through special annual import allocations. Can the US please elaborate the rules subject to the qualification of such treatment, and policy objectives behind the annual exemption limits?*

**RESPONSE:** The rules specifying the duty free treatment of certain watches from the U.S. Insular Possessions are laid out the Harmonized Tariff Schedule of the United States. Specifically please see Chapter 91 Additional Note 5:  
<http://www.usitc.gov/publications/docs/tata/hts/bychapter/1211htsa.pdf>

The U.S. Department of Commerce and the U.S. Department of the Interior jointly administer the Insular Possessions Watch and Jewelry Program under Public Law 97-446, as amended by Public

Law 103-465, Public Law 106-36 and Public Law 108-429. The purpose of this program dates back to the original legislation from 1954 and was established to support the light industry on the islands. Additional information is included in the United States' notification of this program to the Committee on Subsidies and Countervailing Measures, in G/SCM/N/220/USA (19 October 2011). Further information on the regulations governing this program can be found at the following URL: <http://ia.ita.doc.gov/sips/15cfr303.html>.

**(v) Other charges affecting imports**

**Customs user fees**

*We understand that the purpose of the Merchandise Processing Fee (MPF) is to cover the cost of processing the entry of imported merchandise (page 42). Could the US provide information on the accumulated MPF paid and the cost of merchandise processing over the review period? Australia would also appreciate it if the US could elaborate on the usage of a surplus fund (in case the accumulated MPF paid exceeds the cost of merchandise processing) or the recovery of a necessary fund (in the opposite case).*

**RESPONSE:** The United States did not experience a surplus with its MPF collections. The projected MPF collected for the review period is approximately \$2.85 billion. The projected expenditures for CBP's commercial operations for the review period is approximately \$3.17 billion.

**Page 42, Paragraph 32**

*Australia notes that the Report makes no mention of the status of the Foreign Manufacturers Legal Accountability Act, which would require manufacturers of certain products imported into the United States to establish a registered agent in the United States to accept service of process on their behalf, imposing an additional costly burden on foreign manufacturers.*

*What is the status of this bill in Congress?*

**RESPONSE:** The Foreign Manufacturers Legal Accountability Act has been introduced in both the House and Senate. However it is not possible to speculate when either chamber might take further action with respect to this bill.

**Page 43, Paragraph 34**

*We note in paragraph 34 (page 43) that new legislation raised the MPF ad valorem rate for formal entries from 0.21% to 0.3464% as of 1 October 2011. Australia would appreciate if the US could elaborate on the reason(s) behind this increase.*

**RESPONSE:** The last legislative change to the Merchandise Processing Fee was 17 years ago in 1995, and the costs of maintaining and improving the level of service that Customs and Border Protection provides have increased since that time. The increase covers these costs, the purpose for which the fees are collected. In order to collect an amount commensurate with CBP's commercial costs, the ad valorem rate required an upward adjustment. The United States notes that while the MPF fee was increased, the upper cap limit of \$485.00 remained the same.

**(b) Harbor Maintenance Tax**

**Page 44, Paragraph 36**

*We note in paragraph 36 (page 44) that the Harbor Maintenance Tax ad valorem fee of 0.125% is assessed on the declared value for commercial cargo entering the United States. Australia would appreciate if the US could confirm whether this fee is applicable regardless*

*of the origin of the cargo. If so, Australia would appreciate it if the US could elaborate on the reason(s) behind not exempting this fee to its FTA partners.*

**RESPONSE:** The United States does not maintain a country of origin exemption for HMF. The amount of the Harbor Maintenance Tax (HMT), also called the Harbor Maintenance Fee, is set by statute (26 U.S.C. § 4461 and 4462). Funds collected through this fee are used for improvements to and maintenance of ports. Fees are structured to help offset the costs of maintaining the ports for commercial trade and funds collected through this fee are intended for improvements to and maintenance of ports.

**Page 44, Paragraph 36**

*We also note in paragraph 36 (page 44) that the fund has maintained a significant surplus for many years. Australia would appreciate if the US could elaborate on the amount in the fund currently available, and would like to know whether the US plans to reduce the fee in future, bearing in mind the obligation of Article VIII: 1 of GATT that such charges be limited in amount to the approximate cost of the services rendered.*

**RESPONSE:** The United States Army Corp of Engineers, the agency responsible for the HMT funds has a number of proposals that it is currently considering, and a number of projects prepared to begin. Time may pass between collection of the fee and expenditure of the relevant sums because, after each project is vetted, the funds must be appropriated by Congress in order for any project to begin. A considerable amount of recordkeeping and accounting help ensure that funds that are collected are used for projects that are appropriate under the provisions of the HMT fund and that they are used in a manner that is in compliance with the United States' WTO obligations.

**(vi) Contingency Measures**

**(a) Anti-dumping and countervailing measures**

**Page 47, Paragraphs 42-55**

*Australia requests an update on the progress of the United States in bringing the Continued Dumping and Subsidy Offset Act 2000 (also known as the Byrd Amendment) in to conformity with its obligations under the Anti-Dumping Agreement and the Subsidies and Countervailing Agreement? Have the recommendations of the WTO dispute (DS217, DS234) been fully implemented? Are the Act and the actions of the United States Customs and Border Protection taken under the Act now compliant with the United States' international trade obligations?*

**RESPONSE:** On February 8, 2006, the President signed into law the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. The United States has taken all actions necessary to implement the DSB's recommendations and rulings.

**(b) Import licensing**

**Page 54, Table III.14,**

*It appears that the steel import licensing system has been put in place for the purposes of monitoring. Could the US clarify how this is consistent with Article 11 of the WTO Agreement on Safeguards?*

**RESPONSE:** The steel import license is not a safeguard action within the meaning of GATT Article XIX and the WTO Agreement on Safeguards. The license requirement is for statistical purposes only and has been duly notified to the WTO in accordance with Article 7.3 of the Agreement on Import Licensing Procedures.



**(c) New legislation or rules enacted during the review period**

**Page 57, Paragraph 68**

*We note in paragraph 68 (page 57) that final rules and regulations implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act had not been issued as of 1 July 2012. We also note that on 22 August 2012, the Securities and Exchange Commission (SEC) adopted a rule mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act to require companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country. Australia would appreciate it if the US could elaborate on any implications for other countries exporting minerals including tantalum, tin, gold or tungsten.*

**RESPONSE:** The final rule requires issuers that report to the Securities and Exchange Commission and that have conflict minerals that are necessary to their products that they manufacture or contract to manufacture to conduct a reasonable country of origin inquiry regarding those minerals to determine whether any of the minerals originated in the Democratic Republic of the Congo or an adjoining country.

Based on the inquiry, if an issuer determines that its conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country, the issuer is not required to file a conflict minerals report or obtain an independent private sector audit of that report. Instead, the issuer only is required to separately describe its reasonable country of origin inquiry in a filing on Form SD, the specialized disclosure report form. Also, the issuer in this instance would not be required to disclose the country of origin of those conflict minerals.

**(vii) Quantitative trade measures, restrictions, controls and licensing**

**Page 57, paragraph 69**

*In relation to the historical licence-reduction provisions of the Dairy TRQ licensing programme, how many historical licences are currently issued?*

**RESPONSE:** For 2012, there are 163 historical licenses holders and 946 historical licenses currently issued.

*What will the figure be once the reduction provisions take effect?*

**RESPONSE:** The primary impact of the historical license surrender provision is to reduce the quantity (size) of a license issued the following year, and not on the number of licenses. We do not forecast the number of licenses for a coming year.

*Would the US please explain what the rationale was for suspending the provisions on the reduction of historical licences until 2016?*

**RESPONSE:** The rationale for suspension until 2016 was an acknowledgement that factors beyond the control of the license holders contributed to a declining use of licenses. These factors include the lack of availability of cheese from the European Union, and general economic conditions in the United States, including a weaker U.S. dollar.

*Can the US please advise whether this suspension will have an impact on access to licences for importers and exporters for unused quantities of the Dairy TRQ? If so, what is the extent of this impact?*

**RESPONSE:** There will be no impact. When the reduction provisions are in effect, any amounts permanently reduced are transferred to the non-historical quota, which is allocated by a lottery available to all importers and exporters. With the suspension, no reductions will now occur through 2015. Given the annual reallocation process, all quantities of licensed dairy and cheese items are fully available every year, regardless of initial type of license.

**(viii) Technical regulations and standards**

**Page 58, Paragraph 70**

*Australia notes that the United States has an enquiry point and notification authority under the TBT Agreement.*

*Can the United States clarify the governance mechanism around management of the TBT enquiry point? What processes are instituted to ensure a timely response to queries made to the TBT enquiry point? What commitments does the United States make to respond to enquiries to the TBT enquiry point and is there a deadline for responding to requests?*

**RESPONSE:** The Congressional mandates for USA WTO Inquiry Point Notification Authority are in U.S. Code 19USC242 and 19USC2544, which are called out in Chapter 13 of the Trade Agreements Act of 1979, Subchapter II - Technical Barriers to Trade (Standards), Part b (Functions of Federal Agencies). This authority was delegated to Department of Commerce, and in turn, the Department of Commerce assigned the authority to the National Institute of Standards and Technology.

The USA Inquiry Point responds to WTO Member requests for documents and information within 2 days, and usually replies within 1 day. Comments received or inquiries for clarification of technical details in a notified measure must be transmitted to the relevant USA regulatory agency for reply.

With respect to inquiries regarding actions by US regulatory agencies, the USA Inquiry Point's role is limited to conveying the inquiry to the relevant US regulatory agency and reminding agencies when inquiries are outstanding and require a response.

In addition, the Administrative Procedure Act requires regulators to publish regulatory proposals in the U.S. Federal Register, solicit comments on the proposal from the public, and respond to substantive comments received during the comment period when the final rule is published.

**Page 59, Table III.15**

*We note in Table III.15 (page 59) that Executive Order 13563 on Improving Regulation and Regulatory Review stressed the importance of public participation in the rulemaking process, and sought to improve rulemaking by requiring the use of the Internet and a period of 60 days to enable public comment on regulatory proposals. Australia would like to know whether public participation is open to foreign stakeholders.*

**RESPONSE:** Yes, foreign stakeholders may comment through their national WTO Inquiry Point, through the U.S. Federal Register, or the Regulations.gov website.

**(ix) Sanitary and phytosanitary measures**

**Page 61, Paragraph 81**

*Can the US advise the time required for SPS rulemaking to be concluded and thus the delay foreign exporters should expect before obtaining market access for their requests for agricultural products following a risk analysis?*

**RESPONSE:** The U.S. rulemaking process for SPS measures is transparent and science-based. The time required for such a review is dependent upon a number of factors, including the nature of the request, the availability of scientific evidence to support the request, the quality of data submitted by the petitioner, and the results of audits. For an indication of APHIS- specific efforts to reduce the administrative procedures related to rulemaking, please see [http://www.aphis.usda.gov/import\\_export/plants/plant\\_imports/quarantine\\_56/index.shtml](http://www.aphis.usda.gov/import_export/plants/plant_imports/quarantine_56/index.shtml).

*Are there any plans to review the rulemaking process to implement new, trade facilitating SPS rulemaking procedures, thereby reducing the significant delays for obtaining market access to the US?*

**RESPONSE:** The U.S. Government is continually striving to improve its regulatory coherence and cooperation with both domestic and international stakeholders. See the Office of Management and Budget (OMB) efforts with respect to this issue: [http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563\\_01182011.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf).

**(2) MEASURES DIRECTLY AFFECTING EXPORTS**

**(iv) Official support and related fiscal measures**

**Page 70, Paragraphs 114, 115, 116**

*Australia notes that the Ex-Im Bank provides export financing through various programmes including direct loans to foreign buyers of exports from the United States*

*Can the United States clarify how the Ex-Im Bank determines which particular goods and services exports are to be included as part of a loan? What consideration is given to each in terms of value for money, quality, fit for purpose, availability and specific company products?*

**RESPONSE:** Ex-Im is typically presented with a request for financing support for a given transaction/project with the specific goods and services already identified. Our engineering group will evaluate the proposed transaction for technical feasibility and appropriateness of the goods and services for the proposed purpose of the transaction. The Bank also has several statutory requirements it must follow; these include no support for military/defense items unless it is clearly non-lethal dual use, nuclear and nuclear related have to undergo a U.S. State Department clearance, no support for any item that can be used to produce a good or service that has an adverse economic impact on the U.S. Ex-Im is also directed by the U.S. Congress to afford the same treatment of services exports that the Bank provides to goods exports. Finally, Congress has directed Ex-Im Bank to provide a certain amount of support for small business exporters and to encourage the growth of renewable energy exports. All of these provisions apply to all of Ex-Im Bank products of loans, guarantees and insurance.

*Australia notes the examples included in the Report of direct loans to foreign buyers of exports from the United States in the commercial aircraft, heavy equipment and project finance areas, and special financing programmes in aircraft finance, project finance and supply chain finance.*

*Does the Ex-Im Bank prioritise industries to which it provides such loans and financing, and if so which industries does it prioritise?*

**RESPONSE:** The only industries on which Ex-Im Bank is directed to focus are small business exporters (which is more a cross section of many industries), and renewable energy technology/products. As noted above, Ex-Im Bank is a demand-driven export credit agency; therefore the sectors it supports are those whose companies come to Ex-Im Bank for financing.

*We note in paragraph 115 (page 71) that Ex-Im Bank identified nine key markets (Brazil, Colombia, India, Indonesia, Mexico, Nigeria, South Africa, Turkey, and Viet Nam). Could the US please elaborate on whether this list changes over time, and if so, the basis of changes?*

**RESPONSE:** Ex-Im Bank has been focused on these nine countries for the past several years and during this time, no changes have occurred. However, that would not preclude changes or additions to this list of key markets which would happen if it was determined that other markets offered more opportunities for U.S. companies than current ones.

*Australia notes the Report statement that according to authorities, Ex-Im Bank fees are set in accordance with the OECD Arrangement on Officially Supported Export Credits (para 116).*

*Can the US clarify how Ex-Im Bank fees are set for Category 0 High Income OECD and Euro Area countries, given that there are no Minimum Premium Rates under the OECD Arrangement for transactions involving obligors in Category 0 countries?*

**RESPONSE:** U.S. Ex-Im Bank follows the current OECD guidance regarding Cat 0 markets pricing by identifying one or several of the acceptable market benchmarks and using it as the basis to price the transaction.

### **(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

#### **(ii) State Trading Enterprises, government corporations and government enterprises**

##### **Pages 74 and 75 , Paragraphs 126 and 127, Tables III.20 and III.21**

*Noting that the role of the Commodity Credit Corporation is to ‘stabilise, support and protect farm income and prices’, could the US outline the rationale for maintaining the Corporation given current high international prices and projections of significant global demand and strong prices for the foreseeable future?*

**RESPONSE:** Not all agricultural prices are high. Moreover, projections cannot take into account year-to-year variations such as weather effects. The Commodity Credit Corporation (CCC) is essentially a financing mechanism to provide an orderly implementation of programs under its authority which are authorized or mandated by statute.

#### **(iii) Government procurement**

##### **Page 78, Paragraph 138**

*Australia notes the Report statement that procurement at the sub-central (i.e state) level is a matter of state law.*

*How does the United States Government encourage US states to be bound by international government procurement obligations? How successful are attempts by the United States Government to encourage greater participation by the states in international government procurement arrangements?*

**RESPONSE:** When U.S. trading partners request coverage of state procurement in a trade agreement, the U.S. Trade Representative asks for the state's authorization to cover its procurement under the agreement, pointing out the reciprocal benefits to the state of such coverage. Only where a state authorizes such coverage is its procurement included in the trade agreement. The procurement of 37 states is covered under the WTO Agreement on Government Procurement, with varying numbers of states covered under free trade agreements.

**(iv) Subsidies and other government assistance**

**Page 79, Paragraph 143, 144**

*Australia notes that GM, Ally Financial and AIG remain included in the Trouble Asset Relied Program (TARP).*

*Could the United States provide an outline of how long these companies are expected to be included in the TARP? What processes are in place to encourage exit from the program?*

**RESPONSE: GM:** As of September 30, 2012, Treasury held 500.1 million shares and Treasury had recovered \$23.97 billion of its total \$51.03 billion investment in GM. Since GM is a publically-traded company and its stock is highly liquid, Treasury can exit its investment over time through sales of its remaining common shares on the open market, through underwritten offerings, block trades or dribble out programs, or a combination of the above. Treasury will continue to evaluate its options to exit its remaining GM investment based on market conditions.

**Ally Financial:** As of September 30, 2012, Treasury's outstanding investment in Ally Financial stood at \$13.75 billion, having recovered approximately one-third its original investment. Treasury continues to closely monitor the performance of Ally Financial and look for the best opportunities to exit its remaining investment in the company.

**AIG:** During the financial crisis, the government's overall support for AIG peaked at approximately \$182 billion, including \$70 billion that Treasury committed through TARP, and \$112 billion committed by the FRBNY. On December 11, 2012, Treasury announced that it has agreed to sell all of its remaining 234,169,156 shares of AIG common stock in an underwritten public offering, for expected aggregate proceeds of approximately \$7.6 billion. Giving effect to this offering, the overall positive return on the Federal Reserve and Treasury's combined \$182 billion commitment to stabilize AIG during the financial crisis is now \$22.7 billion. Treasury will continue to hold warrants to purchase approximately 2.7 million shares of AIG common stock – the sale of which will provide an additional positive return to taxpayers.

More information about these programs can be found at: <http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/Pages/default.aspx>.

*Australia notes that there is no legislative expiry to the American Recovery and Reinvestment Act (ARRA) with the expected outlays from ARRA increasing from US\$787 billion to US\$840 billion.*

*Given the increase in outlays under ARRA how much of the new outlays are on new public projects? To what extent will foreign firms be able to participate in these new projects?*

**RESPONSE:** The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$787 billion in fiscal stimulus. The original expenditure estimate was increased to \$840 billion in 2011, largely as a result of Congressional Budget Office (CBO) estimates of the long-term multiplier effects of past spending. There has been no new appropriation of funds since the enactment of ARRA in February 2009. The CBO report can be found at: Congressional Budget Office, *Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic output from April 2011*

through June 2011, August 2011, [www.cbo.gov/sites/default/files/cbofiles/attachments/08-24-ARRA.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/08-24-ARRA.pdf).

The Recovery Act stimulus is divided into temporary tax reductions, payments to eligible recipients like Social Security beneficiaries, aid to states for education grants and to improve infrastructure. Of this, about 32 percent or \$277 billion was toward education programs and public work contracts, grants, and loans, and of this \$225 billion have been disbursed.

Section 1605 of ARRA requires that for any ARRA-funded construction, alteration, maintenance, or repair of public buildings or public works, all iron, steel, and manufactured goods must be produced in the United States although there are no restrictions on the nationality of the firm providing the good or service. Regulations for ARRA are at: Code of Federal Regulations, Vol. 74, No. 77, April 23, 2009, [www.whitehouse.gov/sites/default/files/omb/assets/fedreg\\_2009/042309\\_recovery.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/fedreg_2009/042309_recovery.pdf). The provision also requires that the law be applied in a manner consistent with the United States' international obligations under NAFTA and the WTO Government Procurement Agreement.

Additional information on this program is available at [www.recovery.gov/](http://www.recovery.gov/).

**(vi) Trade-related intellectual property rights**  
**(e) Patent Law**

**Page 93, Paragraph 179**

*What changes have been implemented to patent office practices as a result of the decision in Mayo v. Prometheus?*

**RESPONSE:** The United Patent and Trademark Office (USPTO) implemented a new procedure for examining process claims for subject matter eligibility in view of the Supreme Court decision Mayo v. Prometheus. For a memo outlining the changes, please see: [http://www.uspto.gov/patents/law/exam/2012\\_interim\\_guidance.pdf](http://www.uspto.gov/patents/law/exam/2012_interim_guidance.pdf).

**Page 93, Paragraph 180**

*Could the United States elaborate on the nature of the metrics for patent quality, how they are measured and what steps are taken to improve quality where the metrics identify a problem?*

**RESPONSE:** The USPTO utilizes work product reviews (In-Process Review, Complete First Action on the Merits (FAOM) Review and Pre FAOM Search Review) to place emphasis on the importance of high quality examination early in prosecution. The Pre FAOM Search Review and Complete FAOM Review emphasize the use of best practices during the initial search and examination to highlight the importance of a thorough search prior to the first action on the merits as well as a clear and complete first action in achieving high quality examination. The Final Disposition reviews emphasize the correctness of an examiner's final decision on the patentability of the claims. The Quality Index Report measures events that occur during the prosecution of an application that may have the effect of extending prosecution. The findings of these metrics are used to provide feedback and training to the corps which promote the principles of compact prosecution. To the extent that our metrics focus on high quality examination early and throughout prosecution, they promote efficiency and as a result contribute to the achievement of the Office's goals of reducing overall examination time in addition to promoting high quality examination. For more information, please see: [http://www.uspto.gov/patents/init\\_events/qual\\_comp\\_metric.pdf](http://www.uspto.gov/patents/init_events/qual_comp_metric.pdf).

**Page 94, Paragraph 183**

*In regard to the trademark amendments of 2011, could the United States indicate the thinking behind requiring additional administrative measures for trademark right holders to maintain their*

*registrations in that country? Is there a particular trigger for requesting additional specimens that we should be informing our rights holders about?*

**RESPONSE:** The revisions will facilitate the USPTO's ability to verify the accuracy of identifications of goods/services. The accuracy of the trademark register as a reflection of marks that are actually in use in the United States for the goods/services identified in the registration serves an important purpose for the public. The public relies on the register to clear trademarks that they may wish to adopt or are already using. Where a party searching the register uncovers a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as changing its plans to avoid use of the mark, investigative costs to determine how the similar mark is actually used and assess the nature of any conflict, or cancellation proceedings or other litigation to resolve a dispute over the mark. If a registered mark is not actually in use in the United States, or is not in use on all the goods/services in the registration, these types of costs and burdens may be incurred unnecessarily. Thus, accuracy and reliability of the trademark register help avoid such needless costs and burdens, and thereby benefit the public.

Specimens of use in use-based trademark applications illustrate how the applicant is using the proposed mark in commerce on particular goods/services identified in the application. Post registration affidavits or declarations of use and their accompanying specimens demonstrate a trademark owner's continued use of its mark in commerce for the goods/services in the registration. The USPTO anticipates issuing requirements for additional specimens or other information, exhibits, and affidavits or declarations in a relatively small number of cases, to assess the accuracy of the identifications of goods/services. For example, additional specimens may be requested in a case to verify the accuracy and the nature of the use when the identification includes a large number of, or significant disparity in, goods/services.

#### **IV TRADE POLICIES BY SECTOR**

##### **(1) AGRICULTURE**

##### **(i) Agriculture in the United States**

#### **Page 99, paragraph 1 and 2**

*There appears to be a typographical error in one of the first sentences in paragraphs 1 and 2. Can the US please confirm that the total value of its agricultural production was US\$372 billion in 2011?*

**RESPONSE:** The United States confirms that the total value of its agricultural production was US\$372 billion in 2011.

#### **Page 100, Table IV.2**

*Can the United States explain how domestic policy choices have contributed to the general decline in maize exports from the United States since 2006/07?*

**RESPONSE:** U.S. share of global corn trade has declined since 2006, due to both policy and market factors, as listed below. The complicated interaction among these factors makes it difficult to pinpoint the precise contribution of each.

**Reduced exportable supplies in the United States:** Despite record planted area in the United States, unfavorable weather and below-trend yields for the past three years have resulted in reduced crop outputs and lower exportable supplies. This has been happening at precisely the same time as foreign competitors are ramping up production and exports.

**Intensifying international competition:** Since 2006, the U.S. corn crop has faced increasing competition in global markets. Global import demand over the past several years have driven area

expansion in Brazil, Argentina, and Ukraine, where the combined production has gained 49 percent since 2006. In 2011, combined exports from these three countries surpassed those from the United States. Ukraine, in particular, has increased its corn exports twelve-fold in just six years.

More indirect U.S. corn exports: Part of the reason for the fall in U.S. corn exports is that more corn is being processed into value added products which are then exported. Among those value added corn products are ethanol and meat. As an example, estimating the amount of corn used to produce these indirect exports reveals that corn used in the production of meat, which was then exported, increased by 63 percent (8 million tons) over the past five years.

**Page 100, Paragraph 5 and 6**

*The Secretariat Report states that, after falling for many years, the number of farms in the United States has been increasing for the last decade, with about 2.2 million farms currently in operation. This is apparently due to an increase in small farms. Could the United States outline its definition of a farm and advise whether the growing number of smaller farms reflects any particular agricultural sector policy choices?*

**RESPONSE:** A farm is defined, for statistical purposes, as any place from which \$1,000 or more of agricultural goods (crops or livestock) were sold or normally would have been sold during the year under consideration.

A property with less than \$1,000 in sales could still be classified as a farm if it had enough acreage of various crops or head of livestock to generate \$1,000 of sales. These places are called “point farms,” and their numbers have grown sharply. In the 2007 Census of Agriculture, point farms accounted for 31 percent of all farms, up from 11 percent in the 1982 census. The number of point farms increased substantially between the 2002 and 2007 Censuses of Agriculture, reflecting a concerted USDA effort to better identify and track very small farms. Thus, some part of the observed increase in small farm numbers reflects better counting, not more farms.

In addition, USDA has used the \$1,000 threshold, under the direction of Congress, since 1974. Because the farm definition is not adjusted for inflation, it will define more very small places as farms as farm commodity prices increase over time.

Ninety-one percent of U.S. farms are classified as small – gross cash farm income (GCFI) of less than \$250,000. About 60 percent of these small farms are very small, generating GCFI of less than \$10,000. These very small farms, in some respects, exist independently of the farm economy because their operators rely heavily on off-farm income.

In response to growing consumer and retailer interest in local food production, USDA has initiated several programs aimed at beginning farmers and at local food markets in recent years. Farms that produce for local markets are considerably smaller, on average, than other farms. Thus, shifts of consumption to local markets, and hence to the farms that supply them, do appear to favor smaller operations. On the other hand, local production is still a small part of crop agriculture, with local producers accounting for less than 5 percent of all cropland and the evidence regarding impacts of these programs on small farm counts has so far been mixed.

*Given that for family farms “off-farm income is...more important than earnings from farming activities but the opposite is true on larger farms” (paragraph 6), does the United States consider that significant Amber Box support has diminished, in particular for the 2.5 per cent of farms which represented 59 per cent of all total sales (particularly as the Secretariat report points to a growing agriculture trade surplus?*



**RESPONSE:** The United States agrees that domestic support levels have diminished. We note that the U.S. 2010 Aggregate Measurement of Support (AMS or “amber box” support) was at a historically low level of \$4.119 billion in 2010, down from \$4.267 billion in 2009.

**Page 101, Paragraph 8 and Table IV.3**

*Australia notes that sugar imports to the United States have increased significantly over recent years, particularly when compared with other products in Table IV.3. Could the US outline the reasons for this increase in sugar imports, the current policy settings to meet consumer demands at reasonable prices and, the state of domestic demand and supply?*

**RESPONSE:** As demand for sugar in the United States continues to increase, domestic U.S. sugar cannot meet demand, and therefore, increasing imports have been a large component of domestic consumption.

**(ii) Agriculture policies**

**Page 103, Paragraph 11**

*We note the prospects for the change in Farm Bills. When the Farm Bill was introduced in 2008 the CBO estimated total costs of mandatory programs at \$284 billion over 2008-2012 and \$604 billion over 10 years (2008-2017).*

*Could the US provide some indication of when we might expect a new Farm Bill and what the budgetary implications would be of extending the current bill (noting the baseline for total outlays based on existing programs is estimated to be \$993 billion for the period 2013-2022).*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going. Therefore, the United States is unable to speculate as to the timing and content of successor legislation to the 2008 Farm Bill.

*We understand the Senate and House proposals for a new Farm Bill look to reduce Farm Bill spending by 2-3 percent. Can the US provide any early indication of how this might impact on support notifications in the WTO.*

**RESPONSE:** Farm Bill spending estimates are based on projections that assume a specific set of market and weather conditions, as well as program parameters. Actual expenditures will vary and until the final program details under a new Farm Bill are set, it is not possible to project support levels under WTO rules.

**Page 103, Paragraph 13**

*Efforts to improve utilisation of tariff quotas remains an important issue for many WTO members. In this context, Australia remains concerned that some persistent underfill of some tariff quotas could be a result of quota administration practice and not simply reflect market circumstances. The Secretariat’s Report indicates that, for US tariff quotas, “fill rates vary significantly from one quota to another”. While the US has provided various reasons for this underfill to the WTO Committee on Agriculture, can the US also provide reasons as to why it applies price-based SSGs when in-quota trade is already so low?*

**RESPONSE:** The United States has price-based special safeguards (SSGs) on all tariff lines also subject to WTO tariff-rate quotas (TRQ). There is no SSG on in-quota imports so if all imports are within the TRQ, the price-based SSG never comes into effect. The United States annually notifies SSG use and provides quantity data on the use of the SSG by tariff line as a WTO Committee on

Agriculture best practice because the notification instructions only require reporting on whether the price-based safeguard has been used.

**Page 104, Paragraph 20, Table IV.4**

*The Secretariat Report notes that the United States is the world's biggest donor of food aid. Since 2006, the structure of its food aid deliveries has changed as the proportion of direct transfer has fallen and that of local purchases and triangular purchases have increased. Australia welcomes this shift and understands this is due, at least in part, to the pilot program 'Local and Regional Procurement Project'. What has been the assessment of this project? In particular, we would be interested to better understand whether the change in the structure of United States' food assistance deliveries is structural, as opposed to a counter-cyclical reflection of current high market prices?*

**RESPONSE:** The WTO's report (Table IV.4) appears to contain a few errors. The World Food Programme's (WFP) Food Aid Information System does show an increase in locally purchased food aid, but the tonnages in the WTO report do not match the WFP's data. The tonnages for triangular purchases of the U.S. Government appear to be overstated in the WTO report.

USDA hired an independent evaluator to review the Local and Regional Procurement Pilot project. The report will be issued and made available to the public before the end of calendar year 2012. In terms of the structure of international food assistance programs, the U.S. Government currently provides food assistance through Title II of the Food for Peace Act, Food for Progress, McGovern-Dole International Food for Education and Child Nutrition, and the Emergency Food Security Program. The authorizing statutes for Title II of the Food for Peace Act, Food for Progress, and McGovern-Dole International Food for Education and Child Nutrition allow donations of commodities produced in the United States. The Emergency Food Security Program allows for the purchase of locally produced food and other forms of food assistance (e.g. vouchers).

*As of 2010, direct transfer still accounted for roughly half of total food aid. Direct transfer risks undercutting local producers as well as normal patterns of international commercial trade. Has the US undertaken any assessment of the impact of its direct transfers on domestic production in recipient countries and also in neighbouring countries?*

**RESPONSE:** The U.S. Government reviews recipient countries' markets closely prior to the provision of any food aid. The U.S. Government reviews expected consumption, domestic production, stocks, and commercial imports in the recipient countries. Food aid is provided when domestic and commercial supplies are not sufficient to meet consumption needs. In emergency situations, the U.S. Government also works closely with the World Food Programme and other emergency relief organizations to make sure that the most critical needs are met. Given the food deficits in recipient countries and the size of food aid donations relative to commercial production and markets, the U.S. Government is not aware of specific situations where its food aid has had a negative impact.

*Could the United States outline any future plans for ongoing reform to provide a greater proportion of untied cash-based food assistance, consistent with the disciplines envisaged in the draft Doha agriculture modalities?*

**RESPONSE:** The Doha Development Agenda (DDA) negotiations are not complete. Therefore, discussion of any future plans based on the draft DDA text would be premature at this point.

**Page 106 and 107**

*While support provided through counter-cyclical payments (paragraph 24), marketing assistance loans and loan deficiency payments (paragraph 25) and the ACRE program (paragraph 27) has decreased, Australia's notes that insurance subsidies and the value of crops covered (paragraph 28) has nonetheless increased. Does the United States consider that insurance subsidies will be the*

*primary vehicle for support to US agriculture going forward? If so, does this reflect a structural shift to a greater portion of farm support being spent on Amber Box support in favour of agricultural producers?*

**RESPONSE:** The U.S. domestic support notifications have shown that crop insurance has accounted for a larger share of amber box support in more recent years. However, given the uncertainty over the timing and content of the next Farm Bill, it is premature to discuss the overall role crop insurance subsidies might play in the future.

## **Sugar**

### **Page 107, Paragraphs 27 and 28**

*We note premium subsidies to producers have increased by \$2.5 billion over the past year and the value of crops covered have increase by \$47 billion over 4 years. Could the US indicate whether the USDA's RMA has undertaken any studies itself or is aware of any other studies on the impact these schemes have on producer decision-making in terms of planted areas in any given year?*

**RESPONSE:** RMA has not conducted such an analysis.

### **Page 107, Paragraph 30**

*Australia notes in paragraph 30 that the Sugar Program supports US sugar prices above comparable levels in the world market. We understand the Sweetener Users Association recently told USTR in public testimony that "if food manufacturers could access world-priced sugar, it would better serve our national interests and grow manufacturing jobs. It would also help every day Americans who are spending an additional \$3.5 billion a year on import duties for sugar". Has the United States undertaken any official analysis on the cost impact of the program to the US economy in general and sugar/sugar products consumers in particular?*

**RESPONSE:** No official analysis of such cost impacts is underway by the United States.

*How does the US sugar program of marketing loans, price supports, domestic marketing allotments and tariff rate quotas position the US sugar industry to benefit from growing global demand for sugar in coming years?*

**RESPONSE:** The United States cannot speculate on the future business strategies of the U.S. sugar industry; however, given that demand for sugar in the United States is significantly greater than the domestic supply, traditionally the U.S. sugar industry has focused on supplying domestic, rather than global, demand.

### **Page 108, Paragraph 33**

*What was the value of the purchases made under the DPPSP in 2009, 2010, 2011 and 2012? Given the reduced reliance on the MILC and DPPSP programs does the US envisage phasing out these programs in the future?*

**RESPONSE:** FY 2009 expenditures for product purchases under the DPPSP were \$227 million. There have been no purchases since then. Given the uncertainty of the timing and content of successor legislation to the 2008 Farm Bill, discussion of any future plans would be premature at this point in time.

## **(iii) Levels of support**

**Page 109, Paragraph 37**

*If farmers are benefiting from high market prices, and crop insurance premiums are tied to prices resulting in support under crop insurance being high, is any consideration being given to farmers funding their own insurance programs?*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

**Page 109, Paragraph 40**

*The Secretariat Report notes that, while “the trend in support for agricultural producers in the United States has been downward for several years, this is not due to a change in agricultural policies but to rising prices, which have reduced price- and revenue-linked payments.” What consideration is the United States giving to structural reform to reduce its substantial policy intervention in its agriculture sector.*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

**(3) Services**

**(i) Environmental services**

**Page 189, Paragraph 66**

Paragraph 66 of the Secretariat’s report states that the US has GATS commitments on sewerage and refuse services that are limited to services provided under contract by private industry, but US FTAs do not contain any restrictions related to National Treatment for sewerage and refuse services. Could the US confirm whether it makes full National Treatment commitments in this sector in its FTAs?

**RESPONSE:** Yes. The national treatment obligation in our FTAs applies to all service sectors unless a specific exemption is listed in Annex I or II. However, these commitments apply only to privately contracted services as the national treatment obligation does not apply to government procurement.

**PART II: QUESTIONS ON THE REPORT BY THE UNITED STATES WT/TPR/G/275**

**III. OPENNESS AND ACCOUNTABILITY: BUILDING SUPPORT FOR TRADE**

**(iv) State and local government relations**

**Page 14, Paragraph 50**

*Australia notes that USTR serves as the liaison point in the Executive Branch for state and local government and Federal agencies to transmit information to interested state and local governments, and relay advice and information from the states on trade-related matters.*

*What obligations/mechanisms do US states have to advise USTR of any changes to state government agency structures including changes to agency names and organisational structure?*

**RESPONSE:** States may advise USTR of any changes to state agency structures or agency names through various mechanisms. One is the State Point of Contact System (SPOC) which was created by the Office of the U.S. Trade Representative (USTR). It is important that the USTR receive input and advice of state and local government representatives. The Governor’s office in each state designates a single contact point. The SPOC is responsible for disseminating information received from USTR to relevant state and local offices, and assist in relaying specific information and advice from the states to USTR on trade-related matters or other changes within the state.

Additionally, under the USTR Advisory Committee system, the USTR established an Intergovernmental Policy Advisory Committee on Trade (IGPAC). The IGPAC has broad representation from state and local officials from all three branches of government, as well as state and local associations and regulators. These advisors help keep USTR abreast of issues and other pertinent information that impacts the states.

### **PART III: OTHER QUESTIONS:**

#### **Maritime Services**

*The US report mentions the US has an open market for services but does not go into detail on the level of openness in specific service sectors. Could the US provide further information on the level of actual openness in the maritime transport sector, including whether cabotage or coastal shipping by foreign service suppliers is permitted in specific circumstances?*

**RESPONSE:** Vessels engaged in transportation are considered to be goods, not services. With respect to services, the United States has not undertaken specific commitments in maritime transport services.

#### **Air Services**

*The US is the world's largest aviation market and therefore a significant market for service suppliers providing aviation-related services such as ground handling. Are there any restrictions on the number of ground handling providers in the US? Are there any restrictions on foreign service suppliers providing ground handling services at airports in the US?*

**RESPONSE:** There is no U.S. Government-imposed limit on the number of ground-handlers at U.S. airports or on foreign service suppliers providing such services. Airport managements, however, may impose reasonable, minimum standards for third-party service suppliers at their airports. If airport management is not already providing identical aeronautical services and there is not adequate space available on the airport for all interested potential suppliers to operate, airport managements may limit access and choose among competing suppliers that meet the minimum standards, after having negotiated in good faith with the interested suppliers.

## QUESTIONS FROM BRAZIL

I.

II.

### III. PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

IV.

#### V. I. ECONOMIC ENVIRONMENT

##### (1) RECENT ECONOMIC DEVELOPMENTS AND (2) MONETARY, FISCAL AND OTHER POLICIES

Pages 3, 4, and 6 (Paras 5, 9, 13 and 14)

*The Report states that “from a peak in 2002, the U.S. dollar depreciated gradually by about 25% until 2008, stabilized temporarily in 2008-09, and then resumed its downward trend in 2009 to mid-2011, depreciating by around 16%. (...) The euro-dollar exchange rate movements have an impact on U.S. trade that extends beyond the direct import and export linkages of the United States and the euro zone, as they also affect third-country markets where both compete”. The Report also mentions that “as a result of the financial crisis, a number of fiscal stimulus measures were enacted to aid the economy. The American Recovery and Reinvestment Act (ARRA), enacted in 2009, continued to support the recovery in 2011, although at declining levels. The Troubled Asset Relief Program (TARP) of 2008 targeted financial stability, especially as concerns banking, credit, and support of certain industries. Although funding expired at the end of 2010, approximately one quarter of the funds are outstanding and still supporting certain programmes, including U.S. government investments in the auto industry, American International Group (AIG), and 460 U.S. banks (end 2011)”. Finally, the Report recalls that “from late 2010 to mid 2011, the Fed conducted a second round of quantitative easing due to the financial crisis and its aftermath”.*

#### Questions:

1. *To what extent does the United States take into account, during its policy-making process, the distortive effects of its fiscal and monetary policies on global exchange rates and, consequently, on international trade?*

**RESPONSE:** The United States has undertaken both accommodative fiscal and monetary policies to support the recovery of the U.S. economy. These policies are beneficial to both the United States and the global economy.

2. *Which measures, if any, does the United States take to avoid nullifying and impairing, as a result from the devaluation of the U.S. dollar driven by the recent U.S. fiscal and monetary policies, other Members’ benefits under the WTO Agreements?*

**RESPONSE:** The assertion on which this question is based is incorrect. The real exchange rate of the U.S. dollar is currently close to its July 2008 level, prior to the start of the first round of quantitative easing.

3. *Is the overvaluation of third countries' currencies due to speculative capital inflows viewed as an acceptable by-product of US' fiscal and monetary policies given the broader objective of injecting stimulus into the economy to spur growth?*

**RESPONSE:** According to the IMF, the U.S. dollar is overvalued by between 0 and 10 percent on a real effective basis. Moreover, studies by the IMF, including in the World Economic Outlook and Global Financial Stability Report, have found little evidence that monetary policy in the United States has resulted in a rise in U.S. capital outflows. As Federal Reserve Chairman Bernanke has noted, "differences in growth prospects among countries – and the resulting differences in expected returns – are the most important determinant of capital flows. The rebound in emerging market economies from the global financial crisis, even as the advanced economies remained weak, provided still greater encouragement to these flows."

4. *Does the US envisage devising and adopting regulatory measures targeted at speculative capital outflows resulting from a combination of excess liquidity produced by QEs and low interest rates?*

**RESPONSE:** The United States maintains an open capital account.

5. *What in the US' view would be appropriate responses by countries most distressed by the adverse consequences of overvaluation on production, trade and employment? Would multilateral coordination be a more adequate venue?*

**RESPONSE:** Policies aimed at maintaining undervalued exchange rates, particularly by systemically important countries, are harmful to the global trading system and result in persistent global imbalances. We have engaged bilaterally and multilaterally, through the IMF and the G-20, to address these problems.

6. *Is the unconventional or "accommodative" monetary policy a means through which the US intends achieve its goal of doubling exports in five years, according to the National Export Initiative? To what extent is the performance of US exports due to the its monetary policy rather than fiscal measures and other policies?*

**RESPONSE:** The U.S. dollar exchange rate is market-determined. We do not use the exchange rate as a tool to meet trade policy goals. The purpose of accommodative monetary policy is to meet the independent Federal Reserve's dual mandate of price stability and maximum employment. As noted in the December 2012 Federal Open Market Committee statement: "The Committee remains concerned that, without sufficient policy accommodation, economic growth might not be strong enough to generate sustained improvement in labor market conditions." Strengthening growth in the United States will help boost global growth, particularly at a time when the economies of the euro area and Japan are in recession.

7. *The process of "quantitative easing" has as an inevitable result the depreciation of local currency. Has the impact of this depreciation been evaluated on international trade? To what extent the distorting effects of this policy can be considered as currency intervention and consequently as a form of subsidy to commerce violating GATS article XV?*

**RESPONSE:** The premise that quantitative easing has resulted in a depreciation of the dollar is not supported by the data, which show that the US dollar exchange rate is essentially unchanged from

where it was prior to the Federal Reserve's actions U.S. monetary policy is directed at meeting the independent Federal Reserve's dual mandate of price stability and maximum employment.

**(3) DEVELOPMENTS IN TRADE AND FOREIGN DIRECT INVESTMENT**  
**(ii) Trade in services**

Page 12 (Para 27)

*The Report comments that the US "is aware of the growth potential of its services exports and has enacted laws or initiated actions to increase services exports, especially in the travel and tourist sector." It states equally that early this year "President Obama issued an Executive Order to improve visa processing and promote travel and tourism." It entails actions to "improve visa processing times for non-immigrant visas for foreign visitors, in particular with respect to increasing capacity by 40% in Brazil and China, in order to promote tourism."*

Question:

1. *According to estimates from the US Department of Commerce, Brazil is set to become the second fastest growing country in the number of visitors to the US over the next four years. Further, more US tourist visas have been issued to Brazilian visitors than to Chinese citizens for the first time from January to September 2012. In light of the aforementioned trends, and given Brazilian tourists spent nearly 6 billion dollars in the US in 2010, does the US deem that including Brazil in its Visa Waiver Program would further encourage Brazilian citizens to visit the US? If so, does it consider extending that special treatment to Brazil in the near future?*

**RESPONSE:** The United States Government is increasing efforts to expand the Visa Waiver Program (VWP) and travel by nationals of VWP participants, as directed by the President in Executive Order 13579 (January 2012). Designation as a VWP program is, however, subject to criteria established by U.S. law. These include requirements with respect to low nonimmigrant visa refusal rates; issuance of machine-readable electronic passports; information sharing; consideration of law enforcement and security interests; and cooperation in the repatriation of citizens and nationals with a final order of removal.

**II. TRADE POLICY AND INVESTMENT REGIMES**  
**(2) PARTICIPATION IN THE WORLD TRADE ORGANIZATION**

Pages 15 and 16 (Paras 6 to 10)

*The report by the Secretariat states that "the United States is committed to contributing constructively and creatively to the functioning of the WTO, in particular, acknowledging that the WTO Doha Round is at an impasse, it is committed to fresh and credible approaches to new market-opening trade initiatives". In document WT/TPR/G/275, the United States mentions that "work has picked up in multilateral negotiations on trade facilitation and a variety of development issues, negotiations the United States strongly supports".*

Questions:

1. *Could the United States elaborate on what it envisages as "a variety of development issues", in the context of its Report?*

**RESPONSE:** One of the areas of work in the multilateral negotiations that has picked up since the Eighth Ministerial Conference is with respect to those issues under negotiation in the CTD Special Session, including the Monitoring Mechanism for special and different treatment, the Cancun 28, and the Agreement Specific Proposals related to the SPS and Import Licensing Agreement. Consistent



with Ministers' Elements for Political Guidance (WT/MIN(11)/W/2), Members have focused on making progress in these areas throughout 2012, and we hope that progress can continue to be achieved during 2013.

- 2. In spite of U.S. initiatives in the area of trade facilitation, ITA coverage extension, and a plurilateral agreement on services, which other approaches, if any, is the United States committed to in WTO negotiations?*

**RESPONSE:** The United States views the WTO as an institution at a crossroads. This year, the Membership's collective efforts to 'turn the page' in the Doha negotiations are creating important new opportunities. Technical negotiations on a multilateral trade facilitation agreement are advancing. We also are working to address development concerns and are exploring realistic approaches that can advance some partial result on agriculture. Preparations are underway to expand the product coverage of the Information Technology Agreement, or ITA, and some Members are pursuing promising work in the services area. And we are open to new ideas on how to advance market access in agriculture, NAMA, and services.

The United States is committed to the WTO and wants to make it work more effectively in the interests of all Members. This includes using the WTO Committee system to raise issues that we consider to be important, such as trade protectionist measures. We want to encourage healthy debate and, where possible, explore the potential for the negotiation of new trade opportunities.

- 3. How do the U.S. current initiatives in WTO negotiations relate to the spirit of the DDA mandate and to the balancing of the three pillars?*

**RESPONSE:** The United States is very willing to continue to make progress wherever possible on the Doha mandate, based on common efforts. But "business as usual" has not worked, and will not work going forward. We believe that now is the time to craft credible, innovative approaches to the WTO's work as an institution that liberalizes trade and creates and applies meaningful rules to trade. But all major players must do their part.

- 4. How does the US believe the plurilateral services initiative can be squared with the objective of fulfilling the development mandate of the Doha Round, as reaffirmed by Ministers during MC-8? How can the services initiative be reconciled with the MC-8 direction for inclusive, transparent, and multilateral "new negotiating approaches" to break the deadlock in the Doha Round? To what degree can it be justified as a stepping stone towards restoring the credibility and legitimacy of the multilateral trading system?*

**RESPONSE:** The United States sees the International Services Agreement (ISA) as a complement to our bilateral and regional initiatives rather than a WTO work product. We would note that many WTO Members, including Brazil, are currently engaged in negotiation outside the WTO to liberalize trade.

### **(3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS**

#### Page 20 (Para 19)

*The U.S. Congress sets the statutory guidelines for unilateral preference programmes and is responsible for initiating and passing legislation to amend or re-authorize these programmes. During the past two years Congress has held significant policy discussions on prospective reform of some of these programmes, though they have not yet led to any major changes. The*

*legal authority for the GSP and ATPA programmes lapsed on 31 December 2010 and 12 February 2011, respectively. In October 2011, legislation was enacted re authorizing the two programmes until 31 July 2013. Congress may consider changes or reforms in the GSP and ATPA programmes when it next takes up renewal of these two programmes, probably in the first half of 2013. According to the President's Trade Policy Agenda, the growing competitiveness of many emerging market GSP beneficiaries may prompt review and reform of the GSP programme.*

**Question:**

- 1. Regarding the upcoming appraisal of the US GSP program in Congress, what are the possible "changes or reforms" in the GSP and how are they expected to affect emerging-market beneficiaries?*

**RESPONSE:** It is not yet clear whether possible reforms to the GSP program will be on the Congressional agenda in 2013, and the Administration is not in a position to speculate on what specific reforms Congress might consider. For its part, the Obama Administration believes it is important that any prospective reform of the GSP program take into account both the needs of the world's poorest countries and the fact that many emerging market countries may no longer need preferential access to compete in the U.S. market in some product sectors.

**(4) INVESTMENT AGREEMENTS AND POLICIES**  
**(iii) Investment regulations and restrictions**

Page 28 (paras 34, 35 and 36)

*According to the Secretariat, "there remain a number of restrictions to foreign investment in certain areas, and certain information-gathering, monitoring, reporting, and disclosure procedures can also have an impact on foreign investment." The next paragraph states that "According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations".*

**Questions:**

- 1. Could the U.S. elaborate on these limitations?*

**RESPONSE:** The Congressional Research Service (CRS) report cited in Paragraph 35 of the Secretariat's Report discusses a number of federal-level measures that "have an impact on foreign investment in the United States," including measures that do not restrict foreign investment. Indeed, the report notes that "there are not across-the-board, blanket restrictions on foreign investment in the United States." The United States maintains an open investment regime, with very few limitations on foreign investment. Detailed information about specific measures that impact foreign investment in the United States is widely and publicly available, including in the CRS report cited in the Secretariat's Report.

- 2. Does the U.S. Government consider removing or relaxing such restrictions?*

**RESPONSE:** There are not at present any proposals within the U.S. Government for significant revision to measures impacting foreign investment. As noted in the CRS report cited in Paragraph 35 of the Secretariat's Report, foreign investment in the United States is subject to restrictions in only a very small number sectors.

3. *Will the SelectUSA Initiative, mentioned in paragraphs 29 and 33 of that same report, be able to provide information on those restrictions?*

**RESPONSE:** SelectUSA can help a firm understand the U.S. federal regulatory climate as it pertains to a current or potential business investment. Providing information to domestic and foreign firms on the investment climate in the United States is among the functions of the SelectUSA Initiative

4. *Brazil noted that neither the U.S. Government nor the WTO Secretariat mentioned, on their reports, the “Make it in America” Initiative. Could the U.S. provide detailed information about such initiative?*

**RESPONSE:** The Make it in America Challenge will provide \$43 million in competitive grant funding through the Department of Commerce’s Economic Development Administration (EDA) and National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP), and the Department of Labor’s Employment and Training Administration (ETA).

Make it in America will build upon the administration’s bottom -up approach to strengthening the economy by partnering with state, regional and local economies. Successful projects will leverage funding from both funding agencies to include:

- public works projects that revitalize, expand and upgrade physical infrastructure;
- technical assistance in developing new strategies and tools to enhance their economies;
- technical assistance to companies looking to invest in innovative technologies, new products or services, or enhanced processes that will grow sales and jobs;
- targeted training and employment activities that support the local workforce needs of employers, move new and current workers up and along a career pathway, and strengthen America’s highly-skilled and diverse workforce.

Additional information can be found at: <http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge>

*According to the Secretariat, “a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations. In addition, in terms of reporting and disclosure, four major federal statutes have an impact on foreign investment. For example, a provision in the Agricultural Foreign Investment Disclosure Act requires foreign persons or an interest by a foreign person in agricultural land to submit a report to the Secretary of Agriculture within a specified timeframe”. The Report also mentions that “[t]he Committee on Foreign Investment in the United States (CFIUS) is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction”.*

Questions:

1. *Could the United States elaborate on the reasons and the rationale underlying the adoption of the aforementioned barriers, restrictions and requirements to foreign investments?*

**RESPONSE:** The Secretariat's Report does not itself speak to barriers or restrictions on foreign investment. Rather, the Report references a report of the Congressional Research Services (CRS) that discusses federal-level measures that "have an impact on foreign investment in the United States," including measures that do not restrict foreign investment. Detailed information about these measures is presented in the CRS report itself. As recognized by the question, the rationale underlying CFIUS review is to address potential national security concerns.

2. *Could the United States clarify its understanding of what constitutes "national security effects", "national security concerns" and "mitigation measures"?*

**RESPONSE:** With respect generally to the concept of "national security," please refer to the official guidance that Treasury published on December 8, 2008, in the Federal Register (and available on the CFIUS webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>), regarding the types of transactions that CFIUS has reviewed and that have presented national security considerations. CFIUS's use of risk mitigation agreements is addressed generally in Executive Order 11858, amended by the President on January 23, 2008, can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2008-01-25/pdf/08-360.pdf>.

Information describing mitigation measures required by CFIUS is available in the CFIUS Annual Report, available on the CFIUS website at [www.treasury.gov/CFIUS](http://www.treasury.gov/CFIUS).

3. *Could the United States present and elaborate on recent examples of application of the referred provisions?*

**RESPONSE:** By law, information filed with CFIUS may not be disclosed by CFIUS to the public. Accordingly, CFIUS does not comment on information relating to specific CFIUS cases, including whether or not certain parties have filed notices for review. General information regarding CFIUS' review of transactions in the previous year is publicly available in our annual report to the U.S. Congress available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

## **(5) AID-FOR-TRADE**

### Page 29 (Para 39)

*According to the Secretariat, the first Quadrennial Diplomacy and Development Review (QDDR) "showed a statistically significant relationship between USAID trade capacity building (TCB) obligations and developing country exports, indicating that, on a predictive basis, an additional US\$1 of USAID TCB assistance is associated with a US\$42 increase in the value of developing country exports two years later."*

### Questions:

1. *Could the U.S elaborate on the methodology the QDDR used to reach such conclusion?*

**RESPONSE:** QDDR's conclusion was derived from a 2010 USAID evaluation titled "From Aid to Trade: Delivering Results". The evaluation examined the impact of trade capacity building (TCB) activities funded and implemented since 2002 by USAID and other US government agencies. The evaluation addressed six questions, including: To what extent have USAID programs of this type contributed in a measurable way to improved trade capacity in the target countries?

Regression analysis by David H Bearce, Steven E. Finkel and Anibel L. Perez-Linan at the University of Pittsburgh was used to examine the impact of U.S. government and USAID TCB obligations on a cross-country basis. In addition, the analysis was further expanded by identifying patterns of domestic and external factors that appeared to have an impact on trade performance at the country level in USAID recipient countries and in countries to which USAID did not provide TCB assistance. The regression analysis found a statistically significant relationship between USAID TCB obligations and developing country exports, which was used to predict that each additional \$1 invested by USAID is associated with \$42 increase in the value of developing country exports two years later. A summary of USAID's report on this evaluation is available at: [http://pdf.usaid.gov/pdf\\_docs/PDACR201.pdf](http://pdf.usaid.gov/pdf_docs/PDACR201.pdf).

2. *Was it based on an average from all countries that received assistance from the USAID, or was it based only on selected cases?*

**RESPONSE:** The evaluation analyzed documentation for 256 USAID TCB projects carried out in 78 countries that, taken together, represent 70 percent of total USAID TCB obligations for projects with a distinct trade focus between 2002 and 2006. The evaluation examined both ongoing and completed projects that represented the full range of funding amounts, scopes, and durations. Drawing upon international trade data for 188 countries and controlling for external factors such as size of the recipients country's economy, world economic analysis to and other donor TCB assistance.

3. *Is there any plan to include any South American country in the programmes held under the Partnership for Growth (PFG) initiative, mentioned in paragraph 40?*

**RESPONSE:** The U.S. Government is reviewing the progress of the first four PFG countries. The information of the review will help shape the PFG effort going forward. The PFG process transforms the character of the U.S. bilateral relationships with a select set of top-performing low-income countries to accelerate and sustain broad-based economic growth. No new countries have been selected for a second round of PFG initiatives.

## **VI. III. TRADE POLICIES AND PRACTICES BY MEASURE**

### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

#### **(i) Customs procedures**

Page 31 (para 2)

*According to the Secretariat, the "Secure Freight Initiative (SFI), initiated in response to the Security and Accountability for Every (SAFE) Port Act to evaluate the feasibility of requiring 100% scanning of maritime cargo containers. The SAFE Port Act, as amended, requires 100% scanning of all maritime containers shipped to the United States (...) Complimentary rules and procedures for ensuring security of air cargo on passenger aircraft were enacted (Implementing Recommendations of the 9/11 Commission Act) and the law is under the purview of the Transportation Security Administration (TSA), another agency of the Department of Homeland Security. The law required 100% cargo scanning on international U.S. inbound flights"*

#### Questions:

1. *Could the US share the results of that evaluation of feasibility?*
2. *How does the United States estimate the impact of 100% scanning legislations on international trade?*

3. *Is there any data available on possible costs to exporters and importers that would result from the adoption of these provisions?*

**RESPONSE:** Estimates for potential costs incurred outside of the United States to implement the scanning regime as envisioned by the SAFE Port Act legislation vary based on a number of variables involved in the calculation and the lack of a single perspective on who would bear costs associated with equipment procurement, maintenance and operations; upfront expenditures for potential redesigns of ports and facilities; and data analysis and alarm resolution. In the pilot ports the U.S. Government bore all the costs. On May 2012, DHS Secretary Napolitano issued a report and letter to Congress extending to July 2014 the deadline to implement 100% scanning.

Reports on progress and costs for 100% scanning can be found at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-52\\_Feb10.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_10-52_Feb10.pdf)  
<http://www.gao.gov/products/GAO-10-12>

**(iii) Rules of origin**

Pages 32 and 33 (Para 7)

*According to the Secretariat, the US Customs and Border Protection (CBP) proposed in 2008 a new uniform set of rules of origin, applicable to all imports in non-preferential trade. However, after receiving comments, the CBP officially withdrew the proposal in 2011. Thus, the non-preferential rules of origin remain unchanged and are to be determined on a case-by-case basis. The Secretariat also indicates that “[t]he role of U.S. industry has been noted as having a very influential impact on the varying product-by-product outcome of preferential rules of origin negotiations. This proliferation of differing rules of origin, their complexity, and lack of transparency continues to be of concern for some.”*

Questions:

*Please elaborate on the arguments put forward in the comments opposing the new rules. Which domestic sectors/industries have most voiced opposition to the proposal?*

*Does the US still intend to adopt a new uniform set of non-preferential rules of origin? If so, would there be any estimated deadline to do so?*

*Could the United States elaborate on how its rules of origin and/or marking systems (both preferential and non-preferential) assure transparency and predictability to interested parties?*

**RESPONSE:** The US Customs administration, CBP, proposed a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. Based on the comments received in response to its proposed changes, in September 2011, CBP issued a final rule not adopting new origin and marking rules. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. For more specific

information on the comments and replies, and rational please see, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>

The United States does not have any immediate plans to adopt a new set of non-preferential rules of origin.

Page 36 (Para 13)

*According to the Secretariat, “[s]pecific rules for U.S. imported products, differ from those applied to domestic products, which differ from FTA preferential origin rules, and these are likely to differ for U.S. products exported (subject to foreign countries marking or origin requirements)”.*

Question:

*Could the United States elaborate on the reasons for the existence of different marking and/or origin rules for imported and domestic products?*

**RESPONSE:** The United States believes the U.S. marking disciplines are rational as they were created and are maintained to ensure that the ultimate U.S. purchasers are informed as to the country of origin of a good. Certain sensitive imported goods might involve further elements designed to lower risk of circumvention of U.S. legal requirements. U.S. preferential rules of origin employ the “wholly obtained” criterion for goods that are wholly the growth, product, or manufacture of a particular beneficiary country. For goods that consist in whole or in part of materials from more than one country, the U.S. preferential rules of origin are based on tariff-shift method, regional value-content method, or other specific rules. The U.S. “non-preferential rules of origin” employ the “substantial transformation” criterion for goods that consist in whole or in part of materials from more than one country.

The United States does not maintain rules of origin and marking for goods being exported.

**(v) Other charges affecting imports**

Pages 42 and 43 (Paras 32, 33 and 34)

Question:

*How can selective exemptions from the merchandising processing fee be justified in the light of the most-favored nation principle?*

**RESPONSE:** The United States believes that the exemption from the merchandise processing fee with respect to imports from U.S. FTA partners is consistent with U.S. WTO obligations, and considers its decision to absorb the costs of services for certain FTA partners to be entirely appropriate.

**(vi) Contingency measures**

Pages 48 and 50 (Paras 48 and 50)

*According to the Secretariat “[t]he United States abandoned the use of zeroing when calculating margins in original investigations based on weighted average to weighted average comparisons in 2006. However, in February 2012, after publishing a proposed modification, receiving public comments, and consulting with Congress, the U.S. Department of Commerce modified its methodology to address the issue of zeroing in administrative, new shipper, expedited, and sunset*

*reviews. In administrative reviews, ‘except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with monthly weighted average normal values, and will grant an offset’ where the export price exceeds the normal value. Further, in sunset reviews ‘it will not rely on weighted average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.’ The new rules apply to all reviews pending before the Department for which preliminary results were issued after 16 April 2012”.*

Question:

*1. Does the abovementioned provisions mean that the United States precluded the use of zeroing in all AD-related circumstances? Are there any exceptions that could result in future applications of zeroing by the United States? In which circumstances “a different comparison method is more appropriate”? Please elaborate.*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

According to the Secretariat, the Department of Commerce proposed to modify its regulations concerning the use of market economy input prices in non-market economy proceedings. Under the proposed modification, where a non-market economy producer purchases an input from a market economy supplier, the Department of Commerce would treat the price paid to the market economy supplier as the price for all of the input used only if "substantially all" of the input (greater than 85%) was purchased from the market economy supplier. In other cases, a surrogate price for the portion of the input not purchased from a market economy supplier could be used.

*According to the Secretariat, the DoC proposed to modify its regulations concerning the use of market economy input prices in non-market economy proceedings. Under the proposed modification, where a non-market economy producer purchases an input from a market economy supplier, the DoC would treat the price paid to the market economy supplier as the price for all of the input used only if "substantially all" of the input (greater than 85%) was purchased from the market economy supplier. In other cases, a surrogate price for the portion of the input not purchased from a market economy supplier could be used.*

Questions:

*1. Was any scientific or technical study carried out to define the percentage above (greater than 85%) as “substantially all”? What elements were looked into to set such percentage?*

**RESPONSE:** The Department of Commerce proposed this percentage as a reasonable and predictable threshold for "substantially all," to be applied across all products and NME countries. This proposal has not yet been adopted as final, as the Department of Commerce is still considering comments received from its request for public comment.



2. *Please specify the components of the surrogate price for the portion of the input not purchased from a market economy supplier.*

**RESPONSE:** Surrogate values are identified on a case-by-case basis for each individual segment of a case, using publicly available information. In accordance with our statutory requirements, surrogate values are sourced from countries that are (1) economically comparable to the country under investigation/review, and (2) significant producers of comparable merchandise. Such surrogate values may be based on publicly available import statistics, publicly available domestic industry data from the surrogate country, etc.

**(vii) Quantitative trade measures, restrictions, controls, and licensing**

Page 54 (Para 62)

*According to the Secretariat, “[t]he United States last notified quantitative restrictions in 1999, and cross-referenced three notifications in the areas of safeguards, import licensing, and textiles. According to the authorities, a new notification is under preparation”).*

Question:

1. *Could the United States provide any estimate of the timeframe for the completion of the new notification under preparation?*

**RESPONSE:** The United States’ most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1.

**(viii) Technical regulations and standards**

Pages 60 and 61 (Paras 76, 79 and 80)

*According to the Secretariat, “[n]ew regulations, including those that incorporate technical regulations and conformity assessment procedures, must be published in the Federal Register in both proposed and final form and must be cleared by the OMB before publication if they have a significant effect”.*

Questions:

1. *Could the United States elaborate on the reasons of the requirement for OMB clearance for “economically significant regulations”?*

**RESPONSE:** Under Executive Order 12866, “Regulatory Planning and Review,” OMB is responsible for reviewing “significant regulatory actions” by the agencies, with the exception of the so called “independent” agencies (e.g., CPSC) published in the Federal Register. “Significant regulatory actions” are defined in the Order as regulations that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles of this Executive Order.

Those regulatory actions that are likely to impose the economic effects described in subsection (1) above are designated by OMB as “economically significant.” This definition is functionally equivalent to the definition of a “major” rule as that term is used in the Congressional Review Act (2).

For economically significant regulations, the agencies must submit for OMB review, along with the draft regulation, a Regulatory Impact Analysis (RIA). The RIA must provide an assessment of benefits, costs, and potentially effective and reasonably feasible alternatives to the planned regulatory action (see section 6(a)(3)(C)). Preparing RIAs helps agencies evaluate the need for and consequences of possible Federal action. By analyzing alternate ways to structure a rule, agencies can select the best option while providing OIRA and the public a broader understanding of the ranges of issues that may be involved. Accordingly, it is important that a draft RIA be reviewed by agency economists, engineers, and scientists, as well as by agency attorneys, prior to submission to OIRA.

OIRA reviews the draft rule and the RIA for consistency with the regulatory principles stated in the Order, and with the President's policies and priorities. The review determines whether the agency has, in deciding whether and how to regulate, assessed the costs and benefits of available regulatory alternatives (including the alternative of not regulating).

2. *How does the United States assure that this requirement does not impose non-science based restrictions to trade (e.g., how does this requirement reconcile with the SPS Agreement provisions)?*

**RESPONSE:** The United States is obligated to apply only those SPS measures that are consistent with the WTO SPS Agreement. OMB review, which may be required depending on whether the rule is “significant,” does not alter that obligation.

*The report by the Secretariat states that compliance with voluntary consumer product safety standards is not a legal obligation, but non-compliance may indicate the existence of a hazard. Moreover, the CPSC and other agencies may take corrective action (e.g. withdrawal of the product from the market) if their analysis shows that the product could pose a substantial hazard. The report also mentions that “the CPSC focused much of its surveillance and compliance work on imported products which represented about 80% of recalls for 2008-11.”*

Questions:

1. *In that situation, how does the US ensure that producers are adequately informed about the possible consequences of non-compliance to those voluntary standards?*

**RESPONSE:** Response: Where compliance with a voluntary standard is mandatory, it will be set out in regulation. U.S. regulations are published in the Federal Register and the Code of Federal Regulations. Where there are no applicable technical regulations, the manufacture, or if the product is imported, the U.S. importer, is nonetheless legally responsible for ensuring its products do not present an unreasonable risk of injury or death. Companies may use a variety means to ensure their products do not present an unreasonable risk of injury or death, such as product safety design assessments or conformance with voluntary standards. Many manufacturers and importers also use the voluntary standards to establish consumer product performance requirements.

The CPSC has an extensive global outreach program on U.S. product safety rules as well as the benefits of complying with voluntary standards. Outreach includes in-person training; videoconferences and teleconferences; webinars; PowerPoint presentations; and other materials in multiple languages, many of which are available on the CPSC website at: [www.cpsc.gov](http://www.cpsc.gov).

2. *Does the fact that “non-compliance may indicate the existence of a hazard” mean that products which do not comply with the voluntary standard compete in a less advantageous manner in the*

*US market? If this is so, would it be reasonable to qualify these “voluntary standards” as “de facto mandatory”?*

**RESPONSE:** No, products that do not comply with the voluntary standard do not compete in a less advantageous manner in the U.S. market. It would not be reasonable to characterize such voluntary standards as *de facto* mandatory. Manufacturers may choose to use a particular voluntary standard to establish specific product performance requirements, and importers and distributors may impose requirements to use specific voluntary standards on their suppliers. These are a business decisions.

If the CPSC becomes aware of injuries, or the potential for injuries associated with a product that fails to comply with a consensus voluntary standard, this indicates to the CPSC that the product may contain a defect that presents a substantial product hazard. A consumer product that does not meet a voluntary standard, but which also does not create a hazard, normally would not result in action by the CPSC.

*Could the United States elaborate on the reasons for CPSC’s stronger focus on imported products?*

**RESPONSE:** For purposes of protecting the public against unreasonable risks of injury, the CPSC treats all consumer products the same, regardless of where they are manufactured.

A large percentage of recalled products comes from outside the United States. CPSC institutes a recall after the product is on the market, and the reasons for the recall do not take into account the country of manufacture. CPSC announces recalls of products that present a significant risk to consumers, either because the product could contain a defect or because it violates a mandatory safety standard.

Almost 50 percent of all consumer products sold in the United States are imported, and the percentage of these products is growing. Because foreign-made products have such a significant market share, and because CPSC recall data indicate that four out of every five of the recalls that have occurred in recent years have involved foreign-made consumer products, it is prudent for the CPSC to use significant resources to ensure the safety of those products.

*According to the Secretariat, there are about 225 ANSI accredited standards developing organizations (SDOs) in the United States.*

Question:

*Could the US share information on how many SDOs, among the 225 accredited by ANSI, have accepted to comply with the TBT Code of Good Practices on standard-setting?*

**RESPONSE:** The American National Standards Institute (ANSI) is a private sector organization and the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC). ANSI has accepted the TBT Code of Good Practice on behalf of its membership of 225 accredited standards development organizations.

## **(2) MEASURES DIRECTLY AFFECTING EXPORTS**

### **(iv) Official support and related fiscal measures**

Page 70, 71, 72 (Paras 115, 116 and 117, Table III.18)

*According to the report by the Secretariat, the Ex-Im Bank operates in 186 countries around the world and has identified nine key markets, including Brazil.*

Questions:

1. Please indicate and/or comment on the criteria used for the selection of these markets.

**RESPONSE:** The criteria includes the following: size of export market for U.S. firms; projected growth; projected infrastructure needs; Ex-Im's current market penetration in the market; congressionally mandated markets; and markets where Ex-Im's financing could make a difference.

2. In the case of Brazil, which sectors/industries is the Ex-Im Bank targeting? What are goals and export results the Ex-Im Bank expects to reach with respect to Brazil?

**RESPONSE:** Major sectors include transportation, warehousing, oil and gas, and mining. Thus far, Ex-Im has been successful in financing green technologies, oil and gas projects, railway sector, aircraft and manufacturing.

3. Would the United States please provide further details on the increase of loans provided by the Ex-Im Bank between 2008 and 2011? To which sectors have those loans been granted?

**RESPONSE:** The increase in the use of Ex-Im Bank direct loans was based on demand for this product due to several factors: retreat of commercial banks from transactions with longer tenors and larger amounts because of liquidity constraints, and the attractive CIRRs vs. pure cover transactions from a competitive perspective. The majority of the direct loans that Ex-Im has approved over the past several years have been primarily for project finance transactions across a range of industry sectors: oil and gas, power, transportation, telecommunications, renewable energy sectors as well as engineering/consulting services. Ex-Im Bank approved 2 long term direct loans in 2008 valued at \$356 million; in 2009, 16 direct loans valued at \$3.025 billion; in 2010, 14 valued at 4.26 billion; in 2011, 17 valued at \$6.32 billion, and in 2012, 18 long term direct loans valued at \$11.8 billion.

The answers to all of these specific questions and more details on all U.S. Ex-Im Bank activity and operations can be found at [www.exim.gov](http://www.exim.gov).

### **(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

#### **(i) Business framework and business investment incentives**

Page 72 (Para 120)

*According to the Secretariat, the U.S. Government has turned to a number of fiscal incentives to help spur the economic recovery following the economic downturn. One of the incentives is the reduction of the workers' payroll taxes by 2%, through the Tax Relief, Unemployment Insurance Reauthorization and the Job Creation Act (TRUIRJCA) of 2010.*

#### Questions:

1. Please indicate the amount of government revenue forgone or not collected as a result of this reduction of the workers' payroll taxes.

**RESPONSE:** The Tax Relief, Unemployment Reauthorization and Job Creation Act of 2010 reduced the payroll tax paid by employees from 6.2 percent to 4.2 percent. The U.S. Department of the Treasury estimated that the payroll tax cut would payroll tax collections by \$110 billion in 2011.

2. *Please inform which sectors/industries/regions have most benefitted from this fiscal incentive.*

**RESPONSE:** U.S. Department of Treasury's state-by-state estimates of the number of people who benefited from the payroll tax reduction and the amount of tax received in 2011 can be found at the following website: <http://www.treasury.gov/press-center/press-releases/Pages/tg1029.aspx>. Payroll tax revenue estimates are not available at the sector or industry level.

3. *Would this fiscal incentive amount to a partial exemption of taxes paid or payable by industrial enterprises?*

**RESPONSE:** Payroll taxes paid by all employees were reduced from 6.2 percent to 4.2 percent. The Tax Relief, Unemployment Reauthorization and Job Creation Act of 2010 did not change the payroll taxes paid by employers.

### **(iii) Government procurement**

#### Page 78 (Para 137)

*According to the Secretariat "[t]he United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for goods and services. When the law goes into effect, an amount of 2% is applied to foreign entities not party to an international procurement agreement. This is understood to apply to countries that are not members of the GPA or do not have a free trade agreement with the United States".*

#### Question:

*Could the United States elaborate further on the provisions of this specific legislation and on its legal basis under the WTO Agreements?*

**RESPONSE:** The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. The United States would refer Brazil to the text of the legislation for an elaboration of its provisions. This legislation is fully consistent with U.S. obligations under the WTO Agreements and, pursuant to the express terms of the statute, the U.S. government shall apply the legislation "in a manner consistent with United States obligations under international agreements."

### **(iv) Subsidies and other government assistance**

#### Pages 79, 80 and 81 (Paras 140-143)

*Subsidies, as defined and notified under GATT Article XVI:1 and Article 25 of the Agreement on Subsidies and Countervailing Duties are reported to the WTO by Members including the United States. According to the latest notification in October 2011, the United States reported 50 federal programmes, and over 500 sub-federal programs (Table III.22).*

*As illustrated through the WTO notification, the agriculture and energy and fuel sectors are the largest recipients of government assistance and have grown in recent years. One of the major contributors to the growth in this sector is interest in biofuels, or using incentives to find alternatives to fossil fuels. This has gained further momentum in recent years due to the high energy prices and the negative contribution to the current account*

caused by substantial petroleum imports (Chapter I). Biofuel incentives are also important as they could have a direct or indirect impact on certain aspects of global trade, due to diversion of food products to fuel, commodity price fluctuations, and with respect to agricultural policies. There are a number of programmes, grants, tax credits, and other incentives related to energy biofuels (Table III.23).

Question:

1. Would the United States please explain which are the eligibility criteria for the Federal programmes on biofuels focused on production, research, development and innovation (as opposed to consumption)? Specifically in the case of the Flexible Fuel Production Incentive, is there any connection between the program and government procurement stimulus under "Buy American" conditions?

**RESPONSE:** The Department of Energy maintains an Alternative Fuels Data Center which contains a comprehensive list of the numerous Federal laws and incentives related to alternative fuels, including certain biofuels. The following link: [http://www.afdc.energy.gov/laws/fed\\_summary](http://www.afdc.energy.gov/laws/fed_summary), is connected to the database containing are federal incentives, laws and regulations, funding opportunities which contain eligibility criteria for federal initiatives related to alternative fuels and vehicles, and advanced technologies and is updated regularly. We have found no connection between the program and the "Buy American" requirements for government procurement in the American Recovery and Reinvestment Act of 2009 ARRA).

The TARP provided government support to AIG, the automotive industry, banks, and financial institutions. On 31 May 2012, the lifetime cost of TARP was estimated at US\$63 billion. While many of the TARP programmes are winding down, significant assets remain under government control or ownership and a number of programmes remain active, especially in the housing market. The United States has articulated broad principles for exiting TARP, including exiting TARP programmes as soon as practicable and seeking to maximize taxpayer returns. As concerns the Automotive Industry Financing Program, TARP has received US\$40 billion of its approximately US\$80 billion investment. Chrysler exited the programme in July 2011, but GM and Ally Financial (former GMAC financing) remain included, as US\$37.2 billion of reimbursement remains outstanding. Likewise, AIG is still covered under TARP and is expected to have a lifetime cost of US\$18.7 billion.

Question:

1. Concerning TARP/Automotive Industry Financing Program, how is the government participation in the companies involved being reduced? Could you provide which is the percentage of government participation in the companies involved at present?

**RESPONSE:** Treasury continues to have TARP investments through the Automotive Industry Financing Program in General Motors and Ally Financial.

**GM.** As of September 30, 2012, Treasury held 500.1 million shares (approximately 32 percent of the company's common stock) and Treasury had recovered \$23.97 billion of its total \$51.03 billion investment in GM. Since GM is a publically-traded company and its stock is highly liquid, Treasury will exit its investment over time through sales of its remaining common shares on the open market, through underwritten offerings, block trades or dribble out programs, or a combination of the above. Treasury will continue to evaluate its options to exit its remaining GM investment based on market conditions.

Ally Financial. As of September 30, 2012, Treasury's outstanding investment in Ally Financial stood at \$13.75 billion (including approximately 74 percent of the company's common stock), having recovered approximately one-third its original investment. Treasury continues to closely monitor the performance of Ally Financial and look for the best opportunities to exit its remaining investment in the company.

More information about Treasury's TARP investments can be found at: <http://www.treasury.gov/initiatives/financial-stability/reports/pages/default.aspx>

#### **(v) Competition policy**

*According to the report by the Secretariat (see paragraph 149), the Federal Trade Commission (FTC) amended the Hart-Scott-Rodino Pre-merger notification rules and the form for reporting the proposed merger. The new rules would include significant changes. Additionally in 2010, the DoJ and the FTC amended the Horizontal Merger Guidelines. The amendments retained the core elements of the previous guidelines but contain a number of important clarifications concerning market definition.*

#### **Question:**

*1. Please elaborate on the changes brought by the new rules amended by FTC and on clarifications on market definition made to the Horizontal Merger Guidelines.*

**RESPONSE:** Following a public comment period, the Federal Trade Commission and the Department of Justice made changes to the Hart-Scott-Rodino (HSR) rules, the premerger notification form and instructions to reduce the filing burden and streamline the [form](#) parties must file when seeking antitrust clearance of proposed mergers and acquisitions under the HSR Act and the Premerger Notification Rules.

The revisions were part of ongoing efforts by the FTC and DOJ to review their regulations, ensure that the rules are necessary and up-to-date, and eliminate unnecessary or potentially overly burdensome reporting requirements for business. The changes are intended to make the HSR form easier to complete, reduce the burden for most filers, and make the premerger notification review program more effective for both agencies.

The Final Rules and Form are available at <http://www.ftc.gov/os/fedreg/2011/07/110707hsrfrn.pdf>.

The 2010 Horizontal Merger Guidelines (the "Guidelines"), were developed after extensive public consultations, including with non-US agencies, and updated the 1992 guidelines in several important ways. The Guidelines:

- Clarify that merger analysis does not use a single methodology, but is a fact-specific process through which the agencies use a variety of tools to analyze the evidence to determine whether a merger may substantially lessen competition.
- Introduce a new section on "Evidence of Adverse Competitive Effects." This section discusses several categories and sources of evidence that the agencies, in their experience, have found informative in predicting the likely competitive effects of mergers.
- Explain that market definition is not an end itself or a necessary starting point of merger analysis, and market concentration is a tool that is useful to the extent it illuminates the merger's likely competitive effects.
- Provide an updated explanation of the hypothetical monopolist test used to define relevant antitrust markets and how the agencies implement that test in practice.

- Update the concentration thresholds that determine whether a transaction warrants further scrutiny by the agencies.
- Provide an expanded discussion of how the agencies evaluate unilateral competitive effects, including effects on innovation.
- Provide an updated section on coordinated effects. The guidelines clarify that coordinated effects, like unilateral effects, include conduct not otherwise condemned by the antitrust laws.
- Provide a simplified discussion of how the agencies evaluate whether entry into the relevant market is so easy that a merger is not likely to enhance market power.
- Add new sections on powerful buyers, mergers between competing buyers, and partial acquisitions.

The Guidelines are available at <http://www.ftc.gov/os/2010/08/100819hmg.pdf>.

The Guidelines were amended to take into account the legal and economic developments since the 1992 guidelines were issued. They are not intended to represent a change in the direction of merger review policy, but to offer more clarity on the merger review process to better assist the business community and, in particular, parties to mergers and acquisitions.

#### **(vi) Trade-related intellectual property rights**

##### Page 86-7 (Para 157)

*The United States' strong results in receipts of royalties and licence fees underline the benefits of the IP system to the country, which has a large surplus in IP licence trade and is the world's largest IP licence exporter. Paragraph 157 stresses the fact that emerging countries such as Argentina, Brazil, China and India have provided particularly strong growth of receipts and payments associated with films and television tape distribution.*

##### Question:

1. *Could the United States provide detailed information of such growth, specifying particular IP areas?*

**RESPONSE:** The USPTO's experience with data on revenue receipts is limited to data reproduced in our 2012 report available, table 11, available at: [http://www.uspto.gov/news/publications/IP\\_Report\\_March\\_2012.pdf](http://www.uspto.gov/news/publications/IP_Report_March_2012.pdf).

Unfortunately, these data were not investigated on a country-by-country basis, and so we are not aware of the source of the information used as a basis for Paragraph 157.

##### Page 89 (Para 166)

*Paragraph 166 states that the mission of the USTR includes "to support and implement the Administration's commitment to aggressively protect American IP overseas", in view of the alleged impact of IPR infringements in foreign markets on U.S. businesses.*

##### Question:

1. *In what ways does the United States ensure that the "Administration's commitment to aggressively protect American IP overseas" does not contravene provisions of the TRIPS Agreement, especially Articles 7 and 8 of the agreement?*



**RESPONSE:** The United States is committed to abiding by all provisions of the TRIPS Agreement. The United States Government strives to work cooperatively and constructively with its trading partners, through direct consultations and information exchanges.

Page 92 (Para 175)

*The Leahy-Smith America Invents Act is a major reform of U.S. patent law, aimed at boosting competitiveness by modernizing patent law. Another topic arising in patent law in the recent past is the surge in patent litigations, often by so-called “non-practicing entities” (NPEs), which could allegedly stifle innovation and therefore reverse the intended effect of the patent system. Attempting to address this issue, the “Saving High-Tech Innovators from Egregious Legal Disputes Act” (HR 6285) was introduced in the American Congress in 2012; in addition, the Federal Trade Commission and the Department of Justice announced a joint public workshop to explore the impact of patent assertion entity (PAE) activities on innovation and competition and the implications for antitrust enforcement and policy.*

Question:

1. *If available, could the United States please provide information on the impacts of NPEs and PAEs on innovation and estimate regarding costs of litigation for innovator companies? Has there been observed any reduction on innovation of American firms caused by the surge in patent litigation?*

**RESPONSE:** The U.S. Government is studying the consequences of patent litigation by non-practicing entities or patent assertion entities.

Page 93 (Para 176)

*The Leahy-Smith America Invents Act provides for substantial modification on the U.S. patent law. Under the Act, the disclosure of best mode continues to be a requirement for obtaining a patent in the first instance; nevertheless failure to disclose it cannot be raised as a ground for invalidating, cancelling, or otherwise holding unenforceable any claim in a granted patent.*

Question:

1. *Could the United States please provide information on the reason that failure to disclose the best mode cannot be raised as a ground for invalidating, cancelling or otherwise holding unenforceable any claim in a granted patent, if the disclosure of best mode is a requirement for obtaining a patent?*

**RESPONSE:** An applicant for a patent must disclose: (1) a written description of the invention; (2) a written description of the manner of making and using the invention, sufficient to enable one skilled in the art to make and use it (known as the ‘enablement requirement’); and (3) the best mode contemplated by the inventor of carrying out the invention.

The disclosures required of an applicant are part of the important tradeoff that underlies the patent laws: the grant of a limited-term monopoly in exchange for disclosure of the invention.

The Leahy-Smith America Invents Act eliminated the best mode requirement as a basis for both invalidity and unenforceability defenses in response to concerns that challenges to patents based on best mode are, among other things, often not relevant by the time the patent is in litigation because the best mode contemplated at the time of the invention may not be the best mode for practicing or using the invention years later.. However, a defendant in patent litigation may allege an intentional

nondisclosure of the best mode, with intent to deceive the Office, as a basis for an unenforceability defense.

Page 93 (Para 177 and 178)

*Paragraphs 177 and 178 states that the Leahy-Smith America Invents Act includes provisions for boosting competitiveness and for supporting innovative firms, particularly small businesses, such as discounts of fees and prioritized examination process.*

Question:

1. *Is there any available information regarding the effect of such provisions on small businesses? If so, could the United States provide details?*

**RESPONSE:** For example, the USPTO offers prioritized examination of utility and plant patent applications through the Track One initiative. A patent application under Track One receives special status with fewer requirements than the current accelerated examination program and without having to perform a pre-examination search. Prioritized examination is available for a fee at the time of filing an original utility or plant application, with a 50% discount for small entities. A Request for Continued Examination (RCE) in a plant or utility application may also receive a single prioritized examination.

Thus far, the USPTO has received over 6,900 applications from about 2,800 applicants for prioritized examination under Track One. Of these, over 2,900 applications (42%) from nearly 630 applicants (37%) have benefited from small entity status. The USPTO regularly provides more detailed statistics on the Track One initiative here: [www.uspto.gov/patents/init\\_events/Track\\_One.jsp](http://www.uspto.gov/patents/init_events/Track_One.jsp)

Page 93 (Para 180)

*In recent times, it has been observed a surge in worldwide patent applications, to which Members responded by rationalizing resources and developing measures to address this surge while maintaining quality and examining applications in an expedite manner. Paragraph 180 provides details on a range of initiatives to improve quality and timeliness of patent examination.*

Question:

1. *Could the United States provide information regarding the definition of the technology fields eligible for accelerated examination under the Green Technology Pilot Program?*

**RESPONSE:** Under the now discontinued Green Technology Pilot Program an applicant was able to have an application accorded special status and given expedited examination, for applications pertaining to green technologies including greenhouse gas reduction (applications pertaining to environmental quality, energy conservation, development of renewable energy resources or greenhouse gas emission reduction). Additional information about this pilot, including statistical data can be found on the USPTO website at [http://www.uspto.gov/patents/init\\_events/green\\_tech.jsp](http://www.uspto.gov/patents/init_events/green_tech.jsp)

2. *Does the United States have any information related to the impact of the Green Technology Pilot Program on the transfer of technology to the Member?*

**RESPONSE:** The United States issued 1062 patents under this now closed pilot program. However, the USPTO does not track or collect technology transfer data on these or any other patents.

3. *Could the United States please provide details of the new metrics developed for patent quality at the USPTO and their impact on timeliness of patent examination?*

**RESPONSE:** In summary, the new composite quality metric is composed of seven total factors that take into account stakeholder comments, including three factors drawn from the USPTO's previous quality measurement procedure, and four new factors that focus upon data never before acquired and/or employed for quality measurement purposes. The factors that have been modified from the previous USPTO quality measurement procedures are: (1) the quality of the action setting forth the final disposition of the application, (2) the quality of the actions taken during the course of the examination, and (3) the perceived quality of the patent process as measured through external quality surveys of applicants and practitioners. The newly added factors measure: (1) the quality of the examiner's initial search, (2) the degree to which the first action on the merits follows best examination practices, (3) the degree to which global USPTO data is indicative of compact, robust prosecution, and (4) the degree to which patent prosecution quality is reflected in the perceptions of the examination corps as measured by internal quality surveys. Additional information about the new quality metrics can be found on the USPTO website at [http://www.uspto.gov/patents/init\\_events/qual\\_comp\\_metric.pdf](http://www.uspto.gov/patents/init_events/qual_comp_metric.pdf)

With respect to the impact of the quality metrics on timeliness of patent examination, the quality metrics aren't *per se* directed to timeliness of application processing. However, the work product reviews (In-Process Review, Complete First Action on the Merits (FAOM) Review and Pre FAOM Search Review) place emphasis on the importance of high quality examination early in prosecution. The Pre FAOM Search Review and Complete FAOM Review emphasize the use of best practices during the initial search and examination to highlight the importance of a thorough search prior to the first action on the merits as well as a clear and complete first action in achieving high quality examination. The Final Disposition Review emphasizes the correctness of an examiner's final decision on the patentability of the claims. The Quality Index Report measures events that occur during the prosecution of an application that may have the effect of extending prosecution. The findings of these metrics are used to provide feedback and training to the examiners to promote the principles of compact prosecution. To the extent that our metrics focus on high quality examination early and throughout patent prosecution, they promote efficiency and, as a result, contribute to the achievement of the Office's goals of reducing overall examination time in addition to promoting high quality examination.

4. *Regarding the Patents for Humanity pilot programme, could the United States please provide details of concrete benefits accruing to patent licensees?*

**RESPONSE:** Patents for Humanity is a voluntary awards competition for patent owners and licensees, which is open to anyone in the world who owns or licenses a U.S. patent. The program is open to patent licensees as well as patent owners. Licensees can submit applications to the program based on work they've done using licensed technologies to address humanitarian needs, or they can team up with patent owners to submit joint applications combining the efforts of multiple parties.

Those selected as winners receive the same benefits, whether they are patent owners or licensees. Successful Patents for Humanity participants receive accelerated processing of select matters at the USPTO on any technology in their portfolio. They will also get recognition of their valuable work at a public awards ceremony.

Additional information about this program can be found on the USPTO website: [http://www.uspto.gov/patents/init\\_events/patents\\_for\\_humanity.jsp](http://www.uspto.gov/patents/init_events/patents_for_humanity.jsp)

*Among other international treaties and declarations, the TRIPS Agreement states that IP rights should not be a barrier to the protection of public health, an understanding reiterated by the Doha Declaration on the TRIPS Agreement and Public Health. Paragraph 181 provides information related to the Patient Protection and Affordable Care Act and the 12-year period of data exclusivity from the time of FDA approval of the original product, after which follow-on biologics would be able to rely on data provided for the original approval.*

Question:

1. *Could the United States provide information related to the impact of the approval of biological products “biosimilar” to or “interchangeable” with a biological product already licensed by the FDA? Was there any impact regarding the price of such products to the consumer?*

**RESPONSE:** To date, the United States FDA has not approved a biological product as biosimilar or interchangeable under the Biologics Price Competition and Innovation Act of 2009 (BPCI).

2. *If any, are there measures available for third parties to ensure that the 12-year period of data exclusivity does not inadvertently provide for an extension of the 20-year period of patent protection of patented biological products?*

**RESPONSE:** No. Data exclusivity is separate and independent of patent protection. Data exclusivity prevents unfair commercial use of clinical safety and efficacy data and information required by our Food and Drug Administration for the marketing approval of a drug product, by preventing reliance on this data for a limited period by third parties for their own marketing approval without the consent of the originator. A patent, on the other hand, provides its owner with exclusive rights under Article 28 of the TRIPS Agreement to prevent others from making, using, selling, offering for sale, or importing the subject matter of the patent without consent for a limited period. These are separate and independent forms of intellectual property which protect separate subject matter. Data exclusivity cannot extend patent protection and patent protection cannot extend data exclusivity.

Page 96 (Para 189)

*Regarding the enforcement of IP rights, recent court decisions in the United States have allegedly responded to instances of infringement of medical patents by denying injunctive relief, instead granting monetary damages, often in the form of royalty payments, what would in effect provide for a compulsory licensing. Four examples of such cases are: Voda v. Cordis Corp., Innogenetics, N.V. v. Abbott Labs, Bard Peripheral Vascular, Inc. v. W.L. Gore & Associates, and Medtronic Sofamor Danek USA, Inc. v. Globus Med., Inc.*

Question:

1. *Could the United States please confirm and elaborate on the decision of such cases? Are the monetary damages allegedly issued a type of compulsory licensing?*

**RESPONSE:** The United States does not agree with the interpretation of such cases suggested by the question. The remedies in these cases reflect judicial determinations of the most appropriate form of relief in particular cases based on the application by those courts of relevant legal standards to the facts of those cases, not a form of compulsory licensing. The U.S. patent law (Title 35 of the U.S. Code) does not contain any compulsory licensing provisions.

Page 97 (Para 192)

*According to the Secretariat, the United States conducts enforcement efforts “in a manner consistent with the balance found in U.S. law and the legal traditions of its trading partners”.*

**Question:**

1. *Could the United States elaborate on which provisions of U.S. law and on which legal traditions of trading partners does it find the balance for IPR enforcement?*

**RESPONSE:** In the United States, respect for the rule of law, transparency, and accountability, are fundamental features of IPR enforcement. The United States also respects the laws and regulations of its trading partners. We work closely, and actively consult, with our trading partners through bilateral and multilateral fora, information exchanges, and other interactions. The United States actively promotes exchanges between governments, such as collaboration between Customs services and other law-enforcement agencies, judges, prosecutors, and representatives of intellectual property registration and protection agencies.

## **VII. IV – TRADE POLICIES BY SECTOR**

### **(1) AGRICULTURE** **(ii) Agriculture policies**

Pages 103, 104 (Para 16)

According to the Secretariat, the Export Credit Guarantee Program (GSM-102) is administered by the Foreign Agricultural Service in conjunction with the Farm Services Agency of USDA. Under the Program, the CCC may provide guarantees for credits from private U.S. banks to approved foreign banks for the purchase of agricultural products by foreign buyers. Currently, no funding is provided to GSM-102 as fees and recoveries on default claim payments exceed losses. For the year ending 30 September 2011, the Export Credit Guarantee Program registered guarantees stood at US\$4.1 billion, mostly for exports of wheat, maize, soybeans and soybean products, and cotton.

**Questions:**

1. *Can the US clarify the period it uses to evaluate whether fees and recoveries payments exceed losses and the specific period underpinning the assertion made in the paragraph above?*

**RESPONSE:** The U.S. budget formulation process estimates the net present value of the program’s cash flows over the life of the loan or guarantee, and any outstanding claims.

2. *In light of the decision by the DSB in DS 267 (“US-Upland Cotton”) that considered GSM a prohibited export subsidy, what are the measures being taken by the United States to bring the program to compliance, aside from the periodic Operation Reviews under the Brazil-U.S. Framework for a Mutually Solution to the Cotton Dispute in the WTO?*

**RESPONSE:** The United States has made a number of changes to the GSM-102 program since 2005, including changes to both program premia and repayment terms. The United States has:

- implemented premia based on country risk;
- increased the average premium rate five times since 2010, resulting in an increase of more than 90 percent of the average annualized rate faced by participants;

- implemented a tiered approach to maximum repayment terms based on country risk;
- reduced overall maximum repayment terms from 36 months to 30 months, and more recently reduced maximum terms further to 24 months on a trial basis.
- In addition, the 2008 Farm Bill eliminated the 1 percent cap on premia rates and instituted a requirement that the GSM-102 program, to the maximum extent possible, ensure premia are sufficient but not more than what is necessary to cover the program's long-term operating costs and losses.

As a result of these changes, current U.S. budget estimates indicate that the premia charged by the program are more than adequate to cover its long-term operating costs and losses.

*The FAS also administers a number of programmes to promote exports, such as: the Quality Samples Program (through which the CCC funds the provision of product samples to foreign importers); the Market Access Program (the CCC provides funding for some of the costs of marketing and promotional exercises abroad); the Emerging Markets Program (for technical assistance activities that promote exports, such as feasibility studies and specialized training); the Foreign Market Development (Cooperator) Program; and the Technical Assistance for Speciality Crops Program. Total funding available for these programmes for FY 2012 was US\$255 million.*

Questions:

1. *Could the United States please explain each of these programs, how they are operated and the specific funding available for each of them?*

**RESPONSE:**

**Quality Samples Program**

FY 2012 Authorized Funding: \$2.5 million

The Quality Samples Program helps U.S. agricultural trade organizations provide samples of their products to potential importers overseas. The program focuses on industry and manufacturing, as opposed to end-use consumers.

**Market Access Program**

FY 2012 Authorized Funding: \$200.0 million

The Market Access Program aids in the overseas marketing of U.S. agricultural commodities and products by sharing the costs of activities such as trade shows, market research, technical assistance, trade servicing, and seminars to educate overseas customers.

**Emerging Markets Program**

FY 2012 Authorized Funding: \$10.0 million

The Emerging Markets Program provides funding for technical assistance activities in emerging markets in all geographic regions. The program may only support exports of U.S. agricultural commodities and products through generic, as opposed to brand, activities.

**Foreign Market Development Cooperator Program**

FY 2012 Authorized Funding: \$34.5 million

The Foreign Market Development Cooperator Program aids in overseas marketing of agricultural commodities and products by sharing the costs to create, expand, and maintain long-term export markets for U.S. agricultural products.

### **Technical Assistance for Specialty Crops Program**

FY 2012 Authorized Funding: \$9.0 million

The Technical Assistance for Specialty Crops Program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, and related technical barriers to that prohibit or threaten the export of U.S. specialty crops.

#### Page 107 (Para 28)

*According to the report by the Secretariat, insurance coverage is available for over 100 different crops under a wide variety of insurance policies covering production, price and/or revenue risks, under the Federal Crop Insurance Program. Insurance coverage is provided by the private sector at subsidized rates under terms set by the Federal Crop Insurance Corporation and administered by the USDA Risk Management Agency (RMA). Most of the policies available from the RMA are for crops, although livestock policies are available for cattle, pigs, lambs, and milk to insure against declining prices or differences between sale price and feed costs, and policies are available for forage, grazing, and rangelands. The subsidies provided by USDA are on producer premiums paid to private insurance companies for providing the insurance policies, as well as on a portion of the companies' operating costs and underwriting losses. The premium subsidy to producers was US\$4.7 billion in CY 2010 and is expected to be about US\$7.2 billion for CY 2011. The value of crops protected by insurance also increased, from US\$67 billion in 2007 to \$114 billion in 2011, representing about 80% of area planted to principal crops.*

*Brazil notes that the U.S. has been notifying "underwriting gains or losses" incurred by "Risk Management Agency" in providing crop insurance under "General Services" in the Green Box.*

#### Questions:

- 1. Could the U.S. explain how these insurance programs work, how they are technically operated and the specific funding available for them?*

**RESPONSE:** USDA's Risk Management Agency (RMA) offers two broad types of federal crop insurance: yield-based and revenue-based. The RMA also provides insurance for producers of livestock.

Yield-based crop insurance plans offer protection against the loss of production due to natural causes (e.g., drought, excess moisture, etc.). Revenue-based crop insurance offers protection against decreases in revenue due to either loss of production or declines in price. Another category of revenue insurance provides protection against declines in revenue on a whole-farm basis over some period of years. For producers of livestock, insurance is available to protect against declining prices, reduction in the margin between sales price and certain input costs, and loss of vegetation for livestock feed. Additional information on the major plans of insurance available through the federal crop insurance program is provided at: <http://www.rma.usda.gov/policies/>

### **FUNDING FOR INSURANCE PLANS**

The Federal Crop Insurance Act limits government expenditures for premium subsidies and administrative and operating expense (A&O) payments for the livestock price insurance plans (LRP, LGM) to not exceed \$20 million per fiscal year. For all other insurance plans, there are no statutory or regulatory limits on either the amount of premium subsidies or the amount of indemnity payments paid to producers. Regarding payments for A&O expenses, the Federal Crop Insurance Act

proscribes the maximum percent of premium that the government will pay to companies for such expenses. The Standard Reinsurance Agreement (SRA) negotiated between the government and companies effective for 2011 introduced a limit (about \$1.3 billion) on the maximum amount of compensation paid to companies for A&O expenses.

(a) 2. *explain the rationale for its notification of funding provided by the Risk Management Agency in support of the administration and provision of crop insurance?*

(b)

(c) **RESPONSE:** The United States has historically reported crop insurance expenditures in terms of net indemnities: the difference between producers' premiums (total premium – premium subsidy) and indemnities (payout for a crop or revenue loss). The total net indemnities were reported as non-product specific support under the AMS. The new method reports premium subsidies, rather than net indemnities, as producer support from crop insurance. This change is prompted by a change in legislation for the crop insurance program. The 2008 Farm Act mandated the crop insurance program operate with an actuarially-sound target loss ratio of 1.0. That is, over the long term, premium subsidies should equal net indemnities and thus should capture the full level of support to producers. In addition, a portion of A&O expenses and underwriting gains paid to crop insurance companies are reported in the green box under "General Services," similar to how salaries and expenses are reported for other programs.

(d)

(e) 3. *explain how premium is determined for each crop insurance policy offered the Federal Crop Insurance Program?*

(f)

**RESPONSE:** Over 90 percent of program premium is for policies that are based on the farmer's own production history. The overall approach to rating for these policies is generally known as the "loss cost method." Premium rates for the yield risk are derived from the average historical rate of loss at a county/crop level. For example, if the average rate of loss is ten percent, then the premium rate charged is around ten percent. Other factors also play a role such as catastrophic loading and reserve loading.

The premium rate for revenue policies takes the loss cost-based yield risk premium rate described above and then adds an additional premium load for the revenue risk. The additional premium load for revenue risk is based on the implied price volatility derived from options prices from the commodity exchange markets.

(g)

(h) 4. *elaborate on the timeframe the RMA uses to evaluate the loss ratio of different policies?*

(i)

**RESPONSE:** In general, RMA uses loss costs to determine premium rates, not loss ratios. The time frame used for the calculating average loss costs is twenty years, although there is a catastrophic load process that uses data from a longer period.

(j)

(k) 5. *clarify how the reinsurance scheme between the RMA and private companies work and how it affects the premium charged under different policies?*

(l)

**RESPONSE:** The relationship between RMA and the companies is governed by a Standard Reinsurance Agreement (SRA) which establishes the terms by which A&O compensation and reinsurance is provided to the companies. The SRA establishes two reinsurance funds into which a company can place policies – the Commercial Fund and the Assigned Risk Fund. The Assigned Risk Fund is available for those policies that that the company regards as high risk. The mechanisms by which the Commercial Fund and Assigned Risk Fund operate are otherwise the same.



For policies placed into the Commercial Fund, the company must retain at least a 35-percent share of the premium and ultimate net losses. The corresponding percentage for the Assigned Risk Fund is 20 percent. For purposes of computing underwriting gains/loss, the policies placed in both reinsurance funds by a company are aggregated to the state-level. RMA and the companies then share in the underwriting gains/losses for the reinsurance fund according to the terms of the SRA, as applicable

(m) The reinsurance terms in the SRA have no impact on the premium charged to producers for the purchase of federal crop insurance policies.

(n)

Page 107 (Para 28 and 29)

*The crop insurance program is expanding at a fast pace and has been evaluated by some academic scholars as a very distortive type of subsidy, including because, when farmers already benefit from high prices, such as in 2011, CIP provides additional payments through HRO (Harvest Revenue Option) policies.*

Questions:

1. *How much of the insurance policies sold had the HRO option in 2011 and what does it represent in terms of planted area?*

**RESPONSE:** The term ‘Harvest Revenue Option’ applies only to Group Risk Income Protection (GRIP) that provides revenue coverage on an area basis. Similar revenue coverage, but on an individual APH basis, is available through the Revenue Protection (RP) policy. For both, if the harvest price is higher than the planting-time price, yield losses are compensated at the higher harvest price. This is intended to cover the losses faced by growers who have insufficient production to fulfill their delivery contracts and must purchase grain from the open market at harvest time to meet their obligations.

In 2011, out of 1,152,060 crop insurance policies, RP accounted for 750,923 (or 65 percent) and GRIP-HRO accounted for 12,448 (or one percent). Out of a total of 265.7 million net insured acres, RP accounted for 167.3 million acres (or 63 percent) and GRIP-HRO accounted for 3.4 million acres (or one percent).

2. *Was that number higher than the previous 3 years?*

**RESPONSE:** RP and GRIP-HRO accounted for around 61 percent of crop insurance policies between 2008 and 2010, whereas 66 percent of the policies in 2011 had the same option.

3. *What are the main causes of the verified increase in subsidy levels: (i) an effect of more HRO policies sold; (ii) increase in the average level of coverage chosen by the policy holders; (iii) increase in the number of policies sold?*

**RESPONSE:** From 2010 to 2011, the main cause of the increase in subsidy, which is determined as a percent of premium, was an increase in commodity prices. Higher commodity price increase crop value and therefore liability, premium, and subsidy. Other contributing factors were an increase in the average coverage level (63 percent in 2010 versus 66 percent in 2011), and an increase in the average premium rate (from 9.7 percent in 2010 to 10.5 percent in 2011), largely driven by an increase in price risk for revenue coverage as indicated by commodity market options prices. An increase in the participation rate in the crop insurance program also contributed to the increase.

**(2) SERVICES**

**(ii) Financial services**

Page 121 (Para 67)

*The financial services sector accounted for 8.5% of U.S. GDP in 2010, 47% of which was generated by banking activities, 33% by insurance, 16% by securities trading activities, and the rest by funds, trusts, and other financial vehicles. Over the last decade, the U.S. has run trade surpluses in financial services and trade deficits in insurance. In 2010, exports of financial services, excluding insurance, amounted to US\$66.4 billion, while imports amounted to US\$13.8 billion. Also in 2010, exports of insurance services reached US\$14.6 billion, while imports amounted to US\$61.8 billion. The U.S. sells more financial services through companies' foreign affiliates than it buys from foreign companies' affiliates established in the United States. In 2009, sales of financial services, including insurance, to foreign persons by U.S. multinational corporations amounted to US\$226 billion, while sales of financial services to U.S. persons by foreign multinational corporations were US\$147 billion.*

Question:

1. *Is a foreign insurance company required to have a license from a public authority to operate in the American market such as the one mentioned in page 22, paragraph 3 given to banking institutions?*

**RESPONSE:** Insurance is licensed at the state level of government.

*According to the Secretariat Report, the US government continued to provide support to the financial sector, specifically to the banking sector, during the review period with a view to achieving financial stability and propping up economic recovery (see paragraph 9, page 4, Section I, "Economic Environment" . The Secretariat report also shows that US' exports of banking services – a sector which has run a surplus for the last ten years - rose significantly in the period under review.*

Questions:

1. *Considering such massive granting of subsidies in services is likely to have implications on the competitiveness of the financial sector on a global scale, to what degree has government support to the sector contributed to the performance of US financial services exports over the period under review?*

**RESPONSE:** The Emergency Economic Stabilization Act of 2008 (EESA) established OFS within the Office of Domestic Finance of the Department of the Treasury to implement Troubled Asset Relief Program (TARP), the purpose of which was to restore the liquidity and stability of the financial system. The authority to make new commitments expired on October 3, 2010. Since that time, the focus has been on working to withdraw the assistance that had to be provided during the financial crisis; to reduce emergency assistance; and to manage the remaining TARP investments to protect taxpayers' interests while maintaining financial stability. The United States complies with all WTO notification requirements and does not believe that any of these activities require WTO notification. See:

[http://www.treasury.gov/initiatives/financial-stability/reports/Documents/2012\\_OFS\\_AFR\\_Final\\_11-9-12.pdf](http://www.treasury.gov/initiatives/financial-stability/reports/Documents/2012_OFS_AFR_Final_11-9-12.pdf)

2. *Despite the volume of assistance provided, the United States has not made any WTO notifications over the period under review, other than the Dodd-Frank Act, concerning any new, or any changes to, existing laws, regulations or administrative guidelines that significantly affect trade in services, as required by Article III.3 of the GATS. Does the*

*US have plans to notify such subsidies to the CTS? If so, could the US indicate when it intends to do so?*

**RESPONSE:** The Emergency Economic Stabilization Act of 2008 (EESA) established OFS within the Office of Domestic Finance of the Department of the Treasury to implement Troubled Asset Relief Program (TARP), the purpose of which was to restore the liquidity and stability of the financial system. The authority to make new commitments expired on October 3, 2010. Since that time, the focus has been on working to withdraw the assistance that had to be provided during the financial crisis; to reduce emergency assistance; and to manage the remaining TARP investments to protect taxpayers' interests while maintaining financial stability. The United States complies with all WTO notification requirements and does not believe that any of these activities require WTO notification. See:

[http://www.treasury.gov/initiatives/financial-stability/reports/Documents/2012\\_OFS\\_AFR\\_Final\\_11-9-12.pdf](http://www.treasury.gov/initiatives/financial-stability/reports/Documents/2012_OFS_AFR_Final_11-9-12.pdf)

Page 122 (Para 72)

*The main regulatory reform since the last TPR of the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) (the Dodd-Frank Act), entered into force on 21 July 2010. As stated in its introductory paragraph, the Act's objectives include promoting financial stability, ending "too big to fail", ending bailouts, protecting taxpayers, and protecting consumers from abusive financial services practices. The Act does not introduce market access or national treatment limitations, but establishes a new and comprehensive regulatory framework and extends regulation over new markets, entities, and activities.*

Question:

*1. Are there any exceptional circumstances prescribed by law that allow the bailout of a financial institution?*

**RESPONSE:** Title II of the Dodd-Frank Act amends the orderly liquidation authority for banking institutions by providing an emergency tool to ensure the orderly liquidation of a failed or failing large, interconnected financial company when the stability of the financial system is threatened. It is modeled after the Federal Deposit Insurance Act (FDIA) and the systemic risk exception contained in the Federal Deposit Insurance Corporation Improvement Act. Further detail can be found at: [http://www.fdic.gov/about/srac/2012/2012-01-25\\_resolution-strategy.pdf](http://www.fdic.gov/about/srac/2012/2012-01-25_resolution-strategy.pdf)

The full text of the Act can be found at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4173enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf)

Page 122 (Para 74)

*Section 173 of the Dodd-Frank Act (Access to United States financial market by foreign institutions) introduces modifications to sections 7(d)(3) and 7(e)(1) of the International Banking Act of 1978 and to section 15 of the Securities Exchange Act of 1934. The amended International Banking Act now explicitly requires the Board of Governors of the Federal Reserve System, when considering an application for establishment of a U.S. office of a foreign bank that presents a risk to the stability of the United States financial system, to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. The new amendments also allow the Board to order the termination of the activities of U.S. offices of such foreign banks in the absence of these criteria. Similarly, the SEC is now required,*

when considering an application for establishment of a foreign broker or dealer that presents a risk to consider the same criteria regarding home country regulation. The SEC is also explicitly authorized to rescind the authorization of such foreign brokers or dealers if the home country authority has not taken the steps required.

Questions:

1. Could the United States elaborate on what it understands as "an appropriate system of financial regulation for the financial system" and as "demonstrable progress"?
2. How is it determined whether an institution poses a risk to the stability of the financial system of the United States? Is there a list of specific criteria?
3. If it is concluded that an institution poses a risk to the financial system of the United States, what's the criteria used to determine whether the institution's home country has adopted or has demonstrated progress in the adoption of rules for a financial system able to mitigate those risks? If there are specific criteria, are they dictated by multilateral institutions such as FSB, IOSCO, etc.?
4. If the authorization for a foreign institution to operate in the American market is denied, is the competent institution obligated to justify such a decision?

**RESPONSE TO QUESTIONS 1-4:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor generally may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36; <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>.

Discussion of the financial stability criteria specific to an application by a foreign bank to establish a U.S. office may be found at Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012), at page 16; <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf>.

**PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT**

**WT/TPR/G/275 Report**

**IV. TRADE POLICY DEVELOPMENTS SINCE 2010**

(2) REGIONAL INITIATIVES

(vi) **Managing and deepening U.S.-EU trade**

Page 20 (Para 83)

*The USA states that "in 2011, the United States interacted extensively with counterparts in the major EU governing institutions (the European Commission, the European Parliament, and the European Council) and EU Member State governments on key issues for U.S. workers, farmers, and businesses, such as EU restrictions on U.S. agricultural exports, the protection of intellectual property rights (IPR), and joint efforts on shared concerns in third country markets".*

Questions:

*1. Could the U.S. indicate whether there has been any outcome on such interaction with the EU governing institutions regarding EU restrictions on U.S. agricultural exports?*

**RESPONSE:** We have worked to expand markets for U.S. agricultural producers by encouraging EU regulators to ensure that their regulatory decisions are science-based. By year's end, the EU was moving closer to allowing the import and sale of beef that has been treated with lactic acid. We also engaged with the EU over regulations restricting imports of several major U.S. food and agricultural products, including products of agricultural biotechnology.

*2. Has this issue been discussed under the Transatlantic Economic Council (TEC) umbrella?*

**RESPONSE:** We have not addressed agricultural restrictions specifically in the TEC. There are TEC discussions regarding standards and innovation, especially in the bio-based economy, the results of which could eventually have beneficial effects on trade.

## **VI. TRADE AND THE ENVIRONMENT**

### Pages 31 and 32 (Paras 145-149)

*The report provides information on the work carried out by the U.S.A. regarding a list of "environmental" goods, agreed on by APEC members. The country considers the list a historic outcome. Taking into account that, according to the WTO integrated database, the U.S.A. already applies maximum and average "ad valorem" duties below the proposed 5% limit of the APEC list for most of the tariff lines listed.*

#### Questions:

*1. Which would be the foreseen challenges the U.S.A. will have to face in order to abide to the agreed tariff-line levels?*

**RESPONSE:** The United States will seek legislation to reduce any tariffs above 5% by 2015.

*2. Which are the expected gains for U.S. products in terms of market access?*

**RESPONSE:** The APEC List of Environmental Goods includes 54 environmental goods, including such core products as:

- Renewable and clean energy technologies, such as solar panels, and gas and wind turbines, on which tariffs in the region are currently as high as 35 percent;
- Wastewater treatment technologies, such filters and ultraviolet (UV) disinfection equipment, on which tariffs in the region are currently as high as 21 percent;
- Air pollution control technologies, such as soot removers and catalytic converters, on which tariffs in the region are as high as 20 percent;
- Solid and hazardous waste treatment technologies, such as waste incinerators, and crushing and sorting machinery, on which tariffs in the region are currently as high as 20 percent; and

- Environmental monitoring and assessment equipment, such as air and water quality monitors, and manometers to measure pressure, and water delivery systems, on which tariffs in the region are currently as high as 20 percent.

The United States exported environmental goods worth \$27 billion to the APEC region in 2011, of which \$1.2 billion worth faced tariffs above 5 percent. Thus, the tariff cuts on these products will facilitate increased market access for U.S. exporters.

*3. Could the U.S. provide more information on the environmental provisions in the FTAs signed with Peru, Colombia and Panama and the work developed with those three countries, particularly in terms of technical cooperation, to provide a smooth implementation of those provisions?*

**Response:** The Environment Chapters of the Peru, Colombia, and Panama agreements are intended to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive. First, the Chapters provide that each Party shall strive to ensure that its environmental laws and policies provide for and encourage high levels of environmental protection, and include an obligation on each Party not to fail to effectively enforce its environmental laws. Moreover, the Chapters commit the Parties to adopt, maintain, and implement laws, regulations, and other measures to adhere to their obligations under specified multilateral environmental agreements. Second, the Chapters also contain provisions on procedural matters and enforcement mechanisms. For example, the Chapters include provisions to promote public awareness of environmental laws and establish procedures under which members of the public may make submissions to an independent secretariat asserting that a Party is failing to effectively enforce its environmental laws. Third, the Chapters include provisions that strengthen the Parties' co-operation on environmental issues and establish an environmental affairs council to consider and discuss the implementation of the respective Chapters. Related to these cooperation efforts, and as discussed below, the Parties have negotiated Environmental Cooperation Agreements (ECAs) in parallel with the Environment Chapters. The Colombia and Peru FTAs also include provisions relating to the conservation and sustainable use of biological diversity. Additionally, the Peru agreement includes an Annex on Forest Sector Governance, which sets out detailed provisions designed to strengthen Peru's capacity to sustainably manage its forest resources and combat illegal logging and associated trade.

The ECAs establish a framework for enhancing bilateral cooperation between the Parties aimed at protecting, improving and preserving the environment, including the conservation and sustainable use of natural resources. The United States and Peru have an extensive environmental cooperation work program focused primarily on forest sector governance. As part of this program, the United States has provided technical support to Peru in its process for developing regulations to implement its Forestry and Wildlife law, including sharing experiences with respect to formulating and applying laws and regulations; public participation, process planning and methodology; and communications. The United States also has supported Peru's development of its National Forestry (and Wildlife) Information System. Our FTAs with Colombia and Panama only recently entered into force. The United States currently is in the process of identifying specific goals, objectives, and priority areas for cooperation with both countries.

*4. Considering that the methodology of work in the WTO to address environmental concerns is still not consensual, how does the US Government intend to address these provisions vis-à-vis the present trade and environment agenda?*

**Response:** The United States is committed to working with WTO Members to address trade-related environmental concerns in the Committee on Trade and Environment (CTE), and we look forward to discussing ideas for taking this work forward with Brazil and other interested members.

### **PART III – OTHER QUESTIONS**

*The Secretariat Report for the 2010 US TPR highlighted the overall openness of the services sector in the US. It stressed, however, the existence of restrictions in, inter alia, professional services in Mode 4. It pointed out specifically the insufficiency of the quota (65,000) assigned for foreign professionals in a specialty occupation through the H-1B visa category. According to the website of the US Embassy in Bern, “H-1B classification applies to persons in a specialty occupation which requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. This classification requires a labor attestation issued by the Secretary of Labor. This classification also applies to Government-to-Government research and development, or co-production projects administered by the Department of Defense.”*

#### **Questions:**

*1. In light of the foregoing, has the US undertaken any actions throughout the review period to improve market access to foreign temporary workers in a specialty occupation?*

**RESPONSE:** The Secretariat’s 2010 Report noted no “insufficiency” in the H-1B cap; rather, it notes that, in years when demand for H-1B visas is strong, the cap can be reached quickly. It further noted that this was not the case in the most recent year of that Report’s period of review. More generally, and as noted in the Report, U.S. law provides for the issuance of H-1B visas beyond the 65,000 cap in specified circumstances. This includes up to 20,000 visas for foreign nationals holding a master’s degree or higher from a U.S. university; as well as visas for employment at or by U.S. institutions of higher education and related or affiliated nonprofit entities, and non-profit or government research organizations, which are not subject to any cap. “Specialty occupation” professionals also may be eligible for admission into the United States under visa categories other than H-1B.

*2. Does the US envision making the definition of specialty occupation more specific?*

**RESPONSE:** The term “specialty occupation,” for purposes of H-1B visas, is defined within U.S. law as “an occupation that requires: (i) theoretical and practical application of a body of highly specialized knowledge; and (ii) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” Regulations implementing the applicable U.S. law provide that, to qualify as a specialty occupation, a position must meet one of the following criteria: (i) a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position; (ii) the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree; (iii) the employer normally requires a degree or its equivalent for the position; or (iv) the nature of the specific duties are so specialized and complex that knowledge

required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

*1 - How does the US limitation on acquisition of financial assets by foreign governments (their agencies, funds or public enterprises) affect Market Access (MA) and National Treatment (NT) in American financial market?*

**RESPONSE:** The US does not limit acquisition of US financial assets based in the ownership of the foreign investor.

*2 - How do Foreign Account Tax Compliance Act (FATCA) provisions impact on foreign firms, especially on MA and NT in American financial market?*

**RESPONSE:** FATCA applies to U.S. persons' accounts in foreign financial institutions.

*3 - Would the US favor similar measures to FATCA from its trade partners even though these measures could create restrictions in terms of access to their financial markets?*

**RESPONSE:** The U.S. Government is committed to continued cooperation with other governments in addressing offshore tax evasion, and the Treasury Department is engaged in a dialogue with interested foreign governments regarding the implementation of FATCA.

*4 - How does "Buy American Act" affect MA and NT in financial services? What is the estimated impact on American financial industries as well as on those of its trade partners?*

**RESPONSE:** The Buy American Act does not apply to services.



## QUESTIONS FROM CANADA

### Government Report – United States (G275)

#### **(I) The United States in the Multilateral System: paragraph 2, page 5:**

*In its report, the United States emphasizes its commitment to the enforcement of global trade rules during the period under review. In an Executive Order on February 28, 2012, the President established the Interagency Trade Enforcement Center (ITEC) to strengthen monitoring and enforcement of U.S. trade rights and domestic trade laws.*

- 1. Does the creation of the ITEC signify a new approach to the enforcement of global trade rules by the U.S.?*

**RESPONSE:** On February 28, 2012, President Barack Obama signed Executive Order 13601 establishing the Interagency Trade Enforcement Center (ITEC) to advance U.S. foreign policy and protect the national and economic security of the United States through strengthened and coordinated enforcement of U.S. trade rights under international trade agreements and enforcement of domestic trade laws. ITEC builds upon existing trade enforcement capacity to create a unique and more aggressive “whole-of-government” approach to addressing unfair trade practices around the world. ITEC will enhance the United States government’s trade enforcement activities by focusing existing resources more efficiently across the executive branch and among stakeholders.

- 2. Does this indicate a shift in the focus of U.S. trade enforcement activities?*

**RESPONSE:** The United States will remain focused on ensuring that our trading partners follow WTO rules and abide by their trade agreement obligations, including commitments to maintain open markets on a non-discriminatory basis, and to follow rules-based procedures in a transparent way.

#### **Part II. Trade Policy and Investment Regimes: (4) Investment Agreements and Policies: (iii) Investment regulations and restrictions: paragraph 36, page 28:**

*With respect to approvals for foreign investments:*

- 1. What, if any, involvement do state governments have in the Committee on Foreign Investment in the United States (CFIUS)?*

**RESPONSE:** State governments are not involved in CFIUS reviews.

- 2. It is Canada's understanding that some states have Merger Moratorium (or Business Combination) statutes. Which states maintain these and how do they fit into the US's overall investment strategy, particularly as it relates to FDI attraction?*

**RESPONSE:** The United States Government maintains a centralized resource – the SelectUSA Initiative – to provide investors information about the U.S. investment regime, and to help investors better understand the U.S. legal and regulatory landscape. The SelectUSA website (<http://www.selectusa.gov>) includes links to private sector guides to investing and doing business in the United States, as well as a list of contacts for designated investment officials in each U.S. state and

territory. Information about specific statutes of individual states can be obtained from a variety of public resources, as well as through these contact points.

**Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (iii) Rules of origin: paragraph 10, page 35:**

*Canada notes that paragraph 10 states that, "The rules of "substantial transformation" may be applied to determine the last country in which the article was transformed by having a new name, character, or use".*

3. *Will the United States consider applying the rule of substantial transformation to the labelling of meat cuts, in order to comply with the WTO ruling on U.S. Country of Origin Labelling measures?*

**RESPONSE:** The WTO Dispute Settlement Body did not recommend that the United States come into compliance by any particular means. Accordingly, the United States continues to consider all of its options in this regard.

**Part III. Trade Policies and Practices by Measure: (1) Measures Directly Affecting Imports; (v) Other charges affecting imports: paragraph 36, page 44:**

*It is noted that a number of changes to the Harbor Maintenance Tax have been proposed, but none passed into law.*

4. *Could the United States confirm whether changes to the HMT will be enacted in the near future, in particular given the policy options discussed in the July 2012 Study of U.S. Inland Containerized Cargo Moving through Canadian And Mexican Seaports prepared by the U.S. Federal Maritime Commission?*

**RESPONSE:** The United States is still considering the options that are available and taking into account studies conducted and comments submitted on this issue by interested parties, including the private sector, trading partners, and other federal and state agencies.

**Part III. Trade Policies and Practices by Measure: (vi) Contingency Measures: (a) Anti-Dumping and Countervailing Measures: paragraph 43, page 46:**

*It was identified that there were very few anti-dumping investigations initiated in 2010 (only 3 cases), with a significant increase in 2011 (9 cases), which approached the numbers seen in both 2008 and 2009 (15 and 18 cases respectively).*

5. *Can the United States provide any comments as to why comparatively few anti-dumping investigations were initiated in 2010?*

**RESPONSE:** The United States is not able to comment as to why the number of investigations initiated in one year versus another have either declined or increased since the answer to this question is based on the number of petitions filed by a domestic industry. The decision to file a petition rests solely with the domestic industry and, therefore, the United States cannot speak to the industry's motivations and decisions. Similarly, the United States is not able to comment on the general year-to-year trends associated with the outcomes of antidumping measures imposed since each measure is wholly dependent upon the specific facts in each investigation.

6. *It was also indicated that only half of the antidumping investigations initiated in 2011 resulted in a final imposition of antidumping measures, whereas for the period of 2008-2010 more than 90 percent of the antidumping investigations resulted in final antidumping measures being imposed. Can the United States provide an explanation as to why there has been a significant drop in the number of antidumping measures imposed in 2011 relative to the number of antidumping investigations initiated?*

**RESPONSE:** See answer above.

**Part III. Trade Policies and Practices by Measure: (vi) Contingency Measures: (a) Anti-Dumping and Countervailing Measures: Paragraph 48, Page 48:**

*Paragraph 48 states that in “administrative reviews, except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with monthly weighted average normal values, and will grant an offset where the export price exceeds the normal value” [emphasis added].*

7. *Please provide details about the use of zeroing with different comparison methods. Will the Department of Commerce continue the practice of zeroing with the transaction-to-transaction (T-T) or weighted average-to-transaction (W-T) methods?*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

**Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Technical regulations and standards: paragraph 71, page 58:**

*Canada notes with interest paragraph 71 of the Secretariat's report regarding the US initiating a temporary hiatus on issuing sub-national notifications.*

8. *Could the United States clarify this statement?*

**RESPONSE:** The United States is notifying sub-national measures.

9. *Could the United States provide details on the improvements and "corrections" made to US processes and steps or the processes now in place as regards sub-national notifications?*

**RESPONSE:** The United States streamlined the process to reduce omissions and processing times for notifying the measures.

**Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Technical regulations and standards: paragraph 78, page 60:**

*Canada notes that Paragraph 78 on the Consumer Product Safety Commission (CPSC) states that, "Although the official preference is to rely on industry's use of voluntary standards, the CPSC and other agencies with responsibility for product and service regulations may develop technical regulations when voluntary standards are not considered adequate or when compliance with voluntary standards is considered unlikely."*

*10. Could the United States please elaborate on the criteria used to determine the adequacy of a given standard and the likelihood that it will be complied with?*

**RESPONSE:** Criteria used to determine when reliance on a voluntary standard would be inadequate include the likelihood that the voluntary standard will eliminate or adequately reduce the risk of injury and, in addition, that there will be substantial and timely compliance with the voluntary standard. To determine the likelihood that a voluntary standard will be complied with, we perform an analysis *inter alia* of its technical scope, as well as the reasonableness and practicability of its specifications.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade: (i) Business framework and business investment incentives: paragraph 122, page 73**

*With respect to SelectUSA:*

*11. Could you please elaborate on the role of SelectUSA, particularly its advocacy role abroad? Does SelectUSA have a presence abroad?*

**RESPONSE:** Established by Executive Order of the President in 2011, SelectUSA is the first federal initiative to facilitate business investment in the United States. SelectUSA works with firms – both foreign and domestic – as well as U.S. economic development organizations to provide information, guidance, and counseling on the U.S. economic climate and federal rules and regulations impacting business investment in the United States. It operates under strict geographic neutrality and does not steer investments towards one U.S. location over another.

SelectUSA is the single point of contact at the national level to help international and domestic firms grow and invest in the United States by providing insights into the U.S. economy, overview of the U.S. regulatory climate, and helping connect a firm with strategic partners like industry/trade associations or regional economic development organizations of its choice.

Housed in the Department of Commerce, SelectUSA is a part of the U.S. and Foreign Commercial Service (USFCS), which is located at U.S. embassies and consulates in over 70 worldwide markets and has a robust field operation through U.S. Export Assistance Centers across the United States. By coordinating resources across the federal government, SelectUSA provides both information assistance and ombudsman services to the global investment community.

While the United States has a longstanding open investment policy, SelectUSA serves as ombudsman that can help address issues involving federal regulations, programs, or activities that may put an existing or potential investment at risk. With SelectUSA, investors can develop a better understanding of how to navigate U.S. regulations.

More information can be found at the following website: [www.SelectUSA.gov](http://www.SelectUSA.gov)

*12. How does SelectUSA interact with CFIUS (Committee on Foreign Investment in the United States)?*

**RESPONSE:** SelectUSA is a separate program of the U.S. Department of Commerce and is not a part of the CFIUS review process. SelectUSA refers questions regarding CFIUS to the Treasury Department, as the CFIUS chair.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iii) Government Procurement: paragraph 128, page 76:**

*The Secretariat report provides statistics on U.S. federal spending on federal procurement contracts.*

*13. Could the United States provide statistics on the value of procurement conducted by state and local governments, broken down by state?*

**RESPONSE:** The United States does not have statistics on the value of procurement conducted by local governments or for the states that are not covered by the WTO Agreement on Government Procurement (GPA). Statistics on the procurement conducted by the 37 states covered by the GPA are included in the statistics that the United States submits to the WTO Committee on Government Procurement.

*14. Could the United States provide statistics on the value of procurement conducted by the Department of Defence under its Balance of Payments Program?*

**RESPONSE:** The United States does not have such statistics.

*15. Could the United States provide statistics on the value of procurement conducted by the Department of Defence that is subject to international commitments under the WTO Agreement on Government Procurement? In particular, what is the value of procurement of "specialty metals or any goods containing one or more specialty metals" and of goods covered by the Berry Amendment 10 U.S.C. 2533a?*

**RESPONSE:** Statistics on the procurement of the Department of Defense that is covered by the GPA is included in the statistics that the United States submits to the WTO Committee on Government Procurement. Procurement of "specialty metals or any goods containing one or more specialty goods" is not covered by the GPA and thus is not included in those statistics.

*16. In addition to the Buy American Act, could the United States identify any other federal legislation that contains restrictions on the procurement of goods, services or constructions services, whether the procurement is conducted directly by federal agencies or conducted by state or local governments?*

**RESPONSE:** The United States does not have information on "buy American" requirements maintained by state or local governments. With regard to federal "buy American" requirements, the United States does not keep a comprehensive list of federal "buy American" requirements, some of which may be limited in scope to funds authorized by a particular legislation which is limited in time (such as the American Recovery and Reinvestment Act of 2009). Certain permanent provisions include restrictions on Department of Transportation funds (e.g., 49 U.S.C. §§ 24405, 50101, 5323(j), 23 U.S.C. § 313), others capture miscellaneous limited procurements, such as those made with funds obligated under the Workforce Investment Act of 1998 (10 U.S.C. § 9275(a)) and certain funds used for Indian Health Care Facilities (25 U.S.C. §§ 1631 et seq.)

17. *Could the United States confirm to what extent the Buy American Act applies to the procurement of services, including construction services? Other than “construction materials”, are there other construction services for which the Buy American Act applies? Could the United States identify any other federal legislation or regulation that imposes discriminatory purchasing requirements on the procurement of services by the federal government?*

**RESPONSE:** The Buy American Act only applies to goods, including construction materials. The Trade Agreements Act of 1979 prohibits the procurement of services from countries that do not provide reciprocal access to their government procurement markets, such as under the GPA. In addition, federal law restricts the use of air, and ocean transportation in certain circumstances, to U.S. flag carriers (48 U.S.C. § 40118; 10 U.S.C. § 2631; 46 U.S.C. §§ 1101, 1241(b)).

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iii) Government Procurement: paragraph 132, page 77:**

*The Secretariat report states that “nearly all federal agencies are required to comply with the [Federal Acquisition Regulation], but certain agencies are exempt”, for example the U.S. Postal Service and Central Intelligence Agency.*

18. *Could the United States provide a list all agencies that are exempt from the application of the FAR, with reference to the provisions in the FAR or other legislation or regulation that provide for such exemption?*

**RESPONSE:** The United States does not have a list of all agencies that are not required to comply with the Federal Acquisition Regulation (FAR). The FAR System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. Executive agencies are required to comply with the FAR.

19. *Could the United States confirm whether or not agencies that are exempt from the FAR are subject to the Buy American Act?*

**RESPONSE:** The Buy American Act applies to all federal procurements of goods. For those agencies covered by the FAR, the Act is implemented through the FAR. Agencies not covered by the FAR have their own regulations and policies implementing the Buy American Act requirements.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iii) Government Procurement: paragraph 134, page 77:**

*It is noted that, under U.S. laws and rules, agencies may reserve contracts exclusively for designated groups, known as “set-asides”.*

20. *Could the United States identify the eligibility requirements for such set-asides, in particular what constitutes a “small” business? What factors are considered when determining what constitutes a “small” business?*

**RESPONSE:** 13 CFR 121 contains SBA’s Size Regulations which address size eligibility requirements for federal procurements.

[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34088e0cabbbd20029b3c3b69f716a13&tpl=/ecfrbrowse/Title13/13cfr121\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34088e0cabbbd20029b3c3b69f716a13&tpl=/ecfrbrowse/Title13/13cfr121_main_02.tpl)

Individual eligibility requirements for small business and associated small business participation programs can be found in 13 CFR 124, 125, 126, 127.

[http://www.ecfr.gov/cgi-bin/text-idx?sid=96f2a978e3e29a7c707de9bde4889e75&c=ecfr&tpl=/ecfrbrowse/Title13/13cfrv1\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?sid=96f2a978e3e29a7c707de9bde4889e75&c=ecfr&tpl=/ecfrbrowse/Title13/13cfrv1_02.tpl)

21. *The report also notes that the Small Business Administration has a goal of 23% of all federal procurement dollars to be awarded for set aside for small businesses. What was the actual value of federal procurement set aside for small businesses in fiscal years 2010-11 and 2011-12?*

**RESPONSE:** Fiscal Year 2005 thru 2011 Small Business Goaling achievements data can be found at: [http://www.fpdsg.com/fpdsg\\_cms/index.php/reports](http://www.fpdsg.com/fpdsg_cms/index.php/reports)

22. *In footnote 167 of the report, reference is made to small contracts (less than US\$150,000) being automatically set-aside. What is the value of contracts set aside for small business that fall into this category? In terms of large procurement contracts (above US\$500,000), what is the value of the set asides for small businesses that are subject to subcontracting plans?*

**RESPONSE:** There is no individual data run available from SBA for contracts awarded below \$150,000. That data is included in the Small Business Goaling achievement data at: [http://www.fpdsg.com/fpdsg\\_cms/index.php/reports](http://www.fpdsg.com/fpdsg_cms/index.php/reports). Prime contracts awarded to Large Businesses that individually exceed \$650,000 (\$1.5 million for public construction) and that have subcontracting possibilities, require the submission of a Subcontracting Plan for review and approval of the Government Contracting Officer. Small Businesses awarded a prime federal contract are statutorily exempt from the requirement to submit a subcontracting plan and set-asides which are only applicable to small businesses are therefore not subject to this requirement. The United States does not have data on the value of set asides subject to subcontracting plans.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iii) Government Procurement: paragraph 138, page 78:**

*The Secretariat report states that procurement at the sub-central (i.e., state) level is a matter of state law and that various states may have “buy American” restrictions.*

23. *Could the United States provide a list of its states that have adopted either “buy American” or “buy local” restrictions and provide details on these restrictions for each state?*

**RESPONSE:** The United States does not maintain such a list.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iv) Trade-related intellectual property rights: paragraph 150, page 84:**

*IP protection has been flagged as a key element of the U.S. National Export Initiative.*

24. *How have the National Export Initiative-related IP measures rolled out so far? Are there special IP protection measures which are focused on SMEs. If so, could you please describe them?*

**RESPONSE:** The Administration has introduced a number of IP programs and initiatives that support the National Export Initiative by promoting awareness of IP issues among SMEs and other entities.

The U.S. Department of Commerce International Trade Administration, the U.S. Patent and Trademark Office, and the National Intellectual Property Rights Coordination Center conducted a series of outreach events around the country to increase SMEs' awareness of IPR issues from both a law enforcement and a trade perspective.

The U.S. Department of Commerce International Trade Administration redesigned and launched an interagency website—[www.STOPfakes.gov](http://www.STOPfakes.gov)—to connect U.S. SMEs and others to information and resources to help them protect and enforce their intellectual property rights as they begin or expand their export activities.

**Part III. Trade Policies and Practices by Measure: (3) Other Measures Affecting Investment and Trade; (iv) Trade-related intellectual property rights: paragraph 163, page 89:**

*The Secretariat report notes the efforts made by the U.S. Patent and Trademark Office (USPTO) to conduct training and education programmes, including the development of the Intellectual Property Awareness Assessment Tool, which is designed to assess intellectual property knowledge and provide training resources for small and medium-sized enterprises and inventors.*

*25. Approximately what percentage of SMEs do you expect to use this assessment tool, and can you tell us what feedback you have received from SMEs on the usefulness of this assessment tool?*

**RESPONSE:** We believe a relatively small percentage of SMEs currently use the Intellectual Property Awareness Assessment Tool, but we estimate that usage will grow to approximately 20-25 percent as additional SMEs become aware of the tool. We understand that many law firms now ask their small business clients to take the time to use the tool. A third, more user-friendly, version of the tool is expected to launch in late 2013 and will include advanced features such as imbedded video.

**Part IV. Trade Policies by Sector: (1) Agriculture: (ii) Agriculture Policies: paragraph 11, page 103:**

*The Secretariat report notes that should the Food, Conservation, and Energy Act of 2008 expire without enactment of successor legislation or a temporary extension, farm programmes will revert to the permanent legislation, most of which is in the Agricultural Adjustment Act of 1938, the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act of 1948.*

*26. Could the United States please give the Members an update as to when successor legislation to the current U.S Farm Bill is expected to be passed? Should the 2008 Act expire without enactment of successor legislation or a temporary extension, would the U.S. please explain how it would address the potential implications?*

**RESPONSE:** The United States is unable to speculate as to when successor legislation or an extension to the 2008 Farm Bill will be passed. The majority of provisions in the 2008 Farm Bill expired at the end of September 2012. In the absence of new legislation by the end of 2012, specific legislative steps for price and income support programs will have to be followed.

*27. The U.S. Senate (Farm Bill, Agriculture Reform, Food and Jobs Act of 2012) and U.S. House of Representatives Agriculture Committee (Federal Agricultural Reform and*



*Risk Management Act 2012) have both passed a “shallow loss” revenue program (i.e. Agriculture Risk Coverage and Revenue Loss Coverage, respectively) for grains and oilseeds. Payments are triggered when a producer’s current revenue falls below a “benchmark revenue”. Using a five-year Olympic average (i.e. the preceding 5 years minus the highest and lowest year) price in the calculation ensures that the “benchmark revenue” will remain high (given current price trends), therefore even small drops in revenue could trigger significant payments. Furthermore, the likelihood of payments being triggered is high given the volatility of grain prices in the world market. As these payments would likely be notified under product-specific AMS, how will the U.S. ensure that these programs are implemented in a way that is consistent with its World Trade Organization obligations?”*

**RESPONSE:** We are not in a position to speculate on the implementation of legislation that has not been enacted by Congress. The United States remains fully committed to its WTO Agreement on Agriculture obligations. Any new agricultural programs will be notified in an appropriate and timely manner.

**Part IV. Trade Policies by Sector: (2) Fisheries; (i) Fisheries in the United States: Table IV.6, page 112:**

*The data respecting “Commercial landings of selected species” is current only to 2010.*

*28. Could the United States confirm whether more recent data for this sector is available?*

**RESPONSE:** Data for this sector covering 2011 is available from the National Oceanic and Atmospheric Administration publication, Fisheries of the United States 2011. Relevant excerpts are available at: [http://www.st.nmfs.noaa.gov/st1/fus/fus11/02\\_commercial2011.pdf](http://www.st.nmfs.noaa.gov/st1/fus/fus11/02_commercial2011.pdf).

**Part IV. Trade Policies by Sector: (2) Services; (ii) Financial Services: paragraph 73, page 122:**

*In the section referencing the Dodd-Frank Act, it is noted that as of June 1, 2012, 110 of the rulemaking requirements (27.6%) have resulted in final rules. Rules have been proposed, but not yet finalized for another 144 (36.2%), and rules have not yet been proposed for the remaining 144 (36.2%).*

*29. Could the United States provide an update on the rule-making process for the Dodd-Frank Act?*

**RESPONSE:** Since June 1, 2012, 12 additional rules have been proposed and 23 additional rules have been finalized (as of December 3, 2012).

## QUESTIONS FROM CHILE

**Documents:** WT/TPR/S/275 and WT/TPR/G/275

**Government procurement** (starting on page 76)

1. Section (iii) Government procurement (b) states that the main U.S. government procurement legislation is the Buy American Act, which requires the U.S. Federal Government to purchase domestic goods.

Question: Should we understand by the foregoing that this Act only applies at the federal level and not to the states?

**RESPONSE:** Yes, the Act only applies to Federal procurement.

2. The paragraph goes on to say, "However, the Buy American Act applies to purchases below the GPA and FTAs thresholds and to non-covered entities."

Questions: What are these thresholds? Are they published somewhere? Are these thresholds updated? If so, then why do the government procurement annexes of some FTAs expressly provide for an exception to the Buy American Act for construction services (e.g., U.S.–Chile FTA, U.S.–Australia FTA)? This seems to contradict the WTO Report by the Secretariat.

**RESPONSE:** The thresholds for the GPA and FTAs are set out in the Federal Acquisition Regulation (FAR) 25.402. The thresholds are adjusted every two years, with the next adjustments in Dec. 2013, which will be published in the Federal Register by USTR. The referenced note set out in some FTAs clarifies that the Buy American requirements do not apply to goods purchased as part of a construction services contract which is covered by the agreement. But, that is the same situation in all FTA, whether or not it is set out in a note.

3. The United States is one of the founding members of the GPA. As such, its market access offer is at the three agency levels: federal, sub-central, and other agencies. Thirty-seven U.S. states are included at the sub-central level. Only Chile and Singapore have this coverage, given that the other countries that have bilateral agreements with the United States in force have much less coverage.

Question: Given that the United States has so many years of government procurement experience as well as a number of international agreements with government procurement chapters, why are all 50 states not offered? Are the remaining states not interested? Have they been consulted? What is the process for adding states to the agreements on government procurement? Does the USA intend to extend its sub-central coverage under the GPA or with other trade partners?

**RESPONSE:** The United States covers a state's procurement under the GPA or an FTA only where the State has authorized such coverage. States have been asked to authorize their coverage under new agreements and revision of the GPA. The responses of states have varied by agreement.

### **Secure Freight Initiative (Page 31)**

*On May 2, 2012, Department of Homeland Security submitted to the House and Senate Committees on Homeland Security its intent to extend the deadline for 100% scanning of all maritime containers shipped to the United States to July 1, 2014. Question: In the end, will this initiative be revoked and replaced by the "layered, risk-based approach" for layered cargo?*

**RESPONSE:** The deadline has been extended until at least July 1, 2014, and further legislation is not needed to extend it again. The Secretary of Homeland Security has the authority to extend the deadline again at that time under the conditions outlined in the statute.

### **Prohibitions, restrictions, and licensing (Page 66)**

*Question: Given that natural gas is a strategic resource in the energy sector, could you explain the procedures for obtaining a shale gas export license and provide more information about this market?*

**RESPONSE:** The U.S. Department of Energy (DOE) has authority over long-term natural gas imports and exports of natural gas, including liquefied natural gas (LNG), under the Natural Gas Act of 1938 and the DOE Organization Act. The procedures to apply for authorization, which govern gas from conventional and unconventional (e.g., shale gas) sources, are governed by U.S. regulation 10 CFR 590.

In light of the significant number of new pending applications for LNG exports, and environmental and other issues raised by the public, DOE conducted a two-part export study to examine the cumulative impacts of additional natural gas exports. Information about the export study, the regulations governing exports and imports, the list of pending applications with terminal locations and projected LNG export volumes, public comments submitted in response to applications and other information about the program is available on the DOE website <http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html>.

On December 11, 2012, DOE published a notice and requested public comment (Federal Register Volume 77, Number 238 (Tuesday, December 11, 2012); Pages 73627-73630) on the export study. Initial comments regarding the study will be accepted by DOE for 45 days, followed by a reply comment period that will last for 30 days. DOE will evaluate both the study and the comments received prior to making its determinations of the public interest on a case-by-case basis, for each of the pending cases.

Further information about the U.S. natural gas market can be found on the Department of Energy's website: <http://www.fossil.energy.gov/programs/gasregulation> and on the website of the Federal Energy Regulatory Commission [www.ferc.gov/market-oversight/mkt-gas/overview.asp](http://www.ferc.gov/market-oversight/mkt-gas/overview.asp).

### **Trade Policies by Sector**

*Even though there is no information about the Foreign Account Tax Compliance Act (FATCA) in the documents under review, given its affect on the financial sector and broad impact outside the USA and even in Chile (there have been some press articles on it), we would like to ask the following question: What procedure is Treasury following for negotiating the Intergovernmental Agreement, what are the phases, and which countries are in a final negotiating phase?*

**RESPONSE:** The Treasury Department has developed two model intergovernmental agreements for implementing FATCA in a partner jurisdiction. Both model agreements are available on the Treasury FATCA webpage at: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

Many countries have expressed interest in an intergovernmental approach to implementing FATCA under one of the two model agreements, and the Treasury Department is engaged in discussions with those countries. While we do not discuss publicly the status of intergovernmental negotiations with various countries, the United States has signed bilateral agreements incorporating the terms of the Model 1 Agreement with the United Kingdom (September 12, 2012), Denmark (November 15), and Mexico (November 19), and has initialed agreements with Ireland, Spain, and Switzerland. The text of the initialed agreements will be available after they are signed. In addition, on November 8, 2012, the Treasury Department issued a press release announcing that it was engaged in discussions with more than 50 countries and jurisdictions around the world about the possibility of entering into a bilateral agreement based on one of the two models (available at: <http://www.treasury.gov/press-center/press-releases/Pages/tg1759.aspx>).

The Treasury Department notes that Chile has expressed an interest in exploring options for intergovernmental engagement, and the Treasury Department welcomes Chile's engagement on this important matter.

### ***Intellectual Property***

*1. Chile would welcome a more detailed explanation on the statement made in Paragraph 167 regarding that the U.S. seeks to take advantage of trade policy reviews of its trading partners to achieve constructive engagement around the implementation of the TRIPS Agreement.*

**RESPONSE:** An excerpt from the 2009 USTR statement on the WTO Trade Policy Review of Chile provides an example of how the United States views the opportunity for constructive engagement around the implementation of the TRIPS Agreement through trade policy reviews. It is provided below.

\* \* \*

There are, nonetheless, specific areas of Chile's regime where action could lead to improved trade and investment opportunities and flows. We have referred to them in our questions, but would like to touch on certain of those areas today.

First, we acknowledge that Chile has made some positive efforts to improve its IPR regime, including the creation of a specialized unit within the Chilean police force to handle IPR crimes. In addition, as the Secretariat notes, Chile recently opened a National Institute for Industrial Property to oversee administrative actions related to industrial property. We also understand that Chile recently acceded to the Patent Cooperation Treaty.

Nevertheless, Chile's IPR performance continues to fall well below our expectations. For example, the United States remains concerned about inadequate enforcement against copyright piracy and trademark counterfeiting. We understand that Chile's Congress continues to consider legislation that addresses copyright and other IP issues. We would particularly like to learn more about the status of Chile's pending copyright legislation as well as the government's work to strengthen enforcement mechanisms to fight trademark counterfeiting and copyright piracy.

\* \* \*

*2. Paragraph 170 states that the USTR sees the TRIPS Council as a forum for sharing experiences in order to ensure effective implementation of the obligations regarding*

*intellectual property enforcement. Chile would welcome details on what other areas of the TRIPS Council's work, beyond IP enforcement, is considered important by the U.S.*

**RESPONSE:** U.S. objectives for the TRIPS Council in 2012 provide the U.S. perspective on the important multi-faceted work that the Council does, including use of the TRIPS Council to:

- continue efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue regarding the technical assistance and capacity related needs of developing countries, and especially LDCs, in connection with TRIPS Agreement implementation;
- continue to encourage a fact based discussion within the TRIPS Council on enforcement and other provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

3. *Chile would welcome more information regarding post-grant procedures considered in the "Leahy-Smith America Invents Act".*

**RESPONSE:** Post-Issuance proceedings conducted by the Patent Trial and Appeal Board (formerly the Board of Patent Appeals and Interferences), under the America Invents Act (AIA) include *inter partes* review, post grant review, transitional post grant review for covered business method patents, and derivations.

*Inter partes* review is a new trial proceeding conducted at the Board to review the patentability of one or more claims in a patent on only §§ 102 or 103 grounds, and only on the basis of prior art consisting of patents or printed publications. The *inter partes* review process begins with a third party (a person who is not the owner of the patent) filing a petition after the later of either: (1) nine months after the grant of the patent or issuance of a reissue patent; or (2) if a post grant review is instituted, the termination of the post grant review. The patent owner may file a preliminary response to the petition. An *inter partes* review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged. If the proceeding is instituted and not dismissed, a final determination by the Board will be issued within one year (extendable for good cause by six months). The procedure for conducting *inter partes* review took effect on September 16, 2012, and applies to any patent issued before, on, or after September 16, 2012.

Post grant review is a new trial proceeding conducted at the Board to review the patentability of one or more claims in a patent on any ground that could be raised under § 282(b)(2) or (3). Post grant review process begins with a third party filing a petition on or prior to the date that is nine months after the grant of the patent or issuance of a reissue patent. The patent owner may file a preliminary response to the petition. A post grant review may be instituted upon a showing that it is more likely than not that at least one claim challenged is unpatentable. If the proceeding is instituted and not dismissed, a final determination by the Board will be issued within one year (extendable for good cause by six months). The procedure for conducting post grant review took effect on September 16, 2012, and generally applies to patents issuing from applications subject to first-inventor-to-file provisions of the AIA.

The transitional program for covered business method patents (TPCBM) is a new trial proceeding conducted at the Board to review the patentability of one or more claims in a covered business method patent. TPCBM proceedings employ the standards and procedures of a post grant review, with certain exceptions. For example, for first-to-invent patents only a subset of prior art is available to support the

petition. Further, a person may not file a petition for a TPCBM proceeding unless the person or the person's real party in interest or privy has been sued for infringement of the patent or charged with infringement under the patent. The procedure for conducting TPCBM review took effect on September 16, 2012, but only applies to covered business method patents. The program will sunset for new TPCBM petitions on September 16, 2020.

A derivation proceeding is a new trial proceeding conducted at the Board to determine whether an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application and the earlier application claiming such invention was filed without authorization. An applicant subject to the first-inventor-to-file provisions may file a petition to institute a derivation proceeding only within one year of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The petition must be supported by substantial evidence that the claimed invention was derived from an inventor named in the petitioner's application. The procedure for derivation will take effect on March 16, 2013.

Further information regarding AIA provisions, including those related to post grant proceedings can be obtained through the U.S. Patent and Trademark Office's America Invents Act microsite: [http://www.uspto.gov/aia\\_implementation/index.jsp](http://www.uspto.gov/aia_implementation/index.jsp)

*4. Paragraph 176 indicates that the new federal legislation now considers, following a long lasting policy applied by the USPTO, that directed to or encompassing human organisms are not patentable subject matter. In this regard, we would welcome insights on patentability of other organisms in U.S. law.*

**RESPONSE:** The Leahy-Smith America Invents Act (AIA) restates the long-standing policy that no patent may issue on a claim directed to or encompassing a human organism. The federal courts and the USPTO have issued a number of decisions and guidelines that provide guidance regarding the patentability of nonhuman organisms.

The decision of the Supreme Court in *Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980), held that microorganisms produced by genetic engineering are not excluded from patent protection by [35 U.S.C. 101](#). The test set down by the Court for patentable subject matter is whether the living matter is the result of human intervention.

Following the reasoning in *Chakrabarty*, the Board of Patent Appeals and Interferences determined that animals are patentable subject matter under 35 U.S.C. [101](#). In *Ex parte Allen*, 2 USPQ2d 1425 (Bd. Pat. App. & Inter. 1987), the Board decided that a polyploid Pacific coast oyster could have been the proper subject of a patent under [35 U.S.C. 101](#) if all the criteria for patentability were satisfied. Shortly after the *Allen* decision, the Commissioner of Patents and Trademarks issued a notice (Animals - Patentability, 1077 O.G. 24, April 21, 1987) that the Patent and Trademark Office would now consider non-naturally occurring, nonhuman multicellular living organisms, including animals, to be patentable subject matter within the scope of [35 U.S.C. 101](#).

With respect to plant subject matter, the Supreme Court has held that patentable subject matter under [35 U.S.C. 101](#) includes newly developed plant breeds, even though plant protection is also available under the Plant Patent Act ([35 U.S.C. §§ 161–164](#)) and the Plant Variety Protection Act (7 U.S.C. § 2321 et. seq.). *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-46 (2001).

The USPTO also has issued guidelines regarding the patentability of nonhuman organisms. Please see Section 2105 of the Manual of Patent Examining Procedure for further explanation: <http://www.uspto.gov/web/offices/pac/mpep/s2105.html>

5. *Chile sees the “Peer to Patent” program, referred to in paragraph 180 of the report, with interest, and would welcome more information about the results of the project.*

**RESPONSE:** In June 2007, as part of the efforts of the United States Patent and Trademark Office (USPTO) to implement its Strategic Plan, the USPTO announced a pilot program to determine the extent to which the organized submission of documents together with comments by the public would be useful to examiners. The stated purpose of the pilot was to test whether such collaboration could effectively locate prior art that might not otherwise be located by the USPTO during the typical patent examination process. The culmination of the two-year pilot resulted in numerous data points that support the premise that members of the public, when collaborating in an organized online fashion, are capable of contributing to the location of prior art of value to the examiner during the examination process.

In the interest of gathering data from a more diverse pool of patent applications, the USPTO, in cooperation with the New York Law School’s Center for Patent Innovations, launched a one-year pilot program from October 25, 2010 to September 30, 2011. The last of these applications finished review on December 31, 2011. This pilot tested the scalability of the peer review concept by expanding the candidate pool of applications to technology areas such as Life Sciences, Telecommunications, Business Methods and Computer Hardware and Software and by significantly increasing the total number of applications that may be accepted into the pilot.

Additional information related to the above peer-to-patent pilot programs may be obtained at: [http://www.uspto.gov/patents/init\\_events/peerpriorartpilotindex.jsp](http://www.uspto.gov/patents/init_events/peerpriorartpilotindex.jsp)

6. *Regarding Section 514 of the Uruguay Round Agreements Act, Chile would welcome more information on the copyright status of foreign works that were previously in the public domain as a consequence of the U.S. Supreme Court decision in the *Golan v Holder* case.*

**RESPONSE:** The 2012 U.S. Supreme Court decision in *Golan v. Holder* upheld the constitutionality of Section 514 of the Uruguay Round Agreements Act, which in 1994 amended the Copyright Act to "restore" protection to certain qualified foreign works that were in the public domain in the United States, but were protected in their country of origin. The court’s decision did not affect the copyright status of foreign works in the United States.

7. *In consideration to the priority given by U.S. authorities to effective IP enforcement in foreign markets, as stated in Paragraph 192, Chile would welcome information regarding if the promotion of enforcement of U.S. IP rights through mechanisms such as the Special 301 Report, considers future adjustments to overcome the methodological constraints showed by actual results.*

**RESPONSE:** Each year, as required by U.S. law, the Office of the United States Trade Representative (USTR) issues a Special 301 Report cataloguing specific IPR problems in numerous countries worldwide. The review of each trading partner’s IPR regime is done on a case-by-case basis; all relevant factors are taken into consideration. USTR considers information submitted by interested stakeholders and U.S. Embassies located in foreign capitals. In addition, USTR actively encourages foreign governments to submit material which can be taken into account during these reviews. A country is placed on the Special 301 list if it is clear that it "denies adequate and effective protection of IPR or fair and equitable market access to U.S. persons that rely upon IP protection." In addition to citing specific concerns, Special 301 also affords an opportunity to give credit where it is

due, such as by improving the standing of countries when there are significant improvements in IPR protection and enforcement.

The Special 301 process entails ample opportunities for engagement with individual trading partners to discuss IPR concerns and possible ways to address them. Throughout the course of the year, the United States meets regularly with our trading partners to discuss IPR concerns. Officers at U.S. Embassies also are engaged actively to convey specific IPR concerns to host-country governments and to discuss potential resolutions.



## QUESTIONS FROM CHINA

### PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

#### SUMMARY

##### Page ix (Para2)

*Since its last Review, United States has moved ahead with the legislative approval of three free-trade agreements and the extension of two lapsed preference programmes (the Generalized System of Preferences and the Andean Trade Preferences Act (ATPA)).... According to the 2012 Trade Policy Agenda, the United States is working toward the conclusion of the Trans-Pacific Partnership regional trade agreement and towards extending permanent normal trade relations with Russia.*

##### Questions:

1. *How will the the United States deal with the relationship between its bilateral and regional agreements and the WTO multilateral trading system? How does the US view the future direction of the Doha Round negotiations and the multilateral trading system?*

**RESPONSE:** The core objective of U.S. trade policy is to open markets and to advance the rule of law through the multilateral trading system, as it has been since before the founding of the GATT. A strong and vital World Trade Organization (WTO) is central to that task. The United States also pursues bilateral and regional free trade agreements (FTAs) that are complementary to and compatible with advancing the goals of the multilateral trading system. U.S. FTAs, because of their comprehensive duty-elimination and breadth of commitments, produce significant benefits for its partners, and, through the economic growth this brings, for other trading partners as well. This also strengthens and expands the forces working towards global trade reforms. The liberalization undertaken by many of our FTA partners has often led those Members to increased participation in liberalizing efforts at the WTO.

The United States is very willing to continue to make progress wherever possible on the Doha mandate, based on common efforts. But “business as usual” has not worked, and will not work going forward. We believe that now is the time to craft credible, innovative approaches to the WTO’s work as an institution that liberalizes trade and creates and applies meaningful rules to trade. But all major players must do their parts.

##### Page ix (Para3)

*Foreign direct investment continues to play an important role in the U.S. economy by making important contributions to U.S. employment, R&D, and exports. ... in June 2011, new steps were taken to facilitate and attract inward FDI into the United States by creating the first government-initiated centralized investment promotion body through the SelectUSA initiative.*

##### Questions:

2. *How will the US explain the fact that the investment attempts in the US of companies of Huawei, ZTE and Sany from China have been repeatedly frustrated?*

**RESPONSE:** The United States has a longstanding policy of openness to foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy. The Executive Order establishing the SelectUSA initiative recognizes that business investment, by both

domestic and foreign firms, is a major engine of economic growth and job creation in the United States.

**Page ix (Para5)**

*The United States is one of the most well established and mature IP jurisdictions, however, the legal, economic, and trade policy context of IP continued to evolve significantly in the review period, notably through major legislative developments, significant judicial decisions, regulatory legislation, strengthened domestic enforcement, an enhanced policy focus on the role of IP, and consolidation of a trend towards development of markets in IP.*

**Questions:**

3. *In the review period, what changes in the legislative and judicial context have occurred in respect of commercial secrets?*

**RESPONSE:** As explained in other responses to questions regarding trade secret enforcement, there have been a number of prosecutions and court cases under the Economic Espionage Act during the review period, as well as civil litigation regarding trade secrets at the district and circuit court level.

4. *Please provide the number of cases concerning commercial secrets during the review period.*

**RESPONSE:** There were eleven trade secret (18 U.S.C. § 1832) prosecutions, and two economic espionage (18 U.S.C. § 1831) prosecutions in FY 2011.

**Page x (Para10)**

*There have been no major changes to agriculture policies in the United States since its last Review, and The Food, Conservation, and Energy Act of 2008 remains the basis for most agricultural programmes until it expires.*

**Questions:**

5. *The Food, Conservation, and Energy Act of 2008 will expire in 2012. In June and July 2012, the House of Representatives and the Senate of the US approved Agriculture Reform, Food, and Jobs Act and Federal Agriculture Reform and Risk Management Act respectively. When will the new agriculture acts be submitted to the President? And how will the new acts achieve the policy goals of protecting farmers' income and supporting the high prices of domestic agricultural products?*

**RESPONSE:** The U.S. Senate passed a version of the Farm Bill earlier this year. The House Agriculture Committee has also passed legislation to replace the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). This proposed legislation must still be taken up by the full House of Representatives. Once the House passes legislation, it must be reconciled with the legislation that the full Senate passed. The final legislation, once approved by both bodies, would be submitted to the President for his signature. Because of the uncertainty that remains in the legislative process, the United States cannot speculate as to when the legislation will be finalized or what provisions the final legislation will contain.

6. *The subsidy programs in all previous agriculture acts enacted in the US are not consistent with WTO's domestic support classification. Could the US give the description according to the classification of yellow box, blue box and green box when describing the subsidy programs in the agriculture acts?*

**RESPONSE:** U.S. domestic support notifications are fully compliant with U.S. WTO obligations. Please see the U.S. domestic support notifications to the WTO Committee on Agriculture for a detailed listing of U.S. agricultural programs and how they are classified under the WTO Agreement on Agriculture.

**Page xi (Para13)**

*The initiation of AD investigations increased from 3 to 15 cases in 2011 after only a few initiations in 2010. There have been no particular trends in the overall number of CVD investigations initiated in recent years, but as with AD investigations, the majority of CVD investigations initiated during the past five years involved imports from Asian countries (92%). During the review period, the United States adopted or proposed several modifications to its methodology for the calculation of dumping margins in the case of non-market economies.*

**Questions:**

7. *Given the frequent anti-dumping and countervailing investigations launched by the US against Chinese export products, how does the US view China's market economy status?*

**RESPONSE:** China is considered a non-market economy country for purposes of the U.S. antidumping law. As a result, any dumping by Chinese exporters is determined through the use of the non-market economy methodology set forth in U.S. law for cases involving such countries. China's non-market economy status has no relevance outside the context of antidumping proceedings. China's status as a non-market economy can only be reevaluated by the Department of Commerce in the context of an antidumping proceeding and in accordance with the relevant statutory guidelines, based upon a formal request made or supported by the Chinese government. Commerce has not received such a request since 2006.

8. *In anti-dumping investigations, concerning the issue of China's market economy status, the United States often ignored the actual situation of the industry involved in the case and selected third country prices for alternative prices. As a result, Chinese companies have repeatedly been treated unfairly. Taking the US anti-dumping investigations on the solar cell products exported from China as an example, in this case, what evidence did the United States have to prove the objectivity and impartiality of its selection of "the third country as alternative"?*

**RESPONSE:** We do not agree with China's assertion that its companies have been treated unfairly. As explained above, China is designated a non-market economy country under U.S. antidumping law. Therefore, Chinese prices and costs are not considered to be meaningful measures of value for purposes of antidumping calculations. Rather, the Department of Commerce relies on the use of surrogate values as defined in its law regarding non-market economies, which is also explicitly provided for in China's Protocol of Accession. In selecting an appropriate surrogate country, U.S. law requires that the Department of Commerce select a surrogate that is both economically comparable to the non-market economy country and a significant producer of comparable merchandise. U.S. law further requires that the Department of Commerce make its decisions based on the best available information on the record of a particular proceeding, allowing all interested parties a full opportunity to defend their rights and interests in an open and transparent process. With respect to the antidumping investigation involving *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, 77 FR 63791 (October 17, 2012), the reasoning for the Department of Commerce's selection of the surrogate country is described in detail in the Final Decision Memorandum that can be found at <http://ia.ita.doc.gov/frn/summary/prc/2012-25580-1.pdf>.

9. *Would the United States explain in detail the so-called modifications to its methodology for the calculation of dumping margins in the case of non-market economies as said in the Secretariat Report? What is the timetable for the implementation of these modifications?*

**RESPONSE:** Over the past few years, the Department of Commerce has proposed and implemented a number of modifications to our regulations with regard to both market and non-market

economies. Detailed explanations of these modifications can be found at <http://ia.ita.doc.gov/tlei/index.html>. In some cases, the Department of Commerce is still considering comments on its proposals. A number of these proposals strengthen the Department of Commerce's enforcement of the unfair trade laws without directly addressing the manner in which we calculate antidumping or countervailing duties. For other proposals, there may be an impact on margins, but any such impact will necessarily be case-specific. Whether the impact of that change is to increase or decrease the margin will depend not only on the change in methodology, but the facts of any particular case to which the methodology is being applied.

10. *The GPX bill signed by President Obama on 13 March 2012 stipulates the applicability of countervailing duty investigations to non-market economies including China and the retroactivity of its effectiveness. This is contrary to the Tariff Act of the United States and the basic spirit of modern rule of law. What are the explanations of the United States on this issue?*

**RESPONSE:** The "GPX bill", also referred to as Public Law 112-99, became part of the Tariff Act upon its enactment and, as such, is fully consistent with the Tariff Act as well as the rule of law. Public Law 112-99 was enacted in accordance with standard legislative procedures and in accordance with the requirements of Article I, Section 7, of the United States Constitution. Rather than changing the law, Public Law 112-99 simply reaffirmed the Department of Commerce's obligation to impose countervailing duties on merchandise from countries designated as non-market economy countries upon a determination by the Department of Commerce that a government is providing countervailable subsidies with respect to such merchandise and a determination by the USITC that such subsidies materially injure, or threaten to materially injure, an industry in the United States.

## I. ECONOMIC ENVIRONMENT

### **Page 3 (Para5)**

*From a peak in 2002, the U.S. dollar depreciated gradually by about 25% until 2008, stabilized temporarily in 2008-09, and then resumed its downward trend in 2009 to mid-2011, depreciating by around 16%. More recently, it appreciated by about 5% in the second half of 2011, and then resumed its downward trend in early 2012...*

### **Questions:**

11. *Although the US dollar appreciated slightly in early 2012, it resumed its downward trend in August. What are the main reasons behind these sharp movements? To what extent have QEs played the role in this? What kind of dollar policy does the US intend to maintain in the future?*

**RESPONSE:** The U.S. dollar exchange rate is market-determined. The United States continues to pursue the following policies: (1) we do not intervene in foreign exchange markets, except in the rare circumstance of disorderly markets, and (2) we also publish the currency composition of our reserves (3) as well as amounts of any intervention that we undertake – and this is supported in the public data. We also are pressing other countries to follow these policies.

The monetary policy of the Federal Reserve, an independent agency, is guided by the Federal Reserve Act, which requires it to pursue policies to promote effectively the goals of maximum employment and price stability. Federal Reserve Chairman Bernanke recently commented that "all of the Federal Reserve's monetary policy decisions are guided by our dual mandate to promote maximum employment and stable prices." Information on the Federal Reserve's policies is available at <http://www.federalreserve.gov/>.

12. *Since the adoption of QEs, how much of a role has the continuous depreciation of the US dollar played in stimulating US export?*

**RESPONSE:** The dollar has not continuously depreciated since the start of quantitative easing. The real exchange rate of the dollar is essentially unchanged from its level in July 2008 prior to the start of quantitative easing.

13. *Will the easy monetary policy become an important policy tool for the United States to reduce debt ratio and boost economy in future?*

**RESPONSE:** The monetary policy of the Federal Reserve, an independent agency, is guided by the Federal Reserve Act, which requires it to pursue policies to promote effectively the goals of maximum employment and price stability. Federal Reserve Chairman Bernanke recently commented that “all of the Federal Reserve’s monetary policy decisions are guided by our dual mandate to promote maximum employment and stable prices.” Information on their policies is available at <http://www.federalreserve.gov/>.

**Page4 (Para8)**

*During the past two years in particular, and since the Obama administration took office, the theme of "rebalancing", both domestically and internationally, has been at the core of U.S. economic policy. It was recognized that the United States, with long-term current account deficits, has relied heavily on domestic consumption and construction of real estate for growth which is unsustainable; and a more balanced pattern of growth is needed, which relies less on consumption and more on exports and investment for growth. Domestically, reforms are also needed in order to increase investment, raise revenues, and cut unnecessary spending.*

**Questions:**

14. *Please elaborate on policy direction and thinking of the US on stimulating export and reducing trade deficit. Are such policies likely to lead to explicit or implicit trade barriers against other surplus countries?*

**RESPONSE:** Our policies are consistent with the Framework for Strong, Sustainable, and Balanced Growth, adopted by the Leaders of the G-20 at the 2009 Pittsburgh Summit. The United States has reduced its current account deficit from 6.5 percent of GDP in the fourth quarter of 2005 to 3.0 percent of GDP in the second quarter of 2012. The household saving rate has risen and the government deficit has narrowed.

The National Export Initiative is aimed at reducing barriers to the sale of U.S. goods and services abroad, including by negotiating the opening of new and expanding markets, and vigorously enforcing our trade rules both domestically and internationally, fully consistent with its WTO obligations.

15. *With high unemployment rate, will the government’s plan to cut spending be difficult to move forward because of the influences from public opinions? Are there quantified evaluation indicators for the plan of spending cut?*

**RESPONSE:** G-20 economies have committed to putting their public finances on sustainable paths. The Obama Administration is committed to a deficit reduction plan that would support the recovery in the near term, while restoring fiscal sustainability through a balanced approach to medium-term deficit reduction.

16. *What “rebalancing” measures have the US adopted and what are the results their implementation in the past few years?*

**RESPONSE:** The G-20 has agreed that rebalancing is at the core of the group's agenda and that deficit countries need to save more and surplus countries need to boost domestic demand growth. The United States is doing its part. The U.S. current account deficit has declined from a peak of 6.5 percent of GDP in the fourth quarter of 2005 to 3.0 percent in the second quarter of 2012. The household saving rate has risen, and the federal budget deficit has declined from 10.1 percent of GDP in fiscal year 2009 to 7.0 percent in fiscal year 2012. Current account surplus economies need to do their part to foster global rebalancing by accelerating the pace of domestic demand growth in their economies.

**Page 4-5 (Para 9)**

*The Troubled Asset Relief Program (TARP) of 2008 targeted financial stability, especially as concerns banking, credit, and support of certain industries. Although funding expired at the end of 2010, approximately one quarter of the funds are outstanding and still supporting certain programmes, including U.S. government investments in the auto industry, American International Group (AIG), and 460 U.S. banks (end 2011). However, these investments and support are gradually being reduced and eliminated.*

**Questions:**

17. *When will the funding and support finally be terminated? Please elaborate on the legal basis confirming the termination.*

**RESPONSE:** Treasury's authority to invest money through TARP ended on October 3, 2010, in accordance with the Emergency Economic Stabilization Act of 2008 (EESA), the legislation that created TARP. As of November 30, 2012, Treasury has recovered almost 90 percent of the funds invested through the various TARP programs. Several programs have already been completely closed, and more are in their wind-down phases. EESA did not set a date by which the programs will be fully shut down, however, the government is focused on winding down TARP programs as quickly as possible, while ensuring financial stability and maximizing returns to the taxpayer.

**Page5 (Para12)**

*Further reductions of US\$1.2 trillion to US\$1.5 trillion are also scheduled to follow. In addition, the 2010 Pay-as-you-go Act contains a rule of budget neutrality, meaning that new laws should not be introduced that would increase budget deficits. A number of expiring tax cuts, and lower defence operation spending will also aid the budgetary situation in the near term. Revising U.S. tax policy has also been high on the agenda with a number of proposals from the Administration and from Congress, especially regarding corporate taxes.*

**Questions:**

18. *How will the US deal with the contraction pressure on economy exerted by budget deficit cut?*

**RESPONSE:** At the time of drafting, the Obama Administration is engaged in discussions with the United States Congress regarding the budget. We, therefore, are not in a position to comment on the outcome of the negotiations.

**Page6 (Para13)**

*The fed has been very active in recent times, using a wide range of policies, some unconventional, to aid economic recovery, while it has also been affected by new legislation. From late 2010 to mid-2011, the Fed conducted a second round of quantitative easing due to the financial crisis and its aftermath.... In January 2012, the Fed announced its policy for a long-run goal of maintaining inflation at 2%.*

**Questions:**

19. *How does the US evaluate the results of the Fed's three rounds of quantitative easing and their*

*spillover impact? In its statement made in October, the Fed said that if the outlook for the labor market does not improve substantially, it will continue its purchases of agency mortgage-backed securities, and employ its other policy tools as appropriate. What are the criteria for the labor market not to “improve substantially”? Are there any observable quantitative criteria? What are the “other policy tools”?*

**RESPONSE:** We do not comment on the monetary policy of the Federal Reserve. The monetary policy of the Federal Reserve, an independent agency, is guided by the Federal Reserve Act, which requires it to pursue policies to promote effectively the goals of maximum employment and price stability. Federal Reserve Chairman Bernanke recently commented that “all of the Federal Reserve’s monetary policy decisions are guided by our dual mandate to promote maximum employment and stable prices.” Information on their policies is available at <http://www.federalreserve.gov/>.

20. *Is the potential inflation risk brought by continuous quantitative easing a concern for the Fed and how will it be dealt with? If inflation keeps rising without significant improvement of the labor market, how will the Fed strike a balance between price stabilizing and employment fostering?*

**RESPONSE:** Since quantitative easing began in 2008, the U.S. year over year core inflation rate has averaged 1.75 percent. Available data indicate that inflation expectations remain low.

21. *How does the United States consider the global inflation that might result from its long-term low interest rate policy?*

**RESPONSE:** The International Monetary Fund’s October 2012 World Economic Outlook (WEO) projects declining global inflation in the coming years. While these are projections, the WEO shows global inflation for 2012 of 4 percent, declining to 3.7 percent in 2013, and 3.6 percent in 2014.

#### **Page6 (Para14)**

*The U.S. administration has taken two major initiatives in recent years aimed at increasing exports. In 2010, President Obama set a goal of doubling exports in five years through his National Export Initiative. The National Export Initiative aims at improving trade advocacy, increasing access to credit, removing trade barriers, enforcing trade rules, and pursuing policies to promote growth.*

#### **Questions:**

22. *As a major policy adopted by the US to promote economic growth, in what way are the Fed’s quantitative easings related to the plan of doubling export in five years? Depreciation of the US dollar as a result of quantitative easings has created very favorable conditions for export. How does the US evaluate the role played by QEs in stimulating its export?*

**RESPONSE:** There is no connection between the announced U.S. goal of doubling exports in 5 years and U.S. monetary policy. The goal for doubling U.S. exports was announced by the President in January 2010 and deals with a variety of efforts from negotiating trade agreements, promoting exports (through non-monetary policies such as increasing trade advocacy), and enforcing U.S. rights under trade agreements. U.S. monetary policy is conducted by the Federal Reserve Board, which is an independent agency, and not under the purview of the President. As the Chairman of the Fed, Ben Bernanke, remarked recently that “since mid-2008, in fact, before the intensification of the financial crisis triggered wide swings in the dollar, the real multilateral value of the dollar has changed little, and it has fallen just a bit against the currencies of the emerging market economies.”

23. *The “financial cliff” will not only drag down economic growth in the US, but also become a major uncertainty for the global economy. When will this problem of “financial cliff” be solved?*

*What concrete measures are being considered by the US government in order to solve this problem?*

**RESPONSE:** Major changes in tax and spending policies are set to take effect in January 2013 under current law. These changes include the following: expiration of tax cuts initially enacted in 2001 and 2003 and extended in 2010; expiration of the payroll tax cut first enacted in 2010; automatic budget cuts established by the Budget Control Act of 2011 as an enforcement mechanisms for deficit reduction; and reductions in Medicare payment rates for physicians' services. The [United States] is diligently working to replace this "fiscal cliff" with a deficit reduction plan that would support the recovery in the near term while restoring fiscal sustainability through a balanced approach to medium-term deficit reduction.

24. *Please introduce the US' supporting policies and measures for the financing of small and medium-sized enterprises.*

**RESPONSE:** Small businesses play a special role in U.S. job creation, innovation, and entrepreneurship. Since the beginning of 2009, through the Recovery Act and the Small Business Jobs Act, the Small Business Administration (SBA) has supported over \$93 billion in lending to more than 166,000 small businesses nationwide. Additional information on the Administration's supporting policies for small business, including access to capital, may be found at:

<http://www.whitehouse.gov/economy/business/small-business>

**Recovery Act:** [http://www.recovery.gov/About/Pages/The\\_Act.aspx](http://www.recovery.gov/About/Pages/The_Act.aspx)

**Small Business Jobs Act:** <http://www.whitehouse.gov/blog/2010/09/27/president-obama-signs-small-business-jobs-act-learn-whats-it>

**Small Business Administration:** <http://www.sba.gov/>

25. *How will the US balance between providing support to small and medium-sized enterprises and solving financial cliff problem?*

**RESPONSE:** The President and Congress are discussing measures to address the "financial cliff", and we are not in a position to comment on any possible outcome at this time. The Administration recognizes that small businesses are the backbone of the U.S. economy and create two out of every three new private-sector jobs in America. A summary of actions taken to assist small businesses may be found at: <http://www.whitehouse.gov/snapshots/supporting-small-business-and-entrepreneurs>

### **Page 7 (Para 21)**

*Technological developments and innovation in the U.S. energy sector are credited with improving the trade balance (in volume terms), with falling import volumes.*

### **Questions:**

26. *Can the United States share with other WTO Members details of these technological developments and innovation?*

**RESPONSE:** Some of the most notable technological developments have occurred in the production of natural gas and oil from shale. While a summary of all the technological developments is not possible, the following webpages provide a great deal of information:

<http://energy.gov/natural-gas>

<http://energy.gov/science-innovation/innovation>

## **II. TRADE POLICY AND INVESTMENT REGIMES**



**Page 14 (Para 1)**

*The U.S. Constitution grants Congress the power to regulate foreign commerce and authority to establish rates of duty. The Executive branch under the President also has certain roles in trade policy.*

**Questions:**

27. *In the Executive branch, what are the roles respectively played by NSC, NEC, TPRG, TPSC, USTR, and various government departments including in particular the NTIA under the Department of Commerce, in the development of trade policies related to telecommunication services? Also, what is the function and the weight of the FCC as an independent regulatory authority?*

**RESPONSE:** The submission by the United States to the WTO for this Trade Policy Review (WTO/TPR/G/275), describes the role of various Executive Branch entities in the development of U.S. trade policy – Paragraph 36 to Paragraph 39.

As indicated in that submission, the Department of Commerce is a participating agency in the development of U.S. trade policy. As one constituent part of the Department of Commerce, NTIA's perspectives are factored into Commerce Department positions on matters of relevance to its telecommunications-related responsibilities. As noted in the penultimate sentence in the U.S. submission, "(r)epresentatives of other agencies also may be invited to attend meetings depending on the specific issues discussed". The Federal Communications Commission (FCC) would be one such agency that may be invited to share its expertise when the matters under consideration relate to its statutory responsibilities.

28. *On the Congress side, under the Senate and the House of Representatives, which sub-commissions have a bigger say in introducing trade policies relating to telecommunication services?*

**RESPONSE:** The House Ways and Means committee and the Senate Finance committee have direct jurisdiction over USTR and its trade policy activities, and thus a direct role in telecommunications trade policy. However, given the breadth of policy that can affect telecommunications trade, many different committees are relevant, and thus identifying which has a "bigger say" depends on the issue.

29. *During President Obama's previous term, the relationship between Congress and the Administration was stiff. Please inform whether this relationship will be improved during President Obama's second term. How will this affect the introduction of or adjustment to the US trade policies of the telecommunication services?*

**RESPONSE:** The United States Government is divided into three branches: Executive, Legislative, and Judicial – each with its own set of powers and responsibilities. The Administration and Congress have a close collaborative relationship on trade policy, with many notable accomplishments over the past four years e.g. the approval and entry into force of the Korea, Colombia, and Panama trade agreements, extending permanent normal trade relations to Russia and Moldova, launching the TransPacific Partnership, and others. We expect this close collaboration on trade policy (including that related to telecommunication services) to continue in the future.

**Page16 (Para11)**

*Since its last Trade Policy Review, the United States has moved ahead with the legislative approval of three free-trade agreements and the extension of two lapsed preference programmes. To date it has put into effect its trade agreements with the Republic of Korea and Colombia, and is working with Panama to put that agreement into effect. The United*

*States has also extended two preference programmes (Generalized System of Preferences and the Andean Trade Preferences Act that had lapsed). Furthermore, as part of the President's 2012 Trade Policy Agenda, important priorities were announced with respect to concluding a bold and ambitious Trans-Pacific Partnership agreement and building better export markets through regional economic integration*

**Questions:**

30. *What are the negative impacts of the US regional and bilateral agreements? What problems came up in the US in the implementation of these agreements?*

**RESPONSE:** The United States pursues bilateral and regional free trade agreements (FTAs) that are complementary to and compatible with advancing the goals of the multilateral trading system. U.S. FTAs, because of their comprehensive duty-elimination and breadth of commitments, produce significant benefits for its partners, and, through the economic growth this brings, for other trading partners as well. This also strengthens and expands the forces working towards global trade reforms. The liberalization undertaken by many of our FTA partners has often led those Members to increased participation in liberalizing efforts at the WTO.

As noted, the United States has enacted legislation to implement each of our FTAs, including the United States-Panama Trade Promotion Agreement, which entered into force on October 31, 2012. The United States and its FTA partners work together on the ongoing implementation of our respective agreements. One of the key benefits of our FTAs is that it provides a forum for communication and cooperation on trade issues. We are not aware of problems in the United States regarding implementation of our FTAs.

31. *How will the government provide assistance or aid when domestic industries, enterprises, workers, and farmers are affected negatively by these agreements? Have there been such cases since 2010? If any, please elaborate on the legal basis of such aid and the amount of the aid. Please provide statistics of the aid according to industries and enterprises, and also statistics of the aid directly to workers and farmers. Apart from financial aid, are there any other assistance measures? Please introduce.*

**RESPONSE:** Trade Adjustment Assistance programs for workers, farmers and firms are authorized under Title II of the Trade Act of 1974, as amended (19 U.S.C. § 2341 et seq.). See <http://www.ustr.gov/about-us/press-office/reports-and-publications/2012-0> (p.184) for more information.

The Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs, collectively referred to as Trade Adjustment Assistance (TAA) for workers, provide assistance to workers who have been adversely affected by foreign trade. The TAA program currently offers the following services to eligible workers: training; weekly income support; out-of-area job search and relocation allowances; case management and employment services; assistance with payments for health insurance coverage through the utilization of the Health Coverage Tax Credit (HCTC); and wage insurance for some older workers. In Fiscal Year (FY) 2011, \$704,005,680 was allocated to state governments to fund and administer TAA for workers benefits. See <http://www.doleta.gov/tradeact/> for more information.

The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) reauthorized and modified the Trade Adjustment Assistance for Farmers program. The legislation provided \$90 million per year for FY 2009-2010 and \$22.5 million for the first quarter of FY 2011. The program officially expired on February 12, 2011. On October 12, 2011, Congress passed the Trade Adjustment Assistance Extension Act of 2011, which reauthorized the program through the first quarter of FY 2014.

However, Congress has not appropriated funding for the program to accept new participants in FY 2012, 2013, or 2014. See <http://www.fas.usda.gov/itp/taa/> for more information.

The U.S. Economic Development Administration's (EDA) Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized through December 31, 2014 (P.L. 112-40). The TAAF Program supports a national network of 11 non-profit or university-affiliated Trade Adjustment Assistance Centers to help U.S. manufacturing, production, and service firms in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico. In FY 2011, EDA awarded a total of \$15,415,300 in TAAF Program funds. See <http://www.eda.gov/> for more information.

32. *In the light of the present negotiations of the Trans-Pacific Partnership (TPP) agreement, there are quite a lot of differences of interest among parties due to the fact that the negotiating standards are too high. How will the US resolve such differences? President Obama once announced to conclude the TPP negotiations by the end of 2012, which now seems to be impossible. What is the new time schedule of the US?*

**RESPONSE:** The United States and its TPP partners have affirmed that we seek to establish a comprehensive, next-generation regional agreement that liberalizes trade and investment, and addresses new and traditional trade issues and 21st-century challenges. We believe this is the most effective way to increase trade and investment and deepen regional economic integration. We are confident that this goal is achievable and continue to work expeditiously towards that end.

**Page 25 (Para 28)**

*Trade data are not available for U.S. trade with U.S. insular possessions (U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands).*

**Questions:**

33. *Why are such trade data not available?*

**RESPONSE:** The Census Bureau of the U.S. Department of Commerce publishes information on exports to and imports from Puerto Rico and the U.S. Virgin Islands, as well as imports from Guam, American Samoa, and Northern Mariana: <http://www.census.gov/prod/www/abs/foreign.html>. U.S. Foreign Trade Regulations require that export documentation is filed for those goods going to Puerto Rico and the Virgin Islands, but not the other U.S. possessions.

**Page27 (Para 33)**

*The U.S. Government took steps to facilitate and attract inward FDI into the United States by creating the first government-initiated centralized investment promotion body.*

**Questions:**

34. *What are the basis and background for this substantial adjustment by the US government to its foreign investment policy?*

**RESPONSE:** Establishment of the SelectUSA Initiative does not represent a change in the foreign investment policy of the United States, but is rather an effort to advance long-standing U.S. policy objectives. The Executive Order establishing the Initiative notes that the United States Government lacks the centralized investment promotion infrastructure and resources that is often found in other industrialized countries, and therefore establishes an

initiative to enhance coordination of federal activities and to increase the impact of federal resources that support business investment in the United States.

35. *What are the specific measures adopted under the “SelectUSA initiative” to attract investment into the United States? How long will these measures be effective? Will the barriers encountered by enterprises from developing countries in their investment (merges and acquisitions) in the US be relaxed accordingly?*

**RESPONSE:** The functions of the SelectUSA Initiative are defined within Executive Order 13577 (June 2011), and are limited to: (1) coordinating outreach and engagement by the federal government to promote the United States as the premier location to operate a business; (2) serving as an ombudsman that facilitates the resolution of issues involving federal programs or activities related to pending investments; (3) providing information to domestic and foreign firms on the investment climate in the United States, federal programs and incentives available to investors, and state and local economic development organizations; and (4) reporting to the President, to describe outreach activities, requests for information received, and efforts to resolve issues. The Initiative will engage in these functions on an ongoing basis.

36. *What is the scope of work for “SelectUSA initiative” and the Federal Interagency Investment Working Group? How are they divided from CFIUS and NISP in terms of responsibilities?*

**RESPONSE:** The functions of the SelectUSA Initiative are defined within Executive Order 13577 (June 2011), and are limited to: (1) coordinating outreach and engagement by the federal government to promote the United States as the premier location to operate a business; (2) serving as an ombudsman that facilitates the resolution of issues involving federal programs or activities related to pending investments; (3) providing information to domestic and foreign firms on the investment climate in the United States, federal programs and incentives available to investors, and state and local economic development organizations; and (4) reporting to the President, to describe outreach activities, requests for information received, and efforts to resolve issues. The Initiative will engage in these functions on an ongoing basis.

37. *What results have the initiative achieved after being implemented for more than one year? How much funding is annually provided by the US government for this initiative?*

**RESPONSE:** Since its establishment in June 2011, SelectUSA has reached key milestones, including: Training of key personnel across the US&FCS to assist firms and U.S. economic development organization on business investment promotion; Providing investors customized, timely, and accurate information about the U.S. investment climate; On a case-by-case basis, working across the U.S. federal government to address investor issues and needs; and Assisting states, regions, counties, and local economic development organizations across the United States in their efforts to promote business investment

38. *Chinese enterprises face many obstacles when investing in the US, and China's direct investment in the US has been at a very low level. What are the views of the US on this situation? Does the United States really treat Chinese enterprises and those from other WTO Members equally when they invest in the US?*

**RESPONSE:** The United States has a longstanding policy of welcoming foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy. Recognizing that international investment is to the benefit of all economies, the United States takes active steps to encourage increased investment into the United States and to reduce barriers to U.S. investment in markets overseas. In the bilateral context, these efforts include the negotiation of international investment agreements, such as the investment treaty currently under negotiation between the United States and China.

39. *What are the US government's policies towards FDI in high-technology industries such as new energies, biomedicine and new materials?*

**RESPONSE:** The United States does not have a general policy of economic planning, nor is U.S. international investment policy developed on a sector-specific basis.

**Page28 (Para 35)**

*According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations.*

**Questions:**

40. *Does the US government have restrictive policies towards cross-border investment, cross-border merger and acquisition, factory building, technological cooperation, and equity participation with technology made by foreign enterprises in high technology areas such as new energies, biomedicine and new materials?*

**RESPONSE:** Foreign investors are generally free to either establish or acquire investments in the United States, subject only to non-discriminatory, generally-applicable laws and regulations. Federal-level measures treat foreign and domestic investors and investments differently in only a small number of sectors. In most cases, the extent of differential treatment is narrow and does not prohibit foreign investment in the particular sector or subsector. A full description of each of these measures is available in the non-conforming measures annexes of recent U.S. BITs and FTAs, available at: <http://www.ustr.gov/>. Without knowing how sectors such as “new energies” and “new materials” are defined, the sectors cited above are not subject to specific reservations in the non-conforming annexes of recent U.S. agreements.

41. *In the field of communications, which federal laws or regulations in the United States limit or hinder foreign investment? Please provide and specify related provisions.*

**RESPONSE:** Section 310 of the Communications Act of 1934, as amended, governs the foreign ownership of spectrum licensees. Section 310(a) states that a foreign government may not directly hold a spectrum license. Sections 310(b)(1) and (2) state that foreign individuals and business entities may not directly hold any common carrier, broadcast or aeronautical fixed or aeronautical en route license. Under section 310(b)(3) a foreign entity is limited to a 20 percent ownership interest in any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. Pursuant to section 310(b)(4), a foreign entity is limited to a 25 percent ownership interest in a U.S. corporation that directly or indirectly controls any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. The Federal Communications Commission (FCC), however, has the discretion to allow foreign ownership in excess of 25 percent under section 310(b)(4) of the Act unless

such ownership is inconsistent with the public interest. In the case of common carrier and aeronautical fixed and aeronautical en route licenses, the FCC presumes that foreign investment from WTO member countries does not pose competitive concerns to the U.S. market and is in the public interest. In an August 2012 Order, the FCC adopted a policy to forbear from the application of the 20 percent foreign ownership limit set forth in section 310(b)(3) to common carriers in which the foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee. The text of the August 2012 Order is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-93A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-93A1.pdf).

42. *Does the United States intend to modify them?*

**RESPONSE:** On August 9, 2011, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) that initiates a review of the FCC's policies and procedures that apply to foreign ownership of common carrier spectrum licensees and of aeronautical en route and aeronautical fixed spectrum licensees pursuant to section 310(b)(4). The text of the NPRM is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-121A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-121A1.pdf)

**Page 28 (Para 36 and 37)**

*The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction. CFIUS operates essentially on a voluntary basis, but has the authority to initiate a review of any transaction that may raise national security concerns. Between 2009 and 2011, the number of notices received and investigations undertaken by CFIUS have increased steadily (Table II.11), although notices remain below the 2008 pre-recession level.*

*... A separate, but parallel mechanism established through Executive Order is the National Industrial Security Program (NISP) for the protection and safeguarding of classified information that may be released to industry.*

**Questions:**

43. *In addition to Foreign Investment and National Security Act of 2007 and Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons, what are other laws or regulations that are related to the national security review of foreign investment in the United States? Please specify.*

**RESPONSE:** In addition to the CFIUS review process, foreign investment in the United States may trigger requirements under other statutes and regulations with national security purposes, such as export control laws administered by the Departments of State and Commerce and review under the National Industrial Security Program Operating Manual (NISPOM) relating to companies with classified contracts.

44. *How will CFIUS apply the revised national securities standards in Foreign Investment and National Security Act of 2007 and Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons during specific reviews? In addition to these standards, under what situations will foreign investment involve a breach of national security?*

**RESPONSE:** CFIUS's approach to determining whether a transaction raises national security concerns, and a general description of the types of transactions that CFIUS has reviewed and that have presented national security considerations, is available in the official guidance that Treasury published

on December 8, 2008, in the *Federal Register* (and available on our webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>). The CFIUS process is fully described in statutes, executive orders, regulations, and in the guidance document noted above, all of which are available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

45. *After CFIUS implemented the revised national security standards, did the percentage of foreign transactions rejected rise? Did the number of cases initiated by CFIUS increase?*

**RESPONSE:** Please refer to CFIUS Annual Reports available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius) for information that CFIUS has made publicly available on covered transactions notified to CFIUS.

46. Please provide country-specific percentages of all the investigations initiated and handled on grounds of national security and also the main areas involved. Among the investment transactions reviewed annually from 2009 to 2011, what is the percentage of the transactions that failed in the review? Since 2009, how many cases under national security review have involved the banking or financial sector? How many foreign banks have failed in the national security review?

**RESPONSE:** Please refer to the CFIUS Annual Report available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius) for information that CFIUS has made publicly available on the number of cases by country and industry.

47. *Which government departments or agencies does the US national security review of foreign investment involve? Which of them are permanently involved? Which of them are involved in individual cases? Please specify.*

**RESPONSE:** The members of CFIUS include the heads of the following departments and offices:

1. Department of the Treasury (chair)
2. Department of Justice
3. Department of Homeland Security
4. Department of Commerce
5. Department of Defense
6. Department of State
7. Department of Energy
8. Office of the U.S. Trade Representative
9. Office of Science & Technology Policy

The following offices also observe and, as appropriate, participate in CFIUS's activities:

1. Office of Management & Budget
2. Council of Economic Advisors
3. National Security Council
4. National Economic Council
5. Homeland Security Council

The Director of National Intelligence and the Secretary of Labor are non-voting, *ex-officio* members of CFIUS with roles as defined by statute and regulation.

48. *Please elaborate on CFIUS's specific review process of investment transactions.*

**RESPONSE:** Please see the CFIUS website at [www.treasury.gov/cfius](http://www.treasury.gov/cfius) for a detailed overview of the CFIUS review process.

49. *Please inform in detail the “National Industrial Security Program (NISP)”. In CFIUS’s review, does it also consider the impact of classified information on the transaction and national security?*

**RESPONSE:** Executive Order 12829, as amended, "National Industrial Security Program" (the "NISP"), was established to achieve cost savings and protect classified information held by contractors, licensees, and grantees of the United States Government. Further information can be found at <http://www.archives.gov/isoo/oversight-groups/nisp>.

As discussed in the Guidance Concerning the National Security Review Conducted by CFIUS, published in the Federal Register on December 8, 2008 and available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius), foreign control of U.S. businesses that have access to classified information or sensitive government or government contract information, including information about employees, is among the national security considerations that CFIUS examines. However, pursuant to Executive Order 11858, CFIUS may exercise its mitigation authority only where the risk posed by the transaction is not adequately addressed by other provisions of law, such as the NISP.

50. *What measures does the United States plan to adopt to enhance the transparency of the review by CFIUS?*

**RESPONSE:** The process is fully described in statute, executive order, and regulations, all of which are available on CFIUS’ website, [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### **Page30 (Para1)**

*Pursuant to this “informed compliance” approach, i.e. the shared responsibility between CBP and the import community, importers are expected to apply "reasonable care" in their importing operations. They are expected to exercise reasonable care to classify, value, and determine origin of goods so that CBP can apply the necessary import rules, assess duty rates, and collect statistics.*

#### **Questions:**

51. *Please elaborate on the specific meaning and criteria of “reasonable care” and the treatment of importers that do not satisfy this requirement.*

**RESPONSE:** On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective.

Two new concepts that emerged from the Mod Act were “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay



release of the merchandise and, in some cases, could result in the imposition of penalties. For additional information, see: [http://www.cbp.gov/linkhandler/cgov/trade/legal/informed\\_compliance\\_pubs/icp021.ctt/icp021.pdf](http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp021.ctt/icp021.pdf)

**Page30 (Para2)**

*C-TRAT. In addition to importers, the programme covers carriers, brokers, consolidators, and certain manufacturers who agree to work to help protect the supply chain and implement security measures and best practices.*

**Questions:**

52. *Does “certain manufacturers” refer to domestic or overseas manufacturers? Is there plan to include domestic exporters in C-TPAT? If not, will it be considered in future? At what time? Besides, what measures will CBP take to ensure the safety of export goods?*

**RESPONSE:** The C-TPAT program for manufacturers is open to active manufacturer’s incorporated in Canada and Mexico. For more information about manufacturer participation in the C-TPAT program, see:

[http://www.cbp.gov/xp/cgov/trade/cargo\\_security/ctpat/ctpat\\_application\\_material/ctpat\\_security\\_guidelines/foreign\\_manufacturers/](http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/ctpat_application_material/ctpat_security_guidelines/foreign_manufacturers/)

At this time there are no current plans for CBP to certify U.S. domestic manufacturer’s in the C-TPAT program.

*SFI. Secure Freight Initiative (SFI), initiated in response to the Security and Accountability for Every (SAFE) Port Act to evaluate the feasibility of requiring 100% scanning of maritime cargo containers. The SAFE Port Act, as amended, requires 100% scanning of all maritime containers shipped to the United States by 1 July 2012.*

**Questions:**

53. *Will the Initiative hinder normal international trade? What measures does the United States plan to adopt to reduce the adverse impact of the Initiative?*

**RESPONSE:** The deadline for the 100% scanning requirement has been extended and will not go into effect until July 1, 2014. The Secretary of Homeland Security has the authority to extend the deadline again at that time under the conditions outlined in the statute.

**Page31 (Para4)**

*U.S. laws only allow licensed **customs brokers** to transact customs business on behalf of others (i.e. importers, purchasers)...*

*CBP regulations prescribe eligibility requirements (age, citizenship, etc.) and qualifications (licence exam, fees, and approval by CBP) to become a licensed **customs broker**.*

**Questions:**

54. *Does the above-mentioned two “customs broker” mean the same? In the US, does a customs broker engage in customs business in his own (personal) name or do he or she need to set up a company and engage in customs business in the company’s name?*

**RESPONSE:** Yes, “customs broker” has the same meaning in both references. U.S. Customs brokers are individuals, partnerships, associations, or corporations licensed and empowered by CBP to assist importers and exporters in meeting Federal requirements governing imports and exports. An owner or purchaser of imported goods need not be or set up a customs brokerage to enter their goods in its own name.

**Page 33 (Para 8)**

*This proliferation of differing rules of origin, their complexity, and lack of transparency continues to be of concern for some.*

**Questions:**

55. *The complexity of the US rules of origin affects the transparency of these rules, and has triggered the concerns of some WTO Members. Does the United States have any improvement plan?*

**RESPONSE:** The United States does not currently have any plans to change its rules of origin.

**Page35 (Para9)**

*The U.S. preferential rules of origin have not been notified to the WTO Committee on Rules of Origin since 1997.*

**Questions:**

56. *Has the US notified its non-preferential rules of origin to the WTO? If yes, please provide the reference number of these notifications.*

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

57. *In the previous Trade Policy Review of the United States, the United States, at the request of Members, agreed to submit to the Secretariat its updated preferential rules of origin, but the WTO Secretariat seemingly has not received them yet. When will the United States notify the WTO the latest preferential rules of origin?*

**RESPONSE:** As noted above, the United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

**Page 38 (Para 17)**

*To date (noting the deadline of 30 September 2012), the United States had not yet submitted its documentation to the WTO in order to make the necessary changes to its WTO tariff schedule.*

**Questions:**

58. *When will the United States submit the aforesaid documentation?*

**RESPONSE:** With regards to the HS2012 changes, the United States acknowledges the need to delete subheadings 3702.91 to 3702.95 and to replace those with new subheadings 3702.96, 3702.97 and 3702.98. The failure to make this change was an accidental omission and steps are being taken to rectify the situation. The United States intends to make these changes and submit the necessary documentation to the WTO as soon as possible.

**Page 39 (Para 18)**

*During the period under review, the United States implemented other nomenclature changes to its tariff schedule (HTSUS) by presidential proclamation. There were 11 sets of changes involving the footwear sector (i.e. footwear with textile outsoles). The United States has not notified these changes as a rectification or modification to its tariff schedule, thus the nomenclature of the HTSUS and the U.S. WTO schedule differ for these 11 sets of footwear changes.*

**Questions:**

59. *The 11 inconsistencies between HTSUS and the US WTO tariff schedule may lead to double standards for the importation of these 11 categories of goods. Could the United States explain on this situation?*

**RESPONSE:** On October 31, 2011, the President issued Proclamation 8742 to modify the Harmonized Tariff Schedule of the United States with respect to certain footwear, in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System. These changes became effective on December 3, 2011.

**Page 41 (Para 24)**

*The WTO tariff bindings do not yet reflect HS changes from 2007 and 2012, as is the case with most Members, or some other changes that the United States has made domestically but has not yet notified.*

**Questions:**

60. *What does the “some other changes” made domestically of the US tariffs refer to? Do they refer to the changes described in Para 18 in Page 39 in the Secretariat Report? When does the United States intend to notify them to the WTO?*

**RESPONSE:** Correct. That language refers to the changes specified in Para 18 on Page 39. The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect these changes to the Harmonized Tariff Schedule of the United States as soon as possible.

**Page42 (Para32)**

*The Merchandise Processing Fee (MPF) was created in 1986, and since 1990 has been applied differently depending on whether the import is an informal or formal entry.*

**Questions:**

61. *Please provide the definitions of “informal entry” and “formal entry”.*

**RESPONSE:** In general, an informal entry involves the importation of merchandise that does not exceed \$2,000 in value. Informal entries do not require filing a CBP Form 7501 (Entry Summary), or posting of a Customs bond, and are liquidated at the time of release. Informal entries are used for both personal and commercial importations. The form used for an informal entry is CBP Form 3461, which is completed by the importer and submitted to CBP.

Formal entry of merchandise involves the importation of commercial merchandise valued over \$2000. Formal entries require the filing of a CBP Form 7501 and a customs bond, and are subject to formal liquidation.

Note, a final rule raising the informal entry limit to \$2500 was adopted on December 6, 2012. The final rule will go in effect in January 2013. For more information on this change, see:

<https://www.federalregister.gov/articles/2012/12/06/2012-29193/informal-entry-limit-and-removal-of-a-formal-entry-requirement>

**Page44 (Para36)**

*Since 1986, the United States has charged a fee on certain merchandise arriving by vessel in order to maintain the navigation channels.*

**Questions:**

62. *Please elaborate on the consistency of this fee with Article XIII of GATT1994.*  
63. *Section 11214 of the Budget Law adopted in 1990 stimulated that the Harbour Maintenance Tax is 0.125% of the value of the goods. It came into effect on 1 January 1991. On 5 October 2011, the Federal Maritime Commission (FMC) decided to investigate whether the Harbour Maintenance Tax levied by the United States was the*

*major reason for the transfer of US-bound cargo vessels to Canadian and Mexican ports. What are the findings of the investigation of the FMC? Does the United States plan to improve in this respect to reduce the adverse effects on trade?*

**RESPONSE:** The amount of the Harbor Maintenance Tax (HMT), also called the Harbor Maintenance Fee, is set by statute (26 U.S.C. § 4461 and 4462). Funds collected through this fee are used for improvements to and maintenance of ports. Fees are structured to help offset the costs of maintaining the ports for commercial trade and funds collected through this fee are intended for improvements to and maintenance of ports. The United States considers this fee or tax, and the uses for which it is collected, as GATT VIII compliant.

Please see a copy of the study released in 2012: [http://www.fmc.gov/assets/1/News/Study\\_of\\_US\\_Inland\\_Containerized\\_Cargo\\_Moving\\_Through\\_Canadian\\_and\\_Mexican\\_Seaports\\_Final.pdf](http://www.fmc.gov/assets/1/News/Study_of_US_Inland_Containerized_Cargo_Moving_Through_Canadian_and_Mexican_Seaports_Final.pdf)

### **Page48 (Chart III.5)**

#### **Questions:**

64. *In 2012, electronic products make up for 20% of all the anti-dumping cases. What specific electronic products are involved? How about Chinese electronic products in these cases?*

**RESPONSE:** Although not typically considered to be “electronics,” the Department of Commerce initiated antidumping and countervailing duty investigations of Large Residential Washers, Crystalline Silicon Photovoltaic Cells, and Utility Scale Wind Towers during 2012, which may be included in the category “machinery and electrical equipment” referenced on page 48. The antidumping/countervailing duty investigations of Utility Scale Wind Towers and Crystalline Silicon Photovoltaic Cells involved China.

### **Page50 (Para50)**

*During the review period, the United States has adopted or proposed several modifications to its methodology for the calculation of dumping margins for non-market economies.*

#### **Questions:**

65. *Are there any other changes apart from the calculation methodology mentioned in para 50?*

**RESPONSE:** There are no other changes currently being considered or implemented other than those described in the answer to question 9 above.

66. *Are there special calculation methodology for certain specific areas such as high technology and new energies?*

**RESPONSE:** There are no such special calculation methodologies.

### **Page 67 (Para 100)**

*Exports and re-exports of certain goods, technology, and software that have commercial and military or proliferation applications ("dual-use" items) are controlled through the Export Administration Act (EAA) and the Export Administration Regulations (EAR), which is administered by the Bureau of Industry and Security (BIS) in the Department of Commerce. The EAR includes a list of products, the Commerce Control List (CCL), which may require a licence from the BIS before they may be exported or re-exported. The rules are frequently updated and changes posted on the BIS website. The need for a licence depends on the item, the country of destination, its end use, and the end-user and it is up to the exporter to find out if a licence is needed (unless informed directly by the BIS).*

#### **Questions:**

67. *The US CCL coverage is too wide, including many products or technologies that are not used for military purposes or can be obtained from a country other than the United States. How does the United States view this? Is the US strict control on high-tech exports to China in line with the spirit of free trade?*

**RESPONSE:** The U.S. CLL is predominantly based on the control lists of the four multilateral regimes. The United States Government views export controls as a national security issue. The United States is committed to facilitating normal trade with China for commercial items for civilian end uses and end users.

68. *The United States, as a science and technology power, maintains a large trade deficit with China in terms of high-tech products. Does the United States agree that its export control on high-tech products is one of the main reasons behind the Sino-US trade imbalance?*

**RESPONSE:** No. Only a small amount of bilateral trade for civil end uses is affected by U.S. export controls. Of the \$103.9 billion in U.S. exports to China in 2011, only 0.6 percent (i.e., less than one percent) was exported under a Commerce license. Moreover, Commerce licenses usually are granted for commercial items destined for civil end uses and end users in China. In 2011, the Department of Commerce approved over 2,300 such license applications for U.S. exports to the China.

69. *Has the United States assessed the impact of its export control policies on domestic industries and employment? If yes, can it share the assessment and analysis with the Members?*

**RESPONSE:** On April 20, 2010, Secretary of Defense Robert Gates discussed the Administration's interagency review of the U.S. export control system, which calls for fundamental reform of the current system in order to enhance U.S. national security and strengthen our ability to counter threats such as the proliferation of weapons of mass destruction.

For more information on the Export Control Reform, please visit [www.export.gov/ECR](http://www.export.gov/ECR).

70. *While requesting China to open up more markets and more areas, the United States intensifies its control on exports to China. Could the United States explain the reasons for so doing?*

**RESPONSE:** The United States Government views export controls as a national security issue. The Department of Commerce has repeatedly stated that the U.S. Government's export control reform effort will not alter U.S. export control policy toward China. That policy continues to encourage trade in commercial items with civil end users for civil end uses but not for military end-uses.

**Page 70 (Para 110)**

*Under the Agreement on Agriculture, the United States has the right to provide export subsidies for 14 agricultural products, subject to limits on the quantities that may be exported with subsidies in any year, and limits to the budgetary outlay for exports of each of these products.*

**Questions:**

71. *Does the United States provide similar export subsidies to other industries, especially in the sector of renewable energies?*

**RESPONSE:** No.

**Page70 (Para112)**

*Under Executive Order 13534 of 11 March 2010, the President set out the National Export Initiative (NEI) with the goal of doubling exports over five years ...The NEI addresses several issues intended to increase exports, including: developing programmes that improve information and other technical assistance to first-time exporters, and assist current exporters in identifying new export opportunities in international markets; promoting existing federal resources for export assistance...*

**Questions:**

72. *What are the specific policies and measures under NEI? What is the overall implementation situation to date? What specific policies and measures adopted by the US government have been most effective? Which sectors and industries are the biggest beneficiaries?*

**RESPONSE:** The President launched the NEI during his State of the Union address on January 27, 2010 and established a national goal of doubling U.S. exports by the end of 2014. The NEI has five main components. First, the Administration seeks to improve advocacy and trade promotion efforts on behalf of U.S. exporters. Second, the Administration seeks to increase access to export financing. Third, agencies will reinforce their efforts to remove barriers to trade. Fourth, the United States will robustly enforce trade rules, ensuring America's trade partners live up to their obligations. Fifth, the Administration will pursue policies at the global level to promote strong, sustainable, and balanced growth so that the world economy grows. The annual National Export Strategy tracks and measures the Federal Government's progress in implementing the NEI recommendations including the effectiveness of policies and measures undertaken. The United States has export-competitive products and services across a wide range of industries. For full details see the 2011 National Export Strategy at:

<http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf>

The 2012 National Export Strategy is expected to be publically released at the end of the year.

73. *How has "promoting existing federal resources for export assistance" in NEI been implemented? What does the "federal resources" specifically refer to? What are the executive bodies of NEI? What are their respective roles?*

**RESPONSE:** The NEI is designed so that U.S. Government agencies are focused and working together to ensure that U.S. companies have access to markets and can compete on a fair and level basis with foreign competitors, consistent with global trading rules. Federal resources may include programs, policies and information provided by Export Promotion Cabinet agencies.

As established by Executive Order 13534 of March 11, 2010, the Export Promotion Cabinet consists of:

- the Secretary of State;
- the Secretary of the Treasury;
- the Secretary of Agriculture;
- the Secretary of Commerce;
- the Secretary of Labor;
- the Secretary of Energy;
- the Secretary of Transportation;
- the Director of the Office of Management and Budget;
- the United States Trade Representative;
- the Assistant to the President for Economic Policy;
- the National Security Advisor;
- the Chair of the Council of Economic Advisers;
- the President of the Export-Import Bank of the United States;
- the Administrator of the Small Business Administration;

the President of the Overseas Private Investment Corporation; and  
the Director of the United States Trade and Development Agency.

The Trade Promotion Coordination Committee (TPCC) established by Executive Order 12870 of September 30, 1993 is tasked with helping to implement the NEI and serves as the secretariat for the Export Promotion Cabinet. Its role is to implement the eight priorities identified in the NEI Executive Order:

- Priority 1: Exports by Small and Medium-Sized Enterprises (SMEs)
- Priority 2: Federal Export Assistance
- Priority 3: Trade Missions
- Priority 4: Commercial Advocacy
- Priority 5: Increasing Export Credit
- Priority 6: Macroeconomic Rebalancing
- Priority 7: Reducing Barriers to Trade
- Priority 8: Export Promotion of Services

74. *Are the measures adopted under NEI consistent with WTO rules on subsidies? Please describe in detail.*

**RESPONSE:** Yes. Many of the components of NEI are intended to remove barriers to trade, enforce existing trade rules and promote sustainable growth of trade worldwide. Other aspects of NEI are largely designed to provide information on exporting to help small businesses explore international markets and obtain financing at market-based rates. These policies are similar to those of other WTO Members.

75. *In regard to NEI and other export promotion policies, does the United States have specific plans to relax high-tech export restrictions?*

**RESPONSE:** The United States Government views export controls not as an economic issue but a national security issue. The United States is committed to facilitating normal trade for commercial items for civilian end uses and end users.

76. *Does the US Export Control Reform Initiative have concrete measures for implementation? Please introduce in detail relevant plans and expected timetable, if any.*

**RESPONSE:** The United States has deployed a three-phase implementation plan. While the United States is still in the process of implementing reforms much has been achieved.

- The United States has developed and applied a methodology for rebuilding the control lists, has already published a series of proposed rules for public comment in 2012, will publish the first final rules in early 2013, and will continue to publish the remaining proposed and final rules on a rolling schedule throughout 2013. Rebuilding the control lists is the cornerstone of the initiative, as what is controlled impacts the other three parts of the U.S. system (licensing, enforcement, and the information technology (IT) management of the system).
- The President issued Executive Order 13558 to create the Export Enforcement Coordination Center (E2C2), which formally opened in March 2012. All U.S.

departments and agencies with export enforcement responsibilities are working side-by-side to coordinate enforcement actions.

- The Administration and Congress partnered to pass legislation in the summer 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), to increase the disparate criminal law enforcement penalties to a standardized maximum.
- CISADA also provided the Department of Commerce with permanent law enforcement authority that had lapsed.
- An electronic consolidated list of parties was developed to assist small- and medium-sized companies screen transactions to ensure items are exported in compliance with licensing and other export control requirements. In the most recent month for which statistics are available, October 2012, there were more than 35,000 downloads that month.
- Four U.S. departments are already migrating to a single secure IT system administered by the Department of Defense; other departments will follow.

The United States will need to enact legislation to implement a government reorganization that would consolidate the U.S. system into a single control list, single licensing agency, single primary enforcement coordination agency, and a single IT system.

To follow developments on the reform initiative, visit [www.export.gov/ecr](http://www.export.gov/ecr) where details on all actions on the initiative are posted.

77. *Please elaborate on the detailed measures of President Obama's National Export Initiative (NEI) to provide SMEs with export credit.*

**RESPONSE:** With regard to the NEI and export credits for SMEs, U.S. Ex-Im Bank created Global Access for Small Business, a multi-pronged initiative that draws on the resources of other U.S. government export promotion agencies and enhances existing programs with new products and access. Specifically, in addition to its basic export credit programs of export credit insurance, pre- and post-shipment guarantees and direct loans, Ex-Im introduced a number of new complementary products aimed at the financing needs of small exporters. Details on these specific programs can be found at [www.exim.gov](http://www.exim.gov).

#### **Page71 (Para114)**

*Ex-Im Bank provides export financing through various programmes including:*

- direct loans to foreign buyers of exports from the United States, normally for capital-intensive goods such as commercial aircraft, heavy equipment, and project finance;...
- special financing programmes such as aircraft finance, project finance, and supply chain finance. ...

#### **Questions:**

78. *Please describe in detail whether there are specific requirements on potential national interests from the export programs when the US Ex-Im Bank provides loans and guarantees referred to in the aforesaid Para 114?*

**RESPONSE:** U.S. Ex-Im Bank's mandate from Congress is to support U.S. jobs through exports with export financing. Hence, the national interest served by Ex-Im Bank is



supporting U.S. jobs.

79. *In the face of the current global economic downturn, when the US Ex-Im Bank provides loans and guarantees, does it have special considerations in respect of key industries, underwriting ratio, underwriting size and relevant costs?*

**RESPONSE:** U.S. Ex-Im Bank has several key strategic initiatives mandated by Congress - including small business, environment and Sub-Saharan Africa - that the Bank promotes globally. In all activities, Ex-Im follows international guidelines that specify the terms and conditions applicable. Hence, there are no differences in our underwriting or acceptable costs.

80. *Please describe in detail specific operation procedures of the US Ex-Im Bank when providing guarantee for liquidity financing? How does this product support SMEs?*

**RESPONSE:** Ex-Im Bank has established several liquidity focused programs for SME exporters. Specifically, the Bank introduced the Global Credit Express product as a pilot this past year. It is designed to offer short term working capital loans directly to creditworthy small business exporters. Exporters can receive either a 6 month or 12 month revolving line of credit of up to \$500,000. This product is available through several originating financial institutions nationwide. Ex-Im also introduced the Supply Chain guarantee program which provides U.S. small companies supplying U.S. exporters with liquidity and a more stable cash flow.

81. *How does the US Ex-Im Bank manage the concentration of a single country and a single industry? When providing loans and guarantees, are there country-specific limits in terms of the value? If it has to go beyond the limit, does the US Ex-Im Bank have a special mechanism in place to address it?*

**RESPONSE:** The Bank has an overall exposure limit set by Congress that Ex-Im financing cannot exceed. If the Bank reaches this limit, it would need to request an increase from Congress. Otherwise, US Ex-Im Bank does not operate under any country or industry limits.

82. *Please elaborate on the Ex-Im Bank's financing cost for its export buyer's credit.*

**RESPONSE:** Ex-Im Bank borrows funds from the U.S Treasury in order to fund direct loan commitments. Ex-Im Bank is required to pay interest, based on current rates and terms, on the funds borrowed from the U.S. Treasury.

83. *Please describe the factors that affect the granting of credit line in export buyer's credit.*

**RESPONSE:** U.S. Ex-Im Bank follows standard underwriting procedures and criteria when asked to consider financing for a transaction. In addition to conducting a thorough credit analysis of the obligor/guarantor, Ex-Im also undertakes careful due diligence on the participants in the deal and ensures that the transaction is in compliance with all Ex-Im policy (e.g., environmental guidelines, economic impact, etc.) and statutory requirements and that it is OECD-consistent.

84. *Please explain the difference between direct loan provided to commercial plane buyers and special financing programs for aircrafts in the export credit operations of the Ex-Im Bank. How are the terms of export credit provided to capital-intensive exports and to special financing*

*programs determined?*

**RESPONSE:** U.S. Ex-Im Bank authorizes all aircraft transactions based on the rules set out for loans and guarantees in the OECD Aircraft Sector Understanding (ASU). Consequently, any differences between the two financings are dictated by the OECD ASU, not Ex-Im Bank internal procedures. Regarding capital-intensive exports, U.S. Ex-Im follows the terms and conditions dictated in the OECD Arrangement and its Sector Agreements, such as Nuclear Power Plants, Renewable Energy Projects and Project Finance.

**Page71 (Para115)**

*Ex-Im Bank operates in 186 countries around the world and has identified nine key markets (Brazil, Colombia, India, Indonesia, Mexico, Nigeria, South Africa, Turkey, and Viet Nam)*

**Questions:**

85. *Please elaborate on the US Ex-Im Bank's mode of doing business abroad.*

**RESPONSE:** U.S. Ex-Im Bank has business development officers who work to educate foreign procurement buyers about opportunities to purchase from U.S. suppliers.

86. *When providing loans and guarantees to buyers in developing countries, does it have special policies? Will it provide targeted export financing programs and targeted export credit insurance policies for key markets?*

**RESPONSE:** U.S. Ex-Im does not have any special policies when providing loans and guarantees to buyers in developing countries. While the Bank has a strategic focus on the nine key markets and focuses business development efforts in those markets, this does not preclude Ex-Im from financing transactions in other markets.

87. *Will it include more emerging markets in the aforesaid list?*

**RESPONSE:** At this time, no additional countries have been added.

**Page71 (Para116)**

*To the extent necessary, Ex-Im borrows from the U.S. Treasury to finance medium- and long-term loans. However, in the past five years, Ex-Im Bank has generated US\$1.9billion in excess revenues over its costs of operations.*

**Questions:**

88. *Please elaborate on the sources of the fund and its structure of the Ex-Im Bank. Why does US Treasury give financial support to Ex-Im Bank? Is such support unlimited? What is the mechanism for Ex-Im Bank to receive financial support from the government and how does it operate? In order to receive financial support from the US Treasury, Ex-Im Bank needs to pay the cost of the capital to the US Treasury? What is the relationship between such financial support and rules of WTO and OECD?*

**RESPONSE:** Ex-Im Bank is a self-sustaining agency where the fees charged borrowers as well as the interest rates charged (on direct loans) is used to offset expenses. Ex-Im Bank transactions carry the full faith and credit of the U.S. Government, but as a self-sustaining agency it does not need or receive annual appropriations from the U.S. Treasury to cover expenses. The Bank's fees and interest income (on direct loans) are used to pay for its expenses. With regard to the OECD and the WTO, the Agreement on Subsidies and Countervailing Measures (ASCM) incorporates by reference the OECD Arrangement. Whether viewed independently or taken together, Ex-Im operates in full compliance with both the ASCM and OECD rules.

89. *How does the US Ex-Im Bank determine the cycle of capital increase and its amount?*

**RESPONSE:** Ex-Im Bank determines necessary capital requirements prior to the disbursement of approved direct loans.

90. *In terms of risks, how do the US private sector and Ex-Im Bank determine the boundaries of the risks that they respectively undertake? Are there specific and objective criteria for the division?*

**RESPONSE:** Ex-Im Bank has a mandate to find that a transaction has a reasonable assurance of repayment prior to approval. Beyond normal considerations of creditworthiness, it is difficult to generalize as to how U.S. private sector entities determine the boundaries of risk they may undertake.

### **Page71 (Para 116)**

*To the extent necessary, Ex-Im borrows from the U.S. Treasury to finance medium- and long-term loans. However, in the past five years, Ex-Im Bank has generated US\$1.9billion in excess revenues over its costs of operations. According to the authorities, the Ex-Im Bank's fees are set in accordance with the OECD Arrangement on Officially Supported Export Credits. The Bank typically covers up to 85% of the value of eligible goods and services in a U.S. supply contract or all of the U.S. content of eligible goods and services in that contract. Certain ocean-borne cargoes financed by Ex-Im Bank direct loans and long-term guarantees exceeding US\$20 million or with a repayment period of more than seven years must be transported on U.S. flag vessels, unless a waiver is obtained from the U.S. Maritime Administration. According to MARAD, 10 waivers were granted in 2010 and 16 in 2011*

### **Questions:**

91. *Please elaborate on the pricing mechanism of the interest rates of the Ex-Im Bank. Does Ex-Im Bank charge risk fee or risk premium when providing export credit? If so, how is it charged? What costs are to be covered by the risk fee or risk premium?*

**RESPONSE:** U.S. Ex-Im Bank issues direct loans following the terms and conditions of the OECD Arrangement. Ex-Im charges the fixed-rate Commercial Interest Reference Rates (CIRR) for such loans. Ex-Im Bank charges a risk premium for all export credit transactions and is consistent with OECD pricing modalities. The Bank typically charges the fee on an upfront basis, but for some transactions, such as direct loans, the fee can be collected on a per annum basis. The risk premium is charged to cover the risk of non-payment by the foreign buyer.

92. *In certain circumstances, one of the preconditions of Ex-Im Bank's support is the use of US flag vessels to transport exports. Is this consistent with WTO rules? Why?*

**RESPONSE:** As a matter of policy, cargo benefitting from Ex-Im Bank programs should be transported on U.S.-flag vessels, unless a suitable U.S.-flag vessel is not available at a reasonable rate. We further note that the United States has not undertaken services commitments in regard to maritime services.

### **Page71 (Para117)**

*The "efforts at Ex-Im Bank are focused on supporting President Obama's National Export Initiative (NEI) and the goal of doubling U.S. exports by 2015." ...Under the NEI, the Bank has increased its efforts to provide export financing for small businesses, through the Small Business (Global Access) initiative, launched in 2011, and the development of new products, such as express insurance and an online application process.*

### **Questions:**

93. *What role does Ex-Im Bank play in promoting President Obama's National Export Initiative (NEI)? Are there any changes to the main terms of export credit (including but not limited to term and interest rates) after the adoption of the NEI? If so, please elaborate on the changes. Are these changes consistent with WTO rules?*

**RESPONSE:** In fiscal year 2010, Ex-Im Bank began implementing a strategic plan that reinforces the Bank's ability to accomplish its mission, serve a prominent role in the Obama Administration's National Export Initiative, and meet its Congressional mandates in future years. The Bank's vision is to create and sustain U.S. jobs by substantially increasing the number of companies it serves and expanding their access to global markets. While Ex-Im Bank has not changed any of its financing terms (e.g., interest rates, premia, etc.) in support of the NEI, the Bank has introduced a number of new products aimed at providing a full menu of financing options to U.S. exporters (see responses to previous questions and go to [www.exim.gov](http://www.exim.gov) for more details).

94. *What is the "express insurance" in the new products? Could the United States please provide more information on this new product?*

**RESPONSE:** Express Insurance is a simplified version of Ex-Im's short term insurance product. Its characteristics include a streamlined on-line application that provides a policy quote and credit decisions on deals of up to \$300,000 within 5 workdays or less. Transactions in amounts greater than \$300,000 require additional time. More details on this product can be found on Ex-Im's website at [www.exim.gov](http://www.exim.gov).

**Page 73 (Para 123)**

*The growth of small businesses has been a priority for economic growth in the United States as small businesses account for approximately half of private-sector non-farm employment. Through the Small Business Administration (SBA), loans, loan guarantees, procurement opportunities, contracts, counselling sessions, and other forms of assistance are offered to small businesses.*

**Questions:**

95. *Please describe in detail the US targeted policies and measures for SMEs. For innovation and employment concerning SMEs, does the United States have further specific supportive policies and measures? Please assess the effects of these policies and measures.*

**RESPONSE:** Small businesses are the engines of job growth and innovation in America. A summary of actions taken by the Administration to support small businesses may be found at: <http://www.whitehouse.gov/snapshots/supporting-small-business-and-entrepreneurs>

**Page 77 (Para 131)**

*U.S. procurement legislation also has specific rules on what qualifies as an American good, i.e. specific origin rules that differ from rules of origin and marking for importation purposes.*

96. *What are the major items in the US government procurement of services? In what specific form does the government provide these items (provided by the community, provided within the department, or by the government itself)? How do the departments implement the procurement?*

**RESPONSE:** The top five categories of services procured by the U.S. Federal government are: architecture and engineering; IT services; testing services; medical services; education services; and construction, maintenance and repair services. Federal agencies procure these service consistent with the Federal Acquisition Regulation requirements.

We do not understand the second question so are not able to provide a response.

97. *The United States includes R&D in the government procurement, but does not seem to include*

*R&D in its GPA offer. Please describe whether the US government decides services providers by way of tendering when it procures R&D services. How will the Government do the procurement if it wants to procure a new technology or product just successfully developed by an institution or enterprise?*

**RESPONSE:** The United States excludes research and development (R&D) services from its GPA coverage. The key purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the requirement need, the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success. The contracting process is used to inspire the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden. In R&D acquisitions, the precise specifications necessary for sealed bidding are generally not available, therefore, negotiations are necessary. Also, the nature of development work often requires a cost-reimbursement completion arrangement. The solicitation will be advertised in the <https://www.fbo.gov/> so vendors can compete on the R&D solicitation. An R&D contract is generally awarded to the organization, including any educational institution, that offers the best ideas or concepts and has the highest competence in the specific field of science or technology involved. See Federal Acquisition Regulation (FAR) Part 35 for the policies and procedures of special application to R&D contracting. This part specifically covers work statements for R&D contracts, contracting methods and contract type, solicitations, evaluation for award, subcontracting research and development efforts, data, patent rights, and scientific reports, etc. It also includes guidance to federal agencies on how to establish contracts for research and development with educational institutions and nonprofit organizations.

98. *Please illustrate how government entities included in the US GPA offer distinguish what types of procurements are commercial sale and resale procurements in the actual procurement process.*

**RESPONSE:** The United States procures goods for commercial resale in limited circumstances. For example, the United States may procure goods for resale in a commissary on a military base or in a gift shop in a national park or museum.

99. *Which law stipulates the inclusion of concession projects into the US government procurement? Please briefly illustrate the administration system, procurement procedures of government procurement of concession projects. Please also provide data on the actual size of the procurement.*

**RESPONSE:** The United States does not undertake concession projects. However, it may use build-operate-transfer contracts. In such cases, it would follow the Federal Acquisition Regulations generally applicable to federal procurement. The United States does not have data for such procurement.

100. *Please inform the scope of engineering contract as stated in the American Recovery and Reinvestment Act of 2009.*

**RESPONSE:** The American Recovery and Reinvestment Act (ARRA) included a provision that applied to the iron, steel and manufactured goods used in “project for the construction, alteration, maintenance, or repair of a public building or public work”. If an engineering contract funded by the ARRA fell into that category, the Buy American provision applied. For federal procurements, “public

building or public work” is defined as “a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.”

*101. Does the implementation of the Regulation implementing the “buy American” provisions in the American Recovery and Reinvestment Act of 2009 contradict with the US obligations under the Agreement on Government Procurement? Do the Regulation exclude other WTO members?*

**RESPONSE:** The "Buy American" requirement in ARRA did not apply to government procurement covered by the WTO GPA.

**Page 77 (Para 134)**

*Under U.S. laws and rules, agencies may reserve contracts exclusively for certain designated groups. These provisions are known as set-asides. There are five set-aside categories: (i) small business; ....*

**Questions:**

*102. Please describe how the United States uses government procurement policies to support the development of small businesses. How to ensure the effective implementation of these policies?*

**RESPONSE:** The U.S. Congress, by statute, has established a 23% federal contracting goal for small businesses, measured in dollars of contract awards. In addition, Congress has established through statute, several initiatives that encourage federal agencies to identify capable small businesses for awards of prime contracts. Further, separate small business subcontracting goals, where applicable, have been statutorily mandated for large businesses receiving prime federal contracts. The Small Business Administration and federal agencies have a staff who oversee agencies' efforts in reaching the 23% prime contracting goal and the small business subcontracting goal. There are also resource to assist small businesses in identifying prime and subcontracting opportunities, and in business and entrepreneurial development.

**Page78 (Para136)**

*WTO GPA Members recently reached consensus on a revision of the GPA and re-negotiation of the specific commitments contained in the annexes pertaining to each Member.*

*103. Please confirm whether the United States includes BOT and concession in its offer in the revision of the GPA and re-negotiation of the specific commitments in 2012. If yes, please describe which stage of a BOT project is subject to the GPA, and whether it allows companies of parties to the GPA to participate in the BOT, or rather that these companies may participate in the bidding in the procurement of the enterprise that has won the BOT project.*

**RESPONSE:** The United States did not include BOT contracts in its coverage under the Revised GPA and does not undertake concession contracts.

**Page 79 (Para 140)**

*Subsidies, as defined and notified under GATT Article XVI:1 and Article 25 of the Agreement on Subsidies and Countervailing Duties are reported to the WTO by Members including the United States. According to the latest notification in October 2011, the United States reported 50 federal programmes, and over 500 sub-federal programs (Table III.22)*

**Questions:**

*104. A number of the US polysilicon and PV modules enterprises enjoy government subsidies and*

*special tariffs for electricity. Does the United States believe that they have constituted specific subsidies as defined in the WTO? Are they included in the US latest notification on subsidies? Please specify the US supporting policies and budget scheme for the polysilicon industry and the photovoltaic industry.*

**RESPONSE:** As noted, the United States submitted its most recent subsidy notification in October 2011 (see G/SCM/N/220/USA). Currently, China is conducting a countervailing duty investigation against imports of polysilicon from the United States. Numerous subsidies were alleged by the domestic polysilicon industry in China and are currently being investigated. As part of this investigation, China's administering authority issued detailed questionnaires to the United States Government and the relevant producers and exporters in the United States. Responses to these questionnaires have been provided. If China's administering authorities have additional questions in the context of the investigation, the United States is prepared to provide responses to those questions.

**Page80 (Para 143)**

*The TARP provided government support to AIG, the automotive industry, banks, and financial institutions. On 31 May 2012, the lifetime cost of TARP was estimated at US\$63 billion... As concerns the Automotive Industry Financing Program, TARP has received US\$40 billion of its approximately US\$80 billion investment. Chrysler exited the programme in July 2011, but GM and Ally Financial (former GMAC financing) remain included, as US\$37.2 billion of reimbursement remains outstanding.*

**Questions:**

*105. In respect of the US automobile industry, what are the assistance standards, conditions, decision-making procedure of TARP? Why are the assisted enterprises all US automobile companies? Why did non-US brand manufacturers not obtain the assistance? Please inform in detail the background.*

**RESPONSE:** The Automotive Industry Financing Program (AIFP) was begun in December 2008 to prevent a significant disruption of the U.S. automotive industry, because the potential for such a disruption posed a systemic risk to financial market stability and would have had a negative effect on the economy. In 2008, the auto industry lost nearly 35 percent of its sales volume and almost 400,000 jobs, and both GM and Chrysler were on the verge of disorderly liquidations. This could have caused millions of additional job losses.

Recognizing the danger, Treasury extended temporary loans to GM and Chrysler in December 2008. After the Obama Administration took office, it agreed to provide additional investments conditioned on each company and its stakeholders participating in a fundamental restructuring. In total, Treasury invested approximately \$80 billion in the automotive industry. As of November 30, Treasury has recovered more than \$40 billion, and expects to recover additional funds over time.

**Page83 (Para 146)**

*In addition to the main federal laws, most states have antitrust laws, often modelled after the federal laws.*

**Questions:**

*106. In addition to the Department of Justice and the Federal Trade Commission as well as their local offices, do the states have other anti-monopoly law enforcement agencies?*

**RESPONSE:** Each State has an office of attorney general, which is the chief law enforcement office for that state. Most attorney general offices have one or more staff responsible for enforcement of the state's antitrust laws (or related laws). States may also enforce the federal antitrust laws on behalf of their citizens or bring direct actions for antitrust injuries suffered by the state.

*107. How do the US federal antitrust law and state antitrust laws coordinate in specific implementation and application?*

**RESPONSE:** The FTC and DOJ have developed a close relationship with state antitrust enforcers through a variety of mechanisms, including through the Executive Working Group for Antitrust, which includes the Chairman of the FTC, the Assistant Attorney General in charge of the Antitrust Division, and several State Attorneys General. Both the DOJ and FTC coordinate with State attorneys general as appropriate on investigations conducted by both a federal and state enforcer, and refer cases to each other when the other enforcer would be better suited to handle the investigation. In addition, the DOJ has a formal protocol to allow for cooperation on criminal antitrust matters.

**Page83 (Para 148)**

*While the three pillars of antitrust legislation provide the basic structure, there are other U.S. laws or regulations that could facilitate anticompetitive practices. In the area of international trade: ... the Export Trading Company Act of 1982 provides certain antitrust immunity for export trade and export trade activities; and the Webb-Pomerene Act provides immunity for associations of otherwise competing businesses to engage in collective export sales.*

**Questions:**

*108. Please elaborate on the main contents of the Policy Guide to Merger Remedies issued by the US Justice Department in June 2011. What are the main changes compared to the previous version?*

**RESPONSE:** The 2011 revision of the Merger Remedies Guide was intended for use by Division enforcement staff and by the public. The 2011 revision adjusts previous guidance to take into account the increasing numbers of transnational mergers and complex vertical transactions, and aims at remedies that result in eliminating any competitive harm from a particular transaction. Effective remedies typically include structural or conduct provisions, or a combination of both. For more details, see the Guide itself, at <http://www.justice.gov/atr/public/guidelines/272350.pdf> or the accompanying Division press release, at [http://www.justice.gov/atr/public/press\\_releases/2011/272365.htm](http://www.justice.gov/atr/public/press_releases/2011/272365.htm)

*109. Does summary procedure apply to the US merger reviews? What are the criteria for the application? What is the percentage of cases on which summary procedure is applied?*

**RESPONSE:** If the FTC or DOJ wish to take action with regard to a pre-merger notification made pursuant to the Hart-Scott-Rodino Act (15 U.S.C. § 18a), they must act within 30 days (15 days in the case of cash tender offers). If they do not request additional information or, in limited circumstances, bring an enforcement action within 30 days, then the merger may proceed. Although the figures vary somewhat each year, in most years DOJ or FTC requests additional information for less than 5% of the merger notifications. In addition, parties submitting a notification may request "early termination." If early termination is requested, then the FTC and DOJ may inform the parties before the end of the 30-day waiting period that neither agency will seek additional information in which case the parties are free to close their transaction immediately. In Fiscal Year 2011, parties requested early termination in approximately 82% of Hart-Scott-Rodino filings, of which 77% were granted .



Similar data for the past 10 years is available in Appendix A of the FTC and DOJ Hart-Scott-Rodino Annual Report for Fiscal Year 2011, available at: <http://www.ftc.gov/os/2012/06/2011hsrreport.pdf>.

*110. What is the relationship between the anti-trust review and national security review in the US? In terms of procedures, do they connect with each other? If yes, how do they connect? What are the similarities and differences in terms of criteria when the reviews are applied?*

**RESPONSE:** Antitrust reviews and national security reviews are two separate processes in the United States with differing criteria. CFIUS national security review is unrelated to and independent of antitrust review.

*111. How does the US review the cross-border investment and mergers made by foreign enterprises and foreign financial institutions? Is a higher threshold adopted for cross-border investment and mergers in areas such as energy and high technology?*

**RESPONSE:** The U.S. antitrust agencies review cross-border and domestic mergers and acquisitions in the same manner, applying the same processes and legal standards and review thresholds and approaches regardless of the nationality of the parties or the sectors affected by the transaction. Please see the CFIUS website at [www.treasury.gov](http://www.treasury.gov) for a detailed overview of the CFIUS process. CFIUS does not maintain a "sector list" or apply differential treatment to investments in some sectors.

*112. According to the US national security review, how do Chinese enterprises such as Huawei, ZTE and Sany threat the US national security?*

**RESPONSE:** By law, information filed with CFIUS may not be disclosed by CFIUS to the public. Accordingly, CFIUS does not comment on information relating to specific CFIUS cases, including whether or not certain parties have filed notices for review.

*113. Could the United States provide actual cases of exemption under the two Acts?*

**RESPONSE:** We do not understand what is meant by "actual cases of exemption under the two Acts."

#### **Page84 (Para149)**

*Additionally in 2010, the Department of Justice and the FTC amended the Horizontal Merger Guidelines.*

#### **Questions:**

*114. Please elaborate on the main content of the Horizontal Merger Guidelines amended in 2010. What are the amendments compared to the previous version? What are the reasons for the amendment?*

**RESPONSE:** The 2010 Horizontal Merger Guidelines (the "Guidelines") outline how the federal antitrust agencies evaluate the likely competitive impact of mergers and whether those mergers comply with U.S. antitrust law. They are intended to help the agencies identify and challenge competitively harmful mergers while avoiding unnecessary interference with mergers that either are competitively beneficial or likely will have no competitive impact on the marketplace. To accomplish this, the guidelines detail the techniques and main types of evidence the agencies typically use to predict whether horizontal mergers may substantially lessen competition.

The Guidelines were developed after extensive public consultations, including with non-US agencies, and updated the 1992 guidelines in several important ways. The Guidelines:

- Clarify that merger analysis does not use a single methodology, but is a fact-specific process through which the agencies use a variety of tools to analyze the evidence to determine whether a merger may substantially lessen competition.
- Introduce a new section on “Evidence of Adverse Competitive Effects.” This section discusses several categories and sources of evidence that the agencies, in their experience, have found informative in predicting the likely competitive effects of mergers.
- Explain that market definition is not an end itself or a necessary starting point of merger analysis, and market concentration is a tool that is useful to the extent it illuminates the merger’s likely competitive effects.
- Provide an updated explanation of the hypothetical monopolist test used to define relevant antitrust markets and how the agencies implement that test in practice.
- Update the concentration thresholds that determine whether a transaction warrants further scrutiny by the agencies.
- Provide an expanded discussion of how the agencies evaluate unilateral competitive effects, including effects on innovation.
- Provide an updated section on coordinated effects. The guidelines clarify that coordinated effects, like unilateral effects, include conduct not otherwise condemned by the antitrust laws.
- Provide a simplified discussion of how the agencies evaluate whether entry into the relevant market is so easy that a merger is not likely to enhance market power.
- Add new sections on powerful buyers, mergers between competing buyers, and partial acquisitions. The Guidelines are available at <http://www.ftc.gov/os/2010/08/100819hmg.pdf>.

The Guidelines were amended to take into account the legal and economic developments since the 1992 guidelines were issued. They are not intended to represent a change in the direction of merger review policy, but to offer more clarity on the merger review process to better assist the business community and, in particular, parties to mergers and acquisitions.

**Page 93 (Para 177)**

*The Act established several mechanisms aimed at boosting competitiveness of U.S. markets and at supporting innovative firms, particularly small businesses. For example, it establishes a new category of applicant known as a "micro entity", in recognition of the substantial contributions made by small businesses and independent inventors that are resource-challenged to economic growth and innovation, and accordingly, grants them a 75% discount of certain fees.*

**Questions:**

115. *What are the criteria for identifying “micro entity”?*

**RESPONSE:** The USPTO has proposed rules for the criteria to identify a “micro entity.” Please see the following link for these proposed rules: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-30/html/2012-12971.htm>

116. *Can foreign applicants enjoy these incentives equally?*

**RESPONSE:** Yes.

117. *What materials need to be provided in order to get the fee discount? Are there special requirements for foreign applicants?*

**RESPONSE:** Please see the following link for the proposed rules: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-30/html/2012-12971.htm>.

**Page 93 (Para 178)**

*The Act also includes provisions for the establishment of a prioritized examination process, whereby examination of an application may be expedited upon payment of a fee. In addition, Congress required the USPTO to produce a study on how USPTO can best help small businesses with patent protection overseas, such as whether a loan or grant programme should be established to help small businesses cover the costs of application, maintenance, and enforcement fees or related technical assistance.*

**Questions:**

118. *Is the prioritized examination process mentioned in para 178 the same as the Green Technology Pilot Program mentioned in para 180? If not, what are the differences?*

**RESPONSE:** The USPTO discontinued the Green Technology Pilot Program because the USPTO now has a program that permits the acceleration of any patent application. Known as “Track One,” this program was implemented by a rulemaking to implement the “prioritized examination” provisions of the America Invents Act. More information on the program is available here: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-23/html/2011-24467.htm>.

119. *Is the total amount of applications entering prioritized examination process limited? If so, how is it distributed? For example, are there quotas for different technology areas? Are there quotas for domestic and foreign applications?*

**RESPONSE:** Yes. The limit is 10,000 applications. There are no quotas for different technology areas or for domestic and foreign applications.

120. *Does this prioritized examination process have review cycle requirements? For example, should USPTO conclude the case within certain time after accepting the application for prioritized examination process?*

**RESPONSE:** Yes. The USPTO provides for a final disposition of the case within 12 months of prioritized status being granted. Please see the following link for information on prioritized examination: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-23/html/2011-24467.htm>.

121. *Has USPTO adopted measures to help small businesses with patent protection overseas as required by the Congress? If so, please provide information on these measures.*

**RESPONSE:** Yes. Congress directed the USPTO to study international patent protection for small businesses. The report examines how USPTO and other federal agencies can best help small businesses with patent protection overseas. [http://www.uspto.gov/aia\\_implementation/20120113-ipp\\_rpt.pdf](http://www.uspto.gov/aia_implementation/20120113-ipp_rpt.pdf).

**Page 93 (Para 180)**

*Against a goal of reducing this period to 20 months by 2015, pendency in the review period varied between 33.5 and 33.9 months. The USPTO also undertook a range of initiatives during the review period to further improve quality and timeliness, including through international cooperation... worksharing initiatives with other patent offices on patent examination, notably the Patent Prosecution Highway, which speeds up patent examination and reduces costs by allowing examiners to reuse search and examination results for corresponding applications filed in other participating*

*countries. There was a significant increase in the number of international partners during the review period, and the petition fee for use of this pathway was eliminated;*

**Questions:**

*122. We know that the pendency in the review period varies between 33.5 to 33.9 months. Does USPTO have a time limit on its patent application review? For example, how long can a review last for the maximum? Or, if the review has exceeded the time limit, are there any measures to urge the reviewer to close the case as soon as possible? If so, are applications in different technology areas treated equally? Are domestic and foreign applications treated equally?*

**RESPONSE:** No, the USPTO does not have a time limit on its patent application review, and applications in all technologies and from both domestic and foreign applicants are treated equally. If an applicant is having problems with the application process, they can use the Ombudsman Program. Please see <http://www.uspto.gov/patents/ombudsman.jsp> for more information

*123. Are there conditions and requirements for reviewers' utilization of other countries' search and examination results?*

**RESPONSE:** No, there are no conditions or requirements for reviewers' utilization of other countries' search and examination results.

*124. For applications that have used Patent Prosecution Highway or other countries' search and examination results, is there requirement on the time limit of a review? For example, within what time limit must the case be concluded?*

**RESPONSE:** PPH status affects only when a case is taken up for action, not the period within which the case must be concluded. Furthermore, once a PPH application has been taken up for action, that application will not enjoy any further precedence over any other application.

*125. Compared to patents of the same type which have not applied for faster examination, how much time has been saved on average for the 1,062 patents that were authorized through the Green Technology Pilot Program?*

**RESPONSE:** The USPTO does not have that data available at this time.

*126. Could the US please provide more detailed information on "Peer to Patent project"? How will the public participate in the patent review process?*

**RESPONSE:** In June 2007, as part of the efforts of the United States Patent and Trademark Office (USPTO) to implement its Strategic Plan, the USPTO announced a pilot program to determine the extent to which the organized submission of documents together with comments by the public would be useful to examiners. The stated purpose of the pilot was to test whether such collaboration could effectively locate prior art that might not otherwise be located by the USPTO during the typical patent examination process. The culmination of the two-year pilot resulted in numerous data points that support the premise that members of the public, when collaborating in an organized online fashion, are capable of contributing to the location of prior art of value to the examiner during the examination process.

In the interest of gathering data from a more diverse pool of patent applications, the USPTO, in cooperation with the New York Law School's Center for Patent Innovations, launched a one-year pilot program from October 25, 2010 to September 30, 2011. The last of these applications finished review on December 31, 2011. This pilot tested the scalability of the peer review concept by expanding the candidate pool of applications to technology areas such as Life Sciences,

Telecommunications, Business Methods and Computer Hardware and Software and by significantly increasing the total number of applications that may be accepted into the pilot.

Additional information related to the above peer-to-patent pilot programs may be obtained at: [http://www.uspto.gov/patents/init\\_events/peerpriorartpilotindex.jsp](http://www.uspto.gov/patents/init_events/peerpriorartpilotindex.jsp)

127. *Could the US please give more detailed information on the “new metrics for patent quality”?*

**RESPONSE:** The USPTO continues to focus on delivering high-quality patents to innovators. More than two years ago, the agency developed a new work credit system that gives examiners more time to review the merits of an application before making a decision. The USPTO has continued to improve its hiring practices to recruit experienced professionals, and it provides comprehensive training to new as well as experienced examiners. In providing more effective training, the USPTO further enhances patent examination fundamentals, communication, and cooperation between the examiner and applicant. The USPTO utilizes a highly successful compact prosecution training and refresher training program that encompasses over 20 training modules designed to enhance examiners’ knowledge and skills in procedural and legal topics pertaining to patent examination. In addition, the USPTO has also implemented the *Patent Examiner Technical Training Program (PETTP)* which provides patent examiners with direct access to experts who are able to share their technical knowledge on prior art and industry standards in areas of emerging technologies and established technologies. The PETTP provides an opportunity for communication between patent examiners and the experts who work in the various technologies that are examined throughout the USPTO. This enhanced communication contributes to improving overall patent quality and decreasing patent pendency. The USPTO has also instituted a new program, the Site Examiner Education (SEE) program. This program allows examiners to travel to companies and educational institutions to learn about updates on technology or new technologies and experience how technologies operate in the field.

In the pursuit of improving performance and quality management, the USPTO’s Office of Patent Training (OPT) received recertification for the International Standard ISO 9001:2008 and the Office of Patent Quality Assurance (OPQA) received its first certificate of registration for ISO 9001:2008. The ISO 9001 quality standard is the most widely recognized and established quality management system framework in the world, outlining requirements that provide the foundation for OPQA’s mission and to meet customer expectations and achieve customer satisfaction. One of the quality management principles of ISO 9001 is the continual improvement of overall performance. In achieving ISO 9001:2008 certification by OPQA, the USPTO has ensured that well-defined and documented standards and processes are in place, demonstrating its dedication to providing consistent quality products and services.

In addition, the USPTO has recently adopted new procedures for measuring and improving the quality of patent examination. The new composite quality metric is designed to reveal the presence of quality issues arising during examination, and to aid in identification of their sources so that problems may be remediated by training, and so that the presence of outstanding quality procedures may be identified and encouraged. The composite quality metric is composed of factors that take into account stakeholder comments, including three factors drawn from the USPTO’s previous quality measurement procedure, and four new factors that focus upon data never before acquired and/or employed for quality measurement purposes, for a total of seven factors. The factors that have been modified from previous USPTO procedures measure: (1) the quality of the action setting forth the

final disposition of the application; (2) the quality of the actions taken during the course of the examination; and (3) the perceived quality of the patent process as measured through external quality surveys of applicants and practitioners. The newly-added factors measure: (1) the quality of the examiner's initial search; (2) the degree to which the first action on the merits follows best examination practices; (3) the degree to which global USPTO data is indicative of compact, robust prosecution; and (4) the degree to which patent prosecution quality is reflected in the perceptions of the examination corps as measured by internal quality surveys. Additional information about the new metrics can be found on the USPTO website at [http://www.uspto.gov/patents/init\\_events/qual\\_comp\\_metric.pdf](http://www.uspto.gov/patents/init_events/qual_comp_metric.pdf).

For more information on USPTO's quality improvement initiatives, please see USPTO's Performance and Accountability Report for fiscal year 2012 at: <http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf>.

*128. Could the US please give more detailed information on "Patents for Humanity"? For example, what is the objective of this program? What is the main content of this program? What privileges will be available for the applicants after they participate in this program? What obligations do they undertake? What is the current implementation status of this program?*

**RESPONSE:** *Patents for Humanity* is a voluntary awards competition for patent owners and licensees, which is open to anyone in the world who owns or licenses a U.S. patent. The program recognizes patent owners who apply their patented technology to address humanitarian needs. *Patents for Humanity* advances the Administration's global development agenda by rewarding companies that bring life-saving technologies to underserved people of the world, while showing how patents are an integral part of tackling global challenges.

Each *Patents for Humanity* application must involve technology that is the subject of one or more claims in an issued U.S. utility patent or a pending U.S. utility patent application owned or licensed by the applicant. The program is technology-neutral, meaning applications may be drawn from any field of technology.

Successful *Patents for Humanity* participants receive accelerated processing of select matters at the USPTO on any technology in their portfolio. They will also get recognition of their valuable work at a public awards ceremony.

*Patents for Humanity* is a voluntary program. Being selected for an award does not create any obligations on the recipient.

The application period ended October 31, 2012. Now in the selection phase, awards are expected to be made early next year.

Further information may be found at the following website: [http://www.uspto.gov/patents/init\\_events/patents\\_for\\_humanity.jsp](http://www.uspto.gov/patents/init_events/patents_for_humanity.jsp).

*129. Since the last review, does the US have any new measures to regulate intellectual property rights abuses and to balance the interests of intellectual property right holders and the social and public welfare so as to prevent intellectual property rights abuses from hampering free competition and technology innovation?*

**RESPONSE:** The Federal Trade Commission (FTC) and the Department of Justice (DOJ) develop antitrust policy and enforce the antitrust laws in the United States. The FTC and DOJ recently held a public workshop to explore the impact of patent assertion entity (PAE) activities on innovation and competition and the implications for antitrust enforcement and policy. Section 34 of the America

Invents Act also mandates that the Government Accountability Office (GAO) conduct a study into the consequences of patent litigation by non-practicing entities or patent assertion entities.

**Page94-96 (Para182-188)**

**Questions**

*130. Please explain how USPTO requires applicants/registrant to submit proof of trademark use during trademark application, registration and renewal process. What is the legal requirement for the proof of trademark use? What kind of proof is regarded effective?*

**RESPONSE:** The Trademark Act of 1946, (as amended), requires that, in order to be protected, a trademark, service mark, collective mark or certification mark must ultimately be used in a type of commerce that the U.S. Congress regulates. These types of commerce include interstate, territorial and foreign commerce. Proof of use in commerce is by submission of specimens supporting such use. The timing for a showing of use in commerce depends on the basis under which the application is filed.

There are five bases for filing applications for trademarks and service marks in the United States: (1) use of the mark in commerce regulated by the U.S. Congress; (2) bona fide intention to use the mark in such commerce; (3) priority filing under the Paris Convention; (4) Paris Convention registration; and (5) the Madrid Protocol. U.S. Nationals can only file under the first two bases; foreign applicants can file under all five bases.

Before registration can be effected under the first two bases, the applicant must provide a specimen showing use of the mark in U.S. Commerce regulated by Congress. For use-based applications, the specimen is provided at filing; for intent-to-use applications, the specimen is filed prior to registration with a document supporting an allegation of use of the mark in commerce.

For the other three bases, there is no requirement for specimens to be filed before registration. That is because the owners of these registrations do not need to provide proof of use of the mark in the United States until any of the following occurs: After three years, the registration can be challenged for non-use by a third party; and between the fifth and sixth year of registration (and an additional grace period of 6 months) the registrant must file an affidavit of continuing use. Specimens evidencing use must also be filed every ten years (plus grace period) for the life of the registration.

Examples of acceptable specimens for goods include labels, hang tags, and displays associated with the sale of the goods. For services, acceptable specimens include advertisements, business cards and letterhead. For non-traditional marks such as sound marks and motion marks, the specimen may be in the form of a WAV, MP3, AVI, or MPEG. All documents requiring submission of specimens can be submitted electronically.

*131. According to Section 103 of the US Copyright Act, the objects under copyright protection include compilation and interpretation works, but if a work uses an original work protected by copyright, the protection does not extend to the part of the original work illegally used. Could the United States clarify whether this means that unauthorized translated works in the United States are not protected under the US Copyright Act?*

**RESPONSE:** Under the United States Copyright Act, a copyright owner has the exclusive right to prepare a derivative work based on the copyright work or to authorize others to do so. A derivative work is a work based on or derived from one or more already existing works. One common form of derivative work is a translation of a work into another language. Section 103 of the United States Copyright Act states that the subject matter of copyright includes derivative works, “but protection for

a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such materials has been used unlawfully.” Any derivative work in which the additions, changes, or other modifications represent, as a whole, an original work of authorship is protectable as such. The copyright in a derivative work covers only the additions, changes, or other new material appearing for the first time in the work. It does not extend to any preexisting material and does not imply a copyright in that material. In any case where a protected work is used unlawfully, that is, without the permission of the copyright owner, copyright will not be extended to the illegally used material.

*132. Section 1101 of the US Copyright Act provides protection for music performers, but does not provide protection for other types of performers. Could the United States clarify whether this means that other types of performers (such as the Chinese comic dialogue) in the United States are not protected by the US Copyright Act?*

**RESPONSE:** The United States protects performers’ rights under statutory authorities as well as the common law. Section 1101 of the U.S. Copyright Act prohibits the fixation of a live musical performance without the authorization of the performer. Moreover, other types of performers receive additional protections under certain state statutes and common law. For example, the U.S. Supreme Court, in the case of *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562 (1977), held that a television station was not permitted to broadcast the performance of a fifteen second human cannonball act without the performer’s authorization.

*133. Please provide data on the US IPR enforcement in 2011. For example how many cases of infringements were handled? How many were criminal cases? How many people were charged with criminal liability? How many cases of IPR infringements involved foreigners’ interests?*

**RESPONSE:** Approximately 95 percent of U.S. federal court cases concerning intellectual property are civil; criminal IP prosecutions account for only approximately five percent of total federal intellectual property-related cases. Statistics regarding federal intellectual property criminal cases in Fiscal Year 2011, including the number of criminal investigative matters received by prosecutors, and the number of defendants charged, can be found in the Department of Justice “PRO-IP Act Report for 2011”, available at <http://www.justice.gov/dag/iptaskforce/proipact/doj-pro-ip-rpt2011.pdf>. In FY2011, 215 defendants were charged, and 208 were sentenced. Statistics for recent prior years are available in previous PRO-IP Act reports. These figures include only federal prosecutions, and do not include state prosecutions for trademark counterfeiting or other IP-related crimes, which numbers in the hundreds or thousands.

#### **IV. TRADE POLICIES BY SECTOR**

##### **Page103 (Para12)**

*Tariff rates vary considerably from one tariff line to another and range from zero, for 620 tariff lines, up to 350%, for some tobacco products. The highest tariffs are on tobacco, sugar, peanuts, and dairy products, followed by beef, cotton, and certain horticultural products (such as mushrooms).*

##### **Questions:**

*134. The tariff peaks on tobacco, sugar, peanuts and dairy products have already constituted prohibitive tariffs. Please explain how the US will cut down the tariff peaks to increase market access opportunities in response to the call of the Doha Round negotiations?*



**RESPONSE:** The Doha Development Agenda (DDA) negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point.

**Page103 (Para13)**

*Fill-rates vary significantly from one quota to another and have been particularly low for cotton and high for some dairy and sugar products.*

**Questions:**

*135. Please explain why the fill-rate of cotton is particularly low. What measures will be taken for improvement? If the current import tariff quota for cotton cannot be filled, is there any plan to lift the import limit on cotton?*

**RESPONSE:** U.S. imports of cotton were low in 2010 and only slightly increased in 2011. Additionally, demand for cotton imports is low. U.S. consumption is falling as the U.S. textile industry shrinks and as textile production moves to other countries. Other than country-specific quotas, no special administrative procedures are required for cotton imports under the WTO TRQ.

**Page103 (Para14)**

*However, the price-based safeguard has been applied more frequently.... in many cases the SSG is applied to small quantities such as 4 kg of fresh cheddar cheese or 3 kg of chocolate bars.*

**Questions:**

*136. Please explain why price-based safeguard is used more often than volume-based one?*

**RESPONSE:** The United States automatically applies price-based special safeguards (SSGs) on all products that were subject tariffication in the Uruguay Round. The safeguard rates and trigger prices are published in the tariff schedule of the United States, so that there is transparency as to when the safeguard duty will be applied. The safeguard is applied in this manner for ease of administration and is fully consistent with the provisions of Article 5 of the WTO Agreement on Agriculture, which does not include an injury test. The quantity-based SSG is not automatically applied and requires a decision by the U.S. Government to apply when the trigger is met.

*137. Please explain in detail why SSG is frequently used for small import quantities? Does it mean that the current SSG is not well designed? What measures will be taken for improvement?*

**RESPONSE:** The United States automatically applies price-based special safeguards (SSGs) on all products that were subject tariffication in the Uruguay Round. The safeguard rates and trigger prices are published in the tariff schedule of the United States, so that there is transparency as to when the safeguard duty will be applied. The safeguard is applied in this manner for ease of administration and is fully consistent with the provisions of Article 5 of the WTO Agreement on Agriculture, which does not include an injury test. The quantity-based SSG is not automatically applied and requires a decision by the U.S. Government to apply when the trigger is met.

**Page103 (Para16)**

*For the year ending 30 September 2011, the Export Credit Guarantee Program registered guarantees stood at US\$4.1 billion, mostly for exports of wheat, maize, soybeans and soybean products, and cotton.*

**Questions:**

*138. What is the increase range in terms of value for export competition measures including the*

*Export Credit Guarantee Program in recent years? How will the US gradually reduce the export subsidy elements in all these measures?*

**RESPONSE:** Program utilization by commodity and region is available at the USDA FAS website: <http://www.fas.usda.gov/excredits/Monthly/ecg.html>

*139. Please explain the rules in terms of repayment period and funding channels of existing export credit programs. Do they comply with the modalities of the Doha Round agricultural negotiations?*

**RESPONSE:** The authorizing statute allows for guarantees on credit terms for up to 3 years. By policy the maximum credit term has been reduced from 3 years to 2 years maximum down to 1 year maximum based on the risk of the country.

The Doha Development Agenda (DDA) negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point. The United States is complying and will continue to comply with its commitments under the Uruguay Round Agreement on Agriculture.

**Page104 (Para19)**

*Under the Dairy Export Incentive Program (DEIP) the CCC may provide subsidies (bonuses) for exports of some dairy products... the budgetary outlay for export subsidies under the DEIP in the year ending 30 June 2010 was US\$2.1 million for 15,607 tonnes of butter and butteroil and US\$0.2 million for 1,691 tonnes of cheese.*

**Questions:**

*140. The US has committed to remove all export subsidies in agriculture in the Doha Round negotiations. In view of that, please provide explanations on the resumption and continuous use of export subsidy for dairy products. How does the US assess the implementation of the policy and its impact on agricultural negotiations in the Doha Round?*

**RESPONSE:** The Doha Development Agenda (DDA) negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point. In the interim, the continued operation of export subsidies for U.S. dairy products remains consistent with U.S. WTO commitments.

**Page104 (Para20)**

*About two thirds of aid is for emergencies, a bit less than one third for project aid... Since 2006, the structure of aid has changed noticeably as direct transfers have declined while local purchases and triangular purchases have increased.*

**Questions:**

*141. What is the percentage of cash assistance in the non- emergency food aid? Please explain how the US will raise the proportion of cash assistance so as to minimize the aid in kind?*

**RESPONSE:** The U.S. Government notes that the WTO's report (Table IV.4) appears to be incorrect. The U.S. Government extracted similar information from the WFP's Food Aid Information System, and the tonnages in the WTO report do not match the WFP's data.

Based on the U.S. Government's data for 2010, about one percent of the non-emergency food aid was provided through local and regional procurements. Additionally, the United States has used cash resources to improve food security. The United States has increased its bilateral and multilateral investments in food security since the L'Aquila Summit, where the United States committed to "act with the scale and urgency needed to achieve sustainable

global food security.” Feed the Future, the U.S. Government’s global hunger and food security initiative, is establishing a foundation for lasting progress against global hunger. With a focus on smallholder farmers, particularly women, Feed the Future supports partner countries in developing their agriculture sectors to spur economic growth that increases incomes and reduces hunger, poverty, and undernutrition. Feed the Future is part of the U.S. contribution to broader G8 and G20 commitments to increase investment in agriculture and strengthen global food security. For more information on this Presidential Initiative visit <http://feedthefuture.gov>.

142. *Please explain in detail the sources of direct transfer, local purchase and triangular purchase of the donating food.*

**RESPONSE:** Based on the U.S. Government’s data, food was purchased from U.S. suppliers, as well as suppliers in Central America, Sub-Saharan Africa, and Asia.

143. *The modalities in the Doha Round agriculture negotiations contain strict rules on food aid, especially non-emergency food aid. Please explain whether the food aid practices in the US can meet the rules.*

**RESPONSE:** The Doha Development Agenda (DDA) negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point.

**Page105 (Para22)**

*Outlays for SNAP and other domestic food-aid programmes have been increasing steadily over the past few years, rising from US\$45.9 billion in FY 2004 to US\$94.9 billion in FY 2010. Most of these funds go towards providing vouchers for purchases of food in retail outlets (including imported as well as domestic products) by people and families with low incomes.*

**Questions:**

144. *What is the definition of “people and families with low incomes”?*

**RESPONSE:** Income eligibility standards for the Supplemental Nutrition Assistance Program are set by law. Gross monthly income eligibility limits are set at 130 percent of the poverty level for the household size. Net monthly income limits are set at 100 percent of the poverty level.

**Page105 (Para23)**

*Payments are not linked to production or prices, except for some limits to planting fruits, vegetables, and wild rice, although a pilot project has been developed to allow planting of selected vegetables for processing in seven States for the 2009-12 crop years.*

**Questions:**

145. *Please explain why fruits, vegetables and wild rice are exceptions?*

**RESPONSE:** These restrictions have been a long-standing feature of U.S. policy and have been in place since the 1990 Farm Bill.

146. *Please explain the details of the pilot project for 2009-2012 crop years. Please provide proof that this is in line with the WTO rules on direct payment.*

**RESPONSE:** The Planting Transferability Pilot Program (PTPP) was introduced under the 2008 Farm Act. Under the program, crop producers in seven Upper Midwest states (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin) may plant select vegetables for processing with an acre-

for-acre loss in the Direct and Countercyclical Program (DCP), rather than the market value loss under regular fruit, vegetable, and wild rice (FAV) planting restrictions. Eligible PTPP acreage is capped at specific levels for each participating state, but the overall total cannot exceed 75,000 annually. Based on data from the 2009-2010 period, the average number of acres planted under the program equaled 13,075 annually, about 17 percent of total allowable acres. This program is part of the regulations to implement the Direct Payments program, which has been notified under Annex 2 of the Agreement on Agriculture.

**Page105 (Para 24)**

*Farmers with base acres for peanuts and upland cotton have been the most consistent recipients of counter-cyclical payments...*

**Questions:**

147. *What are the amounts of counter-cyclical payments for upland cotton and peanut producers respectively in recent years? What are the impacts of the payments on the production and price of these two products?*

**RESPONSE:** Countercyclical payments are reported as non-product specific amber box because payments are based on fixed historical area and yields, not current production. Countercyclical payments do not require production of any specific crop, or any production at all, for a recipient to receive a payment. Therefore payments on historical base acres of upland cotton and peanuts do not necessarily go to current producers of those commodities, and the United States is unable to provide data on payments to producers of a specific commodity. The United States refers China to its recent domestic support notifications to the Committee on Agriculture for total outlays.

148. *Counter-cyclical payment is correlated to the price of a single product. Does it fall under the yellow box for specific products? Please explain in which category the US put it in its recent notification to the WTO. Please also provide justification.*

**RESPONSE:** Please see the answer to the previous question.

**Page106 (Para 27)**

*The ACRE programme remains in operation as an alternative to counter-cyclical payments for producers of cereals, oilseeds, upland cotton, peanuts, and some pulse crops.*

**Questions:**

149. *ACRE subsidy is calculated on the basis of state or farm-level revenues, and is related to the prices and output of related products. Does it fall under the yellow box for specific products?*

**RESPONSE:** The United States notifies ACRE program payments as product-specific amber box payments.

150. *The Doha Round calls for slash of trade-distorting domestic support. However, ACRE was implemented after the 2008 Agricultural Act came into effect. Is this a setback in the course of trade liberalization?*

**RESPONSE:** The ACRE program was implemented as part of the 2008 Farm Bill. The program was designed as an alternative to the countercyclical payments program. A producer who elects the ACRE program is not eligible for countercyclical payments and must also take a reduction in direct payments and a reduction in the loan rate under the marketing assistance loan program. Payments under the program have been small, and the United States remains well within its commitments on amber box support.

**Page107 (Para 28)**

*Insurance coverage is available for over 100 different crops under a wide variety of insurance policies covering production, price and/or revenue risks, under the Federal Crop Insurance Program. Insurance coverage is provided by the private sector at subsidized rates under terms set by the Federal Crop Insurance Corporation and administered by the USDA Risk Management Agency (RMA). Most of the policies available from the RMA are for crops, although livestock policies are available for cattle, pigs, lambs, and milk to insure against declining prices or differences between sale price and feed costs, and policies are available for forage, grazing, and rangelands. The subsidies provided by USDA are on producer premiums paid to private insurance companies for providing the insurance policies, as well as on a portion of the companies' operating costs and underwriting losses. The premium subsidy to producers was US\$4.7 billion in CY 2010 and is expected to be about US\$7.2 billion for CY 2011. The value of crops protected by insurance also increased, from US\$67 billion in 2007 to \$114 billion in 2011, representing about 80% of area planted to principal crops.*

**Questions:**

151. *Which types of agriculture insurances enjoy US government subsidies? How are the insurance types determined to be eligible for the subsidies? How is the proportion for subsidy determined for each type of the insurance?*

**RESPONSE:** The amount of subsidy available for a given insurance plan or policy is generally specified within the Federal Crop Insurance Act (Act), with the exception of livestock insurance policies in which case the Federal Crop Insurance Corporation (FCIC) Board of Directors has latitude within certain constraints of the Act to establish. The amount of subsidy for each insurance plan may be found on the RMA website using the Actuarial Information Browser tool at the following URL: <http://webapp.rma.usda.gov/apps/actuarialinformationbrowser/>.

152. *How did the United States decide agricultural insurance rates and terms? What is the role of the government in it? Is the rate of subsidized insurance pure risk rate (excluding operating costs)? Does it comply with the principle of principal guaranteed with meagre profit?*

**RESPONSE:** The Federal Crop Insurance Act requires the RMA to set premium rates in a manner to cover expected losses and a reasonable reserve. RMA periodically reviews and publishes premium rates annually for the administration of the federal crop insurance program. The companies are paid an administrative and operating subsidy separately under the Standard Reinsurance Agreement (SRA) as compensation for administering the policy. In addition, any “profits” from the sharing of risk is also provided within the terms of the SRA.

153. *In regard to reinsurance and risk diversification of major natural disasters, how does the US government respond to risks caused by major natural disasters to agricultural production and agricultural insurance? Does the government support risk diversification of major agricultural disasters through reinsurance or directly sharing agricultural insurance liabilities?*

**RESPONSE:** The primary safety net for agricultural production disasters is the federal crop insurance program. The program is delivered by private insurance companies through a Standard Reinsurance Agreement (SRA) between the companies and the government (FCIC). The terms of reinsurance are specified in the SRA which can be found on the RMA website at <http://www.rma.usda.gov/pubs/ra/>. For crops not insured, the government does provide additional assistance through the Non-Insured Crop Assistance Program administered by the Farm Service Agency.

**Page107-108 (Para 30-31)**

*The program supports U.S. sugar prices above comparable levels in the world market.... Federal milk marketing orders (FMMOs) set minimum prices that processors or manufacturers are required to pay for fluid milk in the ten regions covered by the system.*

**Questions:**

154. *The US maintains high tariff and high subsidy policies for dairy products and sugar. Please explain the impact of these policies on the prices of dairy products and sugar.*

**RESPONSE:** The United States recognizes the market price support component of its dairy and sugar policies, which are compliant with our WTO and other international trade commitments. For more information on U.S. domestic price support for sugar and dairy, including the applied administered prices, please see the U.S. Domestic Support notifications to the WTO Committee on Agriculture, most recently G/AG/N/USA/89.

**Page121 (Para 68)**

*At end-March 2012, foreign banks from 57 countries and territories had offices in the United States....*

**Questions:**

155. *What is the US regulatory authorities' attitude towards mergers and acquisitions and other financial operations by Chinese financial institutions in the United States?*
156. *Comprehensive Consolidated Supervision (CCS) is required for each Chinese bank at every time when it applies to set up a branch in the United States, and the approval process is complex and time-consuming. Why does the US authority not re-use the results of the CCS assessment already conducted to simplify procedures and speed up the approval process?*

**RESPONSES FOR QUESTIONS 155 & 156:** Under the Bank Holding Company Act, the Board of Governors of the Federal Reserve System ("Board") must find comprehensive consolidated supervision ("CCS") when approving a merger or acquisition involving a foreign bank. See 12 U.S.C. § 1842(c)(3)(B). The Board found CCS for Industrial and Commercial Bank of China Limited on May 9, 2012. See: <http://www.federalreserve.gov/newsevents/press/orders/order20120509a.pdf>

Under the Board's Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in the Board's Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of

Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is determinative, and other elements may inform the Board's determination. Under U.S. law, the Board's CCS determination is specific to the particular banking organization applying to acquire a U.S. bank.

*157. The Foreign Account Tax Compliance Act (FATCA) unilaterally requires non-US financial institutions including Chinese banks to sign an agreement with the US government to fulfil the disclosure of information, to withhold taxes and fulfil other obligations in respect of the "US account". Otherwise the related income directly generated in the United States of the bank is subject to a 30% withholding tax. For this purpose, the information system renovation alone will have Chinese banks to pay a very high cost. Does the United States intend to consider a more reasonable way to achieve the policy purposes behind this Act? Can it exempt Chinese banks from the withholding tax obligation?*

**RESPONSE:** The Administration is committed to continued cooperation with other governments in addressing offshore tax evasion, and the Treasury Department is engaged in a dialogue with interested foreign governments regarding the implementation of FATCA. The proposed regulations released in February reflect consideration of the comments received and reduce compliance burdens in a manner consistent with the goal of addressing the misuse of foreign accounts in order to evade U.S. taxation. Treasury and the IRS will continue to work closely with businesses and foreign governments to implement FATCA in a manner that reasonably balances the administrative burdens with the compliance goals. A blanket exemption for Chinese banks from obligations under FATCA, however, would be inconsistent with the purposes of the statute.

*158. Please provide the number of the US banks with a foreign stake, the stake amount and equity ratio, and also the situation of foreign-owned banks and foreign bank branches in the United States; especially the situation since 2010.*

**RESPONSE:** Foreign owned or controlled banking institutions operating in the United States are listed in detail at: <http://www.federalreserve.gov/releases/iba/201209/bytype.htm>.

*159. Could the United States provide a comprehensive summary of the access and regulatory requirements on foreign equity participation in the US banks? How is the implementation status of these access and regulatory requirements?*

**RESPONSE:** Under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*), any company, including a foreign bank, that seeks to acquire a controlling interest in a U.S. bank must receive the

prior approval of the Federal Reserve Board. A controlling interest exists if the company seeks to acquire 25 percent or more of any class of voting securities of the bank or seeks to control a majority of the board of directors of the bank. In addition, the Federal Reserve's approval must be received before a company exercises a controlling influence over the bank. Whether a "controlling influence" exists is subject to the facts and circumstances of each case. See the Board's Policy Statement of September 22, 2008. <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080922b1.pdf>.

In addition, the Change in Bank Control Act (12 U.S.C. 1817(j)) generally requires any person (including a natural person or a company) that seeks to acquire a noncontrolling interest of between 10 percent and 24.9 percent of the voting shares of a bank or bank holding company to file prior notice with the appropriate federal banking agencies before making such acquisition.

Similar rules apply to the acquisition of interests in a savings association or a savings and loan holding company.

The following is an indicative list of the changes to the worldwide organizational structure of bank holding companies (BHCs), savings and loan holding companies (SLHCs), member banks, Edge and agreement corporations, and to the U.S. operations of foreign banking organizations (FBOs) that need to be reported to the Federal Reserve Board:

- information about the Reporter itself;
- acquisition of interests in BHCs, SLHCs, FBOs, banks organized under U.S. law and savings associations;
- acquisition of interests in nonbanking companies that are owned by BHCs, SLHCs, and non-qualifying FBOs, and nonbanking companies conducting business in the United States that are owned by qualifying FBOs;
- transfer, sale, or liquidation of such interests;
- merger of companies;
- internal reorganization;
- commencement of new activities;
- certain merchant banking or insurance company investments establishment in the United States of branches, agencies, and representative offices of FBOs and activities through managed non-U.S. branches;
- opening, closing, or relocation of foreign branches of member banks, BHCs, or Edge or agreement corporations and of their foreign subsidiaries; and
- opening, acquisition, sale, closing or relocation of domestic branches of U.S. subsidiary depository institutions of top-tier BHCs or SLHCs, of unaffiliated state member banks, and of Edge and agreement corporations.

See: [http://www.federalreserve.gov/reportforms/slhc/FRY10\\_201212\\_i.pdf](http://www.federalreserve.gov/reportforms/slhc/FRY10_201212_i.pdf).

160. *Please elaborate on the progress of the implementation of the "Basel III" by the US regulatory authorities, and describe the measures taken and main considerations behind them.*

**RESPONSE:** In June 2012, the Federal Reserve, along with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (banking agencies) issued a notice of proposed rulemaking, titled *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action*, would apply to all depository institutions, bank holding companies with total consolidated assets of \$500 million or more,



and all savings and loan holding companies (collectively, banking organizations). Consistent with the international Basel framework, this NPR would:

- increase the quantity and quality of capital required by proposing a new minimum common equity tier 1 ratio of 4.5 percent of risk-weighted assets and a common equity tier 1 capital conservation buffer of 2.5 percent of risk-weighted assets, and raising the minimum tier 1 capital ratio from 4 percent to 6 percent of risk-weighted assets;
- revise the definition of capital to improve the ability of regulatory capital instruments to absorb losses;
- establish limitations on capital distributions and certain discretionary bonus payments if additional specified amounts, or "buffers," of common equity tier 1 capital are not met; and
- introduce a supplementary leverage ratio for internationally active banking organizations based on the Basel leverage standard.

See: <http://www.federalreserve.gov/newsevents/press/bcreg/20120808a.htm>

The banking agencies simultaneously released two notices of proposed rulemakings that would implement changes to risk-weighted assets consistent with changes to the Basel framework as well as the Dodd-Frank Act.

The comment period was subsequently extended period until October 22, 2012 and the Board is drafting a final rule based on the comments received.

**Page122 (Para72 and 73)**

*The Act does not introduce market access or national treatment limitations, but establishes a new and comprehensive regulatory framework and extends regulation over new markets, entities, and activities...As of 1 June 2012, 110 of the rulemaking requirements (27.6%) have resulted in finalized rules; rules have been proposed, but not yet finalized for another 144 (36.2%); and rules have not yet been proposed for the remaining 144 (36.2%).*

**Questions:**

161. *Please comment on the problems existing in the financial regulatory system and the implementation results of the Act.*

**RESPONSE:** A comprehensive list of ongoing rulemaking under the Act can be found at : <http://www.stlouisfed.org/regreformrules/>

162. *How will the the regulatory system set up according to the Act affect the establishment of branches of foreign securities institutions in the United States, and foreign investors to invest in the US capital markets? Prior to the completion of all supporting legislation, are there any transitional arrangements in place?*

163. *Please describe related conditions, regulatory requirements and approval procedures for foreign securities services providers' equity participation in the US asset management institutions or for the establishment of asset management institutions in the United States.*

**RESPONSE TO QUESTIONS 162 & 163:** The following citation references all the rules that the Commission has proposed or adopted in connection with the Dodd-Frank Act: <http://www.sec.gov/spotlight/dodd-frank.shtm>. That Act contains more than 90 provisions that require SEC rulemaking, and dozens of other provisions that give the SEC discretionary rulemaking authority. Of the mandatory rulemaking provisions, the SEC has proposed or adopted rules for more than three-quarters.

To date, the Commission has put in place a foundation for a framework that will support an entirely new regulatory regime designed to bring greater transparency and access to the securities-based swaps market, adopted rules that will result in increased oversight and transparency around hedge fund and other private fund advisers, gave investors a say-on-pay advisory vote regarding executive compensation and established a whistleblower program which offers incentives for individuals with information regarding securities law violations to come forward. The SEC also has proposed a series of rules designed to improve the practices of credit rating agencies. SEC staff from the Division of Investment Management summarized U.S. regulation of investment advisers in the following April 2012 report: [http://www.sec.gov/about/offices/oia/oia\\_investman/rplaze-042012.pdf](http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf)

*164. Does the Act have certain regulatory requirements on the US investors trading foreign futures, options and other derivatives? If yes, please describe the regulatory requirements concerning income from foreign transactions.*

**RESPONSE:** On November 20, 2012 the Treasury issued a final determination exempting foreign exchange swaps and foreign exchange forwards from the definition of "swap" under the Commodity Exchange Act ("CEA"). On October 28, 2010, the Treasury previously solicited public comment on a wide range of issues relating to whether foreign exchange swaps and foreign exchange forwards should be exempt from the definition of the term "swap" under the CEA (75 FR 66426). The notice of proposed determination seeking to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term "swap" under the CEA was published on May 5, 2011 (76 FR 25774).

The final rule in its entirety can be found at: [http://www.stlouisfed.org/regreformrules/Pdfs/2012-11-20\\_Treas\\_Final\\_determination\\_foreign\\_swaps\\_exempt.pdf](http://www.stlouisfed.org/regreformrules/Pdfs/2012-11-20_Treas_Final_determination_foreign_swaps_exempt.pdf)

**Page122 (Para 74)**

*Section 173 of the Dodd-Frank Act (Access to United States financial market by foreign institutions) introduces modifications to sections 7(d)(3) and 7(e)(1) of the International Banking Act of 1978 and to section 15 of the Securities Exchange Act of 1934. The amended International Banking Act now explicitly requires the Board of Governors of the Federal Reserve System, when considering an application for establishment of a U.S. office of a foreign bank that presents a risk to the stability of the United States financial system, to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. The new amendments also allow the Board to order the termination of the activities of U.S. offices of such foreign banks in the absence of these criteria.*

**Questions:**

165. *What is the basis for the United States to judge that a foreign institution impacts the stability of the US financial system?*
166. *What is the legal basis and what is the procedure of the US investigations into the financial regulatory system of a country of origin? What is the content of the investigation?*
167. *How to determine whether the country of origin has taken any measure to eliminate such risk and what measures have been taken?*

**RESPONSE FOR QUESTIONS 165-167:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor generally may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36; <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>. Discussion of the financial stability criteria specific to an application by a foreign bank to establish a U.S. office may be found at Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012), at page 16; <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf>.

**Page124 (Para82)**

*According to Section 619 of the Dodd-Frank Act, investments made "for the trading account" of a covered banking entity would be deemed proprietary trading and therefore prohibited. However, there are exemptions.*

**Questions:**

168. *The Volcker rule still has some impact on the proprietary trading of foreign banks with a branch in the United States. Please describe the implementation status of the rule.*

**RESPONSE:** The OCC, Board, FDIC, SEC, and CFTC (the Agencies) proposed rules to implement section 619 of the Dodd Frank Act, known as the Volcker Rule. The comment periods on the proposed rules have closed, and the Agencies are currently analyzing the comments that were submitted, including comments regarding the application of the rule to non-U.S. banking entities, and are working to develop a final rule. See: [http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7\\_OCC-FRS-FDIC-SEC\\_Prohibitions\\_restrictions\\_on\\_proprietary\\_trading.pdf](http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7_OCC-FRS-FDIC-SEC_Prohibitions_restrictions_on_proprietary_trading.pdf)

**Page126 (Para 90)**

*Under Section 113 of the Dodd-Frank Act, the FSOC may determine that a U.S. or a foreign non-bank financial company should be subject to supervision by the Board of Governors of the Federal Reserve System and to prudential standards with respect to financial activities if the company's material financial distress or the nature or mix of its activities could pose a threat to the financial stability of the United States.*

**Questions:**

169. *How does the Board of Governors of the Federal Reserve System regulate foreign non-banking financial companies that may threaten the financial stability of the United States?*

**RESPONSE:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor generally may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36; <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>. Discussion of

the financial stability criteria specific to an application by a foreign bank to establish a U.S. office may be found at Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012), at page 16; <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf> .

**Page127 (Para 95)**

*Section 722(d) provides that the CFTC's jurisdiction will apply to activities outside the United States if those activities have "a direct and significant connection with activities in, or effect on, commerce of the United States".*

**Questions:**

170. *Please describe the CFTC's criteria to determine whether an activity has "a direct and significant connection with activities in, or effect on, commerce of the United States".*
171. *How does the CFTC regulate foreign swaps or securities-based swaps activities that have "a direct and significant connection with activities in, or effect on, commerce of the United States"?*

**RESPONSE TO QUESTIONS 170 & 171:** Section 722(d) of the Dodd-Frank Act, amending § 2(i) of the Commodity Exchange Act ("CEA"), provides that swaps provisions of the CEA shall apply to activities outside the United States that have a "direct and significant" connection with activities in, or effect on, commerce in the United States or when they contravene CFTC rulemaking.

Proposed Guidance:

The CFTC has issued Proposed Interpretive Guidance, setting forth its interpretation of section 2(i) of the CEA as applicable to Title VII's swap provisions to activities outside the United States (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-16496a.pdf>). Under the Proposed Guidance, the issue of whether swap activities outside the United States have the requisite "direct and significant" connection with activities in, or effect on, U.S. commerce within the meaning of CEA § 2(i) depends on the nature of the counterparties involved in those swap activities. Consequently, the CFTC proposed a definition of the term "U.S. person," which encompasses persons located within the United States and those located outside the United States but whose swap activities, nonetheless, have a "direct and significant" effect, or connection with, the United States within the meaning of CEA section 2(i). Therefore, the "U.S. person" definition helps to identify transactions or activities that - individually or in the aggregate - satisfies the jurisdictional nexus of CEA § 2(i).

Assuming that such nexus is satisfied, in conjunction with the satisfaction of the relevant definitional tests promulgated by the CFTC under its joint rulemaking with the SEC, firms are required to register with the CFTC as either swap dealers ("SDs") or major swap participants ("MSPs"). Under the Proposed Guidance, SDs and MSPs, once registered, are required to comply with all of the requirements applicable to SDs and MSPs for all of their swaps transactions. Such requirements are categorized as: (i) Entity-Level Requirements: capital adequacy, chief compliance officer, risk management, swap data recordkeeping, swap data reporting, and physical commodity swaps reporting; and (ii) Transaction-Level Requirements: clearing and swap processing, margining and segregation for uncleared swaps, trade execution, swap trading relationship documentation, portfolio reconciliation and compression, real-time public reporting, trade confirmation; daily trading records, and external business conduct standards.

Proposed Exemptive Order:

Separately, the CFTC has issued a Proposed Exemptive Order pursuant to section 4(c) of the CEA (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/20>

[12-16498a.pdf](#)). The Proposed Exemptive Order would permit non-U.S. SDs and non-U.S. MSPs to delay compliance with certain Entity-Level Requirements of the Dodd-Frank Act and the CFTC's regulations, subject to certain conditions.

With respect to relief under the Proposed Exemptive Order, non-U.S. registrants would be permitted to delay compliance with most of the Entity-Level Requirements until July 2013, provided that they: file an application with the National Futures Association ("NFA") to register as a SD/MSP and, within 60 days of filing a registration application, file with the NFA a compliance plan detailing good faith adherence with the applicable Entity-Level and Transaction-Level Requirements under the CEA.

This issue is a subject of a joint final rule and guidance for further defining the terms "swap," "security-based swap," and "security-based swap agreement", regulation of "mixed swaps" and security-based swap agreement recordkeeping. See: <http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2012-18003>

## **PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT**

### **Page 6 (Para 9)**

*Like the predecessor 2004 model BIT, the 2012 model BIT continues to provide strong investor protections while preserving the government's ability to regulate in the public interest. Finalizing the updated model BIT has enabled the United States to advance its ongoing BIT negotiations with partners such as China, India, and Mauritius, and to consider launching additional BIT negotiations with other potential partners.*

### **Questions:**

172. *What are the major changes to the 2012 model BIT if compared to its predecessors?*

**RESPONSE:** The 2012 Model BIT maintains language from its immediate predecessor, the 2004 Model BIT, in particular that text's carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest. The Administration did however make targeted changes to the 2004 text to advance three policy objectives: (1) enhancing transparency and public participation; (2) strengthening protection of labor and the environment; and (3) enhancing disciplines to address challenges posed by State-led economies. Information about specific revisions made to the Model with respect to each of these objectives is available at:

<http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

173. *How does the United States look at the identity of the three major operators of China Mobile, China Telecom and China Unicom? Has the US government set special negotiation principles and policies for state-owned enterprises or state-controlled enterprises in BIT negotiations?*

**RESPONSE:** The United States has a longstanding policy of welcoming foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy.

The U.S. Model BIT contains a number of tools to address the challenges posed by State-led economies. Revisions to the Model BIT in 2012 sought to enhance these tools through new provisions that: (1) discipline the imposition of domestic technology requirements; (2) ensure

opportunity for participation in standards-setting; and (3) clarify the application of BIT obligations to state-owned enterprises and other entities exercising delegated government authority. Additional information about these and other revisions in the 2012 Model BIT text can be found at: <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

**Page9 (Para 20)**

*The United States is firmly committed to putting federal finances on a sustainable trajectory. The Budget Control Act, passed in August 2011, was a significant first step in this direction, committing the United States to US\$2.1 trillion in deficit reduction over the next 10 years. The Administration's FY2013 Budget proposal would reduce the deficit by an additional US\$2.8 trillion over the next decade, cutting the deficit in half as a share of the economy and putting the debt on a declining path by the middle of the decade. By FY2018, the budget deficit would be less than 3% of GDP, the debt-to-GDP ratio would be on a declining path, and the primary deficit would be eliminated, so that spending is no longer adding to the national debt.*

**Questions:**

*174. The United States has adopted a series of measures to reduce government debt. While this is conducive to the long-term development of the economy, in the short term it may bring fiscal tightening effect, result in fluctuations in the economy and affect the economic recovery process. How Will the US government balance reducing the debt ratio in the long term and maintaining stable economic growth in the short term?*

**RESPONSE:** The United States is firmly committed to putting Federal finances on a sustainable trajectory. The Obama Administration is committed to a deficit reduction plan that would support the recovery in the near term, while restoring fiscal sustainability including reducing the debt to GDP ratio through a balanced approach to medium term deficit reduction.

**Page20 (Para 84)**

*During their November 2011 Summit meeting, President Obama and EU leaders established a High Level Working Group on Jobs and Growth (HLWG) and charged it with identifying and assessing options for generating new transatlantic trade and investment that would support job creation and growth. The U.S. government and the European Commission are working internally, with domestic stakeholders, with legislators, and with each other to assess potential challenges for a negotiation, with the aim of developing final recommendations by the end of the year for generating new transatlantic trade and investment in support of increased exports and jobs.*

**Questions:**

*175. Could the United States provide more information on the above-mentioned HLWG?*

**RESPONSE:** The HLWG is continuing its work to identify potential ways forward for the U.S.-EU trade relationship. The Working Group needs to do additional work on several issues before it will be ready to issue final recommendations. The date on which the Working Group will issue its final report is still under consideration.

**Page 25 (Para 112)**

*In August 2011, the United States and Israel finalized a work plan that addresses the remaining barriers to bilateral trade, including in the areas of agriculture and services. As initial steps under the work plan, the two sides agreed to pursue negotiations towards implementation of a Mutual Recognition Agreement for assessing conformity in telecommunications equipment and to facilitate trade by reviewing existing customs procedures and regulations. The two sides also made progress on a number of market access issues related to standards, customs classification, and technical regulations.*

**Questions:**

176. *Please briefly describe the contents of the bilateral Mutual Recognition Agreement reached with Israel concerning telecommunications equipment. Are there any provisions of reservations?*

**RESPONSE:** The U.S.-Israel MRA has not yet entered into force. Once both parties take the steps necessary for the agreement to enter into force, the United States will notify the WTO consistent with its WTO obligations. More information including a copy of the text of the agreement can be found at the following website: <http://gsi.nist.gov/global/index.cfm/L1-7/L2-35/A-665>

**Page 34 (Para 158)**

*A testament to the WTO's important negotiating role is the landmark 2011 agreement to revise the text of the WTO Government Procurement Agreement and expand the procurement that it covers, which was successfully concluded last year.*

**Questions:**

177. *In regard to government procurement entities, we noted that in addition to projects of central government departments, sub-central government entities (states) and other entities (government holding companies), telecommunications projects initiated by rural infrastructure services departments are also covered by the GPA. Please explain the reason and relevant considerations.*

**RESPONSE:** The coverage that the United States offered in the revision of the GPA was based on negotiations with other GPA Parties.

**PART III: OTHER QUESTIONS**

*As early as in 2004, China and the United States began negotiations on the recognition of China's market economy status. In the past 8 years, although the United States has repeatedly pledged to resolve this issue as soon as possible, it failed to take concrete actions.*

**Questions:**

178. *Why does the US delay its recognition of China's market economy status? What is the US plan in respect of "recognizing China's market economy status as soon as possible"?*

**RESPONSE:** China's status as a non-market economy can only be reevaluated by Commerce in the context of an antidumping proceeding and in accordance with the relevant statutory guidelines, based upon a formal request made or supported by the Government of China. Commerce has not received such a request since 2006. In 2006, Commerce determined that, despite many positive economic reforms, China remained a non-market economy for purposes of the U.S. antidumping law. Commerce determined that there were significant areas of China's economy where fundamental reforms were incomplete and that deeply rooted problems remained, for example, with respect to property rights, the rule of law, and the government's role in resource allocations.

A review of China's non-market economy country status, as in the case of all such reviews, would involve a comprehensive, fact-based analysis of publicly available, expert, third-party sources concerning all aspects of China's economy and ongoing economic, legal, and institutional reforms. The public and all interested parties would have an opportunity to comment on any aspect of China's economy or ongoing reforms; they would have full access to all information on which Commerce based its determination, and Commerce would hold a public hearing, if requested, to provide the public and interested parties an opportunity to raise any matter of concern with the decision-maker.

**Chinese export of poultry to the US**

*In September 2010, WTO ruled that China won the case of United States — Certain Measures Affecting Imports of Poultry from China. However, the US has not yet taken any substantial measure for improvement. According to OIE standards, China's cooked poultry and raw poultry produced in epidemic-free areas are safe. Therefore, the US shall immediately resume import of cooked poultry from China and lift the ban on importation of chilled poultry from epidemic-free areas in China in accordance with the WTO ruling and OIE standards.*

**Questions:**

*179. Please explain in detail the timetable of the US to resume import of cooked poultry and to lift the ban on importation of chilled poultry from epidemic-free areas in China.*

**RESPONSE:** For cooked poultry (poultry slaughtered in a country already deemed equivalent by the Food Safety and Inspection Service (FSIS) and then processed in China), FSIS will permit China to list establishments and export processed poultry products produced from eligible sources to the United States under the existing rule after FSIS completes an on-site audit of China's facilities and issues a final report that does not identify any serious issues of concern. FSIS has proposed sending a team to China at the end of January 2013 to conduct the audit.

For fresh/frozen or raw poultry of Chinese origin, FSIS will be able to move forward with the rulemaking phase to add China to the list of countries eligible to export Chinese-origin poultry to the United States after successful completion of the FSIS audit of the slaughter inspection system and completion of a final report.

China must also fulfill the necessary poultry disease-related criteria in order to export fresh/frozen or raw poultry meat and meat products to the United States. The poultry disease regionalization evaluation process and subsequent rulemaking must be completed before fresh/frozen or raw poultry products from specific zones in China can be exported to the United States, regardless of FSIS's equivalence determination. The Animal and Plant Health Inspection Service (APHIS) recently completed an on-site evaluation of China's poultry disease regionalization request for a part of Shandong province. An initial report of the findings of the on-site evaluation is expected in early 2013.

**Chinese export of aquatic products to the US**

*In 2007, China and the US agreed on the principle of "lifting ban on pilot basis followed by complete ban-lifting" to address the US automatic detain of 4 types of aquatic products from China. With joint efforts, 14 Chinese enterprises have been freed from the automatic detain.*

**Questions:**

*180. Could the US please explain in detail the timetable for further steps to lift the ban till the final elimination of the measure?*

Import Alert 16-131 Detention Without Physical Examination of Aquacultured Catfish, Basa, Shrimp, Dace, and Eel from China- Presence of New Animal Drugs and/or Unsafe Food Additives can be found at: [http://www.accessdata.fda.gov/cms\\_ia/importalert\\_33.html](http://www.accessdata.fda.gov/cms_ia/importalert_33.html)

On June 28, 2007, FDA imposed a countrywide import restriction on all farm-raised catfish, basa, shrimp, dace (related to carp), and eel from China (Import Alert 16-131). FDA is concerned about long-term exposure as well as the possible development of antibiotic resistance. FDA is detaining these products at the border until the shipments are proven to be free of residues from drugs that are



not approved in the United States for use in farm-raised aquatic animals. The import restrictions are intended to last as long as needed. In July 2008, FDA auditors conducted an on-site review of the General Administration of Quality Supervision, Inspection and Quarantine's (AQSIQ) inspection system of processors of aquacultured products currently under the FDA import restriction. Thirteen establishments were evaluated during the course of the audits to determine if the firms demonstrated an ability to consistently produce a compliant product with respect to the control of aquaculture drugs, whether a suitable traceback system was in place, and whether significant violations in areas other than the control of aquaculture drugs existed. As a result of the comprehensive review, the firms audited were exempted from the FDA import restrictions. Meanwhile, other Chinese processors of aquaculture products listed on the Import Alert 16-131 are still under the FDA import restrictions, as they have to provide evidences (i.e., testing for residues of an unapproved animal drug) that their products offered or intended for the U.S. market comply with FDA requirements.

Although the FDA was able to exempt those thirteen establishments after the audit, the FDA auditors concluded that Chinese inspectors failed to follow the proper inspection procedures and regulatory policies pertaining to potential seafood hazards, particularly unapproved animal drug hazards in seafood products of aquaculture origin. FDA is committed to working together with its Chinese partners on the issues raised during the on-site review in a cooperative and constructive manner through training and technical assistance.

FDA continues to work with AQSIQ to address residue issues in aquacultured seafood from China. In September 2011, FDA and AQSIQ held a joint workshop in China on aquaculture food safety and prevention techniques targeted at AQSIQ regulators and the seafood industry. A team of FDA aquaculture experts returned to China (Shantou) on November 27-29, 2012 to engage AQSIQ and CIQ in a 2-day workshop and information exchange followed by a 1-day technical working group meeting. Both sides agreed to engage in a process of continued dialogue and information exchange to facilitate assessment of the AQSIQ system for aquaculture safety, including a recently implemented on-farm supervision program targeted at control of unapproved drug use in China.

### ***Chinese export of horticultural products to the US***

*Since 1990s, Chinese export of horticultural products to the US has always encountered quarantine barriers. China has followed the US requirements to provide documentation for quarantine analysis, but the progress is still protracted on the US side.*

#### **Questions:**

*181. Could the US please explain in detail the timetable for completing the quarantine process for apple, pear, miniascape and phalaenopsis seedling, and also the timetable for release of the draft regulation on import of Asian pear from China?*

**RESPONSE:** The U.S. promulgates import requirements for foreign-origin fruits and vegetables and plants in media in a science-based manner in accordance with U.S. plant health regulations, the U.S. Administrative Procedures Act, and international obligations. Due to the inter-active nature of the U.S. process, and the need for cooperation from Chinese regulatory counterparts, we are not able to provide a timeframe for when the regulatory process will be completed. With regard to Chinese-origin Asian pears, the proposed rule was promulgated in December 2011 and the work plan was initialled by both the United States and China in September 2012. We anticipate that the final rule will be published and the work plan formally signed in the near future.

### **The US mandatory inspection of catfish and catfish Products**

*In March 2011, the US Food Safety and Inspection Service of the Department of Agriculture drafted the Mandatory Inspection of Catfish and Catfish Products (G/SPS/N/USA/2171), putting catfish and its products under the regulation of Federal Meat Inspection Act. China considers that the US practice lacks sufficient justification, and certain provisions of the regulation are not consistent with the SPS Agreement of the WTO.*

**Questions:**

182. *Please explain the current status of the regulation, and provide further explanation based on the comments made by China in 2011.*

**RESPONSE:** The USDA published a proposed rule on February 24, 2011, notified to the WTO SPS Committee, and secured comments until the June 24, 2011 closing date. USDA is currently reviewing the comments. When the catfish inspection program rules are issued in final form, implementation dates for key provisions will be specified and notified to the WTO SPS Committee as an addendum to the original notification.

**The US residual tolerance standard on freshwater fish**

*In 2011, the US set a residual tolerance of bispyribac-sodium (0.01ppm) on skin and inside of freshwater fish. It is learnt that the US EPA set the tolerance of bispyribac-sodium at 0.02 mg/kg for kernel, straw and processed products, and the residual tolerance for ruminant and poultry is not determined yet. CAC also has no residual tolerance standard of bispyribac-sodium for fishery products.*

**Questions:**

183. *China considers that the residual tolerance of bispyribac-sodium on freshwater fish is not fully justified, and calls for the US to lift such a limit. If the US insists on the tolerance standard, please provide further risk assessment information including deposition, depletion and residual level of bispyribac-sodium on the skin and inside of freshwater fish, and the exposure dose and risk level of human intake through food chain.*

**RESPONSE:** On February 2, 2011, the U.S. Environmental Protection Agency (EPA) set a tolerance for bispyribac-sodium on fresh water fish at 001 parts per million (ppm). The associated final rule and a copy of the risk assessment can be found at <http://www.gpo.gov/fdsys/pkg/FR-2011-02-02/html/2011-2266.htm>. As background, the EPA received a pesticide petition by Valent U.S.A Corporation requesting to establish tolerances for residues of the herbicide bispyribac-sodium, sodium, 2,6-bis[(4,6-dimethoxy-pyrimidin-2-yl)oxy]benzoate, in or on fish, freshwater at 0.01 ppm. This petition was notified in the *Federal Register* of January 6, 2010 and provided 60 days for public comment. There were no comments received in response to the notice of filing. Prior to establishing this tolerance, there were no legal tolerances for bispyribac-sodium on freshwater fish in the United States. Currently, there are no tolerances (maximum residue limits) established for bispyribac-sodium by the Codex Alimentarius.

**The Amended Lacey Act**

*The amended Lacey Act adopted in 2008 gives huge pressure on importers and exporters of wood and wood products and wood-processing companies and has heavy impact on global trade in forest products.*

**Questions:**

184. *China hopes that the US reduces the coverage of the Act and works out detailed implementation measures. Please explain whether such measures have been taken by the US.*

**RESPONSE:** The United States considers the Lacey Act to be an important tool in U.S. efforts to combat illegal logging and associated trade. We understand that China and many other WTO Members share the objective of combating illegal trafficking in wildlife and plants, including the specific objective of combating illegal logging and associated trade. The United States is continuing to work to implement the requirements of the Lacey Act in a careful, measured manner. To date, the United States has taken several administrative actions to implement the Act. Detailed information on these actions is available on the website of the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS): [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/](http://www.aphis.usda.gov/plant_health/lacey_act/). APHIS is also considering issuing implementing regulations. APHIS published an Advance Notice of Proposed Rulemaking in the Federal Register seeking public comment on a range of implementation issues. See 76 Fed. Reg. 38330 (June 30, 2011).

***The Secretariat Report did not mention following sectors.***

**Questions:**

185. *Please describe foreign investment situation and foreign investment policies in the US telecommunications services market.*

**RESPONSE:** In 1997, the Federal Communications Commission (FCC) adopted the *Foreign Participation Order* which established the framework for foreign investment in the U.S. telecommunications market. There is an open entry standard for foreign investment, either through purchase of existing U.S. telecommunications carriers or the establishment of a new carrier, from a World Trade Organization (WTO) Member country. For foreign investment from a non-WTO Member country, the FCC requires a showing that there are effective competitive opportunities for U.S. investment in the telecommunications market in the foreign country. Foreign investment is subject to review for law enforcement, national security, trade and foreign policy concerns. The text of the *Foreign Participation Order* is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-97-398A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-97-398A1.pdf).

On October 11, 2012, the FCC released a Notice of Proposed Rulemaking (NPRM) that initiates a review of the FCC's effective competitive opportunities (ECO) test that is applied to foreign investment from non-WTO Member countries in carriers providing U.S.-international service and licensees of submarine cables that land in the United States. In the NPRM, the Commission proposed to eliminate or simplify the ECO test. The text of the NPRM is available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1011/FCC-12-125A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1011/FCC-12-125A1.pdf).

Section 310 of the Communications Act of 1934, as amended, governs the foreign ownership of spectrum licensees. Section 310(a) states that a foreign government may not directly hold a spectrum license. Sections 310(b)(1) and (2) state that foreign individuals and business entities may not directly hold any common carrier, broadcast or aeronautical fixed or aeronautical en route license. Under section 310(b)(3) a foreign entity is limited to a 20 percent ownership interest in any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. Pursuant to section 310(b)(4), a foreign entity is limited to a 25 percent ownership interest in a U.S. corporation that [directly or indirectly] controls any common carrier, broadcast or aeronautical fixed or en route licensee. The Federal Communications Commission (FCC), however, has the discretion to allow foreign ownership in excess of 25 percent under section 310(b)(4) of the Act unless such ownership is inconsistent with the public interest. In the case of common carrier and aeronautical fixed and

aeronautical en route licenses, the FCC presumes that foreign investment from WTO member countries does not pose competitive concerns to the U.S. market and is in the public interest. In an August 2012 Order, the FCC adopted a policy to forbear from the application of the 20 percent foreign ownership limit set forth in section 310(b)(3) to common carriers in which the foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee. The text of the August 2012 Order is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-93A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-93A1.pdf).

On August 9, 2011, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) that initiates a review of the FCC's policies and procedures that apply to foreign ownership of common carrier spectrum licensees and of aeronautical en route and aeronautical fixed spectrum licensees pursuant to section 310(b)(4). In the NPRM, the Commission proposed to reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy. The text of the NPRM is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-121A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-121A1.pdf)

*186. Can a foreigner with the USA CPA qualification be engaged in audit business and sign the audit report in the United States? Are there any other legal restrictions? Please provide common practices or provisions in major states.*

**RESPONSE:** A foreigner with an active CPA license and firm license from a U.S. state may conduct and sign audits in the state(s) in which he or she are licensed or has a practice privilege. An online tool is available for knowing where one has a practice privilege outside of the state(s) in which he or she has a principle place of business: <http://www.cparamobility.org/>

In order to audit U.S. public companies, the auditing firm must be registered with the Public Company Accounting Oversight Board.

*187. Can a foreigner with the USA CPA qualification become a partner of a US accounting firm? Are there any other legal restrictions? Please provide common practices or provisions in major states.*

**RESPONSE:** Yes, a foreigner with a CPA license from a U.S. state may become a partner of a firm registered in that state.

*188. After the enactment of the Sarbanes-Oxley Act, the United States strengthened its regulation of practising behavior and legal responsibility of accounting firms. Does the United States have mandatory requirements on occupational insurance of accounting firms? Please provide names of the specific laws and regulations on occupational insurance at the federal level and in major states.*

**RESPONSE:** The United States does not have any federal-level requirements for occupational insurance. At the state level, mandatory insurance requirements are rare. Among major states, only California maintains a rule on maintaining security for claims against an accountancy corporation, and insurance is just one of the three options for meeting the requirement.

Link to California state rule: [http://www.dca.ca.gov/cba/laws\\_and\\_rules/regs11-s75.8.shtml](http://www.dca.ca.gov/cba/laws_and_rules/regs11-s75.8.shtml)

Hawaii is the only other state of which we are aware that maintains an insurance requirement. Link to Hawaii state rule: [http://hawaii.gov/dcca/pvl/pvl/har/har\\_71-c.pdf](http://hawaii.gov/dcca/pvl/pvl/har/har_71-c.pdf)

*189. Please inform relevant regulations on application for declaration permit by non-US express delivery companies.*

**RESPONSE:** We are not clear as to what is meant by declaration in this context. Different regulations apply to the carrier, importer or broker acting on behalf of an importer and are not nationality based. Manifests are submitted by carriers and entry documents are submitted by importers of record or brokers. Manifest requirements for air carriers can be found in 19 CFR Part 122 and entry requirements are found in 19 CFR parts 141 and 142.

*190. Please explain whether the US has specific regulations and qualification requirements for postal service and express delivery companies using airlines for mail and express delivery. Please inform details if there is any, and also whether such regulation and requirements are applicable for non-US service suppliers.*

**RESPONSE:** The U.S. Postal Service is bound by 39 U.S.C. § 5402 with respect to its transportation of mail by air.

For foreign air transportation of mail, the U.S. Postal Service generally may only contract with U.S. flag carriers for the transportation of mail to foreign locations. Several exceptions exist however. First, if the U.S. Postal Service does not receive offers from at least two U.S. flag carriers, the U.S. Postal service may contract with foreign flag carriers. Second, the U.S. Postal Service may enter into contracts to transport mail with U.S. or foreign flag carriers in an emergency or if demand exceeds contracted space. Third, if the U.S. Postal Service determines that service by a U.S. flag carrier is not adequate for its purposes, the U.S. Postal Service may contract with a charter air operator to provide air transportation until a US flag carrier is available.

Foreign flag carriers are prohibited from interstate air transportation within the United States by Federal law and are therefore prohibited from carrying domestic mail. Special rules in subparts f through s of section 5402 describe the rules relating the transportation of mail to, from and within Alaska, but these do not affect foreign flag carriers.

The United States has no specific regulations or qualification requirements for express delivery companies using airline services. The airline themselves must hold economic and safety licenses for the flights that they will be operating, and non-U.S. freight forwarders must register with the U.S. Department of Transportation.

*191. Please inform taxation policies for postal service and express delivery companies in the US.*

**RESPONSE:** The U.S. Postal Service does not pay state taxes, but is responsible for an assumed federal income tax for profits made on competitive services (such as express, parcels, etc.). Specifically, per 39 U.S.C. § 3634, the U.S. Postal Service is responsible for computing its assumed Federal income tax on competitive products income for each year. This assumed Federal income tax is paid to the Postal Service Fund, rather than the U.S. Treasury. The

Postal Service Fund offsets postal costs, including funding of the universal service requirement. *See* 39 U.S.C. § 2003.

By way of background, U.S. Postal Service postal products are divided into two categories: market-dominant (for which there is relatively inelastic demand) and competitive (for which numerous alternatives exist). Unlike the market-dominant category, where there is a price cap, competitive product pricing is limited by a price floor. In other words, these products may not be priced below their costs and must (collectively) make an "appropriate" contribution to postal institutional (i.e., overhead) costs. As such, the competitive products must have sufficiently high cost coverage to cover their own costs, as well as a portion of overall U.S. Postal Service overhead costs.

The Postal Regulatory Commission established specific practices regarding the assumed Federal income tax. *See* 39 C.F.R. § 3060. Among other requirements, the assumed taxable income from competitive products to be paid to the Postal Service Fund is defined as the total revenues generated during a given year, minus the attributable costs and the institutional costs of the competitive products (as described above). U.S. Postal Service must also file reports with the Postal Regulatory Commission regarding its accounting and tax rules.

As is the case with other private sector entities, private express delivery companies are responsible for state and federal tax liability.

*192. Please provide studies or reports on the development and reform of the power sector in the US since 2010. Please provide, if any, details of reform in the sector including power generation, power transmission, power distribution and power trade since 2010.*

**RESPONSE:** The U.S. Energy Information Administration (EIA) is the statistical and analytical agency within the U.S. Department of Energy. EIA has a number of studies and reports on the development and reform of the power sector in the United States. <http://www.eia.gov/>

*193. Please provide details of changes, if any, in power related legislation in the US since 2010.*

**RESPONSE:** The Annual Energy Outlook of 2012 was published by the U.S. Energy Information Administration in June 2012. The document contains summary of Federal and State legislation and final implementation regulations available as of the end of December 2011. [http://www.eia.gov/forecasts/aeo/pdf/0383\(2012\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2012).pdf)

Additional information on legislation can be found at Thomas.gov a service provided by the Library of Congress to make federal legislative information freely available to the public: <http://thomas.loc.gov/home/thomas.php>

*194. Please provide information on the structure of the power market in the US. What are the major companies? What are their ownerships and market shares?*

**RESPONSE:** One of the most useful sources of information on the power market in the United States is the U.S. Energy Information Administration (EIA), the statistical and analytical agency within the U.S. Department of Energy. Please see the links below for additional information on the electricity market in the United States.

<http://www.eia.gov/electricity/>  
[http://www.eia.gov/energyexplained/index.cfm?page=electricity\\_in\\_the\\_united\\_states](http://www.eia.gov/energyexplained/index.cfm?page=electricity_in_the_united_states)

195. *Please provide details of the power pricing mechanism in the US, and the changes in pricing mechanism since 2010, if any.*

**RESPONSE:** The Federal Energy Regulatory Commission (FERC) oversees and regulates transmission of electricity in the United States while states are free to either regulate prices or allow for retail competition. The sites below link to FERC and to a summary of power pricing in the United States.  
[www.ferc.gov](http://www.ferc.gov)  
[http://www.eia.gov/energyexplained/index.cfm?page=electricity\\_factors\\_affecting\\_prices](http://www.eia.gov/energyexplained/index.cfm?page=electricity_factors_affecting_prices)

196. *We notice that the US services trade has been maintaining surplus with strong competitiveness. Please inform policies and measures in the US to promote the export of services and also its creation of more job opportunities.*

**RESPONSE:** U.S. trade in services is driven by commercial considerations, not government policy. The United States considers that the best way to support the international competitiveness of U.S. companies is to ensure that they are subject to competition by promoting open markets and maintaining pro-competitive regulatory policies.

197. *The strict restriction on export of hi-tech products and technology has affected the export growth of the US. Please explain whether the US has any plan to adjust the policies in this regard and whether such plan has been implemented.*

**RESPONSE:** The United States does not agree that export controls on high-tech products have affected the export growth of the United States. As previously noted, only a small amount of bilateral trade is affected by U.S. export controls.

198. *In June 2011, the US Department of Commerce announced the Strategic Trade Authorization License Exception, excluding China from the countries and regions that enjoy trade facilitation measures. Please explain the reasons for the practice.*

**RESPONSE:** With the June 16, 2011. publication of the final rule implementing License Exception Strategic Trade Authorization (STA), the Administration took an initial step in its export control reform effort. License Exception STA is a targeted license exception limited to destinations that pose a relatively low risk that the authorized items will be used for a purpose that the license requirements are designed to prevent. The Administration's effort to reform the U.S. export control system is a national security effort. The reform effort is, thus, not about increasing exports *per se* or attempting to resolve trade deficits or surpluses with any particular country.

*199. Please provide details in the investment in energy-saving technology, and details in the adopted or proposed measures to encourage such investment. Please also provide information on energy efficiency in the US since 2010.*

**RESPONSE:** The U.S. Department of Energy maintains a webpage dedicated to energy efficiency in the United States. The link to that webpage is provided below :<http://energy.gov/science-innovation/energy-efficiency>

*In recent years, biofuels in the United States have developed very rapidly through corn and other food crops, and the energy and industrial properties of corn and other agricultural products have been constantly enhanced. In this regard, the US government also enacted a series of mandatory measures, such as the US Energy Policy Act of 2005. These policies and measures promoted the rapid increase in demand for corn, and thus have an enormous impact on the sharply rising international market prices.*

**Questions:**

*200. Please describe the currently prevailing US policies on biofuels and the future policy orientation.*

**RESPONSE:** U.S. share of global corn trade has declined since 2006, due to both policy and market factors. Compared to last year, U.S. corn used for ethanol production is expected to drop by 10 percent. Furthermore, two forms of policy support to the U.S. ethanol industry, the blenders' tax credit and import tariffs, were eliminated in December 2011. Meanwhile, high corn prices and global import demand over the past several years have driven increased corn production in Brazil, Argentina, and Ukraine, where the combined production has gained 49 percent since 2006. In 2011, combined exports from these three countries surpassed those from the United States. Ukraine, in particular, has increased its corn exports 12 fold in the past six years. At the same time, unfavorable weather and below-trend yields over the past three years for the U.S. corn crop have resulted in reduced crop outputs and lower exportable supplies.



## QUESTIONS FROM CHINESE TAIPEI

### PART I: REPORT BY THE SECRETARIAT (WT/TPR/S/275)

#### VIII. I. ECONOMIC ENVIRONMENT

#### IX. (2) MONETARY, FISCAL, AND OTHER POLICIES

##### Page 5 (Para. 11)

*In 2011, the U.S. reported the third highest federal deficit on record since 1945, at US\$1.3 trillion. This was nearly the same as in 2010 (US\$1.29 trillion) and reflects a slight downward trend from the 2009 peak of US\$1.42 trillion. As a percentage of GDP, the 2011 deficit improved slightly to 8.7% compared with 9% in 2010.*

##### Question(s):

1. *Does the U.S. plan to reduce the level of its federal deficit?*
2. *If yes, what specific measures will be taken?*

**RESPONSE:** The United States is firmly committed to putting federal finances on a sustainable trajectory. The Budget Control Act, passed in August 2011, was a significant first step in this direction, committing the United States to US\$2.1 trillion in deficit reduction over the next 10 years. The Administration's FY2013 Budget proposal would reduce the deficit by an additional US\$2.8 trillion over the next decade, cutting the deficit in half as a share of the economy and putting the debt on a declining path by the middle of the decade. By FY2018, the budget deficit would be less than 3percent of GDP, the debt-to-GDP ratio would be on a declining path, and the primary deficit would be eliminated, so that spending is no longer adding to the national debt.

#### X. II. TRADE POLICY AND INVESTMENT REGIMES

#### XI. (1) TRADE POLICY FORMULATION AND FRAMEWORK

##### Page 15 (Para. 5)

*During certain periods since 1974, Congress has put in place special "fast track" or "trade promotion authority" procedures under which the Congress commits to vote on trade agreement implementing legislation within a fixed period, and without amendment, once the President submits an implementing bill. The most recent set of these procedures covered trade agreements signed between 2002 and mid-2007.*

*Under the Trade Promotion Authority (TPA) that expired in July 2007, Congress had to approve or reject legislation that would implement a new trade agreement without amendment and within a fixed period. The 2012 Trade Policy Agenda does not seem to contain any reference to the TPA.*

##### Question(s):

3. *Can the US say whether or not it plans to seek new negotiating authority?*

**RESPONSE:** The Administration has stated that it plans to engage in consultation with the U.S. Congress regarding the grant of what is known as "trade promotion" or "fast track" authority at an appropriate time. That continues to be the Administration's intention.

4. *If 'yes', could the U.S. please elaborate further on the possible scope of authority that it will be seeking? For example, will its scope be limited to the TPP or will it also cover other trade agreements that the U.S. Administration may enter into in the future?*

**RESPONSE:** We will be consulting closely with the U.S. Congress on the details of any bill to provide trade promotion authority. We are not able to speculate on the scope of such authority at this time.

## **XII. (2) PARTICIPATION IN THE WORLD TRADE ORGANIZATION**

### Page 15 (Para. 6)

*According to the U.S. Trade Policy Agenda, the United States is "committed to preserving and enhancing the WTO's irreplaceable role as the primary forum for multilateral trade liberalization, for the development and enforcement of global trade rules, and as a key bulwark against protectionism". The United States continues to support, participate and pursue trade initiatives and further liberalization through the WTO's multilateral trade framework. Furthermore, the United States is committed to contributing constructively and creatively to the functioning of the WTO, in particular, acknowledging that the WTO Doha Round is at an impasse, it is committed to fresh and credible approaches to new market-opening trade initiatives.*

### Question(s):

5. *Given that the U.S. has been playing a key leadership role in the multilateral trading system over recent decades, in the face of the Doha Negotiation impasse, what 'fresh and credible' approaches will the U.S. Administration consider adopting in order to contribute to the functioning of the WTO?*

**RESPONSE:** The United States views the WTO as an institution at a crossroads. This year, the Membership's collective efforts to 'turn the page' in the Doha negotiations are creating important new opportunities. Technical negotiations on a multilateral trade facilitation agreement are advancing. We also are working to address development concerns and are exploring realistic approaches that can advance some partial result on agriculture. Preparations are underway to expand the product coverage of the Information Technology Agreement, or ITA, and some Members are pursuing promising work in the services area.

The United States is committed to the WTO and wants to make it work more effectively in the interests of all Members. This includes using the WTO Committee system to raise issues that we consider to be important, such as trade protectionist measures. We want to encourage healthy debate and, where possible, explore the potential for the negotiation of new trade opportunities.

## **XIII. (3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS**

### Page 16 (Para. 11)

*The United States has also extended two preference programmes (Generalized System of Preferences and the Andean Trade Preferences Act that had lapsed). Furthermore, as part of the President's 2012 Trade Policy Agenda, important priorities were announced with respect to concluding a bold and ambitious Trans-Pacific Partnership agreement and building better export markets through regional economic integration.*

### Question(s):

6. *In addition to the Trans-Pacific Partnership Agreement (TPP), the Regional Comprehensive Economic Partnership (RCEP) based on ASEAN+6 is another pathway to an FTAAP. What is the U.S.' view regarding these two pathways?*

**RESPONSE:** The United States is not a party to RCEP, so we are not well positioned to comment on it.

**(i) Reciprocal trade agreements**

**(b) Overview of the other free-trade agreements**

Page 18 (Para. 16)

*At the end of 2011, the United States had 11 bilateral or regional free-trade agreements in force with 17 countries. The majority of imports from FTA partners receive benefits, with 90% or more of trade entering duty free from partner countries, with the exception of the two most recent free-trade agreements, with Oman and Peru, which entered into force in 2009.*

Question(s):

7. *What is the reasoning behind Oman and Peru being exceptions?*

**RESPONSE:** Both the U.S.-Oman FTA and the U.S.-Peru FTA entered into force in 2009 and tariff elimination commitments are still being phased in. Under the U.S.-Oman FTA, by the time the agreement is fully implemented, Oman will benefit from 100 percent duty free access into the United States. Under the U.S.-Peru FTA, and by the time of the agreement is fully implemented, Peru will benefit from duty-free access into the United States on 99.5 percent of its tariff lines covering 100 percent of its trade.

**XIV.**

**XV. (4) INVESTMENT AGREEMENTS AND POLICIES**

**(i) Bilateral investment treaties and framework agreements**

Page 26 (Para. 31)

*In 2009, the Administration launched a review of the 2004 model BIT to update it in order to ensure that it was consistent with the public interest and the Administration's overall economic agenda. The Administration completed the review in April 2012, and announced a new model BIT. The 2012 model has 42 pages (including annexes) and is reported to build upon the previous model by enhancing transparency and public participation; sharpening disciplines that address preferential treatment to state-owned enterprises, including the distortions created by certain indigenous innovation policies; and strengthening protection relating to labour and the environment.*

Question(s):

8. *Could the United States please provide more details of the new revised model BIT, and describe the policy objectives it hopes to achieve by the modifications?*

**RESPONSE:** The 2012 Model BIT maintains language from the earlier, 2004 Model BIT, and in particular that text's carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest. The Administration did however make targeted changes to the 2004 text to advance three policy objectives: (1) enhancing transparency and public participation; (2) strengthening protection of labor and the environment; and (3) enhancing disciplines to address challenges posed by State-led economies. Information about specific revisions made to the Model with respect to each of these objectives is available at:

<http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

## XVI.

### (ii) Investment promotion

#### Page 27 (Para. 33)

*In June 2011, the U.S. Government took steps to facilitate and attract inward FDI into the United States by creating the first government-initiated centralized investment promotion body. The SelectUSA initiative was established, by Presidential Executive Order, to attract and retain investment in the American economy, with the specific mission to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness.*

#### Question(s):

9. *Could the U.S. Administration please elaborate further on what incentives it has provided to attract FDI?*

**RESPONSE:** SelectUSA works with firms to help them identify federal programs and incentives that they may wish to compete for. The SelectUSA investment incentives database is available at: <http://selectusa.commerce.gov/investment-incentives>. The website also provides links to business incentives offered by U.S. states and territories.

10. *How does the U.S. evaluate the achievements made under the SelectUSA initiative?*

**RESPONSE:** SelectUSA has identified internal performance measures to track its activity. Its metrics are designed to encourage responsiveness, transparency, and adherence to U.S. open investment policy principles. SelectUSA is housed in the U.S. and Foreign Commercial Service (US&FCS) and feeds its metrics to the US&FCS overall performance targets.

### (iii) Investment regulations and restrictions

#### Page 28 (Para. 35)

*According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations. In addition, in terms of reporting and disclosure, four major federal statutes have an impact on foreign investment.*

#### Question(s):

11. *What policies and regulations does the United States have in place concerning cross-border investments or mergers by foreign companies?*

**RESPONSE:** The United States has a longstanding policy of welcoming foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy. Foreign investors are generally free to establish or acquire investments in the United States, subject only to laws and regulations that are applicable to all firms, irrespective of nationality.

12. *Does the U.S. set a higher threshold for cross-border investments or mergers in areas such as radio communication?*

**RESPONSE:** The United States has foreign equity limitations in the area of radio communication. Section 310 of the Communications Act of 1934, as amended, governs the foreign ownership of spectrum licensees. Section 310(a) states that a foreign government may not directly hold a spectrum license. Sections 310(b)(1) and (2) state that foreign individuals and business entities may not directly hold any common carrier, broadcast or aeronautical fixed or aeronautical en route

license. Under section 310(b)(3) a foreign entity is limited to a 20 percent ownership interest in any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. Pursuant to section 310(b)(4), a foreign entity is limited to a 25 percent ownership interest in a U.S. corporation that [directly or indirectly] controls any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. The Federal Communications Commission (FCC), however, has the discretion to allow foreign ownership in excess of 25 percent under section 310(b)(4) of the Act unless such ownership is inconsistent with the public interest. In the case of common carrier and aeronautical fixed and aeronautical en route licenses, the FCC presumes that foreign investment from WTO member countries does not pose competitive concerns to the U.S. market and is in the public interest. In an August 2012 Order, the FCC adopted a policy to forbear from the application of the 20 percent foreign ownership limit set forth in section 310(b)(3) to common carriers in which the foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee. The text of the August 2012 Order is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-93A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-93A1.pdf). There are no statutory restrictions on the foreign ownership of wireline telecommunications facilities, although in certain circumstances the foreign carrier may need to establish a U.S.-organized subsidiary, but it could have 100% ownership of that subsidiary.

13. *Does the U.S. maintain different standards for investments by foreign enterprises of a specific nature, such as state-owned enterprises?*

**RESPONSE:** In general, investment-related laws and regulations in the United States apply without regard to the nationality of an investor.

Page 28 (Para 36)

*The Committee on Foreign Investment in the United States(CFIUS) is an Interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction.*

Question(s):

14. *Would the U.S. please describe the criteria, if any, used by CFIUS to determine whether a foreign investment transaction has any “national security concerns”? Is the process of reviewing a case transparent?*

**RESPONSE:** CFIUS’s approach to determining whether a transaction raises national security concerns, and a general description of the types of transactions that CFIUS has reviewed and that have presented national security considerations is available in the official guidance that Treasury published on December 8, 2008, in the *Federal Register* (and available on our webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>). The CFIUS process is fully described in statutes, executive orders, regulations, and in the guidance document noted above, all of which are available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

15. *If an investor or enterprise does not accept the CFIUS determination, does there exist any mechanism for complaint? If an investor is from a country that has signed a BIT or BIA with the U.S., could the dispute with CFIUS be resolved by resort to the “Dispute Settlement Mechanism” of the relevant BIA?*

**RESPONSE:** All U.S. BITs and FTA investment chapters have a broad essential security exception. Parties to transactions have the opportunity to address CFIUS at all stages of the process, including

after CFIUS informs the parties of any determination. By statute, actions and findings by the President are not subject to judicial review.

16. *Could the US please explain the reasons why the numbers shown in Table II.11 of notices for transactions covered by CFIUS in 2009, 2010 and 2011 (65, 93 and 111, respectively) represent such a small proportion of the total number of FDI transactions in the U.S.? In what circumstances does CFIUS review the transactions voluntarily if an enterprise fails to notify, and how many cases were reviewed in this way from 2009 to 2011?*

#### **XVII.**

**RESPONSE:** The vast majority of foreign direct investment does not raise national security concerns. Foreign investors are not required to notify CFIUS of their transactions, but instead decide themselves whether to file if they believe national security considerations might arise. However, while the process is essentially voluntary and the vast majority of CFIUS cases are the result of voluntary notices, CFIUS has the authority to initiate a review of any transaction that may raise national security concerns. CFIUS agencies monitor merger and acquisition activity, identify transactions that have not been voluntarily notified to CFIUS but may present national security considerations, and assess whether additional information regarding the transaction or the authority of section 721 is required to identify or address any national security concerns. When a CFIUS agency believes that a non-notified transaction may be a covered transaction and may raise national security considerations, the agency may self-initiate a review of the transaction under section 721. Alternatively, if CFIUS believes that the transaction may raise national security considerations and may be a covered transaction, CFIUS may contact the parties and request further information about the transaction, partly to help to determine whether the transaction is a covered transaction. If CFIUS makes such a determination, it may request that the parties file a notice. In most cases in which CFIUS has made inquiries of parties to transactions, the parties respond by filing a voluntary notice.

A.

#### **XVIII. III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **XIX. (1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(vi) Contingency measures**

##### **(a) Anti-dumping and countervailing measures**

Page 48-50 (Paras. 48-51)

*The Report mentions several modifications to the United States' antidumping and countervailing duty legislation and procedures. As we know, in 2010, the U.S. Department of Commerce (USDOC) was analyzing the possibility of changing the antidumping and countervailing duty collection system from a retrospective to a prospective one, yet there is no mention of this modification in the Secretariat Report.*

Question(s):

17. *Is the above-mentioned modification still under consideration or has it been completed?*
18. *Could the U.S. please provide an update on latest developments involving changes to this duty collection system?*

**Response:** In response to a request from the U.S. Congress, the Department of Commerce prepared a report on the relative advantages and disadvantages of the retrospective and prospective antidumping and countervailing duty collection systems. The report did not make any recommendations nor was it intended to result in any changes to U.S. law or practice with respect to the current retrospective system. The report was provided to the House and Senate Appropriations Committees on November 19, 2010 and was for the

Committees' own use and information. No further activities or developments related to this report have taken place since its transmittal.

Page 50 (Paras. 50-51)

*The Report mentions that the U.S. has adopted or proposed several modifications to its methodology for calculating dumping margins for non-market economies (NME) and the U.S. Department of Commerce (DOC) has proposed to modify its regulations concerning the use of market economy input prices in non-market economy proceedings. Under the proposed modification, where a NME producer purchases an input from a market economy supplier, the DOC will treat the price paid to the market economy supplier as the price for all of the inputs used only if "substantially all" of the input (greater than 85%) is purchased from the market economy supplier. Furthermore, the DOC currently proposes to presumptively use the price paid to the market economy supplier as the price for all of the input used where the share of the input purchased from market economy suppliers exceeds 33% of the total volume of the input purchased.*

Question(s):

19. *Could the U.S. please explain the basis or criteria used by the DOC to determine "substantially all" of the input (greater than 85%) and the 33% minimum threshold for the share of input purchased from market economy suppliers?*
20. *Could the U.S. please provide an update on latest developments concerning the DOC's proposal?*

**Response:** The Department of Commerce proposed 85 percent as a reasonable and predictable threshold for "substantially all," to be applied across all products and NME countries. This proposal has not yet been adopted as final, as the Department of Commerce is still considering comments received from its request for public comment.

## **XX. (2) MEASURES DIRECTLY AFFECTING EXPORTS**

### **(iv) Official support and related fiscal measures**

#### **(a) Export subsidies and drawbacks**

Page 70 (Para. 112)

*Under Executive Order 13534 of 11 March 2010, the President set out the National Export Initiative (NEI) with the goal of doubling exports over five years by "helping firms – especially small businesses – overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps". The NEI addresses several issues intended to increase exports, including: developing programmes that improve information and other technical assistance to first-time exporters, and assist current exporters in identifying new export opportunities in international markets; promoting existing federal resources for export assistance; increasing the availability of export credits to SMEs; promoting exports of goods and services through trade missions and commercial advocacy; improving market access by actively opening new markets; reducing significant barriers to trade, and enforcing trade agreements; and promoting balanced growth in the global economy.*

Question(s):

21. *Bearing in mind the NEI's goal announced at its launch of doubling exports over five years, how would the U.S. assess results and achievements thus far?*

**RESPONSE:** Trade data show that U.S. exports have continued to increase this year, despite some tough economic conditions abroad, continuing the progress we are making on the way to achieving the President's goal of doubling exports by the end of 2014.

22. *Is it expected that the initiative will be carried on to the next stage after 2014?*

**RESPONSE:** The U.S. will assess progress by the end of 2014 and determine next steps at the appropriate time.

## **XXI. (3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

### **(iv) Subsidies and other government assistance**

Pages 79-84 (Paras. 140-145)

*The United States has granted subsidies, tax credits, and other government support to alternative fuels and renewable energy suppliers.*

Question(s):

23. *Please provide details of incentives such as capital subsidies, tax credits, etc., that the United States government provided to alternative fuels and renewable energy suppliers?*

**RESPONSE:** As noted in the Secretariat's report, the United States submitted its subsidy notification to the WTO Committee on Subsidies and Countervailing Measures last year. The notification covers alternative fuel and renewable energy programs. Please see: G/SCM/N/220/USA (19 October 2011).

24. *How were the individual tasks regarding these incentive measures divided up between federal and state governments?*

**RESPONSE:** There is no formal division of tasks between the federal and state government as to incentives provided.

25. *Is this government support available to foreign companies?*

**RESPONSE:** In the context of alternative fuel and renewable energy programs, the Department of Energy (DOE) selects projects for funding through open and competitive solicitations. Foreign entities are eligible to receive funding. Like all other eligible applicants, they must submit an application as described in the subject funding opportunity announcement. Foreign companies have benefitted from DOE programs.

Page 80 (Para. 141)

*As illustrated through the WTO notification, the agriculture and energy and fuel sectors are the largest recipients of government assistance and have grown in recent years. One of the major contributors to the growth in this sector is interest in biofuels, or using incentives to find alternatives to fossil fuels.*

Question(s):

26. *It is our understanding that in addition to the federal programmes there are sub-federal subsidy programmes at state level. Could the U.S. please provide further details of the major programmes launched by state governments to assist producers of solar energy and related equipment, including the qualification requirements for the subsidy and the benefits received by producers in California, New Jersey and Massachusetts in particular?*

**RESPONSE:** Sub-federal programs are also detailed in the subsidy notification of the United States. (See: G/SCM/N/220/USA; 19 October 2011.)

### **(vi) Trade-related intellectual property rights**

Page 93 (Para. 180)



*The USPTO undertook a range of initiatives during the review period to further improve quality and timeliness, such as the Green Technology Pilot Program which ran from December 2009 to December 2011, enabling applicants to request accelerated examination for patents on green technologies.*

**Question(s):**

27. *It would be appreciated if the US could please explain the rationale for discontinuing the Green Technology Pilot Program, which would seem to encourage the development of environmentally-friendly technology.*

**RESPONSE:** The USPTO discontinued the Green Technology Pilot Program because the USPTO now has a program that permits the acceleration of any patent application. Known as “Track One,” this program was implemented by a rulemaking to implement the “prioritized examination” provisions of the America Invents Act. More information on the program is available here: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-23/html/2011-24467.htm>.

**(i) Enforcement**

Page 97 (Para. 195)

*The annual ‘Special 301 Reports’ issued by the USTR in 2011 and 2012 continued to monitor developments concerning IP protection in U.S. trading partners, and cited the significance of IP protection for U.S. jobs and export performance. In both years, 77 trading partners were reviewed, and 42 (in 2011) and 40 (in 2012) were placed on one of the Special 301 lists (Priority Watch List, Watch List, or Section 306 monitoring list). Areas of particular concern included online copyright piracy, internet trading in physical counterfeit goods, test data protection, infringing goods sent by regular courier services, separate shipping of labels for counterfeit products, collection of royalties for performance of musical works, trade secret protection and “enforced technology transfer”, government use of illegitimate software, and unauthorized registration of trademarks under country code top level domain name (ccTLD) extensions.*

**Question(s):**

28. *At which level of government does the U.S. enforce the protection of trade secrets—the federal, the state level, or both? Is there any difference between the levels in the content of what is protected? Furthermore, how many cases of trade secrets infringement are handled at the federal and state levels, and what is ratio between them?*

**RESPONSE:** The United States has laws at both the federal and state levels that provide for the protection of trade secrets. Federal law criminalizes certain thefts of trade secrets through the Economic Espionage Act (EEA), codified as 18 U.S.C. §§ 1831-39. The EEA establishes two separate crimes: economic espionage (§ 1831) and theft of trade secrets (§ 1832). Civil causes of action for trade secret misappropriation are provided for at the state level. In addition, states may criminalize the theft of trade secrets. While the determination of whether certain information constitutes a “trade secret” is made on a case-by-case basis, the EEA and the Uniform Trade Secrets Act (UTSA) provide similar frameworks. Under the EEA, in order to qualify as a “trade secret,” the information must “derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public” and the owner must have taken “reasonable measures to keep such information secret.” The definition contained in the UTSA mirrors that of the EEA; in order to qualify as a “trade secret,” information may be a trade secret if it “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use” and “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

29. *From the time the Economic Espionage Act was passed on 2 October, 1996, to the present, how many cases concerning each of the two defined types of crime, “economic espionage” and “theft of trade secrets” have come to trial? For each type, how many have resulted in guilty verdicts and what sentences or fines have been imposed?*

**RESPONSE:** Since the enactment of the Economic Espionage Act in 1996, there have been approximately 100 prosecutions for “trade secret theft” (18 U.S.C. § 1832) and approximately nine prosecutions for “economic espionage” (18 U.S.C. § 1831). A small number of cases involve both charges. Most of the prosecutions have resulted in guilty verdicts/convictions, and a large majority of convictions are the result of pre-trial guilty pleas. Of the more than 100 cases under Sections 1831 and/or 1832, approximately 10 cases have gone to trial. The vast majority of those cases involved “trade secret theft” (Section 1832) charges.

30. *In addition, when the United States raises a charge of economic espionage, must the actual procedure first be decided and acted upon by a high-ranking official in the US Justice Department? When such a decision is made, must policy issues also be taken into consideration?*

**RESPONSE:** In the first five years after enactment of the Economic Espionage Act, charges under Sections 1831 or 1832 required prior consultation with the Criminal Division of the Department of Justice. That broad requirement has expired. However, charges under Section 1831 (economic espionage) currently require prior consultation with the National Security Division of the Department of Justice.

#### **IV. TRADE POLICIES BY SECTOR**

##### **XXII. (3) SERVICES**

###### **(ii) Financial Services**

###### **(b) Legislative and regulatory developments**

Page 122 (Para. 72)

*The Dodd-Frank Act (or Volcker rule) does not introduce market access or national treatment limitations, but establishes a new and comprehensive regulatory framework and extends regulation over new markets, entities, and activities.*

*It is our understanding that the Volcker rule is intended to apply not only to foreign banks in the US but to their overseas head offices and all of their affiliates throughout the world (non-U.S. entities) as well. This application may cause concerns over extraterritorial implications.*

Question(s):

31. *Will the U.S. give renewed consideration to narrowing the scope of the rule to just branches or agency offices of foreign banks in the US?*

**RESPONSE:** The OCC, Board, FDIC, SEC, and CFTC (the Agencies) proposed rules to implement section 619 of the Dodd Frank Act, known as the Volcker Rule. The comment periods on the proposed rules have closed, and the Agencies are currently analyzing the comments that were submitted, including comments regarding the application of the rule to non-U.S. banking entities, and are working to develop a final rule. See: [http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7\\_OCC-FRS-FDIC-SEC\\_Prohibitions\\_restrictions\\_on\\_proprietary\\_trading.pdf](http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7_OCC-FRS-FDIC-SEC_Prohibitions_restrictions_on_proprietary_trading.pdf)

Page 122 (Paras. 76-81)

*The Dodd-Frank Act introduces important changes in the U.S. financial services regulatory structure. ....*

Question(s):

32. *Could the U.S. please elaborate further on the considerations given by the Dodd-Frank Act to reorganizing the financial authorities?*
33. *How is the big picture of the US financial supervisory structure perceived as being when the Dodd-Frank Act comes into effect?*
34. *Could a new supervisory organization chart be provided for our reference?*

**RESPONSE TO QUESTIONS 32-34:** The Act establishes several offices, committees, and bureaus within existing regulatory agencies: the Consumer Financial Protection Bureau (CFPB) (an independent bureau of the Federal Reserve System); the Office of the Investor Advocate (OIA), Office of Credit Ratings (OCR), and Investor Advisory Committee (IAC) within the Securities and Exchange Commission; and the Federal Insurance Office (FIO) and Office of Financial Research (OFR) within the Treasury Department.

The new Federal Insurance Office has been mandated to monitor much of the insurance industry, to recommend insurance regulation, and to coordinate federal efforts with regard to international prudential insurance matters. All lines of insurance will be under the purview of the new Office, except health insurance, certain long-term care insurance, and crop insurance.

The Act also established the Financial Stability Oversight Council and eliminated the Office of Thrift Supervision.

Page 123 (Paras. 77 and 79)

*The Act establishes several offices, committees, and bureaus within existing regulatory agencies: the Consumer Financial Protection Bureau (CFPB) (an independent bureau of the Federal Reserve System that includes an Office of Financial Education, Office of Fair Lending and Equal Opportunity, and Office of Financial Protection of Older Americans); the Office of the Investor Advocate (OIA); Office of Credit Ratings (OCR); and Investor Advisory Committee (IAC) (all within the Securities and Exchange Commission), and the Federal Insurance Office (FIO) and Office of Financial Research (OFR), both within the Treasury Department.*

*The new Federal Insurance Office has been mandated to monitor much of the insurance industry, to recommend insurance regulation, and to coordinate federal efforts with regard to international prudential insurance matters. All lines of insurance will be under the purview of the new Office, except health insurance, certain long-term care insurance, and crop insurance.*

Question(s):

35. *Is the supervisory function of the FIO different from that of the NAIC, and if so, what is the difference in terms of their respective supervisory powers?*

**RESPONSE:** Insurance entities are primarily regulated and supervised by state insurance regulators. However, the Federal Reserve Board is the consolidated regulator for insurance companies that are bank holding companies, savings and loan holding companies and/or non-bank financial companies designated by the Financial Stability Oversight Council. FIO also is authorized to coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors and assisting the Secretary of the Treasury in negotiating covered agreements.

36. *Health insurance, certain long-term care insurance and crop insurance come under the purview of which Authority/ies?*

**RESPONSE:** Health insurance and long-term care insurance fall within the purview of the Department of Health and Human Services. Crop insurance falls within the purview of the Department of Agriculture.

Page 123 (Footnote no. 86)

*The Bureau will be led by a Director appointed by the President and confirmed by the Senate for five-year term. Although the Bureau will be housed within the Federal Reserve, it is independent and the Federal Reserve Board may not be interfere with its functions or personnel.*

*The Foreign Account Tax Compliance Act(FATCA) requires a foreign financial institution to report the identity of its U.S. accountholders and information about their accounts, or be subjects to a withholding tax on the payment of U.S.-source income or gross proceeds from the scale of certain assets producing U.S.-source income. The FATCA provisions will be effective from January 2013.*

Question(s):

37. *Could the U.S. please advise whether the FATCA provisions are fully compatible with obligations under the WTO/GATS?*

**RESPONSE:** The Foreign Account Tax Compliance Act (FATCA) provisions of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act) are fully compatible with all U.S. obligations under the GATS and the WTO. It is unclear to us how FATCA may implicate any of those obligations.

38. *What efforts have been made by the U.S. Administration to reduce the impact that the FATCA may have on FDI, especially investment by financial institutions?*

**RESPONSE:** Very generally, the Foreign Account Tax Compliance Act (FATCA) provisions of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act) impose withholding obligations on payments made to non-participating foreign financial institutions that are attributable to portfolio investment, not direct investment.

The U.S. Government is committed to continued cooperation with other governments in addressing offshore tax evasion, and the Treasury Department is engaged in a dialogue with interested foreign governments regarding the implementation of FATCA. The proposed regulations released in February reflect consideration of the comments received and reduce compliance burdens in a manner consistent with the goal of addressing the misuse of foreign accounts in order to evade U.S. taxation. Treasury and the Internal Revenue Service will continue to work closely with businesses and foreign governments to implement FATCA in a manner that reasonably balances the administrative burdens with the compliance goals. Updates and further information regarding FATCA are available on the Treasury FATCA webpage: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

**PART II: REPORT BY THE US GOVERNMENT (WT/TPR/G/275)**

**IV. TRADE POLICY DEVELOPMENTS SINCE 2010**

**(2) Regional initiatives**

Page 16 (Paras. 60 and 61)

*The United States has insisted on higher standards for U.S. trade agreements. Throughout 2012, it has sought to intensify its efforts through regional initiatives, such as the TPP, as well as through bilateral engagement with major trading partners and emerging markets.*

*The United States and its negotiating partners in the TPP continued their work to craft a comprehensive, high standard regional trade agreement that addresses new and emerging trade issues and 21st century challenges.*

Question(s):

39. *What is the U.S' definition of a comprehensive, high standard regional agreement?*

**RESPONSE:** The United States and our TPP partners have committed to negotiate a comprehensive, high-standard 21st century agreement, by which we mean one that includes ambitious commitments in traditional areas, including tariffs and non-tariff issues such as Services, Investment, Technical Barriers to Trade and Customs, and also includes commitments on emerging issues such as trade and investment in innovative products, including ecommerce and other digital issues, disciplines to ensure state-owned enterprises compete fairly with private companies, and regulatory coherence to help companies operate more seamlessly in markets.

## QUESTIONS FROM COLOMBIA

### Report by the Secretariat WT/TPR/S/275

#### II. TRADE POLICY AND INVESTMENT REGIMES (4) INVESTMENT AGREEMENTS AND POLICIES (iii) Investment regulations and restrictions

*Paragraph 34 of the Report by the Secretariat states that, "The United States' investment regime has been described as open and transparent with few formal encumbrances. For example, there is free movement of capital and profits, and no minimum investment thresholds. However, there remain a number of restrictions to foreign investment in certain areas, and certain information-gathering, monitoring, reporting, and disclosure procedures can also have an impact on foreign investment."*

1. *Colombia would appreciate it if you could explain in detail: What are the restrictions on foreign investment and what areas are they in?*

**RESPONSE:** The Secretariat's Report does not itself speak to barriers or restrictions on foreign investment in the United States. Rather, the Report (at paragraphs 34/35) references a report of the Congressional Research Services (CRS) that discusses certain federal-level measures that "have an impact on foreign investment in the United States," including measures that do not restrict foreign investment. Detailed information about these measures is presented in the CRS report itself.

*Paragraph 36 of the Report by the Secretariat states that, "The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction. CFIUS operates essentially on a voluntary basis, but has the authority to initiate a review of any transaction that may raise national security concerns. Between 2009 and 2011, the number of notices received and investigations undertaken by CFIUS have increased steadily (Table II.11), although notices remain below the 2008 pre-recession level."*

2. *Colombia would appreciate it if you could explain in detail: What criteria are used to determine whether a transaction that results in control of a U.S. business by a foreign business has national security effects?*

**RESPONSE:** CFIUS's approach to determining whether a transaction raises national security concerns, and a general description of the types of transactions that CFIUS has reviewed and that have presented national security considerations, is available in the official guidance that Treasury published on December 8, 2008, in the *Federal Register* (and available on our webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>).

3. *Colombia would appreciate it if you could explain: What criteria does the CFIUS use in selecting the transactions that could raise national security concerns?*

**RESPONSE:** Foreign investors are not required to notify CFIUS of their transactions, but instead decide themselves whether to file if they believe national security considerations might arise. However, while the process is essentially voluntary and the vast majority of CFIUS cases are the result of voluntary notices, CFIUS has the authority to initiate a review of any transaction that may raise national security concerns. CFIUS agencies monitor merger and acquisition activity, identify transactions that have not been voluntarily notified to CFIUS but may present national security considerations, and assess whether additional information regarding the transaction or the authority of section 721 is required to identify or address any national security concerns. When a CFIUS agency believes that a non-notified transaction may be a covered transaction and may raise national security considerations, the agency may self-initiate a review of the transaction under section 721. Alternatively, if CFIUS believes that the transaction may raise national security considerations and may be a covered transaction, CFIUS may contact the parties and request further information about the transaction, partly to help to determine whether the transaction is a covered transaction. If CFIUS makes such a determination, it may request that the parties file a notice. In most cases in which CFIUS has made inquiries of parties to transactions, the parties respond by filing a voluntary notice.

4. *What is the scope or breadth of the concept of national security?*

**RESPONSE:** With respect generally to the concept of "national security," please refer to the official guidance that Treasury published on December 8, 2008, in the *Federal Register* (and available on the CFIUS webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>), regarding the types of transactions that CFIUS has reviewed and that have presented national security considerations.

5. *Is the concept of national security clearly defined, or is it at the discretion of the CFIUS?*

**RESPONSE:** With respect generally to the concept of "national security," please refer to the official guidance that Treasury published on December 8, 2008, in the *Federal Register* (and available on the CFIUS webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>), regarding the types of transactions that CFIUS has reviewed and that have presented national security considerations.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(3) Other measures affecting investment and trade**

##### **(iii) Government procurement**

##### **(a) Overview of U.S. Federal Procurement**

*Paragraph 131 of the Report by the Secretariat states that, "U.S. procurement legislation also has specific rules on what qualifies as an American good, i.e. specific origin rules that differ from rules of origin and marking for importation purposes. Non-manufactures are considered U.S. products if mined or produced in the United States. Manufactures are considered U.S. products if manufactured in the United States and the cost of U.S. components is more than 50% of the overall cost of all components. In addition, special rules apply for construction contracts: origin is not based on the nationality of the contractor or similar, but on the origin of the articles, materials, and supplies used by the contractor in constructing or repairing the building or work.*

6. *Do imported products exempted from "Buy American" under the national treatment commitment in the free trade agreements have to meet the U.S. product criteria? If so, how is compliance with the criteria checked?*

**RESPONSE:** No, in procurement covered by free trade agreements, products of the countries that are partners in such agreement are treated as domestic products.

*Footnote 167 of the Report by the Secretariat states that, "Set-asides for small business are in respect of all federal government contracts, but may vary on the size of the contract. For small contracts (less than US\$150,000), set-asides are automatic, and for large contracts (US\$500,000), a subcontracting plan is often necessary (SBA online information, "Goaling Program". Viewed at: <http://www.sba.gov/about-sba-services/2636>)."*

7. *Footnote 167 says that set-asides for small businesses are automatic for contracts of less than US\$150,000. What percentage of these contracts are actually awarded to small businesses?*

**RESPONSE:** Statutory set-asides for small businesses (15 USC 644(j)), are "automatic" under US\$150,000 only after a federal contracting officer determines that there are small businesses that can meet the requirements of the upcoming contract. Once that determination is made, the contracting officer is required to compete the upcoming contracting action exclusively among small businesses. In Fiscal Year 2011, 63% of all federal contracting actions below US\$150,000 were awarded to small business.

8. *"Large contracts" have subcontracting "requirements." Are these requirements "waived" for suppliers from countries that have government procurement agreements with the USA?*

**RESPONSE:** By law (15 U.S.C. 637(d)), any prime federal contract whose place of performance is in the United States and that offers subcontracting opportunities must contain a subcontracting plan to indicate the percentage of dollars to be awarded to small businesses.

**(c) New WTO government procurement commitments**

*Paragraph 136 of the Report by the Secretariat states that, "WTO GPA Members recently reached consensus on a revision of the GPA and re-negotiation of the specific commitments contained in the annexes pertaining to each Member. The U.S. commitments, undertaken in the 1994 GPA, remain virtually the same. While the thresholds for procurement did not change, the number of central government covered entities has increased by 12. Commitments for sub-central government entities (i.e. states) and other entities (i.e. government corporations) remain unchanged, except for the increased transparency with the listing for several states of the executive branch entities that they cover. In addition, the United States covered telecommunications projects funded by the U.S. Rural Utilities Service under Annex 3."*

9. *What are the 12 entities that are now considered central government covered under the revised GPA?*

**RESPONSE:** The United States added the following 12 Federal entities to its coverage in the negotiations to revise the GPA:

Advisory Council on Historic Preservation  
Court Services and Offender Supervision Agency for the District of Columbia  
Federal Labor Relations Authority  
Federal Energy Regulatory Commission  
Millennium Challenge Corporation  
National Assessment Governing Board  
National Endowment for the Arts



National Endowment for the Humanities  
Social Security Administration  
Transportation Security Administration (under Department of Homeland Security)  
U.S. Marine Mammal Commission  
United States Access Board

**(d) Special provisions, exceptions, etc.**

*Paragraph 138 of the Report by the Secretariat states that, "Procurement at the sub-central (i.e. state) level is a matter of state law. Various state procurement rules may have similar "buy American" provisions that can be seen as restrictive or discriminate on the basis of origin or similar requirements. For example, several states have restrictions on the public procurement of American flags, requiring them to be manufactured in the United States. In Minnesota, law officials' uniforms are required to be of U.S. origin."*

10. *Could the USA provide a list of the discriminatory provisions?*

**RESPONSE:** The U.S. Government does not have such a list.

## QUESTIONS FROM COSTA RICA

### PART I: QUESTIONS ON THE REPORT BY THE SECRETARIAT

Page 4 (paragraph 9)

*"The Troubled Asset Relief Program (TARP) of 2008 targeted financial stability, especially as concerns banking, credit, and support of certain industries. Although funding expired at the end of 2010, approximately one quarter of the funds are outstanding and still supporting certain programmes, including U.S. government investments in the auto industry, American International Group (AIG), and 460 U.S. banks (end 2011). However, these investments and support are gradually being reduced and eliminated."*

#### Questions:

1. *What industries are covered by TARP?*

**RESPONSE:** TARP included a comprehensive set of measures in five key areas:

- **Auto Industry:** Treasury implemented specific programs under TARP to prevent uncontrolled liquidations in the industry that would have had catastrophic impacts on the auto manufacturers as well as their suppliers, dealers, and the surrounding communities.
- **Bank Investment Programs:** Treasury launched five programs under TARP to stabilize America's banking system and ensure that banks were adequately capitalized.
- **Credit Market Programs:** Treasury implemented three programs to restart the flow of credit to meet the critical needs of small businesses and consumers.
- **Housing:** Treasury created programs and took action to reduce the number of foreclosures and reduce the spillover effects of foreclosures on neighborhoods, communities, the financial system, and the economy.
- **Investment in American International Group (AIG):** Treasury took action to help prevent the collapse of AIG, the world's largest conventional insurance provider at the time, because its failure in during the financial crisis would have had a devastating impact on our financial system and economy.

2. *In absolute terms, how much was allocated to TARP and how much remains available?*

**RESPONSE:** Congress originally authorized \$700 billion for TARP, but subsequent legislation, including the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) passed in 2010, amended the Emergency Economic Stabilization Act of 2008 (EESA), capping the total purchase and guarantee authority under TARP at \$475 billion. As of November 30, 2012, \$418 billion has been disbursed and \$375 billion – or nearly 90 percent – has been recovered through repayments, cancellations of commitments, sales, dividends, interest and other income. Treasury's authority to make new financial commitments under TARP ended on October 3, 2010.

3. *What mechanisms were used to make government investments in the auto industry?*

**RESPONSE:** Treasury's investments in the auto industry under TARP are described on Treasury's website, <http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Pages/overview.aspx>. A more detailed history of the assistance provided to the auto industry can be found starting on page 22 of the TARP Two Year Retrospective: [http://www.treasury.gov/initiatives/financial-stability/reports/Documents/TARP%20Two%20Year%20Retrospective\\_10%2005%2010\\_transmittal%20letter.pdf](http://www.treasury.gov/initiatives/financial-stability/reports/Documents/TARP%20Two%20Year%20Retrospective_10%2005%2010_transmittal%20letter.pdf).

4. *What type of support is being provided to AIG and the 460 U.S. banks and through which mechanisms?*

**RESPONSE:** Five programs were created under TARP to help stabilize the U.S. Banking system during the financial crisis. Information about each of the programs is available on the Treasury website at: <http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/bank-investment-programs/Pages/default.aspx>.

The assistance provided to AIG by Treasury and the Federal Reserve Bank of New York is detailed beginning on Page 49 of the TARP Two Year Retrospective:

[http://www.treasury.gov/initiatives/financial-stability/reports/Documents/TARP%20Two%20Year%20Retrospective\\_10%2005%2010\\_transmittal%20letter.pdf](http://www.treasury.gov/initiatives/financial-stability/reports/Documents/TARP%20Two%20Year%20Retrospective_10%2005%2010_transmittal%20letter.pdf). Information about the current status of the program can be found on Treasury's website at: <http://www.treasury.gov/press-center/press-releases/Pages/tg1796.aspx>

5. *The paragraph indicates that the investments and support are gradually being reduced and eliminated. Is there a timetable for their elimination? Could you indicate the time periods and amounts under which you would dismantle the program?*

**RESPONSE:** The legislation that authorized TARP, did not set a date by which the programs will be fully shut down, however, the government is focused on winding down TARP programs as quickly as possible, while ensuring financial stability and maximizing returns to the taxpayer. Several programs have already been completely closed, and more are in their wind-down phases.

Page 26 (paragraph 30)

*This paragraph states that the use and goals of BITs are to: "(...) encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; (...)"*

Question:

6. *Against the backdrop of the growing role of government and public-sector entities as investors, what is the U.S. policy on state involvement in investments?*

**RESPONSE:** The 2012 Model BIT maintains language from its immediate predecessor, the 2004 Model BIT, in particular that text's carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest. The Administration did however make targeted changes to the 2004 text to advance three policy objectives: (1) enhancing transparency and public participation; (2) strengthening protection of labor and the environment; and (3) enhancing disciplines to address challenges posed by State-led

economies. Information about specific revisions made to the Model with respect to each of these objectives is available at: <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

Page 27 (paragraph 33)

*This paragraph states that in June 2011, the U.S. Government created the first centralized investment promotion body, SelectUSA. It also states that SelectUSA's mission is to coordinate activities to promote investment in the United States, facilitate conflict resolution and provide information.*

Questions:

- 7. How is the SelectUSA initiative related to the provisions on inversion in the framework of bilateral investment treaties?*

**RESPONSE:** The functions of the SelectUSA initiative are not directly related to the provisions of U.S. bilateral investment treaties (BITs), although both SelectUSA and BITs support complementary policy objectives. The United States negotiates BITs to encourage the adoption of market-oriented policies that treat private investment in an open, transparent, and non-discriminatory way. The objective of the SelectUSA Initiative is to support private sector job creation and to enhance economic growth by encouraging and supporting business investment in the United States.

- 8. Does SelectUSA have the authority to oversee or monitor the compliance of U.S. trade partners with the investment-related commitments?*

**RESPONSE:** Monitoring the compliance of U.S. trading partners with investment-related international commitments is not a function of the SelectUSA initiative. The primary function of the SelectUSA initiative is to support private sector job creation and enhance economic growth by encouraging and supporting business investment in the United States.

Page 38 (paragraph 16)

*"The United States' tariff nomenclature is published as the Harmonized Tariff Schedule of the United States, which is based upon the internationally adopted Harmonized System. In addition to adopting the international nomenclature to the six-digit level, the United States further delineates the nomenclature to the eight-digit tariff-rate legal level, and to the ten-digit statistical reporting level. Thus, for importers reporting purposes, the ten-digit level is recorded for entries. The United States also expands the nomenclature with the use of chapters 98 and 99 of the tariff, which are unique national provisions. Chapter 98 pertains to special classification provisions, and chapter 99 to temporary legislation, temporary modifications, and additional import restrictions. The use of chapter 99 has increased significantly in recent years as it is typically used to implement certain temporary provisions, especially as pertains to FTA tariff reductions.*

Question:

- 9. Given that chapter 99 entries are temporary, will they be transferred to a classification in the appropriate chapter, or will they be kept in chapter 99 indefinitely?*

**RESPONSE:** Chapter 99 provides temporary special duty treatment for shipments under certain circumstances. Almost all products imported into the United States are classified under the appropriate chapter 1-97 tariff code. However, if the product qualifies for special treatment under Chapter 99, the Chapter 99 number is used as a secondary number. The product enters under Chapter

99 in addition to entry under the chapter 1-97 classification if the importer and CBP agree that it meets the relevant description.

Some chapter 99 provisions have clear end dates after which they are ineffective or disappear. The rates of duty on the designated products revert to the rates shown in Chapter 1-97. An example is the temporary duty suspensions in heading 9902.

Most Chapter 99 provisions for free trade agreements (FTA), on the other hand, are transitional. Just as individual rate lines in Chapters 1-97 may have staged rates over the first few years of an FTA, Chapter 99 is used to provide staging for groups of rate lines or to incorporate limitations on prices or quantities eligible for preferential rates (tariff rate quotas). At the end of staging, the final rate values can be transferred to rate lines in chapters 1-97 as Special rates. Although the Chapter 99 provisions themselves can be deleted, the effective preferential rates continue as Special rates in Chapters 1-97.

*10. Are the entries in chapter 99 included in the official published numbers for total imports?*

**RESPONSE:** Any item imported under Chapter 99 is first classified under the appropriate line in Chapters 1-97, and is included in the official published numbers for total imports in that HTS line. In addition, the quantity and value is listed under the Chapter 99 provision, but due to confidentiality provisions, the data may not be available to the public if there are only a few importers. Further, the data may only be publicly available through Dataweb by specifying the Rate Provision code treatment (which does not specify exactly which Chapter 99 line was used, but does indicate whether a product was imported under a dutiable or non-dutiable Chapter 99 line).

*11. What criteria are used to classify goods under chapter 99?*

**RESPONSE:** The importer claims the chapter 99 provision for entry, subject to CBP review. Again, this is in addition to classifying in Chapter 1-97.

Page 46 (Paragraph 18)

*“During the period under review, the United States implemented other nomenclature changes to its tariff schedule (HTSUS) by presidential proclamation. There were 11 sets of changes involving the footwear sector (i.e. footwear with textile outsoles). The United States has not notified these changes as a rectification or modification to its tariff schedule, thus the nomenclature of the HTSUS and the U.S. WTO schedule differ for these 11 sets of footwear changes.”*

Question:

*12. When is it expected that said changes will be notified?*

**RESPONSE:** On October 31, 2011, the President issued Proclamation 8742 to modify the Harmonized Tariff Schedule of the United States with respect to certain footwear, in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System. These changes became effective on December 3, 2011.

The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect these changes to the Harmonized Tariff Schedule of the United States as soon as possible.

Page 49 (Paragraph 24)

*“Furthermore, the legal change to amend certain tobacco tariffs, pursuant to Article XXVIII renegotiations, has not been implemented at the WTO, while it appears the United States proceeded domestically with these changes long ago.”*

Question:

*13. It is stated that the United States proceeded to domestically amend its tobacco tariffs long ago. Could the U.S. indicate as of when the change was implemented and when it is expected to be implemented at the WTO?*

**RESPONSE:** The United States notified the conclusion of the Article XXVIII negotiations (see G/SECRET/2.Add1) and provided a copy of the U.S. HTS changes to the WTO.

Page 52 (Paragraph 36)

*“Since 1986, the United States has charged a fee on certain merchandise arriving by vessel in order to maintain the navigation channels. The ad valorem fee of 0.125% is assessed on the declared value for commercial cargo.”*

Questions:

*14. What kind of merchandise is subject to this fee?*

*15. Is there any distinction made between domestic and foreign merchandise when charging this fee?*

**RESPONSE:** The Harbor Maintenance Tax is generally assessed on commercial cargo loaded or unloaded on commercial vessels at certain enumerated ports of entry in the United States, without reference to whether the cargo is domestic or foreign merchandise. There are however a number of enumerated exemptions, such as humanitarian cargo. For a complete lists of ports collecting the HMT and pertinent exemptions, See, 19 CFR §24.24.

Page 57 (paragraph 47)

*Pursuant to commitments undertaken in the Uruguay Round, the United States began reviewing outstanding anti-dumping (AD) orders in force starting in July 1998. The two agencies involved – the Department of Commerce and the United States International Trade Commission (USITC) – had conducted 738 reviews at the end 2011 under the "sunset" review procedure. The sunset review process has resulted in about 58% of orders being maintained (i.e. not revoked), and 37% of orders being revoked (Table III.10).*

Questions:

*16. Have institutional or structural changes been implemented at the Department of Commerce and USITC in order to apply anti-dumping, countervailing and safeguard measures? If so, what are they?*

**RESPONSE:** The United States has enacted legislation that implements, and is consistent with, U.S. obligations under the WTO agreements and GATT 1994 with regard to countervailing duty and antidumping duty measures and safeguard measures. In general, this implementing legislation can be found in the United States Code at 19 U.S.C. 1671 et seq. (countervailing duty and antidumping duty measures) and 19 U.S.C. 2251 et seq. (safeguard measures). Both the Department of Commerce and the USITC have adopted procedural regulations that apply to their respective proceedings under these statutory provisions. The most relevant Commerce rules can be found in the U.S. Code of Federal

Regulations at 19 C.F.R. 351, while the most relevant USITC rules can be found at 19 C.F.R. Parts 206 and 207.

Page 64 (Paragraph 60)

*“The United States has various laws or provisions that allow for quantitative restrictions or prohibitions on imported products. These are often maintained to protect the security or economy of the United States, or safeguard the health or well-being of plant or animal life. For example, the Marine Mammal Protection Act, Endangered Species Act, the Fishermen's Protective Act, the Lacey Act, and the Tariff Act of 1930 Section 305 for obscene materials, and Section 308 pertaining to dog and cat fur products all have provisions to prohibit imports of certain products. Customs and Border Protection (CBP) has enforcement authority and may restrict goods (on behalf of other agencies) that do not conform to U.S. laws or regulations such as standards or consumer protection regulations.”*

Question:

*17. Has the United States notified the WTO of all the provisions stemming from the application of those laws that involve a quantitative restriction or prohibition on imports?*

**RESPONSE:** Pursuant to the recent WTO decision to revise notification procedures on Quantitative Restrictions, the United States notified the WTO of quantitative restrictions, including import prohibitions, maintained by the United States. See G/MA/QR/N/USA/1.

Page 77 (paragraph 84):

*“...A particular concern of several Members has been the Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA) and its implementing regulations. This issue was raised by India, China, Mexico, Costa Rica, Pakistan, and the Philippines, and the United States responded that the law had not been implemented yet and that trading partners would be able to participate in the process of developing implementing regulations for the Act through the WTO notification process.”*

Questions:

*18. What are the criteria that the FDA used to define very small, small and medium-sized businesses under the FSMA?*

**RESPONSE:** FDA will describe the criteria used to define the term ‘business’ by size, as appropriate, as part of the rulemaking process for the various FSMA regulations. Additional information on FSMA and Small Business can be found at FDA’s FSMA website: <http://www.fda.gov/Food/FoodSafety/FSMA/ucm268229.htm>.

*19. What provisions of the FSMA exempt small and medium-sized businesses?*

**RESPONSE:** Several provisions of FSMA, including Section 103: Hazard Analysis and Risk-Based Preventive Controls and Section 105: Standards for Produce Safety require FDA to define “small” and “very small” business.

*20. Do exemptions apply to both U.S. and foreign small and medium-sized businesses?*

**RESPONSE:** We expect that all size-based modifications to requirements in regulations that apply domestically will also apply to foreign businesses.

*21. What is the current program for issuing FSMA regulations?*

**RESPONSE:** There are a number of rulemakings required by the FDA Food Safety Modernization Act (FSMA). One of the rules has issued and the others are in various stages of development. The interim final rule on Establishment and Maintenance of Records issued in February 2012 and is in effect. FSMA expands FDA's former records access beyond records related to a specific suspect article of food which FDA reasonably believes is adulterated and presents a threat of serious adverse health consequences or death to humans or animals to now include records relating to any article of food that is reasonably likely to be affected in a similar manner. In addition, FDA can now access records related to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animal.

With regard to the other rulemakings, FDA is working diligently to issue the rules required by FSMA.

Regarding timelines, the rules that have not issued yet will be, when issued, proposed rules. Following the notice-and-comment process, we will take comment on these rules and then, considering those comments, finalize the proposals. There will be several opportunities for public engagement during the notice-and-comment periods for each rule. The timing of when a final rule takes effect will depend on the particular rule, but we do expect that the rules will have phase-in periods.

*22. Will the Committee on Sanitary and Phytosanitary Measures (SPS) be notified of these regulations?*

**RESPONSE:** The United States will continue to notify all SPS measures consistent with U.S. WTO obligations.

Page 101 (paragraph 147)

*There have been no major changes to the core antitrust laws for many years. Contrary to most aspects of U.S. trade policy that occur through new laws or actions by Congress and the Executive branch, U.S. competition policy is generally developed through interpretation by the Judicial branch, and through administrative proceedings at the Federal Trade Commission (FTC). The Department of Justice (DOJ) and the FTC initiate many cases each year pursuant to the relevant antitrust laws (Tables III.24 and III.25).*

Questions:

*23. Given that federal competition and antitrust legislation in the U.S. dates back 112 years and has not undergone significant changes, how have the resulting interpretations by the judicial branch, and through administrative proceedings of the Commission, allowed for implementation of international best practices in competition law?*

**RESPONSE:** Our antitrust laws were largely written in a broad, flexible way that allows for new learning, economic or otherwise, to inform the decision-making of enforcers and courts. That would include international best practices from the OECD and ICN.

*24. What are the main economic sectors in which the Federal Trade Commission and the Antitrust Division of DOJ have conducted investigations on anti-competitive practices from 2008-2011?*



**RESPONSE:** The Antitrust Division filed 90 criminal cases in FY 2011 in a range of important industries, including auto parts, municipal bonds, real estate foreclosures, and freight forwarding. In FY 2011, the Division placed a strong emphasis on the pursuit and development of antitrust cases in markets critical to the nation's economic recovery, including the financial services and real estate markets. The Division will continue to prioritize those efforts throughout FY 2012 in support of the Department's comprehensive battle against financial fraud.

From 2008 until the beginning of December, 2012, the FTC has taken 23 enforcement actions in nonmerger cases. Of these, nine have been in the area of health care professional services, three have been in the area of prescription drugs, three have been in the manufacturing sector, two have been in the real estate sector, two have been in the area of information technology, two have been in the area of non-health care professional association, and one each have been in the retail and truck rental sectors. Summaries of these FTC non-merger cases can be found on the FTC's Enforcement Database, available at <http://www.ftc.gov/bc/caselist/nonmerger/index.shtml>.

Page 102 (Paragraph 150)

*There is regulatory legislation with significance for Intellectual Property (IP) protection, for instance an abbreviated process for approving "biosimilar" generic versions of innovative biological medicines.*

Question:

*25. How long does the abbreviated process for approving "biosimilar" generic versions take? What does it consist of?*

**RESPONSE:** The Patient Protection and Affordable Care Act (Affordable Care Act), signed into law by President Obama on March 23, 2010, amends the Public Health Service Act (PHS Act) to create an abbreviated licensure pathway for biological products that are demonstrated to be "biosimilar" to or "interchangeable" with an FDA-licensed biological product. This pathway is provided in the *Biologics Price Competition and Innovation Act* (BPCI Act). Under the BPCI Act, a biological product may be demonstrated to be "biosimilar" if data show that, among other things, the product is "highly similar" to an already-approved biological product. The U.S. Food and Drug Administration (FDA) requires licensed biosimilar and interchangeable biological products to meet the Agency's exacting standards of safety and efficacy. The FDA released draft guidance documents on biosimilar product development to assist industry in developing such products in the United States on February 9, 2012, and that guidance is in the process of being finalized. It is, as of yet, unknown how long it may take to obtain an approval under the abbreviated licensure pathway for biological products under the PHS Act. Additional information about the BPCI Act and the draft guidelines can be found on the FDA website at: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm291232.htm>

Page 113 (Paragraph 175)

*Among the features of the law on inventions, the Leahy-Smith America Invents Act, which entered into effect in 2011, are measures to provide efficient dispute alternatives. These measures are expected to improve patent quality and reduce litigation by expanding third-party review of patents through pre-issuance submissions, inter partes review, and post grant review.*

Question:

*26. In addition to the measures to provide efficient dispute alternatives, what other mechanisms are used to improve patent quality?*

**RESPONSE:** The USPTO continues to focus on delivering high-quality patents to innovators. More than two years ago, the agency developed a new work credit system that gives examiners more time to review the merits of an application before making a decision. The USPTO has continued to improve its hiring practices to recruit experienced professionals, and it provides comprehensive training to new as well as experienced examiners. In providing more effective training, the USPTO further enhances patent examination fundamentals, communication, and cooperation between the examiner and applicant. The USPTO utilizes a highly successful compact prosecution training and refresher training program that encompasses over 20 training modules designed to enhance examiners' knowledge and skills in procedural and legal topics pertaining to patent examination. In addition, the USPTO has also implemented the *Patent Examiner Technical Training Program (PETTP)* which provides patent examiners with direct access to experts who are able to share their technical knowledge on prior art and industry standards in areas of emerging technologies and established technologies. The PETTP provides an opportunity for communication between patent examiners and the experts who work in the various technologies that are examined throughout the USPTO. This enhanced communication contributes to improving overall patent quality and decreasing patent pendency. The USPTO has also instituted a new program, the Site Examiner Education (SEE) program. This program allows examiners to travel to companies and educational institutions to learn about updates on technology or new technologies and experience how technologies operate in the field.

In the pursuit of improving performance and quality management, the USPTO's Office of Patent Training (OPT) received recertification for the International Standard ISO 9001:2008 and the Office of Patent Quality Assurance (OPQA) received its first certificate of registration for ISO 9001:2008. The ISO 9001 quality standard is the most widely recognized and established quality management system framework in the world, outlining requirements that provide the foundation for OPQA's mission and to meet customer expectations and achieve customer satisfaction. One of the quality management principles of ISO 9001 is the continual improvement of overall performance. In achieving ISO 9001:2008 certification by OPQA, the USPTO has ensured that well-defined and documented standards and processes are in place, demonstrating its dedication to providing consistent quality products and services.

In addition, the USPTO has recently adopted new procedures for measuring and improving the quality of patent examination. The new composite quality metric is designed to reveal the presence of quality issues arising during examination, and to aid in identification of their sources so that problems may be remediated by training, and so that the presence of outstanding quality procedures may be identified and encouraged. The composite quality metric is composed of factors that take into account stakeholder comments, including three factors drawn from the USPTO's previous quality measurement procedure, and four new factors that focus upon data never before acquired and/or employed for quality measurement purposes, for a total of seven factors. The factors that have been modified from previous USPTO procedures measure: (1) the quality of the action setting forth the final disposition of the application; (2) the quality of the actions taken during the course of the examination; and (3) the perceived quality of the patent process as measured through external quality surveys of applicants and practitioners. The newly-added factors measure: (1) the quality of the examiner's initial search; (2) the degree to which the first action on the merits follows best examination practices; (3) the degree to which global USPTO data is indicative of compact, robust prosecution; and (4) the degree to which patent prosecution quality is reflected in the perceptions of the examination corps as measured by internal quality surveys. Additional information about the new

metrics can be found on the USPTO website at [http://www.uspto.gov/patents/init\\_events/qual\\_comp\\_metric.pdf](http://www.uspto.gov/patents/init_events/qual_comp_metric.pdf).

For more information on USPTO's quality improvement initiatives, please see USPTO's Performance and Accountability Report for fiscal year 2012 at: <http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf>.

Page 118 (Paragraph 192)

*It is stated that Effective IP enforcement in foreign markets remains a strong priority for U.S. authorities. The Joint Strategy included the goal of working collectively to strengthen enforcement of IP rights internationally, enhancing international law enforcement cooperation to combat piracy and counterfeiting.*

Question:

*27. What cooperation efforts are undertaken with Latin American countries to improve international enforcement?*

**RESPONSE:** As Latin American countries geographically are some of our closest trading partners, the United States has a very keen interest in maintaining and improving international IP enforcement. All agencies of the United States Government strive to work cooperatively and constructively with our Latin American partners, through direct consultations and information exchanges at all levels of government. The most tangible evidence of American Government investment in fostering IP enforcement in Latin America is the posting of not one, but two Regional IPR Attachés in this critical expanse: a Regional IPR Attaché for Mexico, Central America, and the Caribbean, based at the U.S. Embassy in Mexico City, Mexico; and a Regional IPR Attaché for South America, resident at the U.S. Consulate General in Rio de Janeiro, Brazil. These Regional IPR Attachés confer with the many governments in their areas of responsibility. They collaborate with rights holders seeking to combat IPR infringement, and academics seeking to enhance and promote IP protection. Additionally, the State Department has dedicated Economic Officers who monitor and promote IP protection at United States diplomatic facilities throughout Latin America, and work closely with the Organization of American States in Washington, D.C.

Other United States Government agencies, including the Departments of Justice and Homeland Security, have specialized personnel in-country to work cooperatively with host governments on a variety of criminal and civil issues. The USPTO also actively encourages interested Latin American governments to send officials, such as judges, prosecutors, Customs and police officers, and intellectual property agency officials to attend specialized and advanced training and information exchanges at the USPTO's Global Intellectual Property Academy (GIPA). At GIPA, foreign officials meet their American counterparts, allowing specialized and focused discussions to take place in a cooperative environment. The United States engages on multiple levels and in varied settings and fora to promote IP registration and protection, and to develop strategies in the fight against infringement and misappropriation.

Page 146 (paragraph 66)

**The U.S. trade regimes for environmental services appear very open.**

Question:

**28. Does the United States have restrictions on the provision of environmental consultancy and advisory services?**

**RESPONSE:** The United States has comprehensive commitments under the GATS with respect to consulting services, and there are no specific reservations for environmental consultancy or advisory services with respect to U.S. commitments on market access and national treatment under its free trade agreements.

**Page 146 (footnote number 69)**

**“Distribution of fresh water is often considered as an environmental service and is delivered in bundle with waste water treatment, by the same utility, and with a single bill. However there are various views as to where water supply services should be classified (...) On the other hand, relevant publications on environmental services tend to address both water supply and wastewater services, and references to water supply as an environmental service are found in several non-U.S. preferential trade agreements.**

**Questions:**

**29. Does the United States consider water supply services as an environmental service? How does U.S. legislation define this kind of service?**

**RESPONSE:** Footnote 69 of the Secretariat’s Report discusses generic classification issues, including, the Report suggests, some that have been discussed in the Committee on Specific Commitments. The United States has previously stated its position on these issues in the context of those discussions, and has no further comment for purposes of the current Trade Policy Review.

**Page 147 (paragraph 66)**

**“While environmental services are not mentioned explicitly in these reservations, the reservation on "public utilities services" cover some environmental services. The government procurement commitments under the various U.S. free trade agreements echo this exclusion, though in most instances with slightly different wording.”**

**Question:**

**30. What environmental services are included in the reservation on public utilities services?**

**RESPONSE:** To the extent environmental services are provided by public utilities, they would be included in the reservation. As noted in the Secretariat’s Report, in the United States, these can include services such as waste-water management and refuse disposal.

**Page 147, note b of Chart IV.10:**

**“All U.S. environmental services commitments under the GATS are qualified by two footnotes: footnote 19 “In each of the following subsectors, U.S. commitments are limited to the following activities: implementation and installation of new or existing systems for environmental cleanup, remediation, prevention and monitoring; implementation of environmental quality control and pollution reduction services; maintenance and repair of environment-related systems and facilities not already covered by the U.S. commitments on maintenance and repair of equipment; on-site environmental investigation, evaluation,**

monitoring; sample collection services; training on site or at the facility; consulting related to these areas”; footnote 20: “Nothing in this offer related to transportation should be construed to supersede the existing U.S. commitments on transportation or related MFN exemptions.”

**Question:**

31. Does the United States have restrictions on the provision of environmental consultancy and advisory services that are commitments under GATS?

**RESPONSE:** The United States has comprehensive commitments under the GATS with respect to consulting services, and there are no specific reservations for environmental consultancy or advisory services with respect to U.S. commitments on market access and national treatment under its free trade agreements.

**Page 150 (paragraph 74)**

“The amended International Banking Act now explicitly requires the Board of Governors of the Federal Reserve System, when considering an application for establishment of a U.S. office of a foreign bank that presents a risk to the stability of the United States financial system, to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. ”

**Questions:**

32. What criteria are used to determine the risk that the establishment of a foreign bank office presents to the stability of the U.S. financial system?  
33. Is this a discretionary measure, or is it a prudential measure based on previously established guidelines?

**RESPONSE:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor generally may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36; <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>. Discussion of the financial stability criteria specific to an application by a foreign bank to establish a U.S. office may be found at Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012), at page 16; <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf>.

**Page 154, paragraph 90:**

“The Financial Stability Oversight Council (FSOC) shall (a) give due regard to the principle of national treatment and equality of competitive opportunity; and (b) take into account the extent to which the foreign or foreign-based company is subject on a consolidated basis to home country standards that are comparable to those applied in the United States.”

**Question:**

34. *What are the implications if the FSOC considers that the home country standards are not comparable to those applied in the United States?*

**RESPONSE:** The Dodd-Frank Act authorizes the Council to make recommendations to the Federal Reserve concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Federal Reserve and large, interconnected bank holding companies, that are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States. The statute provides that in making any such recommendations that would apply to foreign nonbank financial companies supervised by the Federal Reserve or foreign-based bank holding companies, the Council must “(A) give due regard to the principle of national treatment and equality of competitive opportunity; and (B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.”

**PART II: QUESTIONS RELATED TO THE REPORT BY THE U.S. GOVERNMENT**

**Page 22 (paragraph 76)**

*The United States led the way in securing APEC Leaders endorsement of a commercially and environmentally credible list of environmental goods on which they will reduce tariffs to 5% or less by 2015, based on the Leaders' 2011 commitment. The APEC List of Environmental Goods includes 54 core environmental products, including renewable and clean energy technologies, wastewater treatment equipment, air pollution control technologies, and environmental monitoring and assessment equipment.*

**Question:**

1. *What progress has APEC made in liberalizing environmental services and what kind of support does the United States provide to this initiative?*

**RESPONSE:** In 2011, under U.S. leadership, APEC Leaders committed to undertake a series of actions to In 2011, APEC Leaders committed to undertake a series of actions to promote trade in environmental services, including to eliminate local content requirements that distort trade in environmental services by the end of 2012; ensure that all government support and incentive programs that are aimed at promoting environmental services are transparent and consistent with economies' WTO obligations; ensure that all government procurement policies pertaining to environment services are transparent; affirm our commitments to pursue liberalization of environmental services in the WTO; and pursue progressive liberalization of trade in environmental services in APEC economies' Free Trade Agreements. In 2013, APEC will increase focus on implementing these commitments and further breaking down barriers to trade in environmental services.

**Page 23 (paragraph 81)**

*The United States has also increased its engagement with the Gulf Cooperation Council (GCC) and its six member states (Saudi Arabia, United Arab Emirates, Bahrain, Oman, Qatar, and Kuwait).*

**Question:**

2. *What kind of investment and trade projects is the United States developing with the Gulf Cooperation Council? Is there discussion of negotiating a trade agreement?*

**RESPONSE:** The United States and the GCC signed a Framework Agreement for Trade, Economic, Investment and Technical Cooperation on September 27, 2012. The Agreement will establish a Joint Committee to discuss areas where both the GCC and the United States share mutual interests, including considering opportunities for enhancing economic, commercial, investment and technical cooperation, fostering their economic relations and increasing the volume of trade and investment between them.

Page 28 (paragraph 101)

*In April 2012, the United States updated its model text on Bilateral Investment Treaties. It is indicated that this is an updated model that seeks to preserve high-standard protections without compromising governments' ability to regulate in the public interest.*

Questions:

3. *In what ways did the 2004 model fail to suit the public interest? What are the main differences between the revised model text on bilateral investment treaties and the prior version?*
  
4. *How does the U.S. envisage implementing the policy on bilateral investment treaties under the new model with regard to trading partners with whom investment provisions were already negotiated under the previous model?*

**RESPONSE:** Both the 2004 and 2012 U.S. Model BITs reflect a carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest. The updated, 2012 Model text made targeted changes to the 2004 text to advance three policy objectives: (1) enhancing transparency and public participation; (2) strengthening protection of labor and the environment; and (3) enhancing disciplines to address challenges posed by State-led economies. Information about specific revisions made to the Model with respect to each of these objectives is available at: <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>. The Model BIT provides a model text for ongoing and future BIT negotiations; it does not affect BITs or other investment agreements already in force.

Page 37 (paragraph 146)

*“As host of APEC in 2011, the United States defined and achieved a robust agenda on green growth, and, in particular, secured commitments from APEC Leaders to lower applied tariffs on environmental goods to no more than 5% by 2015 and eliminate local content requirements that distort trade and investment for environmental goods and services. APEC member economies also agreed to establish an Experts Group on Illegal Logging and Associated Trade and to work to implement appropriate measures to prohibit trade in illegally harvested forest products. Finally, in 2011, we gained agreement to take steps to streamline import procedures for energy-efficient vehicles, facilitate trade in remanufactured goods, and improve the quality of regulations and standards for emerging green technologies in the region.”*

Questions:

5. *Could the United States describe in detail the measures adopted to simplify imports of energy-efficient vehicles and remanufactured goods?*

**RESPONSE:** On Electric Vehicles, in 2011 APEC Ministers agreed to develop common elements of policies and regulations for the importation of non-salable, alternative-fueled demonstration vehicles by the end of 2012 that allow temporary access for a small number of imported demonstration vehicles; produce effective, targeted research outcomes; permit extended, public on-road demonstrations, while ensuring adequate safety; and, streamline import procedures by providing

expedited approval processes and duty- and tax-exempt treatment during the demonstration period (see Annex C to the AMM Statement). In 2012, Ministers welcomed work on regulatory cooperation and convergence to facilitate the robust deployment of new automotive technologies, such as electric vehicles and vehicle to vehicle and vehicle to infrastructure communications, and instructed officials to continue to share updates on their policy approaches to facilitate the diffusion of advanced technology and alternative-fueled motor vehicles.

On remanufactured goods, in 2011 APEC Ministers agreed to facilitate trade in remanufactured goods by making existing and future tariff and non-tariff measures applied to goods that are not newly-manufactured publicly available, electronically, in their domestic languages, and, where possible, in English. In 2012, Ministers urged officials to continue this compilation. When laws and regulations related to such measures are under development, Ministers agreed to provide a meaningful process for stakeholders to comment and to take those comments into consideration in producing final rules. Ministers also welcomed the APEC Pathfinder Initiative on Facilitating Trade in Remanufactured Goods, under which participating economies committed not to apply measures specifically concerning used goods to remanufactured goods (see Annex D of the AMM). Finally, Ministers instructed officials to undertake additional capacity-building activities on trade in remanufactured goods and remanufacturing, considering the development needs of economies and with a view to increasing the number of economies participating in the Pathfinder. A capacity building workshop on Remanufacturing Research and Development in APEC Economies was held on the margins of the Market Access Group in March 2012 in Singapore. Malaysia hosted a workshop on Remanufactured Goods in October 2012 in Kuala Lumpur, with a view to helping economies join the pathfinder.

6. *What kinds of measures have been taken to improve the quality of environmental regulations and standards on emerging green technologies in the region?*

**RESPONSE:** In 2011, the United States worked closely with other APEC members to reach agreement on specific recommendations to promote interoperable standards for smart grid; facilitate trade in solar technologies through collaboration on standards and conformance; and, to enable greater consistency and transparency in measures to support green buildings. These recommendations are available at: [http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2011/2011\\_amm/annex-e.aspx](http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2011/2011_amm/annex-e.aspx). Following up this work in 2012, APEC provided training to regulators on interoperable standards for smart grid during the World Energy Forum meetings; held a regulator dialogue on Energy Efficiency standards for ICT equipment; and launched a multi-year project on green building codes and modeling standards.



## QUESTIONS FROM CUBA

Con respecto al Informe presentado por el Gobierno de los Estados Unidos sobre el Examen de sus Políticas Comerciales circulado como documento WT/TPR/G/275 y, del Informe de la Secretaría de la OMC circulado como documento WT/TPR/S/275, ambos de fecha 13 de noviembre de 2012, la República de Cuba solicita que sean incluidas en el undécimo examen de ese Miembro, una serie de preguntas en relación con los acápites de estos informes que a continuación se relacionan:

- **Report by the United States (WT/TPR/G/275 of November 13, 2012):**

### Chapter I. THE UNITED STATES IN THE MULTILATERAL SYSTEM:

Paragraph 10 of this Chapter indicates that *“Robust trade enforcement across the spectrum of goods and services is also a central pillar of U.S. trade policy. For nearly two decades, the WTO dispute settlement system has proven valuable to Members as a unique venue for the discussion and adjudication of disputes with our trading partners. The United States' enforcement priorities seek to target the most commercially-significant...issues ... that have important implications for the future of the rules-based global trading system.”*

Paragraph 11 indicates that *“The United States will continue vigilant trade enforcement efforts at the WTO... to maintain a level playing field and uphold key commitments. The United States remains committed to working with its trading partners to create a global trading system where intellectual property is protected, ... and where transparent rules and regulations are applied without discrimination”.*

### Chapter IV. TRADE POLICY DEVELOPMENTS SINCE 2010

#### 1) WTO AGREEMENTS AND INITIATIVES

##### Implementation of Existing Agreements

Paragraph 56 indicates that *“Since entry into force of the Uruguay Round Agreements in 1995, a central theme of U.S. policy has been to undertake the effective and timely implementation of our WTO commitments. The United States believes it is not only important for American trade interests, but for the WTO system as a whole, to ensure that all Members meet their commitments. The various manifestations of this policy range from active and constructive participation in the deliberations of WTO committees to the use of the dispute settlement mechanism. U.S. trade policy seeks to support and advance the rule of law.”*

Paragraph 58 indicates that *“To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 99 complaints at the WTO, thus far successfully concluding 65 of them by settling 28 cases favorably and prevailing in 37 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy.”*

- **Report by the Secretariat (WT/TPR/S/275 of November 13, 2012):**

Chapter III. TRADE POLICIES AND PRACTICES BY MEASURE.

3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE

vi) Trade-related intellectual property measures

(a) Introduction

Paragraph 150 states that “***Intellectual property (IP) Intellectual property (IP) has a central place in the domestic economy and the international trade profile of the United States. The United States is one of the most well established and mature IP jurisdictions; however, the legal, economic, and trade policy context of IP continued to evolve significantly during the review period.***” with a series of elements noted in this regard.

(b) Economic policy context

Paragraph 151 states that “*Policymakers have continued to emphasize the central importance of IP for the trade, economic and employment position of the United States, and – in line with international developments – sought to base IP policy on a firm empirical foundation.*”

Paragraph 152 states that “*IP was integral to trade policy concerns to boost high-value exports of goods and services.*”

Paragraph 155 states that “*The United States is by far the world's single largest IP license exporter, collecting about half of world royalties and license fees in 2010 (last year available).*†”

(c) Institutional framework

Paragraph 162 reports that “***Several agencies are responsible for various administrative and enforcement aspects involving intellectual property in the United States. The United States Patent and Trademark Office (USPTO) plays a key role in strengthening and facilitating IP protection. Beyond its administrative and statutory functions, USPTO provides advice on IP policy issues, gives assistance to foreign governments and international organizations, and conducts programs and studies to strengthen the effectiveness of IP protection domestically and throughout the world.***”

(d) Participation in WTO and international initiatives

Paragraph 167 indicates that “*The United States also responded to questions on its implementation of DSB recommendations concerning two of the four IP-related cases in which the United States had taken part as respondent‡, i.e. ... Section 211 of the Omnibus Appropriations Act of 1998. § Acknowledging that in those two cases its ***implementation had not been completed***, the United States noted that it had been working actively towards compliance in furtherance of the purpose of the dispute settlement system, and engaged to continue to work to implement the relevant DSB recommendations and rulings.*\*\*

Paragraph 168 indicates, furthermore, that “*With respect to the Section 211, the U.S. Administration will continue to work on a solution that would resolve this matter.*”

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† WTO Secretariat estimates, based on World Bank online information, "Indicators: Science and Technology: Royalties and License Fees". Viewed at: <http://data.worldbank.org/indicator?display=default> [May 2012].

‡ As respondent, the United States has taken part in the following IPR-related cases: DS160, DS176, DS186, and DS224. For details, see WTO (2010), Table III.12.

§ WTO documents WT/DS160/R, 15 June 2000; and WT/DS176/R, 6 August 2001.

\*\* WTO document WT/TPR/M/235/Add.1, 1 November 2010.

Paragraph 170 states that “*The United States continued its active role in the TRIPS Council during period under review, in particular **introducing material concerning IP enforcement**, and communicating (with several other Members) the text of the Anti-Counterfeiting Trade Agreement (ACTA; see section below).<sup>††</sup> USTR views the TRIPS Council as an opportunity for sharing experiences to ensure effective implementation of IP enforcement obligations.*”<sup>‡‡</sup>

(e) Trademarks and geographical indications

Paragraph 182 specifies that “*The Trademark Technical and Conforming Amendments took effect on 8 November 2011, and amended the Rules of Practice in Trademark Cases to implement the Trademark Technical and Conforming Amendment Act of 2010. The Act became law on 17 March 2010, and made small technical and conforming corrections to the Lanham Act, as well as more significant changes regarding filing Affidavits or Declarations of Use or Excusable Nonuse to maintain a registration. Specifically, the legislation gave Madrid Protocol registrants the benefit of six-month grace periods immediately following the statutory time periods for filing their trademark registration maintenance documents under Section 71, 15 U.S.C. 1141k.*”

1. Enforcement

Paragraph 189 states that “*Several initiatives to improve the coordination and effectiveness of domestic mechanisms to enforce IP rights matured during the review period. In recognition of the need for more effective coordination and a stronger information base for enforcement of IP rights, the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act of 2008 created a new position of Intellectual Property Enforcement Coordinator (IPEC). This position was filled following Senate confirmation in 2009. The PRO-IP Act required the IPEC to coordinate the development of a joint strategic plan against counterfeiting and infringement. The plan was issued in 2010, containing 33 enforcement strategy action items within six categories: (i) leading by example; (ii) increasing transparency; (iii) ensuring efficiency and coordination; (iv) enforcing rights internationally; (v) securing the supply chain; and (vi) building a data-driven government.*”

Paragraph 194 announces that “*The United States and seven other WTO Members signed the Anti-Counterfeiting Trade Agreement (ACTA) on 1 October 2011.*”<sup>§§</sup> The ACTA aims to strengthen the international legal framework for combating commercial-scale counterfeiting and piracy. “

Accordingly, the **Government of the Republic of Cuba** believes that the policies and measures described above are inconsistent with the long-standing absence of compliance by the United States, which for over ten years has failed to take any effective action to comply with DSB recommendations and rulings which, as long ago as February 2002, found that Section 211 of the Omnibus Appropriations Act of 1998 is noncompliant with the TRIPS Agreement and the Paris Convention.

The DSB has established in its rulings that Section 211 is an illegal regulation that violates the legitimate rights of owners of Cuban trademarks. Yet the United States continues to fail to take the any action at all to implement DSB recommendations and rulings.

*Therefore, the Government of the Republic of Cuba wishes to receive specific answers to the following questions from the U.S. Government:*

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<sup>††</sup> WTO document IP/C/W/563, 7 October 2011.

<sup>‡‡</sup> USTR (2012a).

<sup>§§</sup> The ACTA was signed in Tokyo by Australia, Canada, Korea (Rep. of), Japan, New Zealand, Morocco, Singapore, and the United States.

1. *What prevents you from granting, through the USPTO, the necessary license to the Cuban firm CUBAEXPORT for renewal of the “Havana Club” mark that rightfully belongs to said firm, thus complying with your international intellectual property commitments?*

**RESPONSE:** The United States does not accept the factual and legal characterizations contained in these questions, and notes that the WTO Appellate Body found that Section 211(a)(1) was not inconsistent with the WTO obligations of the United States. With respect to Section 211(a)(2), the Appellate Body did not question the right of the United States to refuse recognition “in its own territory [to] trademarks, trade names or other rights relating to any intellectual property or other property rights that ... have been expropriated or otherwise confiscated in other territories.” See Appellate Body Report, ¶¶ 362-63

2. *How can you defend the propriety of such conduct to the Trade Policy Review Board from the standpoint of your ongoing commitment to comply with the DSB ruling on Section 211--conduct that has continued for more than 10 years now?*

**RESPONSE:** Legislative proposals have been introduced in the current and prior Congresses to implement the recommendations and rulings of the DSB. The Administration continues to work on solutions to implement the DSB’s recommendations and rulings.

3. *How can you support the conferring of validity and recognition of the so-called “original owner” (a misnomer) when it abandoned the mark for over two years and, based on the Lanham Act, any third party was permitted to register the Havana Club mark once it had not been used, and there was no intent to use it, for at least two years?*

**RESPONSE:** Please see the answer to question 1.

4. *Based on what happened with the CUBAEXPORT case, what industrial property right guarantees does the United States offer in its territory to members of this Organization, and, in particular, to Cuba?*

**RESPONSE:** The United States affords persons from other WTO members with robust protection for, and enforcement of, intellectual property rights. In addition to the panoply of remedies available to private rights holders in civil lawsuits against infringement, U.S. law also provides criminal penalties for certain types of intellectual property rights infringement.

## **QUESTIONS FROM THE DOMINICAN REPUBLIC**

### **1. Customs Trade promotion**

*The United States has promulgated various laws designed to promote trade. However implementation of these laws has been delayed or incomplete, as is the case for the scanning of all maritime containers and air freight.*

*-In that regard, it would be interesting to know what action might be taken to implement and apply the trade promotion legislation.*

**RESPONSE:** The United States has amply demonstrated its commitment to a strong and thriving international trading economy. U.S. Customs and Border Protection has deployed a multi-layered, risk-based approach to enhance the security of U.S. borders while facilitating the lawful flow of people and goods entering the United States. CBP has taken a dual approach to the critical issue of increasing and promoting international trade, by securing the supply chain and borders, and by facilitating lawful trade by effectively analyzing pre-arrival information, utilizing information technology, engaging in partnership programs, and developing a robust and capable post-entry verification atmosphere and workforce.

### **2. Rules of origin**

*It would be interesting to know what measures are being taken to reduce the complexity and the difficulty of applying the laws and regulations on rules of origin and marking, given that according to this section the rules are different in the various industries and the final determination can depend on a number of factors.*

**RESPONSE:** While the United States does not consider its laws and regulations either inaccessible or cumbersome, CBP proposed a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. Based on the comments received in response to the proposed changes, in September 2011, CBP issued a final rule that did not adopt new origin and marking rules. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. SEE, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>

The United States does not have any plans at this time to change its rules of origin or its current labeling requirements.

### **3. Exclusion of Argentina from the Generalized System of Preferences (GSP) for failing to pay arbitral awards**

*In accordance with Presidential Proclamation 8788 of March 26, 2012, Argentina was excluded from the GSP for failing to act in good faith in enforcing arbitral awards in favor of U.S. companies. That decision has led to many debates on the implications of and link between international trade and investment arbitration.*

*Given that this measure could have a large impact on areas such as investment and trade arbitration, we would like to know if the U.S. policy in this area is limited to the Argentine case, or whether the*

*U.S. is considering extending this measure to other countries in similar situations. Furthermore, we would like to know, to the extent possible, what the decision-making process and criteria would be.*

**RESPONSE:** The decision to suspend the GSP trade benefits of Argentina was made pursuant to the U.S. statute governing the GSP program, which requires that, in order to be designated a GSP beneficiary, a country may not have failed to act in good faith in recognizing or enforcing arbitral awards in favor of U.S. citizens or corporations. Each petition seeking the withdrawal of GSP benefits is considered on its own merits; and decisions on each petition are based on the circumstances of the particular case and the relevant statutory criteria. Changes to a beneficiary country's eligibility for GSP trade benefits are made following a review of that country's practices with respect to the relevant GSP eligibility criteria. Such reviews generally include a public hearing, solicitation of comments from stakeholders, and consultations with the subject country.

#### **4. Restrictions to foreign direct investment**

*Although the United States' investment regime has been described as open and transparent with few formal encumbrances, there remain a number of restrictions to foreign investment in certain areas. A number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas. Moreover, certain information-gathering, monitoring, reporting, and disclosure procedures can also have an impact on foreign investment. It would be interesting to know which areas are the most affected by these measures, the criteria these measures apply, and the draft regulations that might be proposed to liberalize these areas.*

**RESPONSE:** The Secretariat's Report does not itself speak to barriers or restrictions on foreign investment in the United States. Rather, the Report (at paragraph 35) references a report of the Congressional Research Services (CRS) that discusses certain federal-level measures that "have an impact on foreign investment in the United States," including measures that do not restrict foreign investment. Detailed information about these measures is presented in the CRS report itself.

#### **5. Control of U.S. businesses by foreigners**

*The Committee on Foreign Investment in the United States (CFIUS) is authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction. Although international agreements have derogations for national security and the environment, allowing States full use of their regulatory capacities, it would be interesting to know how the work of committees such as CFIUS is reconciled with provisions on executive boards and boards of directors in free trade agreements and international investment agreements.*

**RESPONSE:** U.S. international investment agreements include an exception for application of measures that a Party considers necessary for the protection of its essential security interests. This exception applies to the entirety of the agreement, including, therefore, with respect to any obligation relating to senior management and boards of directors.

6. *It would be in the United States' interest to improve the rules for determining the origin of textiles and clothing given that these rules are complex in their implementation, above all in that they are "yarn forward."*

**RESPONSE:** This does not appear to be a question.

7. *Why have the U.S. preferential rules of origin not been updated and notified to the WTO Committee on Rules of Origin? Likewise, the rules of origin have not been brought into line with the changes in the Fifth Amendment to the Harmonized System.*

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

8. *Why not have regulatory policies that require the marking of origin for manufactured products (both wholly acquired and those transformed using raw materials not originating in the country) that will then be exported to countries that have signed trade agreements with the USA?*

**RESPONSE:** The United States does not maintain labelling requirements for goods being exported, and there are no plans at this time to change its current labelling requirements.

9. *Why are there taxes or sanctions on the marking rules regime?*

**RESPONSE:** We are unclear what is meant by this question, and what taxes or sanctions, specifically, the Dominican Republic is referring to.

10. *Would the United States be willing to collaborate jointly with the other signatories of the CAFTA-DR FTA on the use of trademarks to not only allow errors but also to prevent discovery of the true origin of the goods?*

**RESPONSE:** We look forward to continued close cooperation with our CAFTA-DR partners on IPR issues, including with regards to trademarks.

#### **11. Sanitary and Phytosanitary Measures**

*Paragraph 14 of the Report by the Secretariat on the U.S. Trade Policy Review refers to the role of the United States in the areas of standards and sanitary and phytosanitary measures and notes that changes were made to these procedures.*

*In that regard, we would ask the United States to tell us why an exception was made to the procedure and whether it believes that the increase in the controls under this Act will have negative effects on trade due to the additional cost of compliance with its provisions.*

**RESPONSE:** The United States has not changed its procedures for developing regulations. These procedures are governed by the Administrative Procedures Act. The U.S. Food and Drug Administration (FDA) has increased the number of routine inspections of all food facilities to meet new requirements mandated by the Food Safety Modernization Act (FSMA), which was signed into law by the President on January 4, 2011. FSMA aims to ensure the U.S. food supply is safe by shifting the focus from responding to contamination of foods to preventing contamination for both domestically produced and imported foods. FDA will be proposing new regulations to fully implement the FSMA, will notify the proposed rules to the WTO, will be providing an opportunity for

public comment on the proposed rules, and will take the public comments into consideration before finalizing any regulations.

**12. Regulation of Technical Standards**

*In the regulations, we noted that the United States regulates the sale of 40-proof rum despite the fact that the definition of rum in the CODEX Alimentarius states that it may be between 33-40 proof. Could the United States explain why it will not label a less-than-40-proof beverage as rum?*

**RESPONSE:** Federal regulations stating the U.S. standards of identity for distilled spirits are long standing, and pre-date Codex definitions. The regulations require that all of the major classes of distilled spirits (neutral spirits, including vodka, whisky, gin, brandy, rum, and tequila) be bottled at not less than 80° proof, which is equivalent to 40 percent alcohol by volume. This 80° proof standard applies to both domestic and imported products. Spirits of these classes that are bottled at less than 80° proof may be labeled as “diluted” vodka, whiskey, brandy, rum, etc.

*In accordance with paragraph 9 of the Report by the Secretariat on the U.S. preferential rules of origin: "The U.S. preferential rules of origin have not been notified to the WTO Committee on Rules of Origin since 1997. The preferential rules are contained in the HTSUS, mainly in the General Notes, accounting for approximately 670 pages of text. Additional preferential origin criteria, outside the General Notes, are in Chapter 98 and 99 provisions. An importer would need to determine which preferential rules might apply to the product concerned, and then find the appropriate section of the HTSUS to determine the applicable origin criteria. Furthermore, the nomenclature-specific tariff shift information has not been updated to reflect HS2012 changes introduced in the tariff, which would have to be negotiated between trading partners for FTAs."*

**RESPONSE:** There does not appear to be a question in this paragraph. The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

**13. *Given that the Dominican Republic has already included its changes in its most recent amendment to the Tariff Code, and that to date (bearing in mind the deadline of September 30, 2012) the United States has not even submitted the required documentation to the WTO to make the necessary changes to its WTO tariff listing, we would like to know when the United States plans to include these changes into the Harmonized System and what the course of action is for negotiating with trade partners.***

**RESPONSE:** The United States has submitted its Schedule XX of bound commitments in both HS 2007 and HS 2012 to the WTO Secretariat according to the submission dates established in WT/L/830 and WT/L/831, respectively.



## QUESTIONS FROM EL SALVADOR

### Report by the Secretariat

#### I. ECONOMIC ENVIRONMENT

##### (3) Developments in trade and foreign direct investment

##### (ii) Trade in services, paragraph 26

*The above paragraph states that, "The services trade (imports and exports) is generally concentrated in relatively few, mainly advanced, developed countries."*

##### Question:

- *Could the United States please state, as appropriate, which measures have been taken or are under consideration to prevent the concentration of trade in services in the hands of a small number of developed and advanced countries?*

**RESPONSE:** U.S. trade in services is driven by commercial considerations, not government policy. The data reported reflects the fact that the volume of services trade is related to the market size of the trading partner. Many U.S. service suppliers are active globally

- *Could the United States indicate how developing and less advanced countries can participate in the trade in services with the United States at all levels of government?*

**RESPONSE:** One of the ways for developing countries to better participate is by opening their markets to trade and investment in services. It is important to recall that "imports" of services through mode 3 can result in exports of services through all modes, while also supporting local economic development, employment and training.

#### II. TRADE POLICY AND INVESTMENT REGIMES

##### (2) Participation in the World Trade Organization, paragraph 6

*This paragraph states that, "According to the U.S. Trade Policy Agenda, the United States is 'committed to preserving and enhancing the WTO's irreplaceable role as the primary forum for multilateral trade liberalization, for the development and enforcement of global trade rules, and as a key bulwark against protectionism.'<sup>[1]</sup>*

*The United States continues to support, participate and pursue trade initiatives and further liberalization through the WTO's multilateral trade framework. Furthermore, the United States is committed to contributing constructively and creatively to the functioning of the WTO, in particular, acknowledging that the WTO Doha Round is at an impasse, it is committed to fresh and credible approaches to new market-opening trade initiatives. <sup>[2]</sup>"*

##### Question:

- *In view of the important role played by the United States in the World Trade Organization, could the United States indicate what form its support will take for Ministerial Conferences on the Doha Development Agenda under the multilateral trade framework?*

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<sup>[1]</sup> USTR (2012b).

<sup>[2]</sup> USTR (2012b).

**RESPONSE:** The United States is very willing to continue to make progress wherever possible on the Doha mandate, based on common efforts. But “business as usual” has not worked, and will not work going forward. We believe that now is the time to craft credible, innovative approaches to the WTO’s work as an institution that liberalizes trade and creates and applies meaningful rules to trade. But all major players must do their part.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) Measures Directly Affecting Imports**

##### **(viii) Technical regulations and standards Paragraph 70**

*This paragraph states that the legal basis for implementing the Agreement on Technical Barriers to Trade (TBT Agreement) in the United States is Title IV of the Trade Agreements Act of 1979, which "designates the Office of the USTR as the lead agency within the federal Government for coordinating and developing international trade policy on standards-related activities..."*

##### **Question:**

- *With regard to the standardization activities of government, intergovernmental and non-governmental entities, could the United States list the government-level mechanisms that it has for monitoring the standardizing activities of non-governmental entities to ensure their compatibility with the TBT Agreement?*

**RESPONSE:** The United States does not have a specific government mechanism for monitoring standards activities for non-governmental entities. U.S. trade agencies participate in national and international standards development activities and the American National Standards Institute committees to ensure consistency of standardization activities and policies with trade policies, including with respect to the TBT Agreement.

## QUESTIONS FROM THE EUROPEAN UNION

### WT/TPR/G/275

#### **Trade and environment.**

#### Page 32 Paragraph 147:

*The US mentions the APEC agreement on environmental goods according to which APEC economies will reduce tariffs to 5% or less by 2015.*

*1. Question: Could the US indicate which steps they intend to take to implement this deal by 2015?*

**RESPONSE:** The United States will seek legislation necessary to reduce any tariffs above 5% by 2015.

### WT/TPR/S/275

#### **I-ECONOMIC ENVIRONMENT**

#### **(3) development in trade and foreign direct investments**

#### **(ii) trade in services**

#### Page 12 para 27

*The report notes that "In January 2012, President Obama issued an Executive Order to improve visa processing and promote travel and tourism. The Executive Order required the Departments of State and Homeland Security to develop an implementation plan within 60 days to improve visa processing times for non-immigrant visas for foreign visitors, in particular with respect to increasing capacity by 40% in Brazil and China, in order to promote tourism." (p. 12).*

*2. Question: Would the US consider adopting measures to improve visa processing in order to simplify and facilitate the movement of business professionals as well, notably intra corporate transferees?*

**RESPONSE:** The United States is committed to facilitating travel for all qualified business travelers as quickly and efficiently as possible. All U.S. embassies and consulates have procedures in place to expedite visa applications for business travelers, particularly those with urgent and unexpected travel needs. These missions partner with overseas business associations, particularly the American Chamber of Commerce, in more than 100 countries to expedite visa interviews for travelers who are coming to the United States to finalize deals, participate in conferences, or attend trade shows.

The Department of State and the Department of Homeland Security work closely together to ensure clear and consistent interpretations of U.S. law are applied to for intra-company transferees. This includes substantial outreach in the United States and around the world to ensure application procedures and legal standards are transparent and consistent. The Department of Homeland Security has extensively engaged, and will continue to engage, stakeholders with respect to L-1 (intra-corporate transferee) visa issues.

Page 23 para 25 on AGOA

*The EU welcomes the extension of the AGOA third-country fabric provisions in August this year.*

*3. Question: Could the US share any data or analysis of the impact of the provisions on export, production and employment figures in beneficiary countries?*

**RESPONSE:** The third country fabric provision significantly enhances the competitiveness of African apparel. The majority of exports under AGOA depend on that provision. The International Trade Commission has prepared some analyses of the textile and apparel trade under AGOA, including "Sub-Saharan African Textile and Apparel Inputs: Potential for Competitive Production" (available at: <http://www.usitc.gov/publications/332/pub4078.pdf>).

## **II- TRADE POLICY AND INVESTMENT REGIMES**

### **(1) TRADE POLICY FORMULATION AND FRAMEWORK**

#### **(4) investment agreements and policies**

##### **(iii) investment regulations and restrictions**

Page 28, Point 36 and Table II.11 address CFIUS covered transaction notices.

*4. Questions: Could the US give more information on cases where (a) the parties did not initially submit the transaction for CFIUS review prior to purchase of certain asset and (b) the CFIUS have acted and requested that the parties involved should unwind the relevant purchase? The EU is aware that this was for example the case with the purchase of 3Leaf last summer. Finally, how many interventions were made in the period referred to in the report (2009-2011)?*

**RESPONSE:** By law, information filed with CFIUS may not be disclosed by CFIUS to the public. Accordingly, CFIUS does not comment on information relating to specific CFIUS cases, including whether or not certain parties have filed notices for review. The response below, therefore, is not a comment on any particular transaction.

(a) CFIUS agencies monitor merger and acquisition activity, identify transactions that have not been voluntarily notified to CFIUS but may present national security considerations, and assess whether additional information regarding the transaction or the authority of section 721 is required to identify or address any national security concerns. When a CFIUS agency believes that a non-notified transaction may be a covered transaction and may raise national security considerations, the agency may self-initiate a review of the transaction under section 721. Alternatively, if CFIUS believes that the transaction may raise national security considerations and may be a covered transaction, CFIUS may contact the parties and request further information about the transaction, partly to help to determine whether the transaction is a covered transaction. If CFIUS makes such a determination, it may request that the parties file a notice. In most cases in which CFIUS has made inquiries of parties to transactions, the parties respond by filing a voluntary notice.

(b) Only the President has the authority to suspend or prohibit a covered transaction. In certain circumstances described in Executive Order 11858 when a transaction raises national security concerns that cannot be resolved by mitigation, CFIUS may refer a covered transaction to the President for him to decide whether to exercise that authority. In these instances, CFIUS may recommend to the President that a transaction be blocked, or if already consummated, be divested. Parties may also decide at any point during CFIUS' review of a transaction to voluntarily withdraw their notice and abandon the transaction or divest.

The vast majority of CFIUS cases are the result of voluntary notices. Statistics that CFIUS has made public regarding notices filed with CFIUS are included in CFIUS Annual Reports available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

### III- TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) Measures directly affecting imports

##### (i) Custom procedures

Page 31, para 2:

*"Secure Freight Initiative (SFI), initiated in response to the Security and Accountability for Every (SAFE) Port Act to evaluate the feasibility of requiring 100% scanning of maritime cargo containers. The SAFE Port Act, as amended, requires 100% scanning of all maritime containers shipped to the United States by 1 July 2012. On 2 May 2012, in accordance with the statute, DHS Secretary submitted to Congress her intent to extend the deadline by two years. New proposed legislation to extend or eliminate the statutory deadline has not been passed into law." The EU notes that the requirement to scan all US bound maritime containers before they are loaded at a foreign port mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007 was already raised prominently during the 2008 and 2010 US TPR. It remains a concern to the EU and its economic operators. The EU welcomes the decision in May 2012 by the Secretary for Homeland Security to postpone the implementation of the scanning requirement for two years but notes that the secretariat report quotes that "new proposed legislation to extend or eliminate the statutory deadline has not been passed into law". The EU recalls that In the US TPR in 2010 , WTO Members asked if the US had considered alternative options based on adequate risk analysis and hence, less costly and burdensome for traders. The US answered that an interagency working group had been assembled to look at worldwide global supply chain security. The working group was looking at all options in addressing the 100% scanning mandate and the path forward. Regarding air cargo rules, the report states that " the law requiring 100% scanning of cargoes on international US inbound flights postponed to 3.12.2012 for implementation".*

*5. Questions: Is the Administration taking actions to seek the repeal of the 100% maritime container scanning requirement by the US Congress? If so please specify such actions and their timeframe. Regarding the 100% cargo scanning on international US inbound flight, could the US clarify what the legal situation shall be and what rules shall apply as of 4 December 2012?*

**RESPONSE:** The deadline for the 100% scanning requirement will not go into effect until July 1, 2014. The statutory requirement still applies, but the deadline for implementation has been changed. The Secretary of Homeland Security has the authority to extend it again at that time under the conditions outlined in the statute. No decision on such a further extension has been reached at this time.

Beginning December 3, 2012, all U.S. inbound cargo shipments loaded on passenger aircraft must undergo screening for explosives. For more information, SEE, <http://www.tsa.gov/press/releases/2012/05/16/tsa-sets-cargo-screening-deadline-international-inbound-passenger-aircraft>

##### (iv) tariffs

##### c) WTO binding

Page 41, para 24:

*It is reported that "The legal change to amend certain tobacco tariffs, pursuant to Article XXVIII renegotiations, has not been implemented at the WTO, while it appears the United States proceeded domestically with these changes long ago".*

6. *Questions: The EU would welcome the certification of the results of the Article XXVIII negotiations conducted in 1995 on certain tobacco tariffs. Could the U.S. share its plans in this respect? Is the US planning to update the list of EU countries granted access to the tobacco TRQ specifically allocated in 1995 to the former EC15 in order to benefit all members of the enlarged European Union (EU)?*

**RESPONSE:** The United States notified the conclusion of the Article XXVIII negotiations (see G/SECRET/2.Add1) and provided a copy of the U.S. HTS changes to the WTO.

**(viii) technical regulations and standards**

Page 58 paragraph 70

*The WTO report states that" the enquiry point and notification authority under the Agreement is the National Institute of Standards and Technology (NIST) of the Department of Commerce" and that "notifications were made on behalf of a number of government agencies (....)".*

7. *Questions: Could the US clarify how many technical regulations and conformity assessment procedures as defined by the TBT Agreement have been brought forward and/ or adopted by Congress during the review period? Which measures has taken the US in order to ensure their transparency obligations under the TBT Agreement regarding the notification of not only technical regulations adopted by the US government agencies but also those technical regulations adopted by the US Congress and by subfederal levels of government?"*

**RESPONSE:** We are not aware of any major U.S. legislation adopted during the review period setting out technical regulations or conformity assessment procedures, and the United States has not notified any such measures to the WTO during the review period. In order to ensure transparency, all legislative information from the U.S. Congress including proposed legislation is provided on the searchable website from the Library of Congress, available at <http://thomas.loc.gov/home/thomas.php>. Sub-federal measures are regularly reviewed from a state regulatory database, and notified by the U.S. inquire point in coordination with USTR to the WTO.

Page 58-61 in particular para 79

*Given the vast number of standards developing organizations in the United States accredited by the American National Standards Institute (ANSI), there are certain concerns regarding the ability of the US standardization system to guarantee the consistency and the coherence with international standards (i.e. ISO/IEC standards). This particularly applies to those standards developing organizations elaborating standards with an international reach outside the regime of the international standardisation organisations ISO and IEC.*

8. *Question: "Since the US, through ANSI, is a member of ISO and IEC, which measures has the US taken in order to ensure that the standards developed by these organisations are taken into consideration by the US standards developing organisations?"*

**RESPONSE:** The American National Standards Institute (ANSI), the U.S. national standards body, has accredited approximately 225 standard development bodies (SDOs), both in the public and private sectors. ANSI has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards set out in Annex 3 of the TBT Agreement, which includes the requirement for standardizing bodies to base their standards on relevant international standards. In addition, ANSI maintains two procedures to ensure coordination with and consideration of ISO and IEC standards: the U.S. National Adoption Procedures and ANSI Essential Requirements. The U.S. National Adoption Procedures ([www.ansi.org/nationaladoption](http://www.ansi.org/nationaladoption)) encourage coordination and communications between U.S. domiciled standards development organizations and activities of ISO and IEC. The ANSI Essential Requirements ([www.ansi.org/essentialrequirements](http://www.ansi.org/essentialrequirements)) require U.S. domiciled standards development organizations to advise the relevant ISO or IEC Technical Advisory Committee if a draft standard is intended to be submitted to ISO, IEC or JTC-1.

**III. Trade policies and practices by measures,  
(2) measures directly affecting exports ,  
(iii) prohibitions, licensing section**

Page 66

*The secretariat report does not mention export control of Liquefied Natural Gas (LNG). However the EU understands that the Current US law stipulates that companies need an authorisation from the US Department of Energy (DoE) for any imports or exports of natural gas. When deciding about such an authorisation the US DoE needs to consider a wide range of public interest issues like development of domestic gas prices. There are currently several pending applications for export licenses. The only countries to which US companies can currently freely export natural gas (or where the DoE is required to grant the necessary authorisation since respective exports are automatically deemed consistent with the public interest) are those which include respective clauses on natural gas in free trade agreements with the US. A US DOE study is underway to assess the effects and public policy implications of permitting a number of export terminals. In addition, the secretariat report page 7 para 21 states that " the prospects for further increases in domestic production of oil and natural gas are quite high".*

9. Question: in light of the above, could the US explain the rationale for this export control measure and the possible follow up to the US DOE study?

**RESPONSE:** New technology has led to rapidly increased U.S. production of natural gas, lower prices and reduced imports. As a result, the private sector is considering conversion of existing liquefied natural gas (LNG) import terminals in the United States into export terminals, and developing new, greenfield LNG export terminal projects. These are significant multi-billion dollar investments and take time to complete.

The U.S. Department of Energy (DOE) has the authority over long-term natural gas imports and exports of natural gas, including liquefied natural gas (LNG), under the Natural Gas Act and the DOE Organization Act. DOE is generally required to grant applications to export LNG to countries with which the United States has entered into a free trade agreement providing for the national treatment for trade in natural gas. For countries that do not meet this criterion, DOE is required to grant applications for export authorizations unless DOE finds that the proposed exports "will not be consistent with the public interest." Factors for consideration include economic, energy security, international, and environmental impacts. As part of the public interest determination review process, DOE solicits public comment, and considers any protests and motions to intervene in the administrative review process.

To date, DOE has approved multi-year long term authorizations of domestically produced LNG exports from the lower-48 states totalling 23.13 billion cubic feet /day to FTA countries and 2.2 billion cubic feet/day to non-FTA countries. In light of the significant number of new pending applications for LNG exports, and environmental and other issues raised by the public, DOE conducted a two-part export study to examine the cumulative impacts of additional natural gas exports. Information about the export study, applications for and approvals of authorizations for LNG exports and imports is available on the DOE website <http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html>.

On December 11, 2012, DOE published notice and requested public comment on the export study (Federal Register Volume 77, Number 238 (Tuesday, December 11, 2012); Pages 73627-73630.) Initial comments regarding the study will be accepted by DOE for 45 days, followed by a reply comment period that will last for 30 days. DOE will evaluate both the study and the comments received prior to making its determinations of the public interest on a case-by-case basis, for each of the pending cases.

**(ix) Sanitary and Phytosanitary measures**

Page 64, para 86:

*10. Questions: Could the U.S. clarify how the first identification of pests of concern for fruits and vegetables is undertaken by Aphis?*

**RESPONSE:** With regard to market access requests, APHIS strongly encourages trading partners to provide a pest list along with their written request for market access. The pest list is subsequently evaluated and a literature review is conducted to determine if additional pests should be added to the list or if some pests should be removed from the list. Once a pest list has been finalized to the mutual satisfaction of both APHIS and its foreign counterpart organization, APHIS proceeds with the pest risk analysis.

Pages 61 to 65

*There are many applications submitted to APHIS/USDA which are still pending to be considered. In addition, some ongoing pest-risk assessment and rule-making processes are taking excessive long timeframes (decades), having a negative impact on exports opportunities. According to WTO commitments, parties are obliged to approve phytosanitary controls and procedures "without undue delay". This issue was already raised during the TPRM 2008 and TPRM 2010. Unfortunately, very little progress has been made. The EU would like to invite and encourage APHIS to broaden the list of products to be eligible for this streamline process with a view to facilitating trade.*

*11. Questions: Could the US clarify which procedural steps and timeframes an application to export plant and plant products for which import requirement have not yet been set up, would need to go through from the time when it has been received in US administration until the import of the products of concern can take place?*

**RESPONSE:** This information was included in our June 19, 2001 *Federal Register* notification entitled "Procedures and Standards Governing the Consideration of Import Requests" (Docket # 00-082-1) and subsequently incorporated into the Code of Federal Regulations at 7 CFR 319.5.

*12. Questions: Could the US inform what the average timeframe is for a new application to be added to the list so called "current in progress PPQ risk analysis", after having been received in US administration? Could the US inform about the criteria and/or parameters for adding new applications to this list?*

**RESPONSE:** The timeframe under which APHIS review a particular application depends on the facts of that particular application. In this sense, there is no average timeframe for APHIS review. As noted above, criteria are included in the 7 CFR 319.5.

*13. Questions : Could the US inform whether APHIS has assessed to further broaden the list of fruits and vegetables, known as its Quarantine 56 or Q-56 to be eligible for the streamline process with a view to further focus its resources and per ende to facilitate trade?*

**RESPONSE:** APHIS regularly considers ways to further streamline its regulatory process. For example, on November 14, 2011, APHIS announced improvements to its risk assessment and rulemaking processes through a business re-engineering process as outlined on the APHIS website at the following web address: [http://www.aphis.usda.gov/newsroom/2011/11/risk\\_assessment\\_process.shtml](http://www.aphis.usda.gov/newsroom/2011/11/risk_assessment_process.shtml)

*14. Questions: Considering that the new legislation concerning importation of Plants for Planting, so called NAPPRA (Not Authorized Pending Pest Risk Analysis) will require to perform risk assessment also for plants for planting, could the US inform if the administration has envisioned to increase*



*APHIS human resources capacity to handle the foreseeable increase of risk assessment for this type of applications to export?*

**RESPONSE:** We do not expect a need to increase resources in this regard.

*On treatment with methyl bromide for plant quarantine purposes,  
15 .Questions: Could the US clarify if this treatment will continue to be part of the US import requirements? Have other less hazardous treatments been developed since 2010 under the US national programme 308 established by USDA on Methyl Bromide Alternatives, as described in the Montreal Protocol and recommended by the International Plant Protection Convention (IPPC)?*

**RESPONSE:** Depending on the pest of concern, methyl bromide treatments may continue; however, APHIS has approved numerous alternative treatments to reduce reliance on methyl bromide. These alternatives include: (1) irradiation treatment, (2) systems approaches, (3) cold treatment, and (3) various hot treatments including vapor heat treatment and hot water dip treatments.

Page 61, para 82

*The US import policy does not allow introduction of some commodities from the EU due to the US national legislation which is not fully in line with the OIE standards. Despite the commitments announced by APHIS since 2005, EU cannot export any food or feed products containing bovine materials. The lack of any concrete initiative to implement the OIE standards in its import rule, despite repeated appeals to this end and the relevant US commitments to do it, including during the previous trade policy reviews of the US in 2008 and 2010, is inconsistent with US use of the OIE standards for its own exports. Animal health rules exclude imports of live animals and of certain products of animal origin into the US from countries not yet free by specific diseases. The US authorities undertake a lengthy assessment of the animal disease situation of the exporting candidates followed by a rulemaking procedure. Irrespective of their OIE official disease status, some EU Member States still do not have the possibility to access the US.*

*16. Questions: When does the US, as a Member of OIE, intend to bring its administrative rules in compliance with OIE standards with regards to BSE and the general animal health regionalisation approach? What steps are the competent US Authorities taking to expedite their technical and administrative process for the recognition of the EU Member States animal health status?*

**RESPONSE:** When the U.S. BSE comprehensive rule is published, U.S. import requirements will be aligned with OIE guidelines, and our internal procedures would mirror established and internationally-recognized OIE guidelines for BSE. It is expected that the final rule will be published during 2013. The United States has worked closely with the European Commission and EU Member states to address the animal health regionalization requests under the U.S.-EU Veterinary Equivalency Agreement. We expect this cooperation to continue.

Pages 62-65, para 88:

*The Food Safety Modernization Act (FSMA) was enacted in January 2011. It has been presented as the most expansive changes in US food safety legislation since 1938 when the Federal Food, Drug and Cosmetic Act was adopted. The FSMA's main objective is to improve the FDA capacity to prevent, to detect and respond to food safety problems but serious questions remain as to its financing. FDA is provided with additional authority and powers but the consequences for trade with the US will very much depend on the implementing provisions that FDA will prepare and for which it has a considerable degree of discretion. The EU has some points of concerns in relation to the responsibility of private certification and accreditation bodies in recognising the ability of competent authorities to approve third country establishments to export safe products to the US; the lack of clarity on how the central role of the European Commission is recognised in ensuring that only safe products are exported to the US; the focus on individual inspections of foreign supplier*

*establishments instead of favouring a systems-based approach whereby competent authorities are the prime interlocutors for such audits and inspections; the conditions that may be imposed, or the guarantees that may be requested, by US importers from their suppliers.*

*17. Questions: When does the US intend to issue and publish the proposed rules, guidance to industry and implementing regulations? How is the US going to address the EU concerns in order not to affect bilateral trade ?*

**RESPONSE:** FDA is working diligently to issue the rules required by FSMA. All rules will be consistent with U.S. WTO obligations, and therefore should be responsive to the concerns of our trading partners.

(a)

### **III-(3) Other measures affecting investment and trade**

#### **(i) Business framework and business investment incentives**

##### Page 73 para 121

*18. Question: Could the US elaborate further on the status and the perspectives of the reform of business tax framework?*

**RESPONSE:** While the U.S. Congress did hold hearings on business tax reform, at this time, the extent to which the proposed framework will be adopted is uncertain.

#### *ii) State trading enterprises, government corporations, and government enterprises as well as Congress corporations*

##### Pages 73-74, Paras 124, 125 and 126

*19. Question : Are such enterprises subject to the competition rules in the same way as other enterprises?*

**RESPONSE:** The referenced entities often are not subject to U.S. antitrust laws. “State trading enterprises” is a WTO legal term that can include private entities with special privileges, regulatory or otherwise. “Government enterprises” includes government corporations as well as some unincorporated government bodies that provide goods or services with commercial attributes. We do not know what is meant by “Congress corporations.” U.S. antitrust laws do not apply to actions by the Federal Government or actions by Federal entities that are of a governmental character. See, e.g., the U.S. Supreme Court decision in *United States Postal Service v. Flamingo Industries (USA) Ltd*, 540 U.S. 736 (2004):

“The Postal Service, in both form and function, is not a separate antitrust person from the United States. It is part of the Government of the United States and so is not controlled by the antitrust laws.”

Whether such entities are immune is determined based on the character and history of the entity involved, the nature of its activities, and the relevant statutory schemes.

*20. Question: Are they subject to the same fiscal rules as other enterprises? Can the US explain how the level of public funding, if any, of these enterprises is determined?*

**RESPONSE:** It is unclear to the United States what is meant by the term “fiscal rules.”

#### **(iii) Government procurement**

21. *Question: Given the economic importance of public procurement, could the US give an assessment in dollars and in percentage of the total of the American procurement that is opened to third countries, be they at the Federal State level or sub-federal?*

**RESPONSE:** The United States does not have statistics on sub-federal procurement except for the 37 states covered by the GPA. With respect to U.S. procurement covered by the GPA, the United States submits statistics to the WTO Committee on Government Procurement. In the ordinary course of business, the United States does not compile information on the percentage of American procurement that is opened to third countries.

**(b) US procurement legislation**

Page 76, para 129

*The report of the WTO Secretariat explains the U.S. procurement legislation including Buy American provisions in paragraphs 129 to 135, as well as new WTO government procurement commitments in paragraph 136. The report states that Buy American provisions apply to procurement below GPA thresholds and to non-covered entities. As far as sub-central Government entities and other entities are concerned, the entity coverage of the U.S. GPA commitments is not comprehensive. This means that, for instance, several universities are not covered by the commitments and use discriminatory Buy American provisions in their procurement. Furthermore, infrastructure projects concerning airports, such as the Airport Improvement Program, contain Buy American requirements and prevent effective participation of European suppliers in these projects.*

*Exceptions under the Buy American Act apply when: (i) it is deemed inconsistent with the public interest; (ii) the cost is considered unreasonable; (iii) the products are for use outside of the United States; (iv) the products are not produced or manufactured in the United States in sufficient quantities or of satisfactory quality; and (v) the procurement is for less than US\$2,500.*

22. *Questions: Regarding the exceptions under the Buy American Act, could the US provide information about waivers granted during the last two years? In particular, could the US give information as to the waivers granted because of the exception of an unreasonable cost? Could the United States indicate when and under which circumstances they would consider waiving Buy American provisions as far as goods, services and suppliers of other GPA Parties are concerned?*

**RESPONSE:** Where buy American requirements apply to procurement not covered by the GPA, waivers are given to goods or services of GPA Parties on the same basis as for non-GPA Parties. The number of waivers that were issued Government-wide in Fiscal Years 2010 and 2011 by exception category are:

*FY10*

*Public Interest: 297*

*Domestic Non-availability: 5531*

*Unreasonable Cost: 363*

*Resale: 2824*

*Commercial Information Technology: 5563*

*FY11*

*Public Interest: 139*

*Domestic Non-availability: 6531*

*Unreasonable Cost: 574*

*Resale: 2491*

*Commercial Information Technology: 3624*

Para 130

*“An agency is allowed to use a foreign supplier if the price of the domestic product is “unreasonable”. The threshold for determining “unreasonable” is generally 6%. However, if the contract involves a small business or labor surplus area, a differential of 12% is applied, and for the Department of Defense, a threshold of 50% is applied.*

*23. Questions: Could the US provide information about the thresholds and differentials that are used for the determination of “unreasonable price”. Could the U.S. explain the reasons why does it apply various thresholds and differentials per sector?*

**RESPONSE:** The Federal Acquisition Regulation (FAR) provides extensive guidance regarding the determination of price reasonableness at FAR 25.105, as shown below, and for supplies at FAR 25.5. Executive Order 10582 of 1954, as amended, defines “unreasonable” as a cost differential greater than 6% of the bid or offered price of materials of foreign origin. This threshold has been in place since 1954.

**25.105 Determining reasonableness of cost.**

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under [Subpart 25.4](#).

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see [Subpart 19.5](#)).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at)

The thresholds (percents) are allowed for the various business sectors (large and small businesses) to level the acquisition competitive environment. The United States recognize that small businesses are often at a disadvantage when competing on government procurements, so 12% was determined reasonable to ensure small businesses have a fair opportunity to compete in government procurements of this nature.

The Department of Defense applies a 50% differential to its procurement. The differential is added to the lowest acceptable foreign offer and then compared to the domestic offer. The differential is applied only to the bid price for material to be delivered under the contract, not the total contract price. Generally the differential is applied on an item by item basis, but a solicitation may provide that certain items will be lumped together.

Page 76, para .131

*“Manufactures are considered US products if manufactured in the United States and the cost of U.S. components is more than 50% of the overall cost of all components.” The EU notes that contrary to this general requirement, some sectors, for example high speed trains, are requested to be manufactured with 100% US components. This “maximalist” requirement clearly blocks any import and closes entirely the market of components for high speed trains. Additionally, taking in account the*

*supply chain that exists nowadays for any mid or high level technical product, this requirement raises questions whether it is actually possible to fulfil it, either for domestic producers or foreign investors, who would want to re-locate manufacturing to the U.S.*

*24. Questions: Could the US explain why some sectors are requested to fulfil the requirement for 100% US components given the negative impact and deterrent effect on foreign investors? Is there any plan to modify the law and regulations in order to harmonise the local content percentage?*

**RESPONSE:** U.S. law requires that some products procured by the federal government must contain 100% U.S. components; for example, products procured for projects funded by the Federal Railroad Administrations' High Speed Rail Program. U.S. legislation generally establishes the requirements for local content percentages, based on a variety of considerations. The United States is not aware of any plans to change these requirements.

*25. Question: Could the US specify for each sector and state the margin of preference (price and local content) applied?*

**RESPONSE:** See responses to Questions 23 and 24.

*Jones Act. The EU notes that the report lacks information on the Merchant Marine Act, so-called Jones Act. In accordance with this Act the United States prohibits the use, sale or lease of foreign built or foreign reconstructed vessels, as well as market access to provide national maritime transport services, by foreign companies. In practice the legislation prevents foreign companies from selling certain maritime goods such as their dredgers, and from providing certain maritime services to the United States and is thus a clear barrier to trade. There are clear indications that "Jones Act" hampers the access of foreign goods and services to the U.S. markets creating a lack of competition in the country.*

*26. Questions: Does the US have any plans to amend its restrictive legislation in the forthcoming future and to eliminate its discriminatory elements? Can the US provide information on cases where it has granted waivers to the Jones Act provisions?*

**RESPONSE:** The United States continues to apply the provisions of the 'Jones Act' in accordance with the exception to Part II of the GATT 1994 provided in paragraph 3 of the GATT 1994. The United States has explained that this exemption continues to be necessary. With regard to services, the United States has not undertaken commitments in the maritime services sector. Regarding the specific questions, there are no plans to amend the legislation. The United States can and has granted waivers under certain Jones Act provisions, for example under 46 U.S.C. § 501. The United States refers the EU to those provisions for further information about waivers.

Page 78, Para. 136.

*"WTO GPA Members recently reached consensus on a revision of the GPA and re-negotiation of the specific commitments contained in the annexes pertaining to each Member. The U.S. commitments, undertaken in the 1994 GPA, remain virtually the same." Regarding the US commitments under GPA, "mass transit" is one of the sectors not covered by the GPA. According to the US legislation, US Code, Title 49 (Transportation), Section 5302: the definition of "mass transit" set in the US legislation:*

*(7) Mass transportation. The term "mass transportation" means public transportation.*

*(...) (10) Public transportation. The term "public transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity). (...)*

*(14) Transit. The term "transit" means public transportation. According to this mass transit definition, intercity trains and high speed trains would not be considered mass transit, which on the*

*other hand it is consistent with the mass transit definition commonly and technically accepted at international level. Nevertheless, the US when applying GPA, unilaterally interprets "mass transit" in a different way, considering that "all kind of trains are mass transit".*

*27. Questions: The U.S. GPA commitments do not apply to the restrictions attached to federal funds for mass transit and highway projects. Can the U.S. confirm that the domestic definition for mass transit (that is then also relevant for GPA purposes) is to be found in the US Code, Title 49 (Transportation), Section 5302? In this respect, can the U.S. confirm that this definition does not include inter-city trains and high speed trains?*

**RESPONSE:** There is no definition of "mass transit" in US Code, Title 49. The referenced definition is not considered to be the definition of "mass transit" for purposes of the U.S. reservation in Annex 2 (*"The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway."*)

Pages 76-78 and para 138

*The report paints an incomplete picture of the state of the US procurement law. This is unfortunate considering the paramount significance the GPA attaches to providing 'transparency of laws, regulations, procedures and practices regarding government procurement'. None of the acts notified in GPA/23 (15 July 1998) appear in the review.*

*The review gives even less information on sub-central, ie. state law – apart from highlighting similar "buy American" procurement rules (p 78).The secretariat report gives little information on sub-federal measures that may contain national preference provisions. It only refers to some exclusions thought many other provisions in states' legislations do tend to give preference to offers that provide for at least 60% of local content.*

*28. Question: Could the US give more information about the legislation at state level that includes preference(s) for offers that provide for 60% of local content?*

**RESPONSE:** The United States does not have such information.

**(iv) subsidies and other government assistance**

Page 81, table III.23:

*"The volumetric ethanol excise tax credit has expired at the end of 2011".*

*29. Question: Could the US provide further information about the perspective for the US policy on bioethanol?*

**RESPONSE:** The United States has an array of policies and programs, many similar to those of other countries, to support the biofuel sector. These programs have been notified to the WTO, most recently in G/SCM/N/220/USA.

**(v) competition policy**

Pages 83-84

*The secretariat report does not refer to the US policy regarding maritime services. In 2010, the US indicated in its replies to the EU questions that "the FMC was analysing what impact the repeal of the EU block exemption for shipping liner conferences might have for US maritime trade and practices"*

*30. Question: Could the US give some indications as to its future policy orientation in this domain?*

**RESPONSE:** The Federal Maritime Commission, after publishing its Study of the EU's 2008 Repeal of Liner Shipping Competition Law Exemption January 2012, plans to conduct a brief follow up review with subsequent recent data since the original study included the severe economic downturn of 2008/2009. The FMC is not aware of any planned future

policy based on the study at this time. The Study is available on the FMC's website at [http://www.fmc.gov/assets/1/Documents/FMC\\_EU\\_Study\\_508compliant.pdf](http://www.fmc.gov/assets/1/Documents/FMC_EU_Study_508compliant.pdf).

**(vi) Trade-related intellectual property rights**

Page 94: *In the U.S. case "Tea Board of India v The Republic of Tea, 80 USPQ2d 1881 (TTAB 2006) related to the test for determining whether a mark is generic, it is stated that "the mark (...) has lost its significance as an indication of geographic origin (...) by virtue of a failure to control the mark".*

*31. Question: Could the US clarify if the abusive use of a certification trademark not timely identified by the holders of the certification trademark is considered as an element qualifying the name as generic?*

**RESPONSE:** The statute does not define "control" or indicate the degree of control required, but it is clear that absolute control would be impracticable, if not impossible. The issue is whether the control is adequate. The owner must take reasonable steps, under all the circumstances of the case, to prevent the public from being misled. Even if control is not maintained and misuse occurs, it must be shown that the misuse was of such significance to permit an inference that the mark is generic.

**(g) Trademarks and geographical indications**

Page 94, paragraph 182

*"The Trademark Technical and Conforming Amendments took effect on 8 November 2011, and amended the Rules of Practice in Trademark Cases to implement the Trademark Technical and Conforming Amendment Act of 2010. The Act became law on 17 March 2010, and made small technical and conforming corrections to the Lanham Act, as well as more significant changes regarding filing Affidavits or Declarations of Use or Excusable Non use to maintain a registration. "*

*32. Question: How do these corrections to the Lanham Act specifically affect the registration and protection of Geographical Indications in the USA? Do they reinforce protection of GIs in accordance with the provisions under Section 2, Articles 22 & 23 of the TRIPS Agreement?*

**RESPONSE:** The United States protects geographical indications through its trademark system as certification marks, collective marks, and trademarks. The U.S. trademark system provides the requisite protection set forth in the geographical indications sections of the TRIPS Agreement. The Trademark Technical and Conforming Amendment Act makes it easier for trademark owners to maintain their registrations because it makes the statutory time periods for filings of affidavits of use consistent across all registration bases – use, Paris Convention, and the Madrid Protocol. It also allows for correction of certain deficiencies in post registration filings that could otherwise result in loss of the registration. For example, with respect to all post registration maintenance filings, owners may correct deficiencies in such submissions outside of the statutory period for filing, upon payment of a deficiency surcharge. Such deficiencies now specifically include the case in which the affidavit was not filed in the name of the owner of the registration. In addition, owners of U.S. registrations under the Madrid Protocol now have the benefit of six-month grace periods immediately following the statutory time periods for post registration filings. Previously, no grace period existed at the end of the six-year period following the date of registration in the U.S. and only a three-month grace period existed following the expiration of each successive 10-year period following registration. The newly enacted grace periods match those given to other trademark registrants.

**(i) Enforcement**

Page 97, paragraph 192

*"Effective IP enforcement in foreign markets remains a strong priority for U.S. authorities. The Joint Strategy included the goal of working collectively to strengthen enforcement of IP rights*

*internationally, including through: (i) combating foreign-based and foreign-controlled websites that infringe American IP rights, as a "growing problem that undermines ... national security, particularly ... national economic security". Combating websites that infringe IP rights is a global problem. One of the EU member States has detected that a significant number of illegal downloading of contents in particular in Spanish language is done through websites registered in the USA territory and we have communicated it accordingly to the USA Government.*

*33. Question: What are the US specifically doing to stop websites that offer illegal downloading from their own territory?*

**RESPONSE:** The National Intellectual Property Rights Coordination Center of U.S. Immigration and Customs Enforcement coordinates "Operation in Our Sites" enforcement actions that involve federal law enforcement investigating and developing evidence to obtain seizure warrants from federal judges. The web-site domain names then are seized pursuant to the federal seizure warrants, and re-directed to display a seizure notice as opposed to offering the content or goods that violate U.S. copyrights or trademarks.

Page 96 Para 189 and 191 on IP enforcement

*34. Questions: Can the US confirm that design infringements are enforced by US Customs at the border? Could the U.S. provide more details on how and using which instrument the IPR domestic enforcement has been strengthened?*

**RESPONSE:** The U.S. International Trade Commission (USITC) investigates allegations of design patent infringement. Design patent holders must file a complaint with the USITC. If the USITC determines that the accused imports infringe the asserted claims of the design patent(s) at issue, the USITC may issue an exclusion order barring infringing products from entry into the United States. U.S. Customs and Border Protection enforces the exclusion order at the border by denying entry into the United States of products subject to the order.

### **III. TRADE POLICIES BY SECTOR**

#### **(1) Agriculture**

##### **(1) Agriculture in the United States**

##### **(iii) level of support**

##### **(a) WTO notification**

Page 108, Para. 34 Other programmes, Marketing orders

*The EU notes that currently some Marketing Orders may be discriminatory for some of the following reasons: Some Marketing Orders are applied in limited geographical areas in the US. However, they are compulsory for every import coming into the US; some Marketing Orders are not based on international standards; some Marketing Orders are applied seasonally, only when harvest and marketing takes place. This may create discrimination among different exporting countries (from different hemispheres), since Marketing Orders are only applied to those imports coming into the US when marketing of US production takes place.*

*35. Questions: Could the U.S. explain why the marketing orders are applied on the basis of some non-objective and potentially discriminatory criteria such as the fact that : some Marketing Orders are not based on international standards and that contrary to CODEX recommendations, the Agricultural Marketing Service inspects 100% of the imported products regulated by the Marketing Order, creating therefore unnecessary delays and extra costs.*

**RESPONSE:** Marketing order standards may only be applied to imports if they meet the terms of 7 U.S.C. § 608e. Among the requirements set out in § 608e is that the application of the marketing order standards to imports is "not inconsistent with U.S. international obligations under any trade agreement, including the General Agreement on Tariffs and Trade."



Page 105, para 23:

*36. Questions: Could the U.S. provide further clarification on the "limits to planting fruit, vegetables, and wild rice" related to direct payments? How are they applied in practice? Is it on farmers' level, or state/federal level? How does the U.S. reconcile the limitations to planting some crops with the provisions of paragraph 6 (b) of Annex 2 of the AoA, as interpreted by relevant WTO jurisprudence, which specifies that the payments are not to be related to a type of production?*

**RESPONSE:** Producers enrolled in the Direct and Countercyclical Payment (DCP) program are prohibited from planting fruits, vegetables, and wild rice (FAV) on their program base acres unless they have an established history of planting FAV. If the farm or the individual producer plants FAV in violation of program rules, the farm's DCP payments are reduced by the market value of the FAV planted in violation. If the farm or producer has an established history, then the farm's DCP payments are reduced on an acre-for-acre basis, i.e. no DCP payments are made for the acres on which allowed FAV are planted. The limits are applied on an individual farm basis.

*37. Could the U.S. provide further details on the pilot project which has been developed to allow planting of selected vegetables for processing for the 2009-2012 crop years as mentioned in paragraph 23? Could the U.S. indicate how the direct payments granted within the pilot project allowing planting of selected vegetables for processing as described in the paragraph are accounted for in the most recent domestic support notification covering the fiscal year 2010?*

**RESPONSE:** The Planting Transferability Pilot Program (PTPP) was introduced under the 2008 Farm Act. Under the program, crop producers in seven Upper Midwest states (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin) may plant select vegetables for processing with an acre-for-acre loss in DCP payments, rather than the market value loss under regular fruit, vegetable, and wild rice (FAV) planting restrictions. Eligible PTPP acreage is capped at specific levels for each participating state, but the overall total cannot exceed 75,000 annually. Based on data from the 2009-2010 period, the average number of acres planted under the program equaled 13,075 annually, about 17 percent of total allowable acres.

Participation in the PTPP does not entitle producers to additional payments; rather, those who participated accepted reduced payments in return for being allowed to plant FAV on some of their base acres. Thus, the program would have resulted in a small decrease in the national direct payment total reported in the U.S. notification.

Page 107, § 28:

*38. Questions: Could the U.S. communicate an update of the data for 2011 as well as an estimate for 2012 concerning the subsidies provided in relation to the crop insurance and related to both the producer premiums and the portion of the companies operating costs and underwriting losses? How does the U.S. calculate the portion of the companies' operating costs and the underwriting losses which is subsidised by public support? Could the U.S. comment on the evolution of the amount under underwriting losses/gains related to the operation of insurance programmes over the last 5 years?*

**RESPONSE:**

|                                       | 2011            | 2012                       |
|---------------------------------------|-----------------|----------------------------|
| Premium volume                        | \$11.97 billion | \$11.06 billion            |
| Premium subsidy                       | \$7.46 billion  | \$6.94 billion             |
| Expense payments to companies         | \$1.33 billion  | Est. \$1.30-\$1.35 billion |
| Underwriting gain (loss) of companies | \$1.67 billion  | Loss, unknown amount       |

Since their entrance into the program in the early 1980s, companies have been compensated for their administrative and operating expenses (A&O) as a fixed percentage of premium, with the percentage established by the U.S. Congress. The companies actual operating costs are not considered when the amount of compensation is calculated. The average A&O percentage has steadily declined, from around 35 percent in the early 1980s to about 18 percent in 2010.

The distribution of underwriting gains and losses is negotiated by the companies and RMA during the course of SRA negotiations. Prior to beginning the recent negotiations for a new SRA, RMA contracted for studies of the historical and reasonable rates of return expected for companies delivering federal crop insurance. Copies of those studies can be obtained from the RMA website at the following URL: <http://www.rma.usda.gov/pubs/index.html#actuarial>

The loss ratio for the U.S. crop insurance program averaged about 0.69 over the past 5 years (2007-2011), with the highest loss ratio experienced in 2011 at 0.91. As a result, the U.S. crop insurance program generated an underwriting gain each year from 2007 to 2011. Thus, the companies also experienced underwriting gains during this period. Data on the aggregated underwriting experience of the companies can be obtained from the RMA website at the following URL: [http://www3.rma.usda.gov/apps/reins\\_public/](http://www3.rma.usda.gov/apps/reins_public/). In general, the aggregated underwriting gains of companies are positively correlated with overall program growth (increased premium volume, increased underwriting gain) and inversely correlated with loss experience (higher losses, reduced underwriting gain and possibly underwriting loss).

Page 109, § 36:

*As the report identifies, while the current Total AMS in the U.S. notifications has continued to decline, the total support notified under the Amber Box has increased since 2007. Also due to climatic effects (for example drought in 2012), while high prices have reduced some budgetary outlays under marketing assistance and counter-cyclical payments, they had a very significant positive budgetary impact on insurance premiums. Considering the above mentioned trends, combined with the announced policy orientation towards further developing insurance support*

*39. Questions: What would be the expected effect of the future Farm Bill, currently under preparation, on the level of trade distorting support in U.S. agricultural policy? What measures does the U.S. envisage in order to address the increase in the total Amber Box support which has taken place over the last years?*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

The United States would also note that total amber box support notified has declined since 2008 by 40 percent and is well below previous peaks in the early 2000s. The United States remains fully committed to its obligations under the WTO Agreement on Agriculture.

Part IV, agriculture, page 109, § 36:

*The Senate version and the House agriculture committee version of the next Farm Bill foresee the elimination of direct payments notified by the U.S. under the green box and introduction of programs such as revenue loss program, price loss, STAX, dairy margin protection, which would appear to be product specific amber.*

*40. Questions: Could the U.S. indicate whether this understanding is correct? To what extent would the U.S. consider such trend towards trade-distorting measures as compatible with Article 20 of the Agreement on Agriculture which outlines provisions on 'Continuation of reform process'?*

**RESPONSE:** Discussions on 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

(2) Fisheries

(iii) Fisheries policy

*Fisheries disaster assistance*

Page 116, paragraph 61 states that "In addition, disaster assistance may be provided under the Interjurisdictional Fisheries Act and the MSA in response to a disaster, with US\$170.4 million in total government financial transfers provided for disaster relief in 2007." In a recent press release (13 September 2012) by the National Marine Fisheries Service (National Oceanic and Atmospheric Administration), titled "Secretary of Commerce declares disaster in Northeast Groundfish Fishery", it was mentioned that: "The Department of Commerce has determined that the diminished fish stocks have resulted despite fishermen's adherence to catch limits intended to rebuild the stocks, and I am making a fishery failure declaration so that Congress is able to appropriate funding that will mitigate some of the economic consequences of the reduced stocks and help build a sustainable fishery. The future challenges facing the men and women in this industry and the shore-based businesses that support them are daunting, and we want to do everything we can to help them through these difficult times."

41. Questions: Could the U.S. confirm that subsidies can be granted to fishermen, following the declaration of a "commercial fisheries disaster", to compensate, because of a reduction by public authorities in total allowable catches, for a loss of access to fishery resources with anticipated revenue declines? Could the U.S. provide information on all the subsidies granted, since 2007, under commercial fisheries disaster and/or failure assistance?

**RESPONSE:** Fishery disaster assistance is administered by NOAA's National Marine Fisheries Service within the Department of Commerce. Two statutes, the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act, provide the authority and requirements for fishery disaster assistance.

The initial step after a disaster request is received is the determination that a commercial fishery failure has occurred. If the available economic information indicates that, because of a fishery resource disaster, a significant number of those engaged in the commercial fishery have suffered revenue declines that greatly affect or materially damage their businesses, the commercial fishery will be deemed to have failed. The following thresholds are to be applied in making the determination, based on the loss of 12-month revenue compared to average annual revenue in the most recent 5-year period: revenue losses greater than 80% will result in a determination of a commercial fishery failure; revenue losses between 35% and 80% will be evaluated further (e.g., to determine if economic impacts are severe); and revenue losses less than 35% will not be eligible for determination of a commercial fishery failure, except where the Secretary determines there are special and unique circumstances that may justify considering and using a lower threshold in making the determination.

A disaster determination by the Secretary of Commerce does not immediately result in financial assistance. Congress must appropriate funds for each individual event, as there is no standing fund for fisheries disasters. Congress may also attach explicit guidance to the Secretary of Commerce as to how funding may be used. Once the funds are appropriated, NOAA's National Marine Fisheries Service works with state Governors and agencies to conduct an assessment and develop a spending plan that addresses the effects of the disaster. Based on the results of the assessment and the direction of Congress, the Secretary can provide assistance to replace gear, purchase safety equipment, develop and improve infrastructure, provide retraining opportunities, undertake research and monitoring, and ecological restoration. The Secretary may also provide assistance to the community affected by the disaster.

**Appropriations made by Congress for Disaster Assistance since 2007\*\*\***

| <b><u>Disaster Determination</u></b>   | <b><u>Year</u></b> | <b><u>Amount Budgeted (000's)</u></b> | <b><u>Distribution of funds</u></b>  |
|--|--------------------|---------------------------------------|--|
| West Coast (California and Oregon) Salmon; natural cause: ocean conditions                         | 2008 - 2011        | \$170,000                             | Direct payments to commercial fishermen, recreational charterboats, processors, in-river guides/gill netters, and other related businesses; direct payments to California/Oregon/Washington for lost landing tax revenues.   |
| Gulf of Mexico Fisheries; natural cause: hurricanes Gustav & Ike                                   | 2008               | \$47,000                              | To repair levees, restore oyster beds, repair infrastructure, and to reimburse commercial fishers, vessel owners, and seafood dealers to offset losses.  |
| Chesapeake Bay Blue Crab (Maryland and Virginia); natural disaster: unknown cause                  | 2008               | \$30,000                              | Virginia: Derelict Crab Pot Removal; Crab License Buyback; Gear Study; Fishery Resource Grant Program; Oyster Aquaculture; Crab Stock Assessment. Maryland: Crab License Buyback; Derelict Crab Pot Removal; Cooperative Research; Crab Stock Assessment; Enforcement; Oyster Aquaculture Training; Oyster Aquaculture Infrastructure Development; Habitat Rehabilitation; Oyster Recovery and Habitat Creation (loan program); Harvest Accountability; Crabmeat Quality Assurance Program; Maritime Heritage Training; Electronic Harvest Logbooks; Blue Crab Sustainability Certification; Crabmeat Packaging Equipment; Marketing Program; and Crab Waste Composting. |
| New England Red Tide (Maine, Massachusetts, and New Hampshire); natural cause: harmful algal bloom | 2008               | \$5,000                               | Massachusetts: Direct payments; Red Tide Monitoring and Outreach<br>New Hampshire: Cyst Bed Mapping; PSP Toxin Detection; Phytoplankton Monitoring; Lobster Tomalley Testing, Shellfish Aquaculture Diversification; and Outreach.<br>Maine: PSP (red tide) Detection; Phytoplankton Monitoring; Cyst Bed Mapping; PSP emerging issues (lobster tomalley); Outreach; Sentinel Buoys; Socio-study; Biotoxin Lab.  |
| Fraser River/Lummi Indian Sockeye Salmon; natural disaster: unknown cause                          | 2002, 2008, 2009   | \$2,000                               | Direct payment to non-tribal fishermen including gillnetters, purse seiners, and reef netters; Tribes Commercial Fishery Infrastructure, Tribal Community Subsistence; and Re-Training in New Fields.  |
| Yukon River Chinook Salmon; natural cause: ocean and river conditions                              | 2010               | \$5,000                               | Direct payments to fishermen, net replacement  |

\*\*\* This information is provided exclusively for transparency purposes. The assistance provided does not necessarily constitute a "subsidy" as defined by the Agreement on Subsidies and Countervailing Measures.

|   |      |          |   |
|---|------|----------|---|
| Deep Water Horizon Oil Spill - Gulf of Mexico Fisheries (Louisiana, Mississippi, Alabama, and Florida); man-made cause: oil spill | 2010 | \$26,000 | Ecosystem Services Impact Study; outreach and marketing activities for Gulf seafood; to develop a seafood quality assurance program, and enhance existing seafood testing; Gulf Fisheries Stock Assessments, including work with Gulf states to implement activities to better assess the fisheries stocks in the Gulf of Mexico. |
|---|------|----------|---|

*Fisheries Financing Program (FFP) According to publicly available information<sup>†††</sup> this program "Provides direct loans for certain fisheries costs. Vessel financing available for the purchase of used vessels or the reconstruction of vessels (limited to reconstructions that do not add to fishing capacity). Refinancing available for existing debt obligations. FFP loans are not issued for purposes which could contribute to over capitalization of the fishing industry. Provides Individual Fishing Quota (IFQ) financing (at the request of a Fishery Management Council). IFQ financing available at this time to first time purchasers and small vessel operators in the Halibut Sablefish fisheries. Provides long term fishery buy back financing (at the request of a Fishery Management Council or Governor) to purchase and retire fishing permits and/or fishing vessels in overcapitalized fisheries. "*

*42. Questions: Could the U.S. explain how it measures "fishing capacity" and how it ensures that a "reconstruction" does not add "fishing capacity" when finance with the assistance of public loans? Could the U.S. explain what it is meant with "over capitalisation of the fishing industry"? What are the criteria used by the Administration to assess that a loan could contribute to such overcapitalisation?*

**RESPONSE:** To begin, nearly all loan applicants are involved in managed fisheries in which the total catch is limited. Consequently, individual fishers cannot increase their harvest beyond their individual limits, and the fishers collectively in any given fishery cannot harvest beyond the allowable limit for the fishery. Secondly, the program will not finance reconstruction that increases the vessel's carrying capacity. Lastly, the program examines the reconstruction project and proposed fishing activity for any other capacity concerns.

As a general matter, a fishery is considered to be over-capitalized when the capital assets involved are greater than what is required to harvest the allowable catch.

The program's policy is not to lend into fisheries classified as "overfished" or "subject to overfishing" as determined by the fishery management staffs using agency standards.

*Question: With regard to the financing of retirement of fishing vessels with the assistance from the FFP, could the U.S. explain how is a fishery found to be "overcapitalised"?*

**RESPONSE:** As noted above, as a general matter, a fishery is considered to be over-capitalized when the capital assets involved are greater than what is required to harvest the allowable catch.

*Capital Construction Fund .According to publicly available information (see weblink [http://www.nmfs.noaa.gov/mb/financial\\_services/ffp.htm](http://www.nmfs.noaa.gov/mb/financial_services/ffp.htm)) "The purpose of the Capital Construction Fund (CCF) Program is to improve the fishing fleet by allowing fishermen to accelerate their*

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<sup>†††</sup><https://www.cfda.gov/index?s=program&mode=form&tab=step1&id=37c280c1acf556c255dba16df4086eb8>

*accumulation of funds with which to replace or improve their fishing vessels. Created by the Merchant Marine Act of 1936, as amended (46 U.S.C. 1177), the CCF Program enables fishermen to construct, reconstruct, or under limited circumstances, acquire fishing vessels with before-tax, rather than after-tax dollars. The program allows fishermen to defer tax on income from the operation of their fishing vessels. Under the CCF Program, the amount accumulated by deferring tax on fishing income, when used to help pay for a vessel project, is, in effect, an interest free loan from the Government."*

*43. Question: Does the Capital Construction Fund include the same conditionality provisions (no addition of fishing capacity, no contribution to "overcapitalisation") regarding fishing vessels constructed, re-constructed, acquired and/or improved with the help of this program?*

**RESPONSE:** Currently, there are no restrictions in place, specifically, to prohibit CCF projects from adding to fishing capacity. However, the CCF regulations are in the process of being amended. When completed, the amended regulations will include a restriction on using CCF funds for any project which increases the harvesting capacity in any fishery.

### **(3) Services**

#### **(ii) Financial services**

*Page 122 para 75 on financial services refers to a change of legislation requiring the Federal Reserve board when considering a proposed acquisition, merger or consolidation, to "take into account " the extent to which a proposed acquisition, merger, or consolidation would result in a greater or more concentrated risks to the stability of the US banking or financial system."*

*44. Questions: Can the US give indications as to the criteria that are used to assess the "stability" impact of the mergers concerning financial services?*

**RESPONSE:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor in merger proposals may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36 See: <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>.

## QUESTIONS FROM HONG KONG, CHINA

### PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

#### III. TRADE POLICIES AND PRACTICES BY MEASURE

Page 41 (Para. 24)

##### **Tariffs**

*Noted that one Uruguay Round concession pertaining to ex 8518.90.10 remains conditional, subject to obtaining adequate coverage in Government Procurement.*

##### Question:

*1. Having regard to the conclusion of the re-negotiation of the Government Procurement Agreement, we would appreciate to have further details regarding this outstanding concession.*

**RESPONSE:** In 1997, 8518.90.10 was subdivided into 8518.90.20 and 8518.90.40. 8518.90.20 is MFN free. However 8518.90.40 remains dutiable as adequate coverage was not achieved as part of the renegotiation of the Agreement on Government Procurement.

Pages 48 – 49 (Para. 48)

##### **Contingency Measures – Anti-dumping and Countervailing Measures**

*Noted that the US has modified its methodology since February 2012 in the calculation of dumping margins to address the issue of zeroing in administrative, new shipper, expedited and sunset reviews. The Secretariat Report states that in administrative reviews, except where the US Department of Commerce (US DoC) determines that application of a different comparison method is more appropriate, the US DoC will compare monthly weighted average export prices with monthly weighted average normal values, and will grant an offset where the export price exceeds the normal value.*

##### Question:

*2. What are the types of situations that would warrant the US DoC to depart from the weighted average comparison method? Has the exceptional rule ever been invoked? Could the US share with us the progress of implementation and feedback from domestic and foreign sectors in this regard?*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

Page 50 (Paras. 50 – 51)

##### **Contingency Measures – Anti-dumping and Countervailing Measures**

*Noted that the US has introduced several modifications to its methodology for the calculation of dumping margins for non-market economies.*

##### Question:

3. Will such modifications effectively inflate the dumping margins or conducive to an increase in AD and CVD petitions?

**RESPONSE:** Over the past few years, the Department of Commerce has proposed and implemented a number of modifications to our regulations with regard to both market and non-market economies. Detailed explanations of these modifications can be found at <http://ia.ita.doc.gov/tlei/index.html>. A number of these proposals strengthen the Department of Commerce's enforcement of the unfair trade laws without directly addressing the manner in which we calculate AD or CVD duties. For other proposals, there may be an impact on margins, but any such impact will necessarily be case specific. Whether the impact of that change is to increase or decrease the margin will depend not only on the change in methodology, but the facts of any particular case to which the methodology is being applied. Similarly, with regard to the filing of AD/CVD petitions, that is a decision made by a domestic industry, not the U.S. government. There can be many factors that impact the timing of the filing of a petition beyond the use of any particular methodology by the Department of Commerce.

Pages 76 – 77 (Para. 129)

**Government Procurement**

*Noted exceptions under the Buy American Act may apply under certain circumstances.*

Question:

4. We would like to know how often such exceptions were invoked in the past two years. If exceptions had been invoked because the exclusion of foreign goods/suppliers was deemed to be inconsistent with the public interest, we would be interested to know how the impact on public interest was assessed.

**RESPONSE:** The number of waivers that were issued Government-wide in Fiscal Years 2010 and 2011 by exception category are set out below. We do not have information on the reasons that the public interest exception was used.

*FY10*

|  |                  |             |
|--|------------------|-------------|
| <i>Public</i>                                  | <i>Interest:</i> | <i>297</i>  |
| <i>Domestic Non-availability: 5531</i>         |                  |             |
| <i>Unreasonable Cost: 363</i>                  |                  |             |
| <i>Resale:</i>                                 |                  | <i>2824</i> |
| <i>Commercial Information Technology: 5563</i> |                  |             |

*FY11*

*Public Interest: 139*  
*Domestic Non-availability: 6531*  
*Unreasonable Cost: 574*  
*Resale: 2491*  
*Commercial Information Technology: 3624*

**IV. TRADE POLICIES BY SECTOR**

Page 119 (Para. 65)

**Environmental Services**

*Noted that most consumers are served by publicly owned or cooperative utilities while the private-sector involvement in the collective, network-based environmental services (water and waste-water management services, refuse disposal services) remained relatively marginal.*



Question:

*5. Is there any plan to privatise those publicly owned or cooperative utilities or any plan to increase private-sector involvement in the collective, network-based environmental services?*

**RESPONSE:** In the United States, network-based services such as those discussed in Paragraph 65 of the Secretariat's Report are generally provided by municipalities. We are not aware of any widespread efforts across municipalities to increase privatization of the provision of these services.

Page 122 (Para. 74)

**Financial Services**

*Noted that when considering an application for establishment of a US office of a foreign bank that presents a risk to the stability of the US financial system, the Board of Governors of the Federal Reserve System is explicitly required to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. The Board is also allowed to order the termination of the activities of US offices of such foreign banks in the absence of these criteria. Similarly, the Securities and Exchange Commission (SEC) is required to consider the same criteria regarding home country regulation when considering an application for establishment of a foreign broker or dealer that presents a risk. The SEC is authorised to rescind the authorisation of such foreign brokers or dealers if the home country authority has not taken the steps required.*

Question:

*6. In determining whether the foreign banks or brokers or dealers present a risk to the stability of the US financial system, are there any objective criteria or measurements in the assessment? Is there any mechanism for these companies to lodge appeal against the decision made by the Board of Governors of the Federal Reserve System or the SEC? So far, are there any applications that have been rejected (or offices ordered to terminate) due to the failure in fulfilling the criteria?*

**RESPONSE:** Discussion of the criteria used by the Federal Reserve in assessing the financial stability factor generally may be found at Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012), at pp. 28-36; <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>.

Discussion of the financial stability criteria specific to an application by a foreign bank to establish a U.S. office may be found at Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012), at page 16; <http://www.federalreserve.gov/newsevents/press/orders/order20120509c.pdf>.

Decisions made by the Federal Reserve may be appealed to the U.S. judiciary.

## QUESTIONS FROM ICELAND

"Other questions" category

*1. Despite the fact that eider-down is processed in a sustainable manner without causing any harm to eider, the United States still maintains an import prohibition on eider-down. Is the United States planning to lift its ban on the importation on eider-down? If not, what justification has the US for maintaining this import prohibition, given the lack of scientific evidence to support such a measure?*

**RESPONSE:** The common eider (*Somateria mollissima*) is protected under the U.S. Migratory Bird Treaty Act (Act), the primary purpose of which is to create a comprehensive framework for the conservation of migratory birds. The Act prohibits, among other things, the possession, purchase, sale, import, and export of migratory bird species, any part, nest or egg of such bird, or any product which consists of any such bird or such part, unless authorized by permit or regulations. The common eider is also protected under the Convention on Migratory Species of Wild Animals under Appendix II, which lists species that have an unfavorable conservation status and that would benefit significantly from international cooperation for their conservation and management. With the exception of domesticated varieties of barnyard mallards, U.S. regulations do not allow for the import of migratory bird parts for commercial purposes. The United States does not anticipate amending the regulations for commercial import of eider down.

*2. The United States maintains a Visa-regime for investors and traders, the so-called E-Visas, that allows some WTO Members – but not all – easier access to visas for Investors and Traders. The fact that this system only applies to some WTO Members but not all has resulted in a situation where enterprises from some WTO Members can better take advantage of the US Mode 3 Commitments than others. What are the US's plans for extending the E-Visa program to those WTO Members not currently benefiting from it?*

**RESPONSE:** U.S. law provides for the temporary entry of two categories of nonimmigrants pursuant to the provisions of a treaty of commerce and navigation between the United States and the foreign state of which that alien is a national, solely to carry on substantial trade (E-1, or "Treaty-Trader," visa), or to develop and direct the operations of an enterprise in which the alien has invested, or in which the alien is actively in the process of investing, a substantial amount of capital (E-2, or "Treaty Trader," visa). With such a treaty in force, a national of the foreign state may establish eligibility for an E-1 or E-2 visa. The issuance of these types of visas is included in the U.S. list of Article II GATS exemptions.

## QUESTIONS FROM INDIA

### **PART I : QUESTIONS REGARDING THE GOVERNMENT REPORT**

#### Page 32 (Para 150)

The trade policy agenda of the United States includes a strong commitment to ensuring that workers and their families in America and around the world benefit from trade. ... The U.S.-Colombia Trade Promotion Agreement is a recent example of how addressing labor issues can support trade liberalization. The agreement includes strong protections for workers' rights that reflect a 2007 Congressional-Executive commitment in the United States to incorporate high labor standards into trade agreements.

While the United States has indicated its strong commitment to ensuring that workers benefit from trade, it has not ratified the following ILO conventions: (i) Convention on the Right to Organise and Collective Bargaining; (ii) the Convention on Freedom of Association and Protection of the Right to Organise; (iii) Convention on Equal Remuneration; (iv) Convention on Discrimination, or (v) Convention on the Worst Forms of Child Labour, and (vi) Convention on Minimum Age.

#### Question 1

Could the US state why, on the one hand it has not ratified some of the ILO conventions, and on the other it seeks to incorporate high labour standards in its trade agreements?

**RESPONSE:** The United States seeks high labor standards in its trade agreements in order to ensure that workers and their families in the United States and around the world benefit from trade. The United States has a comprehensive process for ratifying International Labor Organization (ILO) conventions that ensures that the United States is in full compliance with any conventions it ratifies. While the United States has not ratified some ILO conventions, the United States considers, and the supervisory bodies of the International Labor Organization have agreed, that U.S. labor laws and practices are in general conformance with ILO core labor standards. In June 1998, the International Labor Conference adopted the precedent-setting *ILO Declaration on Fundamental Principles and Rights at Work* (ILO Declaration), by an overwhelming majority. The ILO Declaration is applicable to all ILO member nations because it flows from the ILO Constitution, which member governments must formally accept when they join the Organization. These principles apply regardless of whether a country has ratified the corresponding ILO core conventions. In its trade agreements, the United States cites the ILO Declaration. See <http://www.ustr.gov/trade-topics/labor> for more information.

### **Part II : QUESTIONS REGARDING THE SECRETARIAT REPORT**

#### Page 77 (Para 134)

Under U.S. laws and rules, agencies may reserve contracts exclusively for certain designated groups. These provisions are known as set-asides.

#### Question 2

Could the US state the value of procurement made from the designated groups in which the value of the contract was above the threshold of US obligations under the GPA?

**RESPONSE:** This information is included in the statistics that the United States submits to the WTO

Committee on Government Procurement, which are available on the WTO website.

Page 76 (Para 128)

For fiscal year 2010, U.S. spending on federal procurement contracts amounted to US\$517 billion, approximately 16% of 2010 federal government expenditures.

Question 3

Out of the amount of US \$ 517 bn. could the US indicate the value of procurement through limited tendering on grounds of protection of exclusive rights and additional purchases from original suppliers? Could the US further indicate the percentage of these procurements made from foreign suppliers?

**RESPONSE:** The statistics that the United States provides to the WTO Committee on Government Procurement include the value of contracts subject to limited tendering. However, those statistics do not include the basis for the use of limited tendering, nor do they include the percentage of procurements from foreign suppliers. This is not information that the United States routinely compiles in the ordinary course of business.

Page 48 (Para 46)

At the end of 2011, the United States had 237 AD measures in force.

Question 4

In respect of the 237 AD measures in force at the end of 2011, could the US indicate the number of measures which have been in force for more than (i) 5 years; (ii) 10 years; and (iii) 20 years? Could the US provide these details also in respect of AD measures in force at the end of 2010?

**RESPONSE:** The results (complete with Federal Register citations and dates of publication of the notices) for all of the five-year sunset reviews can be found on the U.S. International Trade Commission's website (<http://pubapps2.usitc.gov/sunset/>). That being said, in the ordinary course of business, the United States does not organize its statistics in the form India is requesting. However, from the website one can obtain, on a case-by-case basis, the information that India is inquiring about, as well as other detailed information about the various sunset reviews.

Page 76-82 (Para 128-145)

The US is an active member of the GPA and has also been encouraging other members of the WTO to accede to the same. The GPA is expected to provide access to the parties to the market for public procurement in each other's territories.

Question 5

The USA requested to provide information on:

1. Total covered procurement under the GPA
2. Break up of total GPA covered procurement into
  - a. Procurement from within United States
    - a. By federal Government
    - b. By State Governments
    - c. By other entities.
  - b. Procurement from GPA members

- a. From European Union
- b. From other GPA countries
- c. Government procurement from non GPA sources.

**RESPONSE:** The United States provides statistics on procurement covered by the GPA to the WTO Committee on Government Procurement, as do other GPA Parties. This information is available on the WTO website.

Page 78 (Para 137)

*The United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for goods and services.*

Question 6

*Could the US confirm whether the 2010 legislation (Zadroga Act) is being implemented? If yes, could the US state the date from which it has implemented this legislation? Further, could the US provide the value of federal excise tax collected so far and details of the countries from which this tax has been collected?*

**RESPONSE:** The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. Pursuant to its terms, the effective date of the legislation was the date of its enactment, January 2, 2011. The U.S. Internal Revenue Service and the Treasury Department are in the process of drafting regulations. In the ordinary course of business, the United States does not compile tax information in the form India has requested.

Page 80 (Para 142-143)

The United States implemented a number of fiscal stimulus measures or government assistance to mitigate the impact of the financial crisis including the American Recovery and Reinvestment Act of 2009.

Question 7

Does "Buy American" under ARRA apply to private projects, or private contractors on public projects? What are the factors, other than 'title' of ownership by a Government entity, that U.S. would consider necessary in determining "public building or work" to which the Buy American provision would apply? The Government of India requests for illustrations of the "case-by-case" determinations by the Contracting Officer in order to understand the application of the "Buy American" provision.

**RESPONSE:** The "buy American" provision under the ARRA applied to ARRA funded projects for the construction, alteration, maintenance, or repair of a public building or public work. In implementing the ARRA, the Federal Acquisition Regulation (FAR) Council adopted the following definition of "public building or public work" in FAR section 25.601, which characterizes the essence of what constitutes a public building or work:

Public building or public work" means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see FAR [22.401](#)). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals,

docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Question 8

ARRA funding requires compliance with the 'Buy American' requirement when such funding is for 'public works' or 'public buildings'. But there is no requirement under the ARRA that such funding should be used only for 'governmental purposes' and not with a view to commercial resale. It is also important to ensure that goods under BA provisions are procured by governmental agencies. The U.S. is requested to elaborate whether these are relevant factors in mandating the 'Buy American' requirement under ARRA. If yes, what are the tests that are used in determining the nature of 'governmental purpose' and ensuring other essential requirements while invoking the BA provisions under ARRA?

**RESPONSE:** The other factors cited in the question were not relevant to the "buy American" requirement in the ARRA.

Question 9

ARRA funding under BA provision is contingent on use of U.S. manufactured goods. Can the US explain how this does not violate Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits any subsidies which are contingent on use of domestic goods? The US is requested to furnish its stand on this aspect of ARRA.

**RESPONSE:** The "buy American" requirement of the American Recovery and Reinvestment Act of 2009 (ARRA) does not apply to covered procurement from suppliers in WTO GPA parties or U.S. FTA partners. Thus, a significant amount of competition results from both US and foreign suppliers. Consequently, the prices paid for government procurement undertaken pursuant to the ARRA are market prices.

Page 74 (Para 126 Table III.20)

Pension Benefit Guarantee Corporation

PBGC is a body corporate established within the US Department of Labor by a federal law - ERISA. Pension Benefit Guaranty Corporation has been listed as a Government Corporation. *PBGC, like a government, enjoys the effective power to regulate, control and supervise individuals or entities through the exercise of lawful authority vested on it through ERISA.* It is administered by a Director, who is appointed by the President of US, by and with advice and consent of the Senate, indicating an element of government control. The board of directors of PBGC consists of the Secretary of the Treasury, Secretary of Labor, and the Secretary of Commerce, indicating another element of government control. It can also exercise its authority in order to compel or command a private body or govern a private body's actions (direction) and may give responsibility for certain tasks to a private body (entrustment). Select instances of such an authority can be seen in the following cases:

- (a) PBGC's powers to force *involuntary termination* of pension plans in case of both single-employer as well as multi-employer pension plans, if certain conditions are not met. The PBGC derives this authority from section 1342 of ERISA.
- (b) PBGC's power to prescribe schedules of *premium rates* and bases payable to it, as applicable to different types of pension plans, as per section 1306 of ERISA.
- (c) PBGC's authority to seek annually relevant records, documents, copies of *audited financial statements* from each contributing sponsor as per section 1310 of ERISA, as part of its supervisory functions.

Question 10

In light of above, would the US agree that PBGC is a public body within the meaning of Article 1.1 (a) (1) of the ASCM? If not, why not?

**RESPONSE:** The Pension Benefit Guaranty Corporation (“PBGC”) is a federal corporation created by Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA is a federal law that sets minimum standards for pension plans in private industry. Congress specified three purposes in Title IV of ERISA, which PBGC is to carry out:

- to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,
- to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and
- to keep pension insurance premiums at a minimum.

1.

PBGC operates two separate insurance programs for defined benefit pension plans. A defined benefit plan promises to pay a specific monthly amount to employees when they retire. It is funded by the employer. When a single-employer plan terminates without sufficient assets to pay all benefits earned under the plan, PBGC becomes trustee of the plan and pays guaranteed benefits to employees and their survivors. Further information regarding the PBGC may be found at <http://www.pbgc.gov/>.

2.

As to whether the PBGC is a public body within the meaning of Article 1.1 (a) (1) of the Subsidies Agreement, we note that the WTO Appellate Body in United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS 379) articulated a standard for determining whether an entity constitutes a public body based inter alia on a fact-intensive analysis. The United States has not conducted an analysis of the PBGC under the standard articulated by the Appellate Body.

Page 74 (Para 126 Table III.20)

Pension Benefit Guarantee Corporation

Section 1305(c) of Employee Retirement Income Security Act, 1974 (ERISA) states that PBGC is authorized to issue to the Secretary of the Treasury, notes or other obligations in an aggregate amount not exceeding USD 100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of Treasury

Question 11

Would the US agree that this represents a financial contribution from the US Government to PBGC? If not, why not?

**RESPONSE:** Section 4005(c) of ERISA (29 U.S.C. § 1305(c)), was repealed under the Moving Ahead for Progress in the 21st Century Act (MAP-21), signed by the President on July 6, 2012. See section 40234 of MAP-21. Thus, the question is moot.

Page 97-98 (Para 195)

The USTR in its annual Special 301 Reports monitors developments concerning US IPR protection in the territories of its trading partners.

Question 12

US is requested to inform whether there is any mechanism of monitoring overall IP protection within the US of non-US right holders.

US may also like to elucidate what legal recourse is available to foreign rightholders in the form of a special office where they can lodge their infringement complaints given that legal procedures in the US are expensive for right holders from developing countries.

**RESPONSE:** Non-U.S. rights holders may avail themselves of the same intellectual property protections as U.S. rights holders. Where a non-U.S. rights holder alleges an infringement of intellectual property rights in the United States, that right holder has recourse to the same substantive rights and procedural safeguards as do U.S. rights holders.

Page 96 (Para 189-191)

Many figures on effectiveness of enforcement action have been cited in the said paragraphs. However, no figures in USD terms have been provided. At the same time, the Government Accountability Office in its April 2010 Report to the US Congress on the impact of counterfeiting on the US economy cited instances of use of inaccurate and unsubstantiated figures by both Government entities such as Customs and Border Patrol and the FBI as well as by Private entities in this regard.

Question 13

US may kindly provide details of the methodology by which the assessment made under Para 190-191 were quantified.

**RESPONSE:** The customs seizure statistics are based on increases in the total number of shipments and in the number of shipments in the specified product categories seized for IPR violations in Fiscal Year (October through September) 2011 over the same period in 2009. The rise in seizures resulting from increased funding is based on the increase in IPR seizures in FY 2010 over 2009. The funding increase included both personnel and non-personnel costs such as travel, training, and tools to assist IPR enforcement.

Page 97-98 (Para 195)

In the Special 301 report of 2012, the USTR specifically pointed out the case of compulsory licensing in India.

The testimony of the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office before the Subcommittee on Intellectual Property, Competition and the Internet Committee on the Judiciary of the U.S. House of Representatives on the subject of "International IP Enforcement: Protecting Patents, Trade Secrets and Market Access" made on June 27, 2012 stated,

*"Unfortunately, compulsory licenses dissuade pharmaceutical and biotech companies from innovating or from bringing their products into countries that grant these compulsory licenses. In the case of India, I was quite dismayed and surprised when they did, indeed, decide to grant that compulsory license for a reason that, I think, **did not meet international standards** and was not due to, for instance, a national crisis,"*



Question 14

While India respects the right of United States to articulate its interests, India would like to know if the US holds that a compulsory licence for a pharmaceutical product can be issued on under conditions of a national crisis. If yes, US may kindly identify the relevant provisions under TRIPS and any other international legal document for this position.

US is also requested to provide information on any type of non-voluntary licensing that is permitted under US IP laws, especially the law on Patents.

**RESPONSE:** The United States recognizes that Article 31 of the TRIPS Agreement permits other use of the subject matter of a patent without the authorization of the rightholder under certain conditions. As affirmed in the Doha Declaration on TRIPS and Public Health, the United States respects a trading partner's right to protect public health and, in particular, to promote access to medicines for all, and supports the vital role of the patent system in promoting the development and creation of new and innovative lifesaving medicines. Consistent with these views, the United States respects its trading partners' rights to grant compulsory licenses in a manner consistent with the provisions of Article 31 of the TRIPS Agreement, and encourages its trading partners to consider ways to address their public health challenges while maintaining IPR systems that promote investment, research, and innovation.

Page 12 (Para 27)

The United States is aware of the growth potential of its services exports and has enacted laws or initiated actions to increase services exports, especially in the travel and tourism sector.

Question 15

The US is requested to provide details of laws enacted and actions initiated to increase services exports other than travel and tourism sector. Para 27 provides details only of laws/changes for travel and tourism sector.

**RESPONSE:** The ability to affect services exports through changes in domestic law and regulation tends to be concentrated in the limited number of sectors where Mode 2 supply is significant, such as travel and tourism. But the United States continuously works cooperatively with its trade partners in seeking agreement on items of mutual interest that can increase exports for all sides.

Page 27 (Para 31)

The 2012 model of Bilateral Investment Treaty has 42 pages (including annexes) and is reported to build upon the previous model by enhancing transparency and public participation; sharpening disciplines that address preferential treatment to state-owned enterprises, including the distortions created by certain indigenous innovation policies; and strengthening protection relating to labour and the environment.

Question 16

Could the US specify how the 2012 model of BIT addresses preferential treatment to state owned enterprises?

**RESPONSE:** The 2004 Model BIT already contained numerous tools to address challenges raised by State-led economies, *i.e.*, economies that organize economic activity to a significant

degree on the basis of state-owned enterprises (SOEs) and other mechanisms of state influence and control. The 2012 Model BIT seeks to enhance these tools through new provisions that: (1) discipline the imposition of domestic technology requirements; (2) ensure opportunity for participation in standards-setting; and (3) clarify the application of BIT obligations to state-owned enterprises and other entities exercising delegated government authority. Additional information about these and other revisions in the 2012 Model BIT text can be found at: <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

Page 28 (Para 34-35)

The United States' investment regime has been described as open and transparent with few formal encumbrances. For example, there is free movement of capital and profits, and no minimum investment thresholds. However, there remain a number of restrictions to foreign investment in certain areas, and certain information-gathering, monitoring, reporting, and disclosure procedures can also have an impact on foreign investment.

Question 17

The US is requested to provide details of restrictions to foreign investment and also of the disclosure procedures that may have an impact on foreign investment. Para 35 does not provide any details w.r.t. such restrictions/ disclosure procedures except that of Agricultural Foreign Investment Disclosure Act.

**RESPONSE:** The United States maintains an open investment regime. Foreign investors are generally free to establish or acquire investments in the United States, subject only to non-discriminatory and generally applicable laws and regulations. The CRS report referenced in Paragraph 35 of the Secretariat's Report discusses federal-level measures that "have an impact on foreign investment in the United States," including some that relate to the collection of statistical information. The report itself (the full title and date of which are contained in the "References" section of the Secretariat's Report) provides details with respect to each of the measures it discusses.

Page 72 (Para 120)

Following the economic downturn the U.S. Government has turned to a number of fiscal incentives to help spur the economic recovery. In particular a number of tax incentives to businesses have been adopted in the last few years.

Question 18

Could the US clarify whether such tax incentives are available to only the domestic firms or to all firms (including foreign ones)?

**RESPONSE:** Assuming a subsidiary of a foreign firm is incorporated in the United States and is liable for the payment of U.S. corporate taxes, as a general matter, the subsidiary would not be excluded from claiming tax incentives.

Page 16 (Para 10)

It appears that some changes or updates to U.S. trade laws or procedures would require updated or amended WTO notifications. In particular, new notifications are necessary in the areas of

rectifications and modifications of schedules, preferential rules of origin, quantitative restrictions, and with respect to preference programmes like the GSP.

Question 19

What are the US plans and the timeframes with regard to submission of full and up-to-date notifications in several important areas, including modifications of schedules, preferential rules of origin, quantitative restrictions, and of preference programmes like the GSP?

The US is requested to elaborate on the reasons for delay in meeting the notification obligations in the above mentioned areas? The US is urged to come forward with full and complete information at the earliest to permit examination and consideration of the updated, modified or amended notifications in the appropriate WTO bodies.

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

Page 19-20 (Para 18-19)

The United States preference programmes are either global, i.e. the Generalized System of Preferences (GSP), or regional, where the five main preference programmes are the Andean Trade Preference Act (ATPA), the Caribbean Basin Economic Recovery Act (CBERA), the Caribbean Trade Partnership Act (CBTPA), the African Growth and Opportunity Act (AGOA), and the Haitian Opportunity through Partnership Encouragement (HOPE) Act.

In order to receive benefits under one or more of the preference programmes, countries have to meet eligibility criteria, which vary by programme, but may include adhering to rules of origin, meeting international commitments in worker rights and investment practices, as well as foreign policy objectives such as having an extradition treaty or combating trade in illegal drugs.

The legal authority for the US GSP programme lapsed on 31 December 2010. In October 2011, legislation was enacted re-authorizing the programme until 31 July 2013. US Congress may consider changes or reforms in the GSP when it next takes up renewal of the programme, probably in the first half of 2013. The President's Trade Policy Agenda suggests growing competitiveness of emerging market GSP beneficiaries may be an element in the review/reform of the programme.

Question 20

We look forward to reviewing an up-to-date notification of the US unilateral preference programmes at the CTD pursuant to the GATT 1979 Decision - Enabling Clause (L/4903). The Enabling Clause covers GSP type schemes extended to developing countries, with scope to accord further preferences to LDCs (e.g. DFQF treatment).

We would, in particular, welcome information on the scope, structure, preference margins, volume and value of trade covered, and eligibility criteria used in the preference schemes.

**RESPONSE:** The United States notified on its GSP program via WT/COMTD/N/1/Add. 8, dated July 4, 2012. Pursuant to the Transparency Mechanism for Preferential Trade Arrangements, the United States has also submitted guides for each of its preference programs

setting forth detailed information regarding each preference program, including product and country coverage and statutory provisions governing the program, which set forth the program's eligibility criteria. These guides are available at <http://ptadb.wto.org/Country.aspx?code=840>.

Page 41 (Para 24)

The United States' WTO tariff schedule (Schedule XX) contains concessions mainly from the Uruguay Round. The WTO tariff bindings do not yet reflect HS changes from 2007 and 2012 or some other changes that the US has made domestically but has not yet notified. Moreover, while the HS96 and HS02 nomenclature changes have been implemented for the tariff lines concerned, the Chapter notes have not been updated, and they remain as implemented at the time of the Uruguay Round. Furthermore, the legal change to amend certain tobacco tariffs, pursuant to GATT Article XXVIII renegotiations, has not been implemented at the WTO, while it appears the US proceeded domestically with these changes long ago.

Question 21

As noted in the Secretariat's report, the US' tariff schedule (Schedule XX) has not been updated to reflect modifications and the transposition to HS 2007 and HS 2012. We urge the US to notify these and any other changes to its WTO bindings made domestically without delay.

Could the US provide an update on the status of the GATT Article XXVIII renegotiations initiated to amend certain tobacco tariffs? The US appears to have amended the tariffs without completing the legal formalities pursuant to Article XXVIII.

**RESPONSE:** The United States notified the conclusion of the Article XXVIII negotiations (see: G/SECRET/2.Add1) and provided a copy of the U.S. HTS changes to the WTO.

Page 30 (Para 2)

*It is mentioned that the US is developing an Automated Commercial Environment (ACE), the electronic commercial trade processing system being developed to facilitate trade while strengthening border security. ACE will provide a single centralized portal and access point for the trade community to interact with CBP*

Question 22

*India will like to know whether with this is a Single Window System under development and whether under this system, an importer will need to file all information only once to a single agency. What is the time frame within which it is expected to be fully operational?*

**RESPONSE:** The United States is developing a new automated customs platform; one of the functions that this platform is expected to offer is an opportunity to transit multiple agency data. This core functionality for the Automated Commercial Environment (ACE) is planned to be completed in approximately 3 years. This core functionality will establish the foundation for the import/export process.

Page 34-35 (Para 8)

*Table III.1 indicates that 18 different kinds of preferential rules of origin are applied with*

*respect to different FTA partners.*

Question 23

*India will be interested in knowing whether US has conducted any Study with regard to the impact on the trade facilitation environment at its border on account of such diverse rules of origin. If so, India will be grateful if US shares the same.*

**RESPONSE:** The United States has not undertaken a study of the impact of its rules of origin on the trade facilitation environment on its border.

Page 35 (Para 10)

*It is reported that as per section 304 of the US Tariff Act of 1930, "all articles of foreign manufacture" need to contain a mark or label indicating the country where the good originated. It is reported that different rules apply for domestic products, for example in order to be labelled as "Made in the U.S.A."*

Question 24

*India requests US to clarify as to why different rules of origin have been adopted for these two purposes. India will also be interested in knowing that under such circumstances, how does US ensure adherence to the principle laid down in Article 2 (d) of the Agreement on Rules of Origin that the rules of origin applied to exports and imports shall be no more stringent than the rules of origin applied to determine whether or not a good is domestic.*

**RESPONSE:** The United States rules of origin are fully compliant with its WTO obligations. Labeling requirements for imported goods are not more stringent than any domestic labeling requirement.

Page 36 (Para 11)

*It is reported that specific labelling requirements, outside of section 304, include the American Automobile Labeling Act, the Fur Products Labelling Act, the Omnibus Trade and Competitiveness Act for Native American style jewellery, and various other Acts or Codes relating to agricultural products such as meat, eggs, mushrooms, etc. In addition to product specific marking requirements, different marking requirements exist, outside section 304, for products subject to FTAs such as NAFTA.*

Question 25

*In India's view such different rules of origin for different purposes create a complex trading environment. Does US propose to simplify and reduce its various labelling provisions?*

**RESPONSE:** The United States does not have any plans at this time to change current labeling requirements.

Page 36 (Para 12)

It is reported that Section 304 of the Tariff Act of 1930 provides that all imported articles, unless exempted, must be marked at the time of importation so that the "ultimate purchaser" knows where the imported article was manufactured. It is further mentioned that if imported articles are not marked or if they are inadequately marked, penalties or fines may be applied, and the products may be retained by Customs.

Question 26

India seeks a clarification from US as to what guidelines are observed in arriving at the conclusion that origin of imported articles are marked correctly as there are no notified non-preferential rules of origin.

**RESPONSE:**

*All U.S. non-preferential rules of origin schemes employ the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. For goods that consist in whole or in part of materials from more than one country, U.S. non-preferential rules of origin schemes employ the "substantial transformation" criterion.*

Page 33 (Para 7)

It is mentioned that CBP determines origin on a case-by-case basis, often relying on a number of court decisions, regulations, and agency interpretations to confer origin. India will like to know as to what guidelines exporters are expected to follow in marking origin in absence of clear origin rules?

Question 27

In India's view, this makes the trade policy regime of US complex. India seeks a clarification whether US is considering implementing non-preferential rules of origin to provide greater certainty to traders as reportedly favoured by CBP?

**RESPONSE:** The United States does not agree that its trade policy regime is complex. CBP had proposed a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. Based on the comments received in response to the proposed changes, in September 2011, CBP issued a final rule that did not adopt new origin and marking rules. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. SEE, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>

Page 42-44 (Para 32-36)

It is mentioned that US charges Merchandise Processing Fees and Harbour Maintenance Tax on *ad valorem* basis. The *ad valorem* levies appear to be in violation of US commitments under GATT Article VIII which provides that all fees and charges of whatever character imposed on or in connection with importation or exportation shall be limited to the approximate cost of services rendered.

Question 28

How does US justify continuance of such levies on *ad valorem* basis?

**RESPONSE:** The Merchandise Processing Fee which is subject to a cap of \$485 is limited in amount to the approximate costs of services rendered and is consistent with U.S. WTO obligations.

Page 105 (Para 24)

The Counter-Cyclical Payments (CCPs) programme provides support to some specific crops like rice, cotton, corn etc. USA notified CCPs as non-product specific support. However, CCPs are product-specific as there are specific target price for crops covered.

Question 29

It is requested to explain the reasons for treating CCPs as non-product specific support rather than product-specific support.

**RESPONSE:** Countercyclical payments (CCPs) are reported as non-product specific because payments are based on fixed historical area and yields (i.e., production), not current production. Countercyclical payments do not require production of any specific crop, nor any production at all, for a recipient to receive a payment.

Page 105 (Para 22)

Outlays for SNAP and other domestic food-aid programmes have been increasing steadily over the past few years. Most of these funds go towards providing vouchers for purchases of food in retail outlets (including imported as well as domestic products) by people and families with low incomes. About US\$0.9 billion is expended for purchase of commodities through the Food and Consumer Services' food programmes for distribution to low-income or other needy people.

Question 30

It is requested to explain the criteria adopted by USA to identify low income or other needy people for the purpose of domestic food aid.

**RESPONSE:** Income eligibility standards for the Supplemental Nutrition Assistance Program are set by law. Gross monthly income eligibility limits are set at 130 percent of the poverty level for the household size. Net monthly income limits are set at 100 percent of the poverty level.

Page 107 (Para 28)

Cotton-4 countries have raised concerns over cotton subsidies to farmers in USA. Farm bill 2012 has restructured as well as repealed many programmes related to different commodities. Direct Payments, Counter-Cyclical Payments (CCPs), the Average Crop Revenue Election (ACRE) Program, are repealed at the end of the 2012 crop year. However, USA has introduced a new crop insurance policy called Stacked Income Protection Plan (STAX) with farmer subsidy as a share of the policy premium is set at 80% for STAX.

Question 31

It is requested to answer the following:

- ) Whether or not introduction of STAX for cotton with 80 percent premium subsidies will encourage more production of cotton and thus will hamper the interest of C-4 countries?

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill. .

- ) How the premium subsidy on cotton under STAX will be treated in domestic support notification?

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill. The United States will notify any new agricultural programs in an appropriate and timely manner.

Page 58 (Para 70)

It is indicated that the enquiry point and notification authority under the TBT Agreement is the National Institute of Standards and Technology (NIST) of the Department of Commerce. However, it can be observed that most of these notifications are from the following governmental, sub-federal and private companies like: State of California; Government Printing Office; Akamai Technologies (Private); Food and Drug Administration; US Department of Agriculture (Animal and Plant Health Inspection Service); California Environmental Protection Agency (Air Resources Board); and Rhode Island Department of Environmental Management.

Question 32

Can the US clarify the role of private firms like the “Akamai Technologies” in the arena of standards setting?

**RESPONSE:** The United States has not notified any measure from Akamai Technologies, as it is not a central or sub-central government entity. Akamai Technologies is a private company and has no affiliation with the U.S. government.

Page 58 (Para 71)

It is indicated that over the period the U.S. authorities recognised the need to make improvements in their internal procedures for sub-federal notifications and there is a need for such measures.

Question 33

Can the US clarify as to how it proposes to meet sub-federal standard/interests with that of international harmonised standard?

**RESPONSE:** State regulators actively engage in U.S. based and international standards development activities and use international standards where appropriate in state regulations.

Page 60 (Para 79)



India seeks a clarification on the role of American National Standards Institute (ANSI) coordinated and administered the private sector voluntary standard and system in the United States and their implementation process.

Question 34

Are these voluntary standards true to the meaning and code or is there any case of violation of these voluntary measures by the private sector in the process of procurement of goods from a third country. India would like to seek US to clarify on whether was there any reported of violation of national treatment principle under the TBT agreement.

**RESPONSE:** Private companies may require the use of voluntary standards in their business transactions. If the United States requires compliance with any voluntary standard, it would establish this through regulation.

Page 61 (Para 81)

The GAO of the US has found, "[t]he safety and quality of the U.S. food supply is governed by a highly complex system stemming from at least 30 laws related to food safety that are collectively administered by 15 agencies."

Question 35

India requests US to kindly explain how the US government balances the WTO commitments under the SPS Agreement, given that there are:

dismally low share of notifications with HS code in the case of US notifications since 1995; and

certain critical transparency related issue of the SPS notifications.

Table 1: The Presence of HS code in the US Notifications

| Year             | Yearly SPS Notification | HS already notified | Share of notification with HS code (%) |
|------------------|-------------------------|---------------------|--|
| 1995             | 21                      |                     | 0.0                                    |
| 1996             | 59                      |                     | 0.0                                    |
| 1997             | 40                      |                     | 0.0                                    |
| 1998             | 50                      |                     | 0.0                                    |
| 1999             | 80                      |                     | 0.0                                    |
| 2000             | 163                     |                     | 0.0                                    |
| 2001             | 165                     |                     | 0.0                                    |
| 2002             | 143                     |                     | 0.0                                    |
| 2003             | 198                     |                     | 0.0                                    |
| 2004             | 181                     |                     | 0.0                                    |
| 2005             | 173                     |                     | 0.0                                    |
| 2006             | 396                     |                     | 0.0                                    |
| 2007             | 405                     |                     | 0.0                                    |
| 2008             | 275                     |                     | 0.0                                    |
| 2009             | 116                     | 2                   | 1.7                                    |
| 2010             | 190                     | 16                  | 8.4                                    |
| 2011             | 223                     |                     | 0.0                                    |
| Jun. 2012        | 133                     |                     | 0.0                                    |
| <b>Total SPS</b> | <b>3011</b>             | <b>18</b>           | <b>0.6</b>                             |

| notifications  |  |  |  |  |
|--|--|--|--|--|
| <p><b>RESPONSE:</b> In accordance with obligations set forth in the WTO SPS Agreement, the U.S. government notifies new or revised SPS measures to the WTO for member review and comment. The United States is the most active member in terms of the number of notifications submitted to the WTO. Since 1995, the United States has submitted 2,384 regular and 84 emergency notifications (G/SPS/GEN/804/Rev.5). When submitting SPS measures, the United States identifies the products covered as specified in the <i>Notification Procedures</i> contained in Annex B Paragraph 5(b) of the SPS Agreement.</p>   |  |  |  |  |
| <p><u>Page 20 (Para 19)</u><br/>The Secretariat’s report refers to the Congressional process in reforming or changing United States preferential programmes including GSP and ATPA.</p> <p><u>Question 36</u><br/>Would the US government please comment on approaches being considered by the U.S. Administration to reform the GSP programme, including its eligibility criteria etc.</p> <p><b>RESPONSE:</b> It is not yet clear whether possible reforms to the GSP program will be on the Congressional agenda in 2013, and the Administration is not in a position to speculate on what specific reforms Congress might consider. For its part, the Obama Administration believes it is important that any prospective reform of the GSP program take into account both the needs of the world’s poorest countries and the fact that many emerging market countries may no longer need preferential access to compete in the U.S. market in some product sectors.</p>    |  |  |  |  |
| <p><u>Page 28 (Para 35)</u><br/>According to a Congressional Research Service (CRS) report, “a number of regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking and investment company regulations</p> <p><u>Question 37</u><br/>Would the U.S. government please elaborate on the barriers referred to in the CRS report? In this regard, it would be appreciated if the USG could provide details of foreign investment policies and prevailing restrictions in the field of mining, energy (including natural gas) and radio communications.</p> <p><b>RESPONSE:</b> The CRS report referenced in Paragraph 35 of the Secretariat’s Report provides detail on each of the federal-level measures it discusses. The report is publicly available, and its bibliographical information is provided in the “References” section of the Secretariat’s Report.</p> |  |  |  |  |
| <p><u>Page 30 (Para 2)</u><br/>The Secretariat’s report provides brief details of several U.S. initiatives to facilitate trade and enforce US laws and regulations. These include C-TPAT; ACE; CSI; and SFI.</p> <p><u>Question 38</u><br/>Does C-TPAT programme provide preferential treatment to those 10,000 partners who are covered under the programme?</p> <p><b>RESPONSE:</b> Information on the C-TPAT program, who may join, and benefits may be found at the following link. <a href="http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/">http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/</a></p> <p>What is the basis on which the U.S. government pursues Mutual Recognition Agreement with its trading partners on C-TPAT?</p>  |  |  |  |  |

**RESPONSE:** Information about C-TPAT and U.S. efforts in the area of international mutual recognition can be found here, [http://cbp.gov/xp/cgov/trade/cargo\\_security/ctpat/ctpat\\_program\\_information/international\\_efforts/](http://cbp.gov/xp/cgov/trade/cargo_security/ctpat/ctpat_program_information/international_efforts/)

What is the trade impact of ACE programme?

**RESPONSE:** ACE is the commercial trade processing system that is being constructed. The core functionality of this processing system will establish the foundation for the import/export process and automation. Additional information about ACE is available at: <http://www.cbp.gov/xp/cgov/trade/automated/modernization/>

Does the US government prescribe standards and detail implementation modalities for the CSI?  
How is the treatment of maritime cargo covered under the CSI different from the cargo that is not pre-screened under the CSI?

**RESPONSE TO IV AND V:** CSI is a security regime to ensure all containers that pose a potential risk for terrorism are identified and inspected at foreign ports before they are placed on vessels destined for the United States. More information on the CSI program can be found through this link, [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/csi/csi\\_in\\_brief.xml](http://www.cbp.gov/xp/cgov/trade/cargo_security/csi/csi_in_brief.xml)

What is the trade impact of SFI?

**RESPONSE:** Estimates for potential costs incurred outside of the United States to implement the scanning regime as envisioned by the SAFE Port Act legislation vary based on a number of variables involved in the calculation and the lack of a single perspective on who would bear costs associated with equipment procurement, maintenance and operations; upfront expenditures for potential redesigns of ports and facilities; and data analysis and alarm resolution. In the pilot ports the U.S. Government bore all the costs. On May 2012, DHS Secretary Napolitano issued a report and letter to Congress extending to July 2014 the deadline to implement 100% scanning.

Page 31( Para 4)

Secretariat's report mentions that CBP is working on "the Role of the Broker Initiative".

Question 39

Would the U.S. government please provide detailed elements of this proposed initiative and how it might impact U.S. trade with its partners? What is the time frame for its roll out?

**RESPONSE:** CBP's new Role of the Broker initiative seeks to modernize the relationship between the customs broker and U.S. Customs and Border Protection (CBP). One key element of this initiative is to modernize the broker's role by modifying regulations. The three goals in the new and amended regulations are to: clarify brokers' responsibilities related to importer validation and provide greater visibility of importers; modernize regulations to align with current electronic capabilities and business practices; and reinforce the broker's responsibility to exercise due diligence in conducting business and by introducing a continuing education requirement.

In order to keep interested parties fully aware and involved in the process, CBP has sought comments and inputs on all facets of the broker regulations from the widest possible audience including small- and medium-sized enterprises. The CBP webpage for this topic can be found at [http://www.cbp.gov/xp/cgov/trade/trade\\_transformation/broker\\_role/](http://www.cbp.gov/xp/cgov/trade/trade_transformation/broker_role/)

At this time there is no time frame indicated for the roll out for the Role of the Broker Initiative.

Page 33 (Para 8)

Secretariat's report states that the US follows multiple preferential rules of origin.

Question 40

Is there any proposal to harmonize the multiple rules of origin?

**RESPONSE:** The United States does not have any plans at this time to change its preferential rules of origin.

Page 38 (para 17)

The Secretariat's report refers to implementation of HS2012 and states, inter-alia, "The United States did not implement one set of changes affecting three six-digit tariff codes of certain photographic films of chapter 37,"

Question 41

Would the U.S government like to comment on the reason for not implementing the changes on the referred three six digit tariff codes of certain photographic films of chapter 37?

**RESPONSE:** With regards to the HS2012 changes, the United States acknowledges the need to delete subheadings 3702.91 to 3702.95 and to replace those with new subheadings 3702.96, 3702.97 and 3702.98. The failure to make this change was an accidental omission and steps are being taken to rectify the situation.

Page 39 (Para 20)

The United States "maintains TRQs on 200 tariff lines of agricultural products". These include beef, dairy, sugar, cotton, tobacco, and peanuts.

Question 42

(a) Is the U.S government considering any revision in its policy towards the TRQs that it maintains on various tariff lines?

**RESPONSE:** The U.S. Government does not currently have plans to change its TRQs.

(b) What is the TRQ regime for Tobacco; its basis and whether it is not discriminatory in denying market access to some of trading partners of the U.S.?

**RESPONSE:** The United States regularly provides information about the TRQ for tobacco, most recently in G/AG/N/USA/85. The TRQ for tobacco is consistent with U.S. WTO obligations

(c) What has been the TRQ utilization of Tobacco by various countries that are its beneficiary?

**RESPONSE:** Please see U.S. notification G/AG/N/USA/85 concerning imports under TRQs during 2010 and 2011.

Page 40 (Para 21)

The Secretariat's report refers to U.S tariff rates and mentions tariff peaks for several products.

Question 43

Does the U.S government have any plan to reduce its tariff peaks on the product categories listed in the Secretariat's report?

**RESPONSE:** The U.S. duty structure is a result of several successive rounds of multilateral trade negotiations. As shown in the Table III.4 of the Secretariat's Report, incidence of international tariff peaks (defined as any tariff rate at or above 15 percent) in the U.S. schedule has declined from 6.6 percent in 2002 to 5.0 percent in 2012. As is the case with other Members, the incidence of tariff peaks in the U.S. tariff schedule would be further reduced through balanced, ambitious multilateral trade liberalization.

Page 54 (Para 62)

Secretariat's reports mentions of a new notification on quantitative restrictions?

Question 44

Could the U.S government indicate the time frame for the proposed new notification on QRs?

**RESPONSE:** The United States most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1.

Page 61 & 64 ( Para 81 and 84)

The Secretariat report refers to Food Safety Modernization Act (FSMA). The report also mentions that according to GAO, "the safety and quality of the U.S. food supply is governed by a highly complex system stemming from at least 30 laws related to food safety that are collectively administered by 15 agencies." Para 84 refers to concerns expressed by various countries under the SPS committee.

Based on paras 81 and 84, would the U.S. government please respond to the following:

Question 45

On FSMA:

(a) We appreciate the importance of food safety, but would not the FSMA impose unnecessary burden on exporter of food products through re-registration every two years; high inspection cost of foreign facilities etc.

**RESPONSE:** Section 415 of the Federal Food, Drug, and Cosmetic Act requires food facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA. FSMA Section 102 requires such food facilities to renew their registrations with FDA during the period beginning on October 1 and ending on December 31 of each even-numbered year. FDA has tried to make the registration renewal process as efficient as possible; we estimate that it will take registrants approximately 30 minutes to renew a registration. Registration renewals should provide FDA with more accurate and up-to-date registration information and this is critical to our strategic planning and resource allocation efforts.

Foreign inspections are an important tool in FDA's oversight of imported foods and FDA bears the majority of the resource burden of conducting these inspections. Pursuant to FSMA, FDA has increased inspections of both foreign and domestic food facilities, including manufacturers/processors, packers, repackers, and holders of foods under FDA jurisdiction, and has mandated an inspection frequency, based on risk, for food facilities.

(b) What would be the modalities and framework for implementing the Foreign Supplier Verification Programme prescribed under FSMA?

**RESPONSE:** Under FSMA Section 301 "Foreign Supplier Verification Program (FSVP)," importers are required to have a program in place to provide assurances that their imported food is produced in compliance with processes and procedures that provide the same level of public health protection as FDA's preventive control requirements and produce safety standards as applicable. The provision

requires the agency to promulgate regulations to specify the content and requirements of FSVPs. FDA is currently drafting a proposed rule.

(c) What is the time frame for the issue of implementing rules and regulations under section 301 of FSMA?

**RESPONSE:** There are a number of rulemakings required by the FDA Food Safety Modernization Act (FSMA). One of the rules mentioned above has issued and the others are in various stages of development. FDA issued the interim final rule on Establishment and Maintenance of Records in February 2012 and it is in effect. The rule expands FDA's former records access beyond records related to a specific suspect article of food which FDA reasonably believes is adulterated and presents a threat of serious adverse health consequences or death to humans or animals to now include records relating to any article of food that is reasonably likely to be affected in a similar manner. In addition, FDA can now access records related to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animal.

With regard to the other rulemakings, FDA is working diligently to issue the rules required by FSMA.

Regarding timelines, the rules that have not issued yet will be, when first published, proposed rules. Following the notice-and-comment process, we will take comment on these rules and then, considering those comments, finalize the proposals. There will be several opportunities for public engagement during the notice and comment periods for each rule. The timing of when a final rule will take effect will depend on the particular rule, but we do expect that the rules will have phase-in periods.

(d) How would the system of third party accreditation be implemented?

**RESPONSE:** FDA Section 307 of FSMA, "Accreditation of Third-Party Auditors," provides for accreditation of third party auditors/certification bodies to conduct food safety audits of foreign food entities and to issue food and facility certifications. The provision states that the food and facility certifications issued by accredited third-party auditors should be used by FDA for the following purposes: (1) determining, in conjunction with any other assurances required, whether a food satisfies a condition of admissibility under FD&C Section 801(q); and (2) determining whether a facility is eligible to offer food for import into the United States under the voluntary qualified importer program described in FSMA Section 302. FSMA requires FDA to issue implementing regulations to establish the program, including conflict of interest provisions. FDA is working diligently to issue a proposed rule.

**Other SPS issues:**

Question 46

It is understood that the Federal Food Drug and Cosmetic Act (FFDCA) authorizes the Environmental Protection Agency (EPA) to establish a tolerance for the maximum amount of a pesticide residue that may be legally present in or on a raw agricultural commodity. EPA is also authorized to exempt a pesticide residue in a raw agricultural commodity from the requirement of a tolerance.

We would appreciate if the U.S. could let us know how the MRL is fixed for fungicide Tricyclazole. We understand that US FDA's website initially said that it permits presence of Tricyclazole in rice bran, rice hulls, and rice polishing (this was later withdrawn). Whereas for rice, it is learnt that there is no MRL for this fungicide. We also understand that Tricyclazole is used as a fungicide on rice in EU, Japan and China where the MRLs are 1 ppm, 3 ppm and 2 ppm, respectively.

We would request the U.S. to explain its basic position on MRLs for fungicide Tricyclazole? Is it true that USFDA website initially stated that it permits presence of Tricyclazole in rice bran and rice hulls and rice polishing? Have U.S. agencies undertaken any scientific study on food safety aspects of various concentration of Tricyclazole in rice? If yes, have these been on raw rice or cooked rice?

**RESPONSE:** Tricyclazole had been listed on "FDA's Listing on Food Additive Status." The listing was based on an animal feed tolerance issued by EPA in 1980 for residues in animal feed. Tricyclazole is not, nor has it ever been, an approved food additive for human food. FDA has removed tricyclazole from the list to avoid future misunderstandings.

In the United States, the Federal Food Drug and Cosmetic Act (FFDCA) authorizes the U.S. Environmental Protection Agency (EPA) to set Maximum Residue Limits (MRL). The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered (licensed) by EPA. Before EPA may register a pesticide under FIFRA, the applicant must show, among other things, that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."

Detailed information on how to register a pesticide and petition for a tolerance can be found on EPA's website at <http://www.epa.gov/pesticides/bluebook/>

To date, the EPA has not established a MRL for Tricyclazole on rice, nor has the EPA received a petition to do so.

Page 72 (Para 121)

The U.S president had proposed a new framework for business tax reforms which includes provisions for eliminating tax loopholes and subsidies.

Question 47

Which subsidies are proposed to be eliminated by the President's programme referred to in para 121?

**RESPONSE:** The President's plan starts from a presumption that all tax expenditures for specific industries would be eliminated, with a few exceptions that are critical to broader growth or fairness. Examples include: last in first out accounting, oil and gas tax preferences, tax preferences for corporate owned life insurance, preferential capital gains treatment for carried interests, and special depreciation rules for corporate purchases of aircraft.

Page 78 (Para 137)

*The Secretariat report mentions that the Public Law 111-347 titled James Zadroga 9/11 Health and Compensation Act of 2010 will create federal excise tax on foreign entities receiving payments for goods and services.*

Question 48

(a) *Can the U.S government confirm whether the relevant rules to implement the law have been framed or not?*

(b) *Can the U.S comment whether the provision of 2% fee over and above the restrictions on US Federal and State government procurement is WTO compliant? Could it also confirm its implementation?*

(c) *Does the U.S support the principle that requirement of funds for domestic programmes could be met through increased tax on foreign entities?*

**RESPONSE:** The text of the referenced legislation, Section 301, of the James Zadroga 9/11 Health and Compensation Act of 2010, is available online at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. The U.S. Internal Revenue Service and the Treasury Department are in the process of drafting regulations, and has no established deadline for completing that work. The statute is effective for payments received pursuant to contracts entered into on and after January 2, 2011. This legislation is fully consistent with U.S. obligations under the WTO Agreements and, pursuant to the express terms of the statute, the U.S. government shall apply the legislation “in a manner consistent with United States obligations under international agreements.”

Page 80 (Para 141)

“The agriculture and energy and fuel sectors are the largest recipients of government assistance”

Question 49

Could the United States provide the extent and quantum of Federal and State government assistance to energy sector in particular solar, and natural gas. Could the US provide details of specific Federal and State programmes through which such assistance is provided in the two sectors?

**RESPONSE:** As noted in the Secretariat’s report, the United States submitted its subsidy notification to the WTO Committee on Subsidies and Countervailing Measures last year. See: G/SCM/N/220/USA, 19 October 2011. This notification covers solar and natural gas - among many other sectors - at both the federal and state level.

Page 103-104 (Para 15 -19)

Question 50

United States Department of Agriculture under its Export Credit Guarantee Scheme (GSM-102) provides credit guarantees to encourage financing of commercial exports of US agricultural products.

(a) How does the scheme operate?

**RESPONSE:** For a detailed response please see: <http://www.fas.usda.gov/info/factsheets/gsm102-03.asp>

(b) Could the US give details of the coverage of the scheme?

**RESPONSE:** See response to (a) above. Currently, GSM-102 covers credit terms of up to two years; maximum terms vary by country.

(c) Has there been a study on the impact of the scheme on export promotion of the agricultural goods?

**RESPONSE:** The United States is not aware of any studies on this topic.

(d) Can the US provide disaggregated information about quantum of guarantees and value of exports of each of the beneficiary crops?

**RESPONSE:** Information regarding program usage is available on our website at <http://www.fas.usda.gov/excredits/Monthly/ecg.htm>

Question 51

Please provide details of the USDA scheme GSM-103. Is the scheme still operational?



**RESPONSE:** The 2008 Farm Bill eliminated authority for the GSM-103 program; therefore, that program is no longer operational.

Question 52

What are the salient features of the Facility Guarantee Programme? What are the budgetary allocations since the year 2008? Has the programme been formally closed?

**RESPONSE:** The Facility Guarantee Program is still authorized under U.S. law, but it has not been made available since 2007.

Question 53

Please provide details of the Dairy Export Incentive Programme (DEIP) of the USDA . What is the allocation of funds for the programme? How much was paid to exporters as bonuses based on their export performance?

**RESPONSE:** For details regarding the Dairy Export Incentive Program please see: <http://www.fas.usda.gov/info/factsheets/deip.asp>

The DEIP program is not currently operational. It was last made available during the 2008/2009 and 2009/2010 years due to the reactivation of dairy export subsidies by the European Union (EU). The last award under the program was made in October 2009. Program allocations are made consistent with U.S. WTO Uruguay Round annual export subsidy budgetary and quantity ceilings.

The United States refers India to the U.S. export subsidies notifications to the WTO Committee on Agriculture for details regarding budgetary outlays and quantities.

Question 54

It is mentioned in Paragraph 19 that in July 2010, the USDA announced that due to prevailing market conditions, it would not be making invitations for offers available but would continue to monitor market conditions. Please provide an update.

**RESPONSE:** The DEIP program was last made available during the 2008/2009 and 2009/2010 years, and the last award under the program was made in October 2009. The program has not been operational since that time.

Page 77 (Para 132-133)

Question 55

How is the definition of 'public work or building' applied under the Federal Acquisition Rules (FAR)? Will it include any privately owned infrastructure projects developed with funds from a Federal Agency? The U.S. is requested to kindly provide illustrations of use of this provision.

**RESPONSE:** Please see the U.S. response to Question 7 for the definition of a public building or public work.

**Part III : OTHER QUESTIONS**

Page – 10 of TN/AG/W/REV.4 Para 35 (b)

USA is seeking a special provision in Doha negotiations to redefine Blue box so that Counter Cyclical Payments can be treated as blue box support. However, USA has repealed CCPs in Farm bill 2012.

Question 56

Is USA government still seeking to redefine Blue box as CCPs is repealed in farm bill 2012? Please throw some light on this issue.

**RESPONSE:** The United States notes that the countercyclical payment program has not been repealed. Until new Farm Bill legislation is adopted and implemented, the United States can not speculate what changes will or will not be made.

In recent years, several US legislative proposals and lawsuits have sought to impose service of process and personal jurisdiction over foreign manufacturers. For instance, in December 2011 Senator Sheldon Whitehouse reintroduced a new version of the Foreign Manufacturers Legal Accountability Act (S.1946) and Rep. Betty Sutton reintroduced companion legislation (H.R.3646). The scope of the proposals remain similar to legislation they introduced earlier - foreign manufacturers of specified covered products would be required to register an agent in a state with a substantial connection to the product and consent to personal jurisdiction and service of process in federal and at least one state court for civil and regulatory actions.

While one certainly recognize the need foreign manufacturers to be responsible for products they sell in the USA, but any sort of FMLAA could prove to be prohibitively expensive to small and medium sized businesses from other countries. Further, we believe, any such proposal would risk disrupting important supplier relationships.

In fact, it is learnt that a number of US bodies such as National Association of Manufacturers, Organization for International Investment and US Chamber of Commerce have strongly expressed their opposition to Foreign Manufacturers Legal Accountability Act (FMLAA) and to having the language of that bill included in any other piece of legislation.

Question 57

- (a) Could the US explain the rationale behind FMLAA?
- (b) How does the US intend to address the concerns expressed by its trading partners in respect of the adverse impact of FMLAA on competitiveness and cost of compliance?

**RESPONSE:** The proposed Foreign Manufacturers Legal Accountability Act, as reflected in bills pending before the U.S. Congress, reflects a desire to ensure that consumers in the United States can be confident that the products they buy are safe and that there are procedures available under U.S. law to address effectively any product liability issues they may engender. The United States believes these goals can be accomplished without imposing undue burdens on foreign manufacturers. The FMLAA is still pending before Congress. We are not in a position to speculate on the implications of particular provisions which are subject to further review and possible modification in the United States Congress.

Question 58

Despite India's repetitive stand against the use of non-tariff barriers to trade, why USA Department of Labour (USDOL) is deliberately linking trade with labour standards affecting India's export competitiveness in International Market? It is evident that USDOL has put another two items i.e. incense (agarbati) and thread/yarn amounting a total of 21 items on the TVPRA list. This not only violating the ILO Declaration of Social Justice for Fair Globalization 2008, which explicitly states that violation of fundamental principles and rights at work cannot be invoked for otherwise used as legitimate comparative advantage but also goes against the basic policy of WTO regarding promotion of fair trade.

**RESPONSE:** The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 directed the Secretary of Labor to, among other actions, develop and make available to the public a list of goods from countries that the United States has reason to believe are produced by forced labor or child labor in violation of international standards. The purpose of the TVPRA list is to raise awareness and promote efforts to eliminate child labor and forced labor. The TVPRA list does not prohibit or otherwise limit or restrict goods from entering the United States, nor does any other U.S. law limit importation of a product based on whether it has been included in the TVPRA list. See <http://www.dol.gov/ilab/programs/ocft/tvpra.htm> for more information.

Question 59

Why are the domestically produced goods in United States not included on the TVPRA list, while USDOL recognizes that both child and forced labour occur in the United States? Does not it violate the non-discrimination principles of WTO's trading system?

**RESPONSE:** As discussed above, the TVPRA list does not prohibit or otherwise limit or restrict goods from entering the United States, nor does any other U.S. law limit importation of a product based on whether it has been included in the TVPRA list. Therefore, India's question regarding non-discrimination is not applicable to the TVPRA list.

Question 60

In spite of the sincere efforts of Government of India to combat child labour in the form of statutory & legislative measures and the resultant decline in the percentage of child labour in India by 45% during the last 5years, why USDOL is deliberately banning India's export in major items in the pre text of child labour?

**RESPONSE:** The purpose of the TVPRA list is to raise awareness and promote efforts to eliminate child labor and forced labor. It does not ban, regulate, or control trade with India.

The WTO Dispute Settlement Understanding states: "*When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.*" It further provides that "*in such cases, Members shall not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement.*" (Article 23.1 and Article 23. 2(a) of WTO DSU)

The US has stated in previous TPRs that "a country is placed on the Special 301 list if it is clear that it 'denies adequate and effective protection of IPR or fair and equitable market access to U.S. persons that rely upon IP protection.'"

Question 61

Please explain

- i) *whether the USTR considers, when it finds the IP practices in other Members objectionable, whether those practices are covered by the TRIPS Agreement, and*

**RESPONSE:** Each year, as required by U.S. law, the Office of the United States Trade Representative (USTR) issues a Special 301 Report cataloguing specific IPR problems in numerous countries worldwide. The review of each trading partner's IPR regime is done on a case by case basis, and all relevant factors are taken into consideration. USTR considers information submitted by interested stakeholders and U.S. Embassies located in foreign capitals. In addition, USTR actively encourages foreign governments to submit material which can be taken into account in these reviews. A country is placed on the Special 301 list if it is clear that it "denies adequate and effective protection of IPR or fair and equitable market access to U.S. persons that rely upon IP protection." In addition to citing specific concerns, Special 301 also affords an opportunity to give credit where it is due, such as by improving the standing of countries when there are significant improvements in IPR protection and enforcement in that country.

As part of its review process, USTR requests written submissions from the public through a notice published in the *Federal Register*. This year's notice yielded 42 comments from interested parties. USTR also received submissions from 18 trading partners. The submissions that USTR received were made available to the public online at [www.regulations.gov](http://www.regulations.gov), docket number USTR-2011-0021. USTR also conducts a public hearing that allows interested persons to testify before the interagency Special 301 subcommittee about issues relevant to the review. The most recent hearing featured testimony from 12 witnesses, including representatives of foreign governments, industry, and non-governmental organizations. A transcript of the hearing is available at [www.ustr.gov](http://www.ustr.gov).

All submissions receive careful examination. USTR, together with the interagency Special 301 subcommittee, makes a balanced assessment of intellectual property protection and enforcement, as well as related market access issues, in accordance with the statutory criteria set out by Congress in the Special 301 statute.

As noted above, this assessment is necessarily conducted on a case-by-case basis, taking into account diverse factors such as a trading partner's international obligations and commitments, the concerns of rights holders and other interested parties. It is informed by the various cross-cutting issues and trends identified in the Report's "Section I – Developments in IPR Protection and Enforcement". However, the assessment is especially based upon the particular facts and circumstances that shape IPR protection and enforcement regimes in a particular trading partner.

) *the US position on the consistency of the Special 301 watchlist in particular with the Dispute Settlement Understanding.*

**RESPONSE:** The Special 301 review is not a determination that there has been a denial or violation of U.S. rights under the TRIPS Agreement.

#### Question 62

How does the US reconcile its stated objectives for the scale up of HIV treatment with the demands for ever increasing IP protection in developing countries in bilateral talks.

**RESPONSE:** Advancing the treatment of HIV/AIDS and promoting strong intellectual property protection and enforcement are mutually consistent objectives. The United States supports these objectives in its bilateral as well as regional and multilateral engagement, including in the WTO, the United Nations, and other institutions such as the World Intellectual Property Organization and the World Health Organization. The United States will continue its engagement to ensure that public health challenges are addressed and that intellectual property rights protection and enforcement are

supported as mechanisms to promote research and innovation.

### Question 63

The US has shown support for the Medicines Patent Pool - Does the US agree that companies that refuse to voluntarily license their ARV patents to the pool are vulnerable to compulsory licensing? What does the US undertake to persuade reluctant companies to license their ARV patents for use in Developing and LDCs?

**RESPONSE:** The United States supports patent pools when they are appropriate. As a global leader in research and development of medicines, the United States has an important role in promoting voluntary mechanisms to increase the competition to provide innovative and affordable health technologies to people in low and middle income countries.

In particular, the United States has strongly supported the Medicines Patent Pool (MPP) since its beginnings. The US National Institutes of Health (NIH) was the first entity to sign in September 2010 a license agreement with the MPP with the strong support of the US Administration. The patents shared within the MPP by the US NIH relate to protease inhibitor HIV medicines, used mainly to treat drug resistant HIV infections. NIH makes these patents available through the MPP to all low and middle income countries on a low royalty or royalty-free basis.

The agreements and ongoing negotiations between the MPP and patent rights holders, and with potential generic manufacturers of medicines, have already resulted in engagement with several companies to produce HIV medicines at a lower cost. The United States encourages other companies to consider arrangements with the MPP to voluntarily make available their patents for this important goal.

The United States strongly supports the guiding principles of the MPP as follows: 1) the Pool operates on a voluntary basis; 2) the Pool operates within the current intellectual property framework such that patent holders are compensated through appropriate royalties; 3) the Pool is an additional mechanism to promote access to medicines.

These principles are in line with the U.S. belief that the IP system, including patents, provides critical incentives to the development of drugs. Developing new life-saving medicines is a very risky endeavor, and it is necessary to provide incentives to the private sector to carry out this work. The ability to patent an invention is critical to ensuring that there are incentives for developing new life-saving medicines, and also is fundamental in ensuring that the benefits of these medicines can be shared widely. By stressing the voluntary nature of participation, the MPP does not threaten the intellectual property of the participants, and the system of incentives in place for developing new medicines.

### **LNG Exports from the US**

India has been desirous of importing LNG from the US but permission has not been accorded so far although the US permits exports to 17 countries - Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, Singapore, and South Korea

The US Department of Energy's (DOE) authority to regulate the imports and exports of

natural gas arises under

- Section 3 of the Natural Gas Act, 15 USC 717b and
- Section 301(b) of the DOE Organization Act, 42 USC 7151

Section 3(a) of the Natural Gas Act, 15 USC 717b(a), sets forth the statutory criteria for review of an LNG export application.

*[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.*

1992 EPA Act created Section 3(c) of the Natural Gas Act. Section 3(c) requires the following applications to be deemed consistent with the public interest and granted without modification or delay:

- *(Free Trade Countries) Applications to authorize the import and export of natural gas, including LNG, from and to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and*
- *(LNG Imports) Applications to authorize the import of LNG from other international sources*

#### Question 64

Under what provisions of the WTO are the measures Section 3(a) and 3(c) listed above consistent with GATT Art 1 and GATT Art XI?

**RESPONSE:** In light of the rapid growth of U.S. natural gas production, with its implications for economic growth, exports and the environment, we are carefully reviewing the issues raised by LNG exports. We are, of course, mindful of our WTO obligations and will review such issues to ensure that any U.S. actions affecting trade are consistent with our WTO obligations.

The U.S. Department of Energy (DOE) has the authority to regulate long-term natural gas imports and exports of natural gas, including LNG, under the Natural Gas Act and the DOE Organization Act. DOE is generally required to grant applications to export LNG to countries with which the United States has entered into a free trade agreement providing for national treatment for trade in natural gas. For countries that do not meet this criterion, DOE is required to grant applications for export authorizations unless DOE finds that the proposed exports “will not be consistent with the public interest.” Factors for consideration include economic, energy security, international, and environmental impacts. As part of the public interest determination review process, DOE solicits public comment, and considers any protests and motions to intervene in the administrative review process.

To date, DOE has approved multi-year long term authorizations of domestically produced LNG exports to FTA countries and to non-FTA countries, including India and South Korea, before South Korea became an FTA partner of the United States. In light of the significant number of new pending applications for LNG exports, and environmental and other issues raised by the public, DOE conducted a two-part export study to examine the cumulative impacts of additional natural gas exports.

Information about the export study, applications for and approvals of authorizations for LNG exports and imports is available on the DOE website <http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html>.

On December 11, 2012, DOE published a notice and requested public comment on the export study (Federal Register Volume 77, Number 238 (Tuesday, December 11, 2012); Pages 73627-73630.) Initial comments regarding the study will be accepted by DOE for 45 days, followed by a reply comment period that will last for 30 days. DOE will evaluate both the study and the comments received prior to making its determinations of the public interest on a case-by-case basis, for each of the pending cases.

**QUESTIONS FROM INDIA  
SECOND SET**

**Part I : QUESTIONS REGARDING THE SECRETARIAT REPORT**

Page 66 (Para 86)

A number of different agencies are involved in developing, implementing, and enforcing SPS measures. Among the main agencies are:

- the Food Safety and Inspection Service (FSIS) in the Department of Agriculture, which is responsible for the safety of meat, poultry, and processed egg products, including imports, and the recognition of establishments in other countries that meet U.S. regulatory standards for these commodities and may export to the United States;

Question 1:

- a) Could United States provide a description of laws and regulation as applicable with respect to import of poultry and poultry products into USA? Furthermore could United States provide a list of authorities/agencies involved in processing the import of poultry and poultry products into USA.

**RESPONSE:** The Food Safety and Inspection Service (FSIS), within the U.S. Department of Agriculture (USDA) is the central competent authority in the United States for poultry and poultry products (i.e. poultry products). The Poultry Products Inspection Act and Title 9 of the Code of Federal Regulations (9CFR), Part 381, are the requirements for poultry and poultry product produced domestically in the United States or in an establishment certified by the central competent authority of an eligible foreign country. Subpart T of 9 CFR, Part 381, applied specifically to imported poultry products. These specific regulations allow for and require that foreign inspection systems are “equivalent to all the provisions of the Act [the Poultry Products Inspection Act] and the regulations...”

Consequently, FSIS has developed a specific equivalence process that all countries wishing to export to the United States must follow. All products produced by establishments certified by the foreign central competent authority within the equivalent (eligible) foreign country must be produced, inspected, and comply with the equivalent requirements. In addition, the product must be re-inspected at the U.S. point of entry before entering the U.S. market and the foreign inspection system must be periodically audited to ensure ongoing compliance.

In addition, the USDA Animal and Plant Health Inspection Service (APHIS), Veterinary Services regulates the importation of animals and animal-derived materials to ensure that exotic animal and poultry diseases are not introduced into the United States. Generally, a USDA veterinary permit is needed for materials derived from animals or exposed to animal-source materials. Materials that require a permit include, animal tissues, blood, cells or cell lines of livestock or poultry origin, RNA/DNA extracts, hormones, enzymes, monoclonal antibodies for IN VIVO use in non-human species, certain polyclonal antibodies, antisera, bulk shipments of test kit reagents, and microorganisms including bacteria, viruses, protozoa, and fungi.



The U.S. Food and Drug Administration (FDA) regulates shell eggs and egg containing products that do not meet USDA's definition of "egg product." FDA also has jurisdiction in establishments not covered by USDA; e.g. restaurants, bakeries, cake mix plants, etc. Egg processing plants (egg washing, sorting, and packing) are under FDA jurisdiction. When appropriate, FDA may exercise its jurisdiction under the FD&C Act over meat and poultry products in interstate commerce. See more information on jurisdictional overlap at

<http://www.fda.gov/downloads/ICECI/Inspections/IOM/UCM127390.pdf> and <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074588.htm>

- b) Does United States allow import of poultry and poultry products from countries reporting HPNAI / LPNAI into USA and under what circumstances? Furthermore could United States provide a description of the laws and regulations as applicable with respect to import of poultry and poultry products from HPNAI / LPNAI countries?

**RESPONSE:** The Animal and Plant Health Inspection Service (APHIS) regulations in title 9 of the Code of Federal Regulations (CFR), parts 93, 94, and 95 (referred to below as the regulations), govern the importation into the United States of specified animals and animal products and byproducts to prevent the introduction of various animal diseases, including exotic Newcastle disease (END) and highly pathogenic avian influenza (HPAI). Avian influenza (AI) is caused by an orthomyxovirus, the same family that includes viruses that cause human influenza. Worldwide, there are many strains of AI virus that can cause varying amounts of clinical illness in birds and poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese and guinea fowl, as well as a wide variety of other birds. A region will be added to the list of regions where HPAI exists when APHIS receives reports of outbreaks of the disease in commercial birds or poultry in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (OIE). The Administrator of APHIS may also add a region to the list based on outbreak reports he or she receives from other sources the Administrator determines to be reliable (e.g., reports from APHIS inspectors based in foreign countries). This last means of adding regions to the list allows APHIS to take prompt action as soon as it reliably learns of an outbreak, even before reports have been received and referred by the exporting country's animal health agency or the OIE.

In addition, APHIS prohibits the entry of live birds or poultry that have been vaccinated for any H5 or H7 subtype of avian influenza. The prohibition will also apply to hatching eggs that were laid by birds or poultry vaccinated for the H5 or H7 subtypes of avian influenza. APHIS does not otherwise regulate low pathogenic avian influenza.

Page 78 (Para 135):

In August 2010, the United States notified the final Regulation

implementing the "buy American" provision in the American Recovery and Reinvestment Act of 2009 (ARRA) pursuant to Article XXIV:5(b).<sup>+++</sup> The rule applied only with respect to contracts funded with ARRA funds to ensure compliance with U.S. obligations under international agreements when undertaking construction covered by such agreements.

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Response: This does not appear to be a question.

Question 2:

- (a) Please explain the legal framework within which water utilities operate in the U.S.? What are the differences between private and public water utilities? We understand that private water utilities operate under specific authorization of the state/municipal government authorities? What is the nature of such control?
- (b) We understand that water utilities raise their own finances, for example, by issuing bonds, and equity and debt instruments, and that they are required to financially break even and are not dependent on governments for their funding needs. Do such utilities also receive government grants? What is the proportion of funding of a typical water utility through grants and other sources of money? Are grants linked to specific functions of the water utility, and if so, what functions?
- c) How is the price for sale of water by the water utilities determined? Are rates of water supply subsidized by the Government?
- d) We also understand that there are legislative proposals seeking to amend Section 608 of the Federal Water Pollution Control Act to incorporate a 'Buy America' provision in respect of iron, steel and manufactured goods for certain projects that are funded by the 'State Water Pollution Revolving Fund'. What is the status of these bills? Is the intent of these bills to limit the requirement for using U.S. manufactured DI pipes to only those projects that are funded by the State fund, and not for all projects, which currently appears to be the case?

**RESPONSE:** There are tens of thousands of public and private water systems in the United States. The United States Environmental Protection Agency enforces federal clean water (Clean Water Act) and safe drinking laws (Safe Drinking Water Act). Public and private water utilities are generally regulated at the sub federal level, and we do not maintain detailed information on their operations, financing or pricing policies. We are not able to comment on pending legislation. However, the U.S., as in the case of the American Recovery and Reinvestment Act of 2009, ensures that "buy American" provisions are applied in a manner consistent with U.S. obligations under international agreements.

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<sup>+++</sup> WTO document GPA/98/Add.2, 6 September 2010.

## QUESTIONS FROM INDONESIA

### **I. Clove cigarette dispute resolution decision against the United States**

*The United States and Indonesia agreed that the United States would have until July 24<sup>th</sup>, 2013 to come into compliance with the WTO decision on clove cigarettes. Specifically, the WTO Panel and Appellate Body found that:*

- *Section 907(a)(1)(A) of the Family Smoking Prevention and Tobacco Control Act treated clove cigarettes less favorably than menthol cigarettes, which were a like domestic product, in violation of TBT Article 2.1; and*
- *Section 907(a)(1)(A) was inconsistent with TBT Article 2.12 because it failed to allow a “reasonable interval” of 6 months between enactment and entry-into-force of the ban on flavored cigarettes.*
- *By failing to notify Section 907(a)(1)(A) to WTO Members through the Secretariat, the United States violated Article 2.9.2 of the TBT Agreement.*

*Indonesia understands that one way the United States could come into compliance with the first finding is by banning menthol cigarettes. We understand that the Administration is still considering all of its options, including banning menthol. If menthol is not banned, however, it is then very important for Indonesia that the United States finds a solution that would reopen the U.S. market to clove cigarettes, rather than simply ignoring the WTO decision. Other countries will look at the United States’ example. We are very concerned that the unfair treatment given to clove cigarettes in the United States may be adopted by the other markets.*

*Indonesia would appreciate an update on the United States’ plans for eliminating the discriminatory treatment of clove cigarettes. We appreciate US Government’s update. The successful resolution of this dispute remains as a top priority for Indonesia.*

**RESPONSE:** U.S. authorities are conferring with interested parties and working to implement the recommendations and rulings of the DSB, in a manner that is appropriate from the perspective of the public health. With regard to clove cigarettes, the United States would emphasize the DSB finding that the measure in the Family Smoking Prevention and Tobacco Control Act reflects the overwhelming view of the scientific community that banning clove and other flavored cigarettes benefits the public health by reducing the likelihood that youth will enter into a lifetime of cigarette addiction.

### **II. NODA EPA - Palm oil**

*The U.S. Environmental Protection Agency (EPA) has issued a preliminary Notice of Data Availability (NODA) in which the Agency interprets the data available in early 2012 as indicating that biodiesel and renewable diesel produced from palm oil do not meet the lifecycle greenhouse gas (GHG) reduction thresholds necessary to qualify for the benefits accorded to those fuels under the US renewable fuel standard (RFS). If this preliminary analysis were confirmed in a final decision, denial of these benefits would preclude widespread introduction of palm-based fuels into U.S. markets.*

*As indicated in the comments filed with EPA, Indonesia does not believe that EPA's preliminary analysis is supported by the available scientific information. Apart from technical issues, Indonesia and other palm-oil producing countries see this outcome as protective in the context of WTO obligations because it protects U.S. feedstock producers of corn oil, waste oil, and others from competition. If the preliminary NODA analysis were issued as a final Agency decision, it would constitute arbitrary, discriminatory and unjustified treatment of Indonesian and other palm oil producers because EPA would not have taken into account the special circumstances of palm oil production that the developing countries which produce palm oil must address. If EPA were to finalize its preliminary NODA analysis, how would the U.S. justify this outcome with respect to its obligations under the WTO Agreement? Did the United States notify and consult with the Committee on Trade and Environment regarding its methodology and before making its determinations?*

**RESPONSE:** EPA's science-based methodology was proposed on May 26, 2009 and finalized on March 26, 2010. The TBT committee was notified of both the proposed and final rules. EPA's analysis of palm oil is still ongoing and we appreciate Indonesia's comments and the additional information they have provided in that process, but we cannot comment or speculate further on EPA's final palm oil rule. The United States is committed to implementing the RFS2 program consistent with our WTO obligations.

### **III. Official support and related fiscal measures (The National Export Initiative)**

*Paragraph 112 under page 70 (of the Secretariat's Report) indicates that Under Executive Order 13534 of 11 March 2010, the President set out the National Export Initiative (NEI) with the goal of doubling exports over five years by "helping firms – especially small businesses – overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps."*

*How does the U.S. ensure the consistency of the National Export Initiative with relevant WTO rules and, especially, providing export-based financing which could be characterized as prohibited import-substitution or other supports under the Subsidy and Countervailing Measures (SCM) Agreement?*

**RESPONSE:** The United States ensures that its trade policies are consistent with U.S. trade obligations by subjecting all such policies to various forms of internal review processes, including an interagency review process.

#### **Sanitary and phytosanitary measures**

- *Federal Food Drug and Cosmetic Act*
- *Federal Meat Inspection Act*
- *Plant Protection Act*
- *Federal Insecticide, Fungicide, and Rodenticide Act*

#### **Question:**

*According to paragraph 81 of the Secretariat's report, at the federal level, institutional responsibility for SPS matters continues to be shared among several government agencies depending on the product and type of risk, while at the state level the authorities may develop their own measures, subject to federal laws and regulations. At the federal level, numerous statutes, along with their implementing regulations, impose SPS requirements in the U.S.*

market. These statutes include the Federal Food, Drug, and Cosmetic Act<sup>§§§</sup>, the Federal Meat Inspection Act; the Plant Protection Act; and the Federal Insecticide, Fungicide, and Rodenticide Act. In addition, the Food and Drug Administration (FDA) Food Safety Modernization Act (which amends the Federal Food, Drug, and Cosmetic Act) became law on 4 January 2010.

Indonesia is concerned about these statutes and how they will affect the country's exports to the United States.

- (a) *When enacting statutes relating to SPS matters, do states follow the criteria for risk assessment as stipulated under the WTO? Could the United States describe the action it takes when SPS measures established by the States are not consistent with federal rules and regulations, and/or with obligations under relevant WTO disciplines?*

**RESPONSE:** State-level government authorities may establish SPS measures for application within their individual states provided that the measures conform to federal rules and regulations, and are consistent with WTO obligations. When conducting risk assessments, state authorities often rely on scientific evidence generated by the federal government. Various regulatory agencies, as well as the Department of Justice and the USTR, review state laws when appropriate to do so. Part of that review may entail an analysis of whether the state requirement conflicts with a federal one. In a situation where a conflict does exist, federal law will prevail.

- (b) *Could the U.S. elaborate on the compliance of the above statutes with its obligations under the SPS Agreement and relevant WTO Agreement*

**RESPONSE:** U.S. laws and regulations are consistent with U.S. WTO obligations, including the WTO SPS Agreement. Each of these measures has numerous provisions, as well as implementing regulations. Accordingly, we cannot respond to Indonesia's question directly. However, we would be happy to discuss any specific questions about specific provisions that Indonesia might have

- (c) *Food Safety Modernization Act (FSMA), including U.S. inspection of Indonesian food production facilities*

**RESPONSE:** This does not appear to be a question.

**Question:**

*According to paragraph 82 of the Secretariat's report, Box III.I under subheading "registration" indicates that "Under Section 102 of the FSMA, food facilities are required to renew their registration with the FDA (required under Section 415 of the Federal Food, Drug, and Cosmetic Act (FD&C Act)) every two years. "Food facilities" include places that manufacture, process, pack, or hold food for consumption in the United States, including foreign facilities. This biennial registration renewal requirement, which must be submitted between 1 October and 31 December, begins in 2012. The FDA may suspend registration if*

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<sup>§§§</sup> 21 USC, Section 301 *et seq.*

*there is **reasonable probability** that food manufactured, processed, packed, received, or held by the facility could have serious adverse effect on human or animal health.”*

*Could the United States clarify what is meant by “reasonable probability” in this context, and how this would be determined?*

**RESPONSE:** Under Section 415(b) of the FD&C Act, if FDA determines that food manufactured, processed, packed, received, or held by a registered facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals, FDA may by order suspend the registration of a facility that:

- Created, caused or was otherwise responsible for such reasonable probability; or
- Knew of or had reason to know of such reasonable probability AND packed, received or held such food.

FDA will determine whether food, manufactured, processed, packed, received, or held by a registered facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals FDA on a case-by-case basis as such a determination depends on an assessment of the unique facts for each situation. FDA has issued an order suspending the registration of a food facility action under section 415 of the FD&C Act recently. For more information on that event and to access a copy of the Agency’s suspension order, please visit: <http://www.fda.gov/Food/FoodSafety/CORENetwork/ucm320413.htm>

**Question:**

*According to paragraph 84 of the Secretariat’s report, a particular concern of several Members has been the FDA Food Safety Modernization Act and its implementing regulations. This issue was raised by India, China, Mexico, Costa Rica, Pakistan, and the Philippines, and the United States responded that the law had not been implemented yet and that trading partners would be able to participate in the process of developing implementing regulations for the Act through the WTO notification process.*

*Indonesia is concerned that such statute would have a significant impact on its exports to the U.S. Therefore, could the U.S. provide more detailed information on the status of implementation? Then, what would be the timeframe given to trading partners to participate in the process of developing the implementation regulation as indicated by the United States?*

**RESPONSE:** There are a number of rulemakings required by the FDA Food Safety Modernization Act (FSMA). FDA issued the interim final rule on Establishment and Maintenance of Records in February 2012 and it is in effect. This rule expands FDA’s former records access beyond records related to a specific suspect article of food which FDA reasonably believes is adulterated and presents a threat of serious adverse health consequences or death to humans or animals to now include records relating to any article of food that is reasonably likely to be affected in a similar manner. In addition, FDA can now access records related to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animal.

With regard to the other rulemakings, FDA is working diligently to issue the rules required by FSMA.

Regarding timelines, the rules that have not issued yet will be, when first published, proposed rules. Following the notice-and-comment process, we will take comment on these rules and then, considering those comments, finalize the proposals. There will be several opportunities for public engagement during the notice and comment periods for each rule. The timing of when a final rule takes effect will depend on the particular rule, but we do expect that the rules will have phase-in periods.

#### **IV. Quantitative trade measures, restrictions, controls, and licensing** **Lacey Act**

##### **Question:**

*For an emerging market such as Indonesia, the Lacey Act declaration requirements for exporting plants and plant products into the U.S. market are cumbersome and not possible to meet in some cases. We understand the importance of the purpose of the Lacey Act, but its implementation acts as a non-tariff trade barrier. Is the U.S. willing to address this issue?*

*Furthermore, it is our understanding that the Animal and Plant Health Inspection Service (APHIS) is soliciting comments on regulatory options that can address issues related to the Lacey Act declaration requirements, and is expected to release a report evaluating the implementation of declaration standards under the 2008 amendments\*\*\*\*. When would this report be ready and would it be accessible to all countries?*

**RESPONSE:** The United States considers the Lacey Act to be an important tool in U.S. efforts to combat illegal logging and associated trade. We understand that Indonesia and many other WTO Members share the objective of combating illegal trafficking in wildlife and plants, including the specific objective of combating illegal logging and associated trade. The United States is continuing to work to implement the requirements of the Lacey Act in a careful, measured manner. APHIS is preparing a report to Congress on the implementation of the declaration requirement. No date has been set for the release of the report, but the report will be made publicly available when it is submitted to Congress.

#### **Quotas and quantitative restrictions on products outside the agriculture tariff-rate quota (TRQs)**

##### **Question:**

*According paragraph 60 of the Secretariat's report, The United States has various laws or provisions that allow for quantitative restrictions or prohibitions on imported products. These are often maintained to protect the security or economy of the United States, or safeguard the health or well-being of plant or animal life. For example, the Marine Mammal Protection Act, Endangered Species Act, the Fishermen's Protective Act, the Lacey Act, and the Tariff Act of 1930 Section 305 for obscene materials, and Section 308 pertaining to dog and cat fur products all have provisions to prohibit imports of certain products. CBP has enforcement authority and may restrict goods (on behalf of other agencies) that do not conform to U.S. laws or regulations such as standards or consumer protection regulations.*

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\*\*\*\*<http://www.fas.org/sgp/crs/misc/R42119.pdf>

*Furthermore, paragraph 61 indicates that The United States also maintains quotas or quantitative restrictions on products outside of the agriculture TRQs. For industrial products, there are TRQs on certain tariff lines of tuna fish and for broomcorn brooms.*

*Indonesia would like to highlight the importance of its trade in tuna products with the United States. Such quotas or quantitative restrictions could be seen as protective measures applied by the U.S. to protect U.S. producers from import competition. This includes the use of the MMPA as the basis for dolphin-free tuna catches. Dolphins are not listed as endangered species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Could the U.S. justify under its WTO obligations that these statutes are not discriminatory and cannot be deemed as unfair barriers to trade?*

**RESPONSE:** The United States negotiated the U.S. TRQ on certain tariff lines of tuna fish as part of the Uruguay Round.

Regarding dolphin-free tuna catches, Indonesia's question refers to a fishing technique that involves the intentional deployment of purse seine nets on or to encircle dolphins. This technique is used on a wide-scale commercial basis only in the Eastern Tropical Pacific Ocean (ETP) on account of the regular and significant association between yellowfin tuna and dolphins that only occurs in that ocean. This technique is associated with well-documented harms to dolphins and led to the depletion of dolphin stocks in the ETP that have not yet recovered. On account of this, Section 101(a)(2)(B) of the Marine Mammal Protection Act (MMPA) sets out conditions under which yellowfin tuna caught using purse seine nets in the Eastern Tropical Pacific Ocean (ETP) may be imported and sold in the United States. Those conditions include *inter alia* that the nation to which the vessel is flagged is meeting its obligations under the Agreement on International Dolphin Conservation Program (AIDCP). Section 101(a)(2)(B) of the MMPA and AIDCP apply only with respect to tuna caught in the ETP and are intended to address the specific tuna-dolphin association and fishing technique that occur in that ocean. The United States prohibits its flag vessels from intentionally deploying purse seine nets on or to encircle dolphins (or other marine mammals), except in the ETP in accordance with the same provisions applicable to foreign flag vessels operating in accordance with the AIDCP.

## **Product Safety Regulations**

### **Question:**

*The Consumer Product Safety Act (CPSIA) was passed and enacted with significantly increased requirements, including third party testing, that affect a wide range of U.S. imports. These requirements have been especially difficult to meet by Indonesia's poorest producers - those producing handmade artisanal items. The CPSIA can be viewed as a protective measure for large-scale foreign producers and their large U.S. retailer importers. The CPSIA has also effectively stopped U.S. imports from Indonesia and elsewhere of, for example, apparel, toys, and other items for children. Could the United States explain how these requirements comply with WTO obligations?*

**RESPONSE:** We disagree with the characterization of the CPSIA. WTO rules permit reasonable measures to protect the health or safety. A major focus of the CPSIA is improved protection, especially for children, from hazardous consumer products. The legislation requiring third party testing of children's products applies to all products within its scope, regardless of where they are manufactured. Laboratories around the world are eligible to participate in the CPSC's third party testing program, if they are accredited by a body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) mutual recognition arrangement. The National Accreditation Body of Indonesia is a signatory to the ILAC mutual recognition arrangement.



## **Import inspection regulations for meat, poultry and eggs**

### **Question:**

*The current U.S. meat, poultry, and egg inspection regulations are unclear. Although the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) is proposing to make several amendments to its meat, poultry and egg products import regulations, Indonesia continues to have concerns. Could the United States explain why there would be no limit on the information requested by the FSIS in determine the eligibility of a certain a meat, poultry, or egg product to be imported into the U.S.?*

**RESPONSE:** FSIS requests only the information that is required to determine whether the foreign country's regulatory system is equivalent to the U.S. regulatory system for meat, poultry, or egg products. While such a determination does require FSIS to request significant information from the requesting country, FSIS only requests such information as is necessary for it to make its determination. FSIS is available to openly discuss any questions a country seeking equivalence may have on the process or in responding to the need for information. In addition, the Foreign Agricultural Service (FAS) is often prepared to provide technical assistance to that country, when appropriate.

*In addition, FSIS also proposes to require that all imported poultry products be inspected only at an official establishment or at an official import inspection establishment, approved by FSIS. Indonesia is concerned that this requirement would be used to limit the number of approved inspection facilities and, thereby, protect the U.S. domestic poultry industry. Could the United States explain why this requirement is being proposed and how does it conform to U.S. WTO obligations?*

**RESPONSE:** FSIS has always required imported meat, poultry, or egg products to be presented to a FSIS approved import inspection facility and re-inspected before it can be released into the U.S. market. This is not a new requirement. The new requirement is proposing that an establishment with a grant of inspection under FSIS jurisdiction and inspection be eligible to perform import inspections and clear product for the U.S. market as long as the facilities at the establishment allow for such an activity. This is a trade facilitating provision, not trade restricting. The United States believes that such a requirement is consistent with U.S. WTO obligations.

## **Import licensing of Animals and animal products, Certain dairy products, Natural gas, and other U.S. imports**

### **Question:**

*Paragraph 63 of the Secretariat's report mentions that The United States requires an import license, either automatic or non-automatic for 15 categories of products (Table III.14).<sup>††††</sup> The licensing requirements are required by six different U.S. executive Departments, under various statutes, and for various purposes. Generally, it is necessary to contact the focal point at the Department or Agency concerned in order to obtain the necessary license, which is subsequently enforced at the border by CBP In general, all persons, firms, and institutions*

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<sup>††††</sup> WTO document G/LIC/N/3/USA/8, 10 October 2011.

*are eligible to apply for licenses. For certain products, additional criteria may apply, i.e. being a resident in the United States, a registered user, a manufacturer or refiner, etc.*

*Indonesia has some concerns that such requirements could restrict or pose unreasonable or unjustifiable barriers to trade, and is inconsistent with the WTO's TBT Agreement and Agreements on Safeguards and import licensing procedure. Could the U.S. explain how its licensing scheme complies with the pertinent WTO Agreements?*

**RESPONSE:** We would be more than happy to discuss questions about specific aspects of any of our import licensing requirements in light of our WTO commitments. We need more specific information regarding Indonesia's concerns, e.g., what specific aspect of our regime raises concerns as considered in regard to a particular WTO Agreement? For further information on the U.S. import licensing regime, please see G/LIC/N/3/USA/9, dated 25 September 2012.

#### **V. Subsidies and other U.S. government assistance measures**

*According paragraph 140 of the Secretariat's report, under table III.2 the following Federal Subsidy Programs, 2011 (2010 fiscal year) are listed as follow:*

*Counter-cyclical payments program with payments linked to target prices as set out in the 2008 Farm Bill*

##### **Question:**

*If the 2012 Senate Farm Bill does pass, direct and counter cyclical payments would end. To compensate that change, the Agricultural Risk Coverage (ARC) payments program would be implemented. Will there be any attempts to measure the change in the impact on Producer Supported Estimate (PSE) due to this program shift? Are there any projections on the impact on the PSE that would arise from the shift towards a different farmer payment system that is based on price?*

**RESPONSE:** The Producer Support Estimate (PSE) is an analysis undertaken by the OECD, not the United States.

#### ***Direct payment to farmers of maize, corn, and soy averaging \$5 billion dollars a year***

##### **Question:**

*In the Senate Agricultural Committee Farm Bill, Agricultural Risk Coverage (ARC) is given a larger pay out than previously before. Direct Payments were capped at \$40,000. Despite record gains, ARC payouts are capped at \$50,000. Is there any indication that a there could be decreased payments, especially in light of budget concerns and the high price of soybean, wheat, maize, and other supported commodities?*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

#### ***Agricultural insurance subsidies for private insurance that depress the price of insurance for farmers, reducing their costs***

##### **Question:**

*According to Paragraph 28 of the Secretariat's report, "Insurance coverage is available for over 100 different crops under a wide variety of insurance policies covering production, price and/or revenue risks, under the Federal Crop Insurance Program. Insurance coverage*

*is provided by the private sector at subsidized rates under terms set by the Federal Crop Insurance Corporation and administered by the USDA Risk Management Agency (RMA). Most of the policies available from the RMA are for crops, although livestock policies are available for cattle, pigs, lambs, and milk to insure against declining prices or to cover the difference between sales prices and feed costs. Policies are also available for forage, grazing, and rangelands. The subsidies provided by USDA are on producer premiums paid to private insurance companies for providing the insurance policies, as well as on a portion of the companies' operating costs and underwriting losses. The premium subsidy to producers was US\$4.7 billion in CY 2010 and is expected to be about US\$7.2 billion for CY 2011.<sup>\*\*\*\*</sup> The value of crops protected by insurance also increased, from US\$67 billion in 2007 to \$114 billion in 2011, representing about 80% of area planted to principal crops.<sup>\*\*\*\*</sup>”*

*According to the WTO Agreement on Subsidies and Countervailing Measures (SCM), the stated support provided to the agriculture and husbandry insurance industry would constitute a subsidy. Will the United States comply with the WTO obligations and the SCM Agreement by removing this subsidy, as it provides U.S. farmers a distinct competitive advantage? Will the upcoming Farm Bill remove address this subsidy?*

**RESPONSE:** The U.S. crop insurance program is consistent with the WTO Agreement, including the SCM Agreement. The United States notifies support under the crop insurance program, and remains in compliance with its WTO obligations.

### **Fisheries Finance Program (FFP)**

#### **Question:**

*ne of the characteristics of the FFP is that the U.S. government provides direct loans to U.S. commercial fishing and aquaculture industries. These loans can be used for capital improvements by commercial fishermen, including vessel purchase. Can the U.S. confirm this? If so, such a subsidy is **prima facie** inconsistent with the United States' obligation under the SCM Agreement. Could the U.S. give justification as to why it continues to uphold this measure?*

#### **Question:**

*The incredibly low interest rates at which the FFP loans are provided would appear to be a prohibited subsidy. The loan borrowing rate is equal to the U.S. Treasury borrowing rate plus 2%, which makes the FFP loan interest rate extremely favorable and low-cost. Indonesia believes that the loans under this program are not in compliance with the WTO's Agreement on Subsidies and Countervailing Measures.*

*In the face of its budget constraints and for the purposes of complying with the WTO obligations, does the United States intend to amend the Merchant Marine Act, the law, which approves this unfair subsidy?*

**RESPONSE:** The Fishery Finance Program is a program the United States has consistently included in its subsidy notifications to the Committee on Subsidies and Countervailing Measures (see, for example, G/SCM/N/220/USA; 19 October 2011). Any subsidy that may be provided under this program is not contingent upon export performance or the use of domestic over imported goods.

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<sup>\*\*\*\*</sup> USDA Risk Management Agency online information "Costs and Outlays". Viewed at: <http://www.rma.usda.gov/aboutrma/budget/cycost2002-11.pdf> [July 2012].

<sup>\*\*\*\*</sup> USDA (2012), pp. 30-31.

Therefore, absent any showing that the program is causing adverse effects to the interests of another WTO Member, there is no basis to assert that the program is inconsistent with U.S. obligations under the Agreement on Subsidies and Countervailing Measures.

## **VI. Anti-dumping and countervailing duty orders**

### **Question:**

*Despite United States Trade Representative Ron Kirk announcing that the USTR would no longer use the zeroing methodology (whereby unfairly traded transactions are aggregated with fair transactions, contrary to worldwide calculation standards of duties), the Ambassador Kirk also announced that the United States will continue to press for zeroing to be allowed under WTO law. Why does the United States want to continue to defend this calculation method in the future?*

**RESPONSE:** The United States has repeatedly explained its concerns regarding the dispute settlement findings on “zeroing”. Changes to the calculation of dumping margins, notwithstanding those concerns, together with our efforts to press for correction of these decisions through ongoing negotiations, demonstrate the commitment of the United States to strengthening the rules-based trading system.

### **Question:**

*Will the United States voluntarily initiate reviews to adjust recent AD/CVD orders based on a methodology free of zeroing?*

**RESPONSE:** The final modification provides that the revised methodology would be applicable in any determinations made pursuant to section 129 of the URAA (19 U.S.C. 3538). Each year, during the anniversary month of the publication of an antidumping or countervailing duty order, an interested party may request that the Department of Commerce conduct an administrative review of the order. The Department of Commerce will conduct administrative reviews consistent with the February 2012 “Final Modification”.

### **Question:**

*Can the United States assist with a campaign to inform foreign producers that the zeroing methodology might have unfairly caused unnecessarily large margins and that their government or U.S. importers should apply for a duty margin review?*

**RESPONSE:** No. The procedures by which interested parties may request that the Department of Commerce determine the actual amount of antidumping duties to be paid on entries in an annual administrative review are publicly available. See 19 CFR 351.213.

### **Question:**

*Concerning the imposition of anti dumping duty and countervailing duty for the importation of Oil Country Tubular Goods (OCTG) from China, the US Steel Producer had submitted a petition to USDOC with regard to the extension of scope ruling on imposition of AD duty and CVD for third parties which processed Finished Good Green Pipe from China.*

*Ministry of Trade of the Republic of Indonesia has submitted a submission to USDOC dated on 10 July 2012. We look forward US response for our submission.*

**RESPONSE:** The United States appreciates the Ministry of Trade of the Republic of Indonesia’s submission to the Department of Commerce dated July 10, 2012. The Department of Commerce will

consider that submission in evaluating whether to clarify the scope of the antidumping and countervailing duty orders.

## **VII. Financial Services: Swap Market Reforms**

### **Question:**

*Page 127, paragraph 94 states: (Trade Policies by Sector, WT/TPR/S/275): "...[C]ompanies that use swaps will face new regulatory, business, and operational requirements as dealers, counterparties, and other swap market participants become subject to new clearing, margin and collateral requirements, record-keeping and reporting duties, and new trade execution alternatives...In Paragraph 95, the Report continues, "Thus far, there has been little guidance from the U.S. Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC) on the cross-border application of swap market reforms, but the CFTC has indicated that it expects to provide a proposed rule and some interpretative guidance on the provision contained in Section 722(d) of Act soon."*

*It has been at least two years since the U.S. indicated that it would provide a proposed rule and guidance. What is the current schedule to do so? Does the U.S. intend on liaise further with Indonesia and other ASEAN countries with regard to the implementation of BASEL III financial regulations and the implementation of the U.S. Dodd-Frank Act? Specifically, the new rules on Swaps may not be consistent with WTO obligations. Which forums has the United States considered in order to deal with potentially adverse extra-territorial impact of the U.S. Dodd Frank Act?*

**RESPONSE:** Section 722(d) of the Dodd-Frank Act, amending § 2(i) of the Commodity Exchange Act ("CEA"), provides that swaps provisions of the CEA shall apply to activities outside the United States that have a "direct and significant" connection with activities in, or effect on, commerce in the United States or when they contravene CFTC rulemaking.

### Proposed Guidance:

The CFTC has issued Proposed Interpretive Guidance, setting forth its interpretation of section 2(i) of the CEA as applicable to Title VII's swap provisions to activities outside the United States (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-16496a.pdf>). Under the Proposed Guidance, the issue of whether swap activities outside the United States have the requisite "direct and significant" connection with activities in, or effect on, U.S. commerce within the meaning of CEA § 2(i) depends on the nature of the counterparties involved in those swap activities. Consequently, the CFTC proposed a definition of the term "U.S. person," which encompasses persons located within the United States and those located outside the United States but whose swap activities, nonetheless, have a "direct and significant" effect, or connection with, the United States within the meaning of CEA section 2(i). Therefore, the "U.S. person" definition helps to identify transactions or activities that - individually or in the aggregate - satisfies the jurisdictional nexus of CEA § 2(i).

Assuming that such nexus is satisfied, in conjunction with the satisfaction of the relevant definitional tests promulgated by the CFTC under its joint rulemaking with the SEC, firms are required to register with the CFTC as either swap dealers ("SDs") or major swap participants ("MSPs"). Under the Proposed Guidance, SDs and MSPs, once registered, are required to comply with all of the requirements applicable to SDs and MSPs for all of their

swaps transactions. Such requirements are categorized as: (i) Entity-Level Requirements: capital adequacy, chief compliance officer, risk management, swap data recordkeeping, swap data reporting, and physical commodity swaps reporting; and (ii) Transaction-Level Requirements: clearing and swap processing, margining and segregation for uncleared swaps, trade execution, swap trading relationship documentation, portfolio reconciliation and compression, real-time public reporting, trade confirmation; daily trading records, and external business conduct standards.

Proposed Exemptive Order:

Separately, the CFTC has issued a Proposed Exemptive Order pursuant to section 4(c) of the CEA (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-16498a.pdf>). The Proposed Exemptive Order would permit non-U.S. SDs and non-U.S. MSPs to delay compliance with certain Entity-Level Requirements of the Dodd-Frank Act and the CFTC's regulations, subject to certain conditions.

With respect to relief under the Proposed Exemptive Order, non-U.S. registrants would be permitted to delay compliance with most of the Entity-Level Requirements until July 2013, provided that they: file an application with the National Futures Association ("NFA") to register as a SD/MSP and, within 60 days of filing a registration application, file with the NFA a compliance plan detailing good faith adherence with the applicable Entity-Level and Transaction-Level Requirements under the CEA.

This issue is a subject of a joint final rule and guidance for further defining the terms "swap," "security-based swap," and "security-based swap agreement", regulation of "mixed swaps" and security-based swap agreement recordkeeping. See: <http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2012-18003>

## **VIII. Other measures affecting investment and trade**

### **Question:**

*Operation of all GSP programs is guided by the Enabling Clause, which has been interpreted through various WTO Dispute Settlement decisions, such that preferential treatment by developed nations is to be provided to all similarly situated beneficiary countries in a similar manner. Although Indonesia understands that there may be the need for beneficiary country eligibility criteria, it questions the application of these criteria to determine beneficiary countries' continued eligibility only in reaction to the receipt of stakeholder petitions that are focused on single countries, rather than on a proactive review that looks at all beneficiary countries. Can the United States explain how its current system of eligibility review is consistent with WTO obligations, including application of the Enabling Clause?*

**RESPONSE:** The Enabling Clause does not address the mechanisms that preference-granting countries use to review applicable country eligibility criteria for unilateral preference programs. Therefore, the use of stakeholder-driven petitions in determining whether to launch reviews of beneficiary country eligibility for GSP trade benefits is not inconsistent with the provisions of the Enabling Clause.

## **IX. Unfair Trade Practices Acts**

### **Question:**

*Several U.S. states (Washington, Louisiana, and Massachusetts) have passed Unfair Trade Practices Acts whose purpose are to prevent "unfair competition" by foreign producers due*

*to an alleged lack of protection of intellectual property anywhere in the producers' operations. More states are preparing to enact similar laws, leading to potentially a 50-state confusing and dissimilar array of such legislation. A company in Thailand has already been affected by the application of the Massachusetts' law.*

*In its commitments to the WTO, the United States included all its states, territories, and possessions. Therefore, how will the United States ensure that these laws are consistent with WTO obligations and not used as unfair protections of U.S. companies against foreign producers?*

**RESPONSE:** The WTO obligations of the United States have been implemented into federal law. The Federal government has the authority to pre-empt certain state laws, including state unfair competition laws, should they conflict with Federal law. The Federal government may also challenge any state law that is inconsistent with U.S. WTO obligations. The United States is not aware of any inconsistency between the state unfair competition laws in Washington, Louisiana, and Massachusetts and U.S. WTO obligations.

## **X. Government procurement**

### **Question:**

*It is our understanding that if a country is not party to the GPA (which Indonesia is not), then the United States can discriminate in terms of its government procurement in implementing the Buy America Act provisions. In one of the U.S. responses, the U.S. indicated, "Members that are signatories to the WTO Government Procurement Agreement as well as parties to the North American Free Trade Agreement enjoy corresponding exemption."<sup>\*\*\*\*\*</sup> In fact, U.S. federal agencies are not allowed to purchase goods covered by GPA from countries that are not parties to the GPA.<sup>†††††</sup> If Indonesia was a party to the GPA, then the Buy America Act provisions would not apply.*

**RESPONSE:** If Indonesia became a Party to the GPA, the United States would be able to procure goods and services from Indonesia, and the provisions of the Buy American Act would not be applied to Indonesian goods and services in procurement covered by the GPA.

*As the consequence of the Panasonic Health Care Indonesia (PHCI), it cannot export its medical equipment to the United States. (They are currently as one of the suppliers of Bayer Healthcare AG, which has a current contract with the U.S. Department of Veteran Affairs (VA) for supply blood glucose monitoring equipment).*

**RESPONSE:** This does not appear to be a question.

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<sup>\*\*\*\*\*</sup>WT/TPR/M/235/Add.1, Page 255

<sup>†††††</sup>*Ibid.*, p. 413. The Trade Agreements Act of 1979 generally prohibits Federal Government agencies from purchasing goods and services covered by the WTO Agreement on Government Procurement (GPA) from any country that is not a party to the GPA or a free trade agreement with the United States, or is not a Least-Developed Country. For goods and services not covered by the GPA, the Buy American Act and other restrictions apply alike to goods and services from other countries.

### **QUESTIONS FROM ISRAEL**

#### **Secretariat Report, Trade Policies and Practices by Measure, Sanitary and Phytosanitary Measures , Box III.1**

*1. In the Secretariat's review on the FDA Food Safety Modernization Act (FSMA), it was indicated that some of the rules and regulations were not yet issued or come into force. We would appreciate if the US can clarify what is the expected timetable for these rules and regulations (specifically - qualified facilities, Produce Safety Standards, Safety of imported food, Intentional Adulteration, Laboratory and Third- Party Accreditation, Traceability and records).*

**RESPONSE:** There are a number of rulemakings required by the FDA Food Safety Modernization Act (FSMA). One of the rules mentioned above has been issued and the others are in various stages of development. FDA issued the interim final rule on Establishment and Maintenance of Records in February 2012 and it is in effect. This rule expands FDA's former records access beyond records related to a specific suspect article of food which FDA reasonably believes is adulterated and presents a threat of serious adverse health consequences or death to humans or animals to now include records relating to any article of food that is reasonably likely to be affected in a similar manner. In addition, FDA can now access records related to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animal.

With regard to the other rulemakings, FDA is working diligently to issue the rules required by FSMA.

Regarding timelines, the rules that have not issued yet will be, when first published, proposed rules. Following the notice-and-comment process, we will take comment on these rules and then, considering those comments, finalize the proposals. There will be several opportunities for public engagement during the notice and comment periods for each rule. The timing of when a final rule takes effect will depend on the particular rule, but we do expect that the rules will have phase-in periods.

#### **Secretariat Report, Trade Policies by Measure, Government Procurement, Article 144**

*2. We have noticed that there is no legislative expiry for ARRA and would like to understand whether there is a possibility that the US will allocate additional budgets under the ARRA funds.*

**RESPONSE:** We are not aware of any proposals for the U.S. Congress to appropriate additional funds under ARRA.

#### **Secretariat Report, Trade Policies by Sector, Agriculture, (ii) Agriculture policies, Article 12-16**

*3. What are the reasons for charging tariffs on the F.O.B value rather than the C.I.F value?*

**RESPONSE:** This has been the practice of the United States since prior to the conclusion of the GATT. The United States believes this value is easy for traders and customs to determine, and is more trade facilitative.

*4. While the average tariffs on import agricultural products into the US in 2012 was 8.5%, tariff duties on some tariff lines remain very high ( up to 350% ). Can the US please explain the need for such high tariffs given the fact that the US is a net food exporter?*

**RESPONSE:** The United States applies tariffs at or below its WTO bound rates, in accordance with the commitments made by the United States during the Uruguay Round. Tariff levels reflect



a number of different factors and we do not see that the fact that we may be a net exporter is relevant to decisions on what particular tariff levels should be.

5. *Can the US please elaborate on the price-based SSG and the reasons for automatically applying it when the import value is below certain level even before it has any negative effect on the local production? (hence in many cases the SSG is applied to small quantities)*

**RESPONSE:** The United States automatically applies price-based special safeguards (SSGs) on all products that were subject to tariffication in the Uruguay Round. The safeguard rates and trigger prices are published in the U.S. national tariff schedule, so that everyone can know when the safeguard duty will be applicable. The safeguard is applied in this manner for ease of administration and is fully consistent with the provisions of Article 5 of the Uruguay Round Agreement on Agriculture, which does not include an injury test. There is no SSG on in-quota imports so if all imports are within the TRQ, the price-based SSG never comes into effect. The United States annually notifies SSG use and provides quantity data on the use of the SSG by tariff line as a Committee on Agriculture best practice (the notification instructions only require reporting on whether the price-based safeguard has been used).

Secretariat Report, Trade Policies By Sector, Agriculture, Article 31

6. *We would appreciate a clarification with regards to the "assessment rate" charged on certain imported dairy products. To our understanding the assessment rate became effective on August 1st, 2011 - requiring importers of certain dairy products defined by HTS number to pay an assessment rate of 7.5 cents per hundredweight of milk, or equivalent as part of the National Dairy Promotion and Research Program (National Program). We would like to know if this levy is charged on local production as well, and for purpose it will be collected.*

**RESPONSE:** The dairy import assessment fee is collected as part of the National Dairy Promotion and Research Program which conducts dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products.

The program is financed by a mandatory 15-cent per hundredweight assessment on ***all milk produced and marketed commercially*** in the United States, and a 7.5-cent per hundredweight assessment, or equivalent thereof, on milk and dairy products imported into the United States. The 2002 Farm Bill mandated that Dairy Promotion and Research Order be amended to implement an assessment on imported dairy products to fund the Program. The 2008 Farm Bill specified a mandatory assessment rate of 7.5-cents per hundredweight on milk, or equivalent thereof, on dairy products imported into the United States, as identified by certain Harmonized Tariff Schedule codes. Collection of the import assessment began on August 1, 2011.

## QUESTIONS FROM JAPAN

### Report by Secretariat

#### **II. TRADE POLICY AND INVESTMENT REGIMES**

##### **(3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS**

###### **(i) Reciprocal trade agreements**

###### **(a) New agreements with Colombia, the Republic of Korea, and Panama**

#### Page 17, Paragraph 13

*(Question)*

*In the Chapter on Cross-Border Trade in Services of US-Colombia and the US-Panama FTA, no commitments on the movement of natural persons are provided, nor is a chapter concerning the temporary entry of business persons.*

*This shows that the commitments under these two FTAs are rollbacks compared to the U.S. GATS horizontal commitments which include granting the temporary entry and stay of natural persons. Please explain this inconsistency with Paragraph 1 (a) of Article 5 of the GATS.*

**RESPONSE:** Under the Cross-Border Trade in Services chapters of both these agreements, cross-border trade in services is defined to include the supply of services “by a national of a Party in the territory of the other Party.” The obligations of these chapters, including with respect to market access and national treatment, therefore apply equally to all cross-border modes of supply (i.e., Modes 1, 2, and 4).

#### **II. TRADE POLICY AND INVESTMENT REGIMES**

##### **(3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS**

###### **(i) Reciprocal trade agreements**

###### **(b) Overview of the other free-trade agreements**

#### Page 18, Paragraph 16

*(Question)*

*After the US-Australia FTA, the United States has not made any commitments on the movement of natural persons, and has not set any chapter relating to the temporary entry of business persons under FTAs. Please note relevant national policy, if any.*

**RESPONSE:** The United States-Australia Free Trade Agreement does not contain a chapter on Temporary Entry of Business Persons. The observation of Japan is otherwise correct, and reflects current U.S. policy.

#### **II. TRADE POLICY AND INVESTMENT REGIMES**

##### **(4) INVESTMENT AGREEMENTS AND POLICIES**

###### **(iii) Investment regulations and restrictions**

#### Page 28, Paragraphs 35,36

*(Question)*

*In the field of radio communications, Japan understands that there is an examination by the Federal Communications Commission (FCC), the Federal Trade Commission (FTC) and the Department of Justice, in addition to a security examination by CFIUS regarding investment by a foreign business operator.*

*Moreover, Japan understands that there is an interagency examination team called "Team Telecom". In this connection, Japan would like to ask the following: What are the ground rules of the examination concerned? What is the purpose of carrying out the examination? How long is the examination period? What is the relationship between CFIUS and Team Telecom? How the transparency of the examination is secured?*

**RESPONSE:** In 1997, the Federal Communications Commission (FCC) adopted the Foreign Participation Order which established the framework for foreign investment in the U.S. telecommunications market. There is an open entry standard for foreign investment, either through purchase of existing U.S. telecommunications carriers or the establishment of a new carrier, from a World Trade Organization (WTO) Member country.

Foreign investment is subject to review for law enforcement, national security, trade, and foreign policy concerns. The text of the Foreign Participation Order is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-97-398A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-97-398A1.pdf).

The review of law enforcement, national security, trade and foreign policy issues described above that is part of the FCC's review of foreign investment in the telecommunications sector (which is sometimes informally referred to as "Team Telecom") is a separate legal process from the review by the Committee on Foreign Investment in the United States (CFIUS).

## **II. TRADE POLICY AND INVESTMENT REGIMES**

### **(4) INVESTMENT AGREEMENTS AND POLICIES**

#### **(iii) Investment regulations and restrictions**

#### Page 28, Paragraph 35

(Question)

*Regarding radio communications, which federal laws and regulations act as barriers or restrictions to foreign investment in specific areas?*

**RESPONSE:** Section 310 of the Communications Act of 1934, as amended, governs the foreign ownership of spectrum licensees. Section 310(a) states that a foreign government may not directly hold a spectrum license. Sections 310(b)(1) and (2) state that foreign individuals and business entities may not directly hold any common carrier, broadcast or aeronautical fixed or aeronautical en route license. Under section 310(b)(3) a foreign entity is limited to a 20 percent ownership interest in any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. Pursuant to section 310(b)(4), a foreign entity is limited to a 25 percent ownership interest in a U.S. corporation that [directly or indirectly] controls any common carrier, broadcast or aeronautical fixed or aeronautical en route licensee. The Federal Communications Commission (FCC), however, has the discretion to allow foreign ownership in excess of 25 percent under section 310(b)(4) of the Act unless such ownership is inconsistent with the public interest. In the case of common carrier and aeronautical fixed and aeronautical en route licenses, the FCC presumes that foreign investment from WTO member countries does not pose competitive concerns to the U.S. market and is in the public interest. In an August 2012 Order, the FCC adopted a policy to forbear from the application of the 20 percent foreign ownership limit set forth in section 310(b)(3) to common carriers in which the foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee. The text of the August 2012 Order is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-93A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-93A1.pdf). There are no statutory restrictions on the foreign ownership of wireline telecommunications facilities, although in certain circumstances the foreign carrier may need to establish a U.S.-organized subsidiary, but it could have 100% ownership of that subsidiary.

### **III. TRADE POLICES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(i) Custom procedures**

Page 30, Paragraph 2

(Question)

*The “Implementing Recommendations of the 9/11 Commission Act,” enacted in August 2007, contain provisions that require the scanning of all U.S.-bound cargo containers in principle before their loading at foreign ports after July 1, 2012 or a later date. The provisions, depending on how they are implemented, could severely disrupt the flow of goods from foreign countries including Japan, into the U.S. Please explain the specific views of the U.S. on this concern. And Japan would like to learn relevant information regarding recent developments of discussion in the U.S. about 100% scanning mandate.*

*According to the U.S. response to the question in the previous Trade Policy Review, the United States stated that CBP was using the current pilot ports to identify challenges associated with the 100% scanning mandate. Japan would like to know what progress or results were seen from this test, if any.*

**RESPONSE:** Estimates for potential costs incurred outside of the United States to implement the scanning regime as envisioned by the SAFE Port Act legislation vary based on a number of variables involved in the calculation and the lack of a single perspective on who would bear costs associated with equipment procurement, maintenance and operations; upfront expenditures for potential redesigns of ports and facilities; and data analysis and alarm resolution. In the pilot ports the U.S. Government bore all the costs. On May 2012, DHS Secretary Napolitano issued a report and letter to Congress extending the deadline to July 2014 to implement 100% scanning.

Reports on progress and costs for 100% scanning can be found at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-52\\_Feb10.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_10-52_Feb10.pdf)  
<http://www.gao.gov/products/GAO-10-12>

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(i) Customs procedures**

Page 31, Paragraph Secure Freight Initiative (SFI)

(Question)

*Japan would like the U.S to explain the future plans for the ACAS (Air Cargo Advance Screening: Prior report system 4 hours before loading) that is temporarily in effect.*

**RESPONSE:** U.S. Customs and Border Protection in cooperation with the Transportation Security Agency announced in October 2012 that it was formalizing and expanding the Air Cargo Advance Screening (ACAS) pilot program which revises the time frame for transmission by pilot participants of a subset of mandatory advance electronic information for air cargo. The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. For information see: <https://www.federalregister.gov/articles/2012/10/24/2012-26031/air-cargo-advance-screening-acas-pilot-program#h-8>

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

**(vi) Contingency measures**

Page 46, Paragraph 42

(Question)

*All Others Rate Provision*

*The DSB adopted recommendations and rulings that found the U.S. statutory provision regarding the “all others” rate to be inconsistent with the Anti-Dumping Agreement in August 2001, over 11 years ago. Although Japan welcomes that the U.S. lifted in 2011 the A.D. measure against hot-rolled steel from Japan, the provision in question still remains in effect. Since this provision has been left un-amended, the provision in question could be applied to new anti-dumping investigations in the future, inconsistent with the WTO Agreements. Japan notes that the U.S. stated in response to the question of the previous Trade Policy Review, “the U.S. administration intends to continue working with the Congress with respect to appropriate statutory measures that would resolve this matter.” Please explain what steps the U.S. government has taken and will take to complete full implementation in the Congress.*

**RESPONSE:** With regard to amending the statutory provision relating to the “all-others” rate, the legislative process is in the hands of the U.S. Congress. The U.S. Administration intends to work with the U.S. Congress with respect to appropriate statutory measures that would resolve this matter.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**

**(1) MEASURES DIRECTLY AFFECTING IMPORTS**

**(vi) Contingency measures**

Page 46, Paragraph 42

(Question)

*Model-Matching*

*In calculating dumping margins, the U.S. government classifies different models of export products under investigation and their domestic “like products” in the exporting country according to individual characteristics, and then determines domestic products that are “identical” to or “closely resemble” the exported products (“model-matching”). After the annual administrative review of anti-dumping measures on ball bearings imported from Japan in FY 2003 (the 15th review), the Department of Commerce decided to change from the existing model-matching methodology, which compares products of the same measurements (outer diameter, inner diameter and width) and load rating (resistance), to a methodology which compares products whose measurements and load rating deviate from each other within 40% in total. Japan would like to know the situation of consideration of revision or improving the methodology after the United States-Japan Economic Harmonization Initiative (EHI), which was held in 2011, and the follow-up officials’ meeting of EHI.*

**RESPONSE:** As noted by Japan, the Department of Commerce determined to modify the model-match methodology in the ball bearings cases from several countries, including Japan, in 2003 to obtain a more accurate calculation of the margin of dumping. At that time, the Department of Commerce notified all interested parties that it was considering changes to the model-match, and the reasons for considering changes. The Department of Commerce then provided interested parties with an opportunity to comment on whether a change to the model-match should be made. After considering such comments, the Department of Commerce then notified parties of its proposed modification to the model-match methodology, along with its reasons for the proposed change, and provided interested parties with an opportunity to comment on the proposed methodology. Only after considering the parties’ comments and making changes to the model-match based on those comments did the Department of Commerce implement a new model-match methodology aimed at providing a more accurate margin of dumping in each case.

Following the USITC's determination that revocation of the antidumping duty order on ball bearings from Japan would not injure the competing U.S. industry, the antidumping duty order was revoked on July 15, 2011. The USITC's determination is subject to litigation, but until there is a final ruling in the court case, administrative reviews are on hold. Therefore, parties have not had an opportunity to raise the issue of model match in an administrative review.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(vi) Contingency measures**

Page 46, Paragraph 42

(Question)

*Byrd Amendment*

*The Byrd Amendment was found to be inconsistent with WTO Agreements in January 2003, and was finally repealed in February 2006. However, revenues from anti-dumping duties on goods imported to the United States before October 1, 2007, continue to be distributed among the relevant parties under the transitional provision of the Deficit Reduction Act of 2005. This means that although the Byrd Amendment was nominally repealed, it continues to stay in effect. Therefore, the inconsistency with the WTO Agreements remains at present even after the repeal of the Byrd Amendment and up until now, the situation has not been improved. The United States mentioned in the response to the question of the previous U.S Trade Policy Review, "the United States has taken all actions necessary to implement the Dispute Settlement Body's recommendations and rulings in the referenced dispute." Please indicate the specific grounds for this assertion in spite of its continuing the distribution in question. The Government of Japan urges the Government of the U.S. to promptly halt the distribution of revenues, including those from anti-dumping duties on goods imported before October 1, 2007, under the Byrd Amendment and resolve the inconsistency with the WTO Agreements.*

**RESPONSE:** As Japan notes, the Continued Dumping and Subsidy Offset Act of 2000 was repealed in 2006. Therefore, the United States reiterates that it has taken all steps necessary to implement the DSB's recommendations and rulings. Moreover, pursuant to that repeal, there has been no distribution to domestic firms of antidumping and countervailing duties collected on goods entering the United States after October 1, 2007.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(vi) Contingency measures**

Page 48, Paragraphs 46,47

(Question)

*Removal of Long Continued Anti-dumping Measures*

*With regard to anti-dumping measures against products made in Japan, the existing oldest measure has been imposed since 1978 and the average length of the measures is about 17 years. Anti-dumping measures must be ineffective in 5 years in principle in accordance with the WTO Agreement. Only if the lifting of the measures may cause continued/renewed dumping and damages, the period of the measures may be extended as an exception. However, upon the request of domestic industries, the U.S. government has repeated the extension of the period for anti-dumping measures and has continued them over a long term in many cases. The Japanese government calls for the U.S. to quickly remove unfairly long continued anti-dumping measures as well as to hear the U.S. view on this.*

**RESPONSE:** The United States' sunset practice is in full compliance with WTO rules and it conducts sunset reviews in a manner consistent with the terms outlined in the AD and SCM Agreements. The determinations in each sunset review are case-specific and the results (including Federal Register citations and dates of publication of the notices) for all of the five-year sunset

reviews can be found on the USITC's website (<http://pubapps2.usitc.gov/sunset/>). From this website Japan can obtain, on a case-by-case basis, the information supporting the rationale for either the continuation or termination of a measure.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(iii) Government procurement**

Page 76, Paragraph 129

(Question)

*Buy American Provision*

*Japan is concerned by the recent trend that Buy American provisions are built into recent laws such as the American Recovery and Reinvestment Act of 2009 (ARRA). Japan requests that such regulations and operations are consistent with the obligations of the U.S. under the Agreement on Government Procurement (GPA) and that they do not counter international efforts against protectionism. In this context, Japan would like to know if the U.S. has established or has been planning any new laws with Buy American provisions since 2010.*

**RESPONSE:** The U.S. Government has not included "buy American" provisions in legislation that has been enacted since the ARRA. The United States is not aware of any proposals for new "buy American" provisions.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**  
**(d) Participation in WTO and international initiatives**

Page 89, Paragraphs 167-168

(Question)

*On March 16, 2011, an amendment to Section 211 of the Omnibus Appropriations Act (S603; A bill to modify the prohibition on recognition by the United States' courts of certain rights relating to certain marks, trade names, or commercial names) was introduced in a Senate committee and read twice and referred to the Committee on the Judiciary. Also, H.R.1166 was introduced in a House subcommittee. However, we are aware that these have not been introduced in a main plenary session yet. Please indicate the present status and future prospects of the amendment.*

**RESPONSE:** The status of these bills has not changed. Comparable legislation may be reintroduced and considered when the 113th Congress convenes in January 2013.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

First- Inventor-to-File Provisions (1)

Regarding the "on sale" provision, under the pre-AIA system, publicity was not required for "on sale" in precluding the grant of a patent on the claimed invention. Whether or not "on sale" is made public does not present a problem under the first-to-invent system because the major issue in granting a patent is the time when the invention was completed. Therefore, the practice of not requiring publicity for "on sale" may be allowed, if it is under the first-to-invent system.

Many countries including Japan, which adopts the first-to-file system instead of the first-to-invent system, have the condition that an invention that could have been known by the public before the filing constitutes prior art.

For example, in Japan, “inventions that were publicly known and publicly worked” are regarded as prior art. However, inventions that have been put under the obligation of secrecy do not form part of the prior arts.

It would be appreciated if the U.S. could provide the reason, preferably with specific case examples, why the new system under the AIA maintains this practice which is unique to the first-to-invent system even when the AIA will change the patent system in the U.S. from the first-to-invent system to the first-to-file system or the first inventor-to-file system.

The U.S.’s view on the matter would be appreciated. Moreover, Japan would like to know whether the U.S. has a plan to define a new practice as to “on sale” in the examination guideline without waiting for a court decision.

**RESPONSE:** The USPTO is charged with implementing the AIA as passed by Congress. In July of 2012, the USPTO published proposed examination guidelines in view of the AIA at 77 Fed. Reg. 43759. Interested members of the public were invited to submit comments. Approximately seventy comments were received from individuals and entities, including some from Japan. The comments are available at [http://www.uspto.gov/patents/law/comments/fitf\\_guidance.jsp](http://www.uspto.gov/patents/law/comments/fitf_guidance.jsp). The proposed examination guidelines acknowledged that the statutory language was not entirely clear on the question of whether a non-public sale qualifies as prior art, stating, “The language of AIA 35 U.S.C. 102(a)(1) does not expressly state whether a sale must be ‘sufficiently’ public to preclude the grant of a patent on the claimed invention.” At this time the USPTO is considering the comments received, and has not yet taken a position on the question of non-public sales. Final USPTO guidelines which address this issue will be published by mid-February.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

##### **(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*First- Inventor-to-File Provisions (2)*

*Under the pre-AIA system, the use or sale of inventions for experimental purposes could not preclude the grant of a patent on the claimed invention.*

*This experimental use doctrine which does not deem incomplete inventions as prior art is also a practice that is unique to the first-to-invent system in which the time when the invention was completed is the main issue in granting a patent.*

*In many countries including Japan, which adopts the first-to-file system instead of the first-to-invent system, an invention produced under circumstances where it could have been known by the public on the filing date, constitutes prior art even if use or sale of the invention is for experimental purposes.*

*Furthermore, 35 U.S.C. 102(a) (1) in the AIA provides a “catch-all” provision that does not grant a patent to a claimed invention if it was “otherwise available to the public” before its effective filing date. If the experimental use doctrine is maintained together with the presence of such a “catch-all” provision, the experimental use doctrine will become an exception for the “catch-all” provision and make implementation of the “catch-all” provision complicated.*

*It would be appreciated if the U.S. could provide the reason, preferably with specific case examples, why the new system under the AIA keeps an experimental use doctrine that is unique to the first-to-invent system even when as the AIA will change the patent system in the US from the first-to-invent system to the first-to-file system or the first inventor-to-file system.*

*The U.S.’s view on the matter would be appreciated. Moreover, Japan would like to know whether the U.S. has plans to define a new practice as to experimental use in the examination guideline without waiting for a court decision.*



**RESPONSE:** The language of 35 USC 102(a)(1) recites “in public use” which was the same language as recited under pre-AIA 102(b). In those instances where the AIA recites the exact same statutory language as prior art provisions of pre-AIA, the USPTO understands that the same case law would be applicable to AIA applications. The experimental use doctrine is not a doctrine that is associated with first to invent, rather it relates to the recitation of “in public use” in 35 U.S.C. 102(b) (102(b) did not involve an invention date inquiry). The experimental use doctrine is not an exception to public use per se. Rather, under the experimental use doctrine, if a use or sale “represents a bona fide effort to perfect the invention or to ascertain whether it will answer its intended purpose,” the experimental nature of the use or sale negates the “public” nature of the use or sale. See *LaBounty Mfg. v. United States Int’l Trade Comm’n*, 958 F.2d 1066, 1071 (Fed. Cir. 1992) (quoting *Pennwalt Corp. v. Akzona Inc.*, 740 F.2d 1573, 1580-81 (Fed. Cir. 1984)). Therefore, United States does not view the AIA as changing the experimental use doctrine of pre-AIA case law.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Grace Period*

*The proposed 37CFR §1.77 (b) stipulates as follows:*

*“§1.77 Arrangement of application elements.*

*(b) The specification should include the following sections in order:*

*\*\*\**

*(6) Statement regarding prior disclosures by an inventor or a joint inventor.*

*\*\*\*”*

*The proposed §1.77 (b) mentions a statement regarding prior disclosures by an inventor or a joint inventor in the specification, and Japan understands that such a statement is not mandatory. Please confirm the accuracy of Japan’s understanding.*

*Japan would like to know whether there are any differences in difficulty of requesting a grace period between when it is done based on proposed §1.77(b) at filing of the patent application and when it is done based on the proposed §1.130 in the course of examination or reexamination.*

**RESPONSE:** Japan is correct in that a statement regarding prior disclosures by an inventor or a joint inventor under proposed § 1.77(b)(6) is not mandatory. Proposed § 1.77(b)(6) permits, but does not require, an applicant to provide a statement regarding prior disclosures by the inventor or a joint inventor. The grace period is provided by operation of U.S. law and is not provided for at the request of the applicant/inventor. Identifying any prior disclosures by the inventor or a joint inventor under proposed § 1.77(b)(6) at filing instead of during prosecution under proposed § 1.130 may save applicants the costs related to a USPTO action and reply and expedite examination of the application.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Derivation Proceedings(1)*

*In Final Rules, 37CFR §42.405, Content of Petition, (b)(2), provide as follows:*

*“(b) In addition to the requirements of §§ 42.8 and 42.22, the petition must: ...*

*(2) Demonstrate that a claimed invention was derived from an inventor named in the petitioner's application, and that the inventor from whom the invention was derived did not authorize the filing of the earliest application claiming such invention."*

*This provision requires a petitioner to demonstrate that the invention was derived from himself/herself, and does not require a respondent to demonstrate that the invention was not derived from the petitioner. The burden of proof of the fact of derivation is imposed on the petitioner. It is usually difficult in reality for the petitioner to prove the fact of derivation. From this viewpoint, some court rulings in Japan have held that the respondent must prove the fact that the invention was not derived from the petitioner.*

*In order to make the derivation proceeding more suitable for practical use, it would be possible to impose a certain degree of burden of proof on the respondent as well. Please explain the U.S.'s idea on this.*

*With a view to making it easier for the petitioner to prove the fact of derivation, Japan would also like to learn, with specific case examples, what kind of evidence is admissible when the petitioner demonstrates that the invention was derived from himself/herself.*

**RESPONSE:** 35 U.S.C. 135(a) requires that a petition asking the Board to institute a derivation must be supported by substantial evidence. Under our rules (37 CFR 42.405(c)), a petition is not sufficient unless it is supported by substantial evidence, including at least one affidavit addressing communication of the derived invention and lack of authorization that, if un-rebutted, would support a determination of derivation. The showing of communication must be corroborated.

A petitioner usually is in the best position to show that he or she conceived the invention and then communicated the invention to the respondent. A petitioner must provide corroboration of the communication as well as any testimony from the petitioner.

35 USC 135(b) provides for rules that include requiring parties to a proceeding (i.e., after a proceeding has been instituted) to prove (petitioner) or rebut (respondent) a claim of derivation. Once a proceeding has been instituted the respondent would then be in a position where rebuttal of the showing of derivation may be required.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

##### **(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175  
(Question)

*Derivation Proceedings(2)*

*New section 291 provides an owner of a patent with relief by civil action, and new section 135 provides a patent applicant with a derivation procedure in the USPTO. Japan understands that these two procedures are common in providing a true inventor with remedy. However, the scope for section 291 and the scope for the section 135 seem to differ from each other. The scope of section 291 is defined as "the same invention" but the scope of section 135 is defined as "an invention that is the same or substantially the same." Japan would like to know the reason for this difference of scope.*

**RESPONSE:** Derivation proceedings before the USPTO require at least one party to be an applicant for patent, whereas derivation proceedings in district courts require both parties to be patentees. Further, in derivation proceedings conducted by the USPTO, the petitioner is not required to claim the same invention, since, under the statute (35 USC 135(a)), it may have a claim that is substantially the same as the respondent's claimed invention. Our rules (37 CRR 42.401) provide that "same or substantially the same" means patentably indistinct. New Section 291 provides for possible relief in a district court where the inventions are in issued U.S. patents and are directed to "the same invention."

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Preissuance Submission by a third party*

*When a third party makes a pre-issuance submission, the third party must submit a statement which includes a name and signature. Of course, some third parties may want to maintain their anonymity and have an attorney make a pre-issuance submission instead. However, the name of attorney could lead an applicant to identify the third party who used the attorney. If the name of the attorney that made the pre-issuance submission is disclosed in the process of putting the submitted information into the file wrapper and is made available to the applicant, the third party might not be able to remain anonymous. Does the U.S. have any plans to take any measures against this possible concern?*

**RESPONSE:** The USPTO cannot permit a third-party submission to be presented unsigned by the submitter in view of the signature requirement in 37 CFR 1.4 for papers filed in a patent application, which require a person's signature. Third-party submissions are required to be signed because 37 CFR 1.290(d)(5) and (g) require statements by the party making the submission. Third parties are free to select the practitioner that will file the submission. There is no requirement that the practitioner must be the practitioner who ordinarily prosecutes the third party's applications.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Inter Partes Review*

*37CFR §42.100(c) of the Final Rules provide as follows:*

*“An inter partes review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year. The time can be extended by up to six months for good cause by the Chief Administrative Patent Judge, ...*

*An inter partes review (IPR) proceeding, which is to be concluded within one year, is preferable for patent users who desire speedy settlement of disputes. At the same time, an extension of up to six months will be granted if there is good cause.”*

*Please explain what situations are considered to exhibit “good cause”.*

**RESPONSE:** Extensions of the one-year period are anticipated to be rare. §§ 42.100(c) and 42.200(c). Whether good cause is shown will depend on the particular facts of a given case and cannot be articulated with certainty in the abstract. One example may be where, through no fault of either party, new evidence is uncovered late in the proceeding that necessitates a motion to amend the patent.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Post Grant Review*

*37CFR §42.200(c) of the Proposed Rules provide as follows:*

*“A post-grant review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year. The time can be extended by up to six months for good cause by the Chief Administrative Patent Judge, ...*

*A post-grant review (PGR) proceeding, which is to be concluded within one year, is preferable for patent users who desire speedy settlement of disputes. At the same time, an extension of up to six months will be granted if there is good cause.”*

*Please explain in what situations “good cause” is demonstrated.*

**RESPONSE:** Extensions of the one-year period are anticipated to be rare. §§ 42.100(c) and 42.200(c). Whether good cause is shown will depend on the particular facts of a given case and cannot be articulated with certainty in the abstract. One example may be where, through no fault of either party, new evidence is uncovered late in the proceeding that necessitates a motion to amend the patent.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Early Publication with “opt out”*

*The early publication system in the United States allows an application to “opt out” of publication if an applicant makes a request certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country. Since a third party cannot learn whether another person has already filed a patent application on the same invention, the system allowing opting out creates serious social and economic loss to investments in R&D. While this presents a serious problem, the AIA has not made any changes on the exception from the early publication system.*

*Japan urges the United States to implement fully and promptly what has already been confirmed under the Framework Talks: i.e., by abolishing the exceptions from the early U.S. publication system, and by publishing all applications except those which are no longer pending, and those which are subject to secrecy orders, after the period of 18 months from the earliest priority date. Please explain the U.S.’s view on this matter.*

*Moreover, with regard to the early publication system in the United States, the United States initiated a public comment process on “the Feasibility of Placing Economically Significant Patents Under a Secrecy Order and the Need To Review Criteria Used in Determining Secrecy Orders Related to National Security” in April 2012. Please explain any progress and results with respect to this public comment process.*

**RESPONSE:** The opt-out provision is exercised only in very rare cases, having declined from about 10% of filings in 2002 to only about 5% in 2009. In other words, the USPTO currently publishes about 95% of all applications at 18 months, equating in raw numbers to 333,668 published U.S. applications in 2009. Moreover, the percentage of opt-outs is expected to decrease further as the USPTO continues to consider operational improvements to reduce pendency and decrease examination backlogs. The USPTO's strategic plan, for instance, calls for a reduction in first action pendency to 10 months and overall pendency to 20 months by 2016. Furthermore, the AIA provides a mechanism for prioritized examination and final disposition within 12 months upon payment of an additional fee. These procedural changes should substantially mitigate, and potentially effectively eliminate, opt-outs, as a result of more applicants being provided with more information about patentability of the invention in advance of the 18-month publication mark. It is worth noting the absence of any empirical data or other “hard” evidence demonstrating that opt-outs, even at current rates, are creating any substantial localized or systemic problems requiring a rebalancing of interests under the U.S. approach.

As stated in 77 FR 23662, Congress asked the USPTO to collect comments on whether the currently performed screening of patent applications for national security concerns should be extended to protect economically significant patents from discovery by foreign entities. Comments were accepted from April to June, 2012.

The USPTO received twenty eight comments from individuals, associations, universities, businesses, and foreign governments. The vast majority of these comments were opposed to the idea of a new secrecy order regime. These comments were shared with Congress to aid in their ongoing oversight of the patent examination system. At this time no further action is contemplated.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Unity of Invention*

*With regard to unity of invention, under the current U.S. patent system, the scope of inventions that can be included in a single application is, according to what we have requested so far, narrower than that under the systems of the JPO and the European Patent Office (EPO). Thus, a patentee is obliged to submit multiple applications, thereby increasing their burden. The Government of Japan wishes to repeat its request to the Government of the United States to adopt the same criterion for its unity of invention as that of Japan and Europe. The U.S.'s view on the matter would be appreciated. We understand that the United States Patent and Trademark Office (USPTO) is reviewing this matter within its working group for enhancing efficiency of patent examination work. Please explain the progress on reviewing this matter.*

**RESPONSE:** The USPTO acknowledges that unity of invention practice results in fewer requirements in certain circumstances and that it is the sole practice in other national jurisdictions. An applicant may select the unity of invention practice in the United States by filing an International Application and entering the National Stage as to the United States. Alternatively, applicants may file a national application under 35 U.S.C. 111(a) to select our national restriction practice. The USPTO has extensively considered whether and how best to use only the unity of invention practice for all applications. Consistent with the review of unity of invention practice, the USPTO is currently undertaking efforts to change other aspects of its patent examination practice, such as adopting a cooperative patent classification system which is consistent with international patent classification, which will offset some of the negative concerns that the USPTO has regarding adopting unity of invention practice as the sole practice in the United States.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**

Page 92, Paragraph 175

(Question)

*Information Disclosure Requirement of Prior Art Documents*

*All applicants for United States patents must disclose important prior art documents to the U.S. Patent and Trademark Office (USPTO) as far as they know until they obtain patents. In addition, they are obliged to submit English translations of prior art documents as a whole or in part, in the case that the documents are not in English. The Government of Japan urges the Government of the United States to take measures to reduce the burden on foreign patent applicants, including eliminating the*

*requirement to submit English translations and shortening the period of the information disclosure requirement. Please explain the U.S. view on this.*

**RESPONSE:** The USPTO is considering the Government of Japan's concerns over USPTO Information Disclosure Statement (IDS) requirements. The USPTO is continuing to assess the capacity and capability of machine language translating tools to address the issues raised above while also promoting effective and efficient examination.

The general requirement to provide material documents known by applicants throughout the examination process, however, is not under review at this time as that requirement promotes effective and efficient examination practice and provides an efficient mechanism for applicants to comply with the judicially created duty of disclosure. Applicants are often aware of the most pertinent prior art which relates to their invention. Since patent prosecution is ex parte and does not generally rely on third parties to provide the most relevant prior art documents, it is reasonable to require applicants to provide relevant documents that they are aware of. Other initiatives to promptly provide examining offices with access to documents cited in counterpart applications will reduce this burden on applicants when the planned information sharing tools are in place.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**  
**(vi) Trade-related intellectual property rights**  
**(i) Enforcement**

Page 96, Paragraph 191  
(Question)

*With regard to Section 337 of the Tariff Act of 1930, the ITC establishes a "target date" for final determination in each investigation within 45 days of the initiation of an investigation. Please indicate the average number of days between the initiation of an investigation and (1) "the target date", or (2) the actual date of final determination. Please provide us with the data of (1) and (2) for the past three years (2010-2012 to date).*

**RESPONSE:** The question draws a distinction between the "target date" on the one hand and the "actual date of completion" on the other. The ITC sets a target date based on a range of factors, including the circumstances of the case. After setting the target date, the ITC can adjust target dates as the investigation proceeds if the need arises based on the circumstances of the case. The ITC also adjusts target dates in cases in which the parties reach a settlement prior to the target date or for other reasons. Accordingly, the number of days between institution and the target date actual date of completion may vary considerably depending on the circumstances of the individual case.

**IV. TRADE POLICIES BY SECTOR**  
**(1) AGRICULTURE**  
**(i) Agriculture in the United States**

Page 100, Paragraph 5  
(Question)

*With regard to the increase in the total number of farms in the past ten years, please provide the reason, the particular sector which is being entered, as well as the age composition and the level of income of these new farmers. Japan would also like to learn new policy measures, if any, to encourage entry into the agricultural sector.*

**RESPONSE:** While the U.S. Census indicates an increase in total number of farms, the increase is not an indicator of the number of new farmers. During the last Census, the U.S. Census Bureau made a concerted effort to identify and count very small farms. Much of the increase in total farms in the U.S. Census likely reflects the counting of farms that are not new, but just have not been counted previously. These farms are not necessarily operated by beginning farmers. Moreover, it should be noted that entry of new farms does not necessarily mean the total number of farms are increasing. The change in the total number of farms is the difference between entry of new farms and exit of established farms. In agriculture, as in any industry, there is a considerable amount of entry and exit.

The Census of Agriculture, conducted by USDA, indicates that both the number and share of farms that have principal farm operators with less than 10 years farming their operation have been declining, since at least 1982. In 1982, 38 percent of principal farm operators had less than 10 years of experience farming, compared with 26 percent of principal farm operators in the latest Census of Agriculture (2007)..

The majority of beginning farmers are under the age of 55, but one-third are over 55 and more than 10 percent are 65 or older. Beginning farms are more likely to not have any positive value of production than established farms. In 2010, 30 percent of beginning farms did not have any positive value of production. This is true for a variety of reasons, including production failures, or newly planted crops, such as fruit and nut trees that have not yet matured. However, the majority of farms without production likely did not intend to have production because they are largely small farms whose operator earns significant off-farm income and/or who is elderly.

For a full description of the beginning farmer and rancher programs under the 2008 Farm Act see: <http://webarchives.cdlib.org/sw1rf5mh0k/http://www.ers.usda.gov/FarmBill/2008/Titles/Underserved.htm>

#### **IV. TRADE POLICIES BY SECTOR**

##### **(1) AGRICULTURE**

##### **(ii) Agriculture policies**

##### Page 104, Paragraph 18

(Question)

*In which category of the DS:1 notification is the budget for “Quality Samples Program”, “Market Access Program” and the other programmes referred to in this paragraph classified?*

**RESPONSE:** These programs are not considered domestic support. These programs are widely available export promotion and advisory services. The funds provided under the programs are prohibited from being used to directly reduce export prices. The U.S. Department of Agriculture has a rigorous compliance system to ensure that funds are consistent with program requirements. USDA also monitors the implementation of these programs through a network of industry contacts.

#### **IV. TRADE POLICIES BY SECTOR**

##### **(1) AGRICULTURE**

##### **(ii) Agriculture policies**

##### Page 107, Paragraph 28

(Question)

*Please provide the reason why the premium subsidies for insurance have substantially increased from US\$4.7 billion in CY2010 to US\$7.2 billion in CY2011. Japan would also like to learn the*

*changes in the number of subscribers, covered areas and the insurance premiums (and the rate of subsidies), with regard to the increasing value of crops protected by insurance from US\$67 billion in 2007 to US\$114 billion in 2011.*

**RESPONSE:** In 2010, total program liability (amount of coverage for producers) was about \$78.1 billion, with a total premium amount of about \$7.6 billion. Expected prices for some major commodities (particularly corn, soybeans, and wheat) increased significantly from 2010 to 2011. As a result, total program liability (which is a direct function of commodity prices) increased to \$114.2 billion, with a corresponding increase in premium to about \$12.0 billion. Because of the higher premium amount in 2011, premium subsidy in 2011 increased by a commensurate amount. Additional data is available from RMA's website at the following URL: <http://www3.rma.usda.gov/apps/sob/national.cfm>

#### **IV. TRADE POLICIES BY SECTOR**

##### **(1) AGRICULTURE**

##### **(ii) Agriculture policies**

Page 107, Paragraphs 28,29

(Question)

*With regard to the Supplemental Revenue Assurance Program (SURE), Japan would like to learn if farmers suffering from disasters can receive insurance payments both from private insurance subsidized by the government and disaster assistance measures such as SURE. Is there a possibility of a case in which a farmer would receive subsidies that more than offset the income loss caused by disasters?*

**RESPONSE:** The United States notes that the SURE program is no longer operational and only covered crop losses due to natural disasters before October 1, 2011. To have been eligible for SURE, a producer had to obtain a policy or insurance plan for all crops on the farm through the Federal Crop Insurance Corporation or obtained Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, from the Farm Service Agency.

It was not possible for a farm to receive SURE and crop insurance payments that more than offset income loss due to a disaster. The SURE program provided payments of 60 percent of the difference between a farm's SURE Disaster Program Guarantee and Total Farm Revenue. A farm's SURE Guarantee could be no more than 90 percent of total expected revenue for the farm, and Total Farm Revenue included both crop value and crop insurance indemnities, NAP payments and other government support payments.



## QUESTIONS FROM THE REPUBLIC OF KOREA

### **PART I: Questions Regarding the Secretariat Report**

#### **III. Trade Policies and Practices by Measure**

##### Page 31 (Para 3)

*CBP is also responsible for supervision or oversight of certain import processes or provisions. For example, CBP regulations allow for the “in-bond process”, which provides that imported goods may be transported in-bond to another port of entry and entered there under the same conditions as at the port of arrival. CBP recently proposed new rules or procedures for the in-bond process, but final rules have not yet been issued. CBP also oversees “Foreign Trade Zones” (FTZs) which are located at or near CBP ports of entry and allow merchandise to enter and be further processed before entering the customs territory of the United States or being re-exported.*

##### Question 1

*Making customs procedures efficient is essential to ensuring that importers and exporters are not unduly harmed by delayed processing and increased costs. U.S. importers who are importing goods from Korea are deeply concerned about the time and expense related to customs procedure. For instance, CBP examinations could result in a delay in the release of imported goods of up to 9 to 12 days if secondary examinations are required. Further, the additional expense associated with the primary and secondary examinations would total up to \$1,500 per container. Korea understands that one of the CBP's missions is to ensure national security, however, it is also important that this mission be balanced with facilitating international trade which is another important mission for CBP.*

*Could the United States explain its plans, if any, that it has prepared or is preparing to make its customs procedure more efficient and transparent?*

**RESPONSE:** The United States is recognized as having one of the most transparent and efficient customs agencies in the world. Even with this standing, the U.S. customs agency, CBP, is committed to streamlining and modernizing trade practices to benefit trade partners around the world and has enjoyed many successful accomplishments. CBP has, in conjunction with the trade industry, worked to devise and test programs and processes that streamline work in ways that will benefit security and regulatory functions. CBP is committed to approaching its work with imports in a risk-based manner, committing its resources and reviews to those goods that warrant further scrutiny while expediting those goods that present a minimal risk of non-compliance with CBP laws, regulations, and procedural requirements. The United States remains committed to a modern and cost-effective customs regime by its continued and active participation in the DOHA Round Negotiating Group on Trade Facilitation.

##### Page 48 (Para 48)

*The United States abandoned the use of zeroing when calculating margins in original investigations based on weighted average to weighted average comparisons in 2006. However, in February 2012, after publishing a proposed modification, receiving public comments, and consulting with Congress, the U.S. Department of Commerce modified its methodology to address the issue of zeroing in administrative, new shipper, expedited, and sunset reviews. In administrative reviews, “except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with monthly weighted average normal*

*values, and will grant an offset” where the export price exceeds the normal value. Further, in sunset reviews “it will not rely on weighted average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.” The new rules apply to all reviews pending before the Department for which preliminary results were issued after 16 April 2012.*

Question 2

*In the amended regulation of the Department of Commerce, it states that in its administrative reviews “except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with monthly weighted average normal values.” How will the Department make the determination whether the application of a different comparison method is appropriate?*

*Also, please explain whether such a different comparison method, in particular, “Weighted Averaged to Transaction (“A-T”) methodology without granting offset” is applicable in the original investigation. If it is, please explain the legal basis with regard to relevant international rules as well as the domestic laws and regulations of the U.S.*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

Page 57 (Para 68)

*A new law pertaining to conflict minerals was contained in the Dodd–Frank Wall Street Reform and Consumer Protection Act, which entered into effect on 21 July 2010. The law foresees reporting and disclosing the source of four minerals, some of which are mainly used in the electronic industry. Reporting would be required by companies listed in the U.S. stock exchanges or those that raise capital in the United States. Draft rules and regulations implementing the law were issued by the SEC in 2010 for comment, and final rules were expected in 2011, but have so far not been issued (1 July 2012). Thus, the actual reporting requirements and their impact are not known at this time. The State of California has adopted a similar law pertaining to conflict minerals, which will be implemented when the Dodd-Frank rules are finalized. Maryland has also enacted a law on conflict minerals.*

Question 3

*With regard to the Conflict Mineral Provision of the Dodd Frank Act, Korea would like to express its concerns as this Provision will have widespread effect on all trading partners of the US.*

*The provision requires a due diligence of the supply chain to verify whether the four designated conflict minerals have been used in the product. As a result, many foreign companies that supply goods to the US companies will be obligated to carry out a due diligence to verify whether they are using conflict minerals if they wish to continue supplying to U.S. companies.*

*In this regard, the U.S. explained at a bilateral consultation that it has plans to prepare a guideline on the implementation of the Provision. Will it include any consideration for exporters and when will this guideline be published?*

**RESPONSE:** The Securities and Exchange Commission is in the process of collecting interpretive questions regarding the final rule, and the staff of the Commission may issue answers to the questions received. There are no current plans to prepare general guidance on the implementation of the final rule. Any specific interpretive questions regarding the final rule should be directed to John Fieldsend at the Commission either by phone at (202) 551-3430 or by email at [fieldsendj@sec.gov](mailto:fieldsendj@sec.gov).

Page 62 Box III.1: The FDA Food Safety Modernization Act (FSMA)

**Registration:** *Under Section 102 of the FSMA, food facilities are required to renew their registration with the FDA (required under Section 415 of the Federal Food, Drug, and Cosmetic Act (FD&C Act)) every two years. “Food facilities” include places that manufacture, process, pack, or hold food for consumption in the United States, including foreign facilities. This biennial registration renewal requirement which must be submitted between 1 October and 31 December, begins in 2012.*

Question 4

*Is food from a foreign food facility that fails to renew its registration within the specified period prohibited from being brought into the U.S. at any point after January 1, 2013?*

**RESPONSE:** A foreign food facility that manufactures/processes, packs, or holds food for consumption in the United States must be registered with the FDA in accordance with section 415 of the FD&C Act in order to import, or offer to import, food from such facility into the United States. FDA intends to issue further guidance regarding the failure to renew a food facility registration in the near future. In the meantime, it is recommended that food facilities complete the registration renewal process in order to remain in compliance with section 415 of FD&C Act, as amended by FSMA.

Question 5

*Will a food facility that fails to renew its registration within the specified period be allowed to renew the registration after January 1, 2013?*

**RESPONSE:** Section 415 of the FD&C Act specifies that food facilities must renew their registrations with FDA during the period beginning on October 1 to December 31 of each even-numbered year. FDA intends to issue further guidance regarding the failure to renew food facility registrations in the near future.

Question 6

*What are the measures to be imposed on a food facility that fails to renew its registration within the specified period (for example, the sending of warning notices, the imposing of fines, etc.)?*

**RESPONSE:** FDA’s enforcement strategy related to food facility registration renewal is still under consideration. FDA intends to issues further guidance regarding the failure to renew food facility registrations in the near future

Page 63 Box III.1: The FDA Food Safety Modernization Act (FSMA)

**Inspections :** (.....) *Under section 807 of the FD&C Act, if a foreign factory, warehouse, or other establishment refuses an inspection (defined as not permitting an inspection within 24 hours of a request or such other time period as agreed upon) food from the establishment is subject to refusal of admission into the United States.*

#### Question 7

*If a food facility agrees to an inspection after 24 hours of a request or another such time period as agreed upon, what procedures should the facility follow? Are there any disadvantages such as fine for the facility?*

**RESPONSE:** The purpose of an FDA inspection is to determine a facility's compliance with the Federal Food, Drug, and Cosmetic Act and relevant regulations of Title 21 of the U.S. Code of Federal Regulations (CFR), including, when applicable, Part 110 (Current Good Manufacturing Practices (GMP) in Manufacturing, Packing, or Holding Human Food) and any other U.S. regulations applicable to the specific type of food produced. For instance, canned foods will be inspected for compliance with the low-acid canned or acidified food regulations in 21 CFR Parts 113 and 114. Dietary supplements will be inspected for compliance with good manufacturing practices for dietary supplements, 21 CFR Part 111. A single inspection may focus on multiple requirements, such as a canned tuna product that may be inspected for compliance with seafood hazard analysis and critical control point (HACCP) systems, canning regulations, labeling requirements and current GMPs.

These are routine inspections of individual facilities designed to evaluate a facility's adherence with applicable U.S. laws.

Generally, FDA does not provide checklists for its food inspections. However, for low-acid canned foods, facilities can use the FDA inspection forms to conduct self-audits of their canning facility and specific processing systems. These forms can be found on FDA's web site at [About FDA - FDA Forms](#).

For additional information on FDA's requirements and inspectional procedures please see the following:

- U.S. Code of Federal Regulations for foods under FDA's jurisdiction- Title 21 Food and Drugs: [e-CFR-TITLE 21--Food and Drugs](#)
- Investigations Operations Manual (IOM): Chapter 5 of the IOM covers general procedures used by FDA investigators when conducting inspections: <http://www.fda.gov/ICECI/Inspections/IOM/default.htm>
- Compliance Program Guidance Manuals (Compliance Programs) are commodity specific inspection manuals used by FDA investigators during inspections: <http://www.fda.gov/ICECI/ComplianceManuals/ComplianceProgramManual/default.htm>
- General information on FDA Inspections, Compliance and Enforcement Activities: <http://www.fda.gov/ICECI/default.htm>
- Inspection Technical Guides: <http://www.fda.gov/ICECI/Inspections/InspectionGuides/InspectionTechnicalGuides/default.htm>

#### Question 8

*When does a food facility receive the results of the inspection?*

**RESPONSE:** As appropriate, FDA may take official action based on the inspectional findings, including subjecting the facility and its products to an Import Alert, issuing violation letters, or other activities. If the inspection verifies that the facility is in compliance with FDA's requirements and food safety standards, a copy of the narrative Establishment Inspection Report is sent to the facility. If significant problems are identified, FDA will provide a copy of the narrative report to the facility's management after violations are resolved or after FDA has taken any necessary regulatory action. For additional information on FDA's requirements and inspectional procedures please see the websites in the previous response.

If significant problems are identified during the inspection, FDA issues inspectional observations (Form FDA-483) to the company's management at the inspection close-out meeting. Facilities may use this meeting to request clarification, to demonstrate to the FDA inspection team any corrections that were implemented during the inspection, and to explain any corrections the facility intends to make at a later time. After completing a foreign inspection, the investigator completes a written narrative of the inspection, known as an Establishment Inspection Report.

The FDA Form 483 does not constitute a final Agency determination of whether any condition is in violation of the FD&C Act or any of its relevant regulations. The FDA Form 483 is considered, along with a written report called an Establishment Inspection Report, all evidence or documentation collected on-site, and any responses made by the company. The Agency considers all of this information and then determines what further action, if any, is appropriate to protect public health.

Please visit the following site for additional information on FDA Form 483: <http://www.fda.gov/ICECI/EnforcementActions/ucm256377.htm>

Facilities are encouraged to submit their responses to a FDA-483, along with supporting documentation, within 15 business days after the close-out meeting.

If the firm is not able to provide information that overcomes a violation, FDA will take this into consideration when taking appropriate regulatory action against the firm or its products. Normally, FDA will notify the firm in writing of any regulatory action taken within 2-6 months after the inspection visit. Once the inspection is considered closed by FDA, FDA shares a copy of the full inspection report with the firm.

*Before the FDA determines whether it will carry out a re-inspection, does the facility have an opportunity to appeal the results of the initial inspection?*

**RESPONSE:** It is FDA's practice for FDA investigators and analysts to discuss observations with the person in charge at the establishment while the inspection is being conducted, as appropriate, and at the end of the inspection during the closeout meeting. This practice ensures that inspected facilities have an opportunity to discuss the investigator's observations before the investigator issues the Inspectional Observations form, FDA-483, if one is issued.

Please visit the following site for additional information on FDA Form 483: <http://www.fda.gov/ICECI/EnforcementActions/ucm256377.htm>

FDA investigators will verify any completed corrective actions so long as the verification does not unreasonably extend the duration of the inspection. FDA also may verify corrective actions through communications with the facility, by conducting examinations or sampling at ports of entry, by conducting a compliance follow-up inspection, or any combination of these. If significant problems are identified during the inspection, FDA issues an FDA-483 (Inspectional Observations form) to the company's management at the inspection close-out meeting. Facilities may use this meeting to request

clarification, to demonstrate to the FDA inspection team any corrections that were implemented during the inspection, and to explain any corrections the facility intends to make at a later time. After completing a foreign inspection, the investigator completes a written narrative of the inspection, known as an Establishment Inspection Report.

At the inspection close-out meeting, the FDA investigator will provide instructions to the facility about how to respond in writing to FDA. The facility's submission should include a letter explaining all corrective actions taken by the facility that were not implemented and verified by the investigator during the inspection. In addition, the facility's response should include supporting documentation, which may include records of repair, implementation of new monitoring activities, pictures, revised HACCP plans, or any other information that may be necessary to demonstrate that appropriate corrective action has been completed. Please refer to the following weblink for additional information on how FDA conducts close-out meetings with a facility's management. <http://www.fda.gov/ICECI/Inspections/IOM/ucm122530.htm#5.2.7>

Facilities are encouraged to submit their responses to a FDA-483, along with supporting documentation, within 15 business days after the close-out meeting. Please see following website for additional information about facilities responses to FDA-483:

- o [Discussions With Management](http://www.fda.gov/ICECI/Inspections/IOM/ucm122530.htm#5.2.7)<sup>20</sup>  
(<http://www.fda.gov/ICECI/Inspections/IOM/ucm122530.htm#5.2.7>)
- o [Procedures](http://www.fda.gov/ICECI/Inspections/IOM/UCM122530#5.2.1.1.3)<sup>21</sup> (<http://www.fda.gov/ICECI/Inspections/IOM/UCM122530#5.2.1.1.3>)

FDA encourages facilities to submit responses in Acrobat-PDF format to the following email account: [FDA483responseinternational@fda.hhs.gov](mailto:FDA483responseinternational@fda.hhs.gov). FDA will send a confirmatory email in return to acknowledge receipt.

If electronic submission is not possible, a hardcopy package may be mailed to the following postal address: Center for Food Safety and Applied Nutrition, Office of Compliance, Division of Enforcement, Food Adulteration Assessment Branch (HFS-607), U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Fax #: 301-436-2716

## **PART II: Questions Regarding the Government Report**

### **III. Openness and Accountability: Building Support for Trade**

#### Page 13 (Para 44)

*The United States also continues to develop the FTA Tariff Tool, a free online tool launched in 2011, which helps more small businesses take better advantage of tariff reduction and elimination under U.S. trade agreements.*

#### Question 9

*Does the U.S. educate, on a regular basis, SME owners to help them better use the FTA Tariff Tool?*

**RESPONSE:** The U.S. has widely disseminated information on the FTA Tariff Tool to SME stakeholders under the NEI and continues to do so at outreach events targeted at small business exporters.

### **IV. Trade Policy Developments Since 2010**

#### Page 16 (Para 57)

*USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements to which the United States is a party and pursues enforcement actions, negotiating*

*agreements, employing WTO and FTA institutional mechanism, using dispute settlement procedures, and applying the full range of U.S. trade laws when necessary. Vigorous investigation efforts by relevant agencies help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities.*

Question 10

*The statutory time-frames for the ITC's injury investigation and the DOC's AD and CVD investigations seem to be harsh on respondents. Despite the shorter statutory deadlines, the extent of information required by both agencies has multiplied a hundred fold. This combination of increased demand for information and shortened deadlines has significantly impaired respondents' ability to compile, prepare, and submit all of the necessary data in a timely manner.*

*Could the United States consider introducing a mandatory pre-initiation investigatory phase, during which the agencies could consult with all of the prospective parties to the investigation, thereby minimizing the adverse impact that can be caused by short deadlines?*

**RESPONSE:** The United States disagrees that the information requested by the Department of Commerce and the USITC to make their respective determinations has increased a hundred fold, or by any substantial measure. Each agency requests information that is necessary to make its respective determination in accordance with U.S. WTO obligations. In addition, the United States has a very transparent system, which provides a number of opportunities for all interested parties to provide the necessary information in defense of their interests as well as opportunities to brief and rebut arguments in their cases. The United States' practice is in full compliance with its WTO obligations, and it conducts its investigations within the time frames outlined in the Agreements. It remains unclear what Korea envisions taking place during a "pre-initiation investigation" that includes the participation of all prospective parties. Nonetheless, to implement such a mandatory pre-initiation investigation before conducting an actual investigation would not only call into question its consistency with WTO obligations, but likely would increase the time, workload and costs on all parties involved. The United States does not believe such a pre-initiation investigation is in the interest of any party, nor would it improve our system.

Page 21 (Para 85)

*(.....) In early 2012, the TEC Investment Working Group successfully negotiated a text of shared principles for international investment policies, which the two sides will seek to persuade other countries to embrace.*

Question 11

*Could the United States elaborate on the content of the text of shared principles for international investment policies? How is it different from BITs or the OECD's principles on international investment?*

**RESPONSE:** The Shared Principles for International Investment prescribe elements of a policy environment that enables and encourages international investment, in light of the broad economic benefits that such investment engenders. These include: open and non-discriminatory investment policies; a level competitive playing field; strong protections for investors and their investments; recourse to effective dispute settlement procedures; and high levels of transparency and opportunity for public participation in government rule-making.

The Principles are a statement of the shared and continuing commitment of the United States and the European Union to adopt and maintain open, non-discriminatory, and transparency regimes for international investment, and to promote such regimes elsewhere in the world. As such, the Principles text is not a legal document, although certain of its elements are often reflected and given effect in international agreements such as bilateral investment treaties. The Principles are a complement to existing instruments and initiatives promoting open investment, in some cases making direct reference to, for example, the work of the OECD.

### **PART III : Other Questions**

#### Question 12

*The United States classifies sunscreen products as OTC drugs. Could the United States elaborate on the rationale for this classification?*

#### Background information

*The number of UV blocking agents approved for use in the U.S. is very limited (please refer to the table below). It is assumed that it may be related with the unique classification of sunscreen products in the U.S. A sunscreen product is classified as an over-the-counter drug in the U.S. while it is classified as cosmetics in Japan, China, Europe and many other countries. For exports to the U.S., manufacturers must submit safety and efficacy data if they wish to use UV blocking agents other than those approved for use in sunscreen products. There are concerns that this creates trade barriers to foreign cosmetics businesses.*

| <i>Country</i>  | <i>Korea</i>                | <i>United States</i> | <i>Europe</i>            | <i>Japan</i>             |
|---|-----------------------------|----------------------|--------------------------|--------------------------|
| <i>Classification of sunscreen products</i>               | <i>Functional Cosmetics</i> | <i>OTC drug</i>      | <i>General Cosmetics</i> | <i>General Cosmetics</i> |
| <i>Number of UV blocking agent types approved for use</i> | 34                          | <u>16</u>            | 31                       | 34                       |

**RESPONSE:** Specifically, under U.S. statutes (the Federal Food, Drug, and Cosmetic Act), a product that is intended for use in the prevention of disease, or to affect any structure or function of the body, is a drug. (21 U.S.C. § 321(g)). Sunscreen products that are intended to help prevent sunburn, and, with other sun protection measures, to decrease the risk of skin cancer and early skin aging caused by the sun, fall within this definition. Drugs are subject to legal requirements to establish that they are both safe and effective for their intended uses.

The UV ingredients identified below are recognized under US regulations (OTC drug monographs) for use in sunscreens intended for these uses, without requiring individual product applications. Ingredients not included in existing drug monographs can be used if a new drug application is approved for the product. Regulations also permit additional ingredients to be added to the sunscreen monograph, if there is a sufficient history of marketing sunscreens with those ingredients and sufficient safety and efficacy data. (21 C.F.R. § 330.14.) The US FDA is considering requests to add several more ingredients to the sunscreen monograph under these procedures.

For imports into the U.S., manufacturers must submit safety and efficacy data if they wish to use UV blocking agents other than those recognized under the OTC monograph system for use in sunscreen products. There are concerns that this creates trade barriers to foreign cosmetics businesses.

#### Question 13



*The number of color additives approved for eye area use is very limited in the U.S. Could the U.S. explain the reasons for such regulations for the additives?*

**Background information**

*Of the listing of 36 color additives subject to certification (21 CFR 74, subpart C), the U.S FDA only approved 4 types of color additives for eye-area use (Blue 1, Green 5, Red 40, Yellow 5); this is quite a limited number of color additives approved for eye-area use compared to Korea, Japan and Europe where 29 types, 58 types and 52 types are approved respectively. Generally, most countries tend to approve approximately 50% or more of approved color additives for eye-area use (Please refer to the table below.).*

| <i>Country</i>  | <i>Korea</i> | <i>United States</i> | <i>Europe</i> | <i>Japan</i> |
|---|--------------|----------------------|---------------|--------------|
| <i>Tar-derived color additives approved for use in cosmetics</i>                                  | 56           | 36                   | 108           | 83           |
| <i>Tar-derived color additives approved for use in cosmetics intended for use in the eye area</i> | 29           | <u>4</u>             | 52            | 58           |

**RESPONSE:** Listing color additives is accomplished through the color additive petition (CAP) process. FDA received petitions to list color additives for eye area use from color additive manufacturers, product manufacturers, trade associations, and other interested parties. Color additives are required to be specifically authorized for use in the area of the eye (see 21 C.F.R. § 70.5(a)). FDA has specifically authorized the use in the eye area of certain color additives that are exempt from certification (21 C.F.R. Part 73) and that are subject to certification (21 C.F.R. Part 74). The 6 color additives requiring batch certification that are authorized for use in the eye area are:

|         |                                     |
|---------|-------------------------------------|
| 74.2052 | D&C Black No. 2                     |
| 74.2053 | D&C Black No. 3                     |
| 74.2101 | FD&C Blue No. 1 and aluminum lake   |
| 74.2205 | D&C Green No. 5                     |
| 74.2340 | FD&C Red No. 40 and aluminum lake   |
| 74.2705 | FD&C Yellow No. 5 and aluminum lake |

Only color additives supported by reports about studies of eye area safety were listed for eye area use.

Firms may petition FDA to list a new color additive or new use for a listed color additive as described in 21 C.F.R. Part 71.. The petition process for color additive approval is described at <http://www.fda.gov/ForIndustry/ColorAdditives/ColorAdditivePetitions>. We encourage petitioners to meet with FDA staff early in the petition process in order to discuss whether additional safety studies will be needed, other than those already reported in the scientific literature, and to obtain other helpful information.

## QUESTIONS FROM MALAYSIA

### SECRETARIAT REPORT

#### Page ix (Para 6)

*On the export side, the United States has launched the National Export Initiative, aimed at improving trade advocacy and pursuing policies to promote growth; and the Export Control Reform Initiative, to reconcile policies for export controls. In addition, the Export-Import Bank has significantly increased its export financing to support the National Export Initiative.*

#### Question:

*Could the US elaborate on the National Export Initiative and the Export Control Reform Initiative. Could the US also provide specific examples of the positive or negative effects of the two initiatives.*

**RESPONSE:** The President launched the NEI during his State of the Union address on January 27, 2010 and established a national goal of doubling U.S. exports by the end of 2014. The NEI has five main components. First, the Administration seeks to improve advocacy and trade promotion efforts on behalf of U.S. exporters. Second, the Administration seeks to increase access to export financing. Third, agencies will reinforce their efforts to remove barriers to trade. Fourth, the United States will robustly enforce trade rules, ensuring America's trade partners live up to their obligations. Fifth, the Administration will pursue policies at the global level to promote strong, sustainable, and balanced growth so that the world economy grows. The annual National Export Strategy tracks and measures the Federal Government's progress in implementing the NEI recommendations including specific examples of the effects of the initiative. For full details see the 2011 National Export Strategy at: <http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf>

The 2012 National Export Strategy is expected to be publically released at the end of the year.

For the Export Control Reform (ECR) initiative, it is a common sense approach to overhaul of the U.S. export control system. The work is being done under a three-phase implementation plan. As part of its implementation effort, the United States has developed and applied a methodology for rebuilding the control lists, has already published a series of proposed rules for public comment in 2012, will publish the first final rules in early 2013, and will continue to publish the remaining proposed and final rules on a rolling schedule throughout 2013.

Rebuilding the control list is the cornerstone of the effort. The current system generally treats all items the same, resulting in the controls applied to an F-18, for example, being the same as the controls for a bolt that is used on that F-18, straining U.S. Government resources without focusing on those items that warrant more scrutiny and control.

The control list-related reforms will move less sensitive items, mostly parts and components, from the State munitions list to the Commerce list. The net result of the list reforms will be to improve U.S. interoperability with close allies and partners while enabling the U.S. Government to focus on transactions of concern.

To follow developments on the reform initiative, visit [www.export.gov/ecr](http://www.export.gov/ecr) where details on all actions on the initiative are posted.

*The degree of private-sector involvement in the collective, network-based environmental services (water and waste-water management services, refuse disposal services) in the U.S. market remains relatively marginal as most consumers are served by publicly owned or cooperative utilities.*

Question:

*Why is the degree of private sector involvement in the collective, network based environmental services in the US market is marginal compared to publicly owned or cooperative utilities?*

**RESPONSE:** The degree of private sector involvement in water and waste-water management services, and refuse disposal services, is reflective of the fact that these services are largely provided by public utilities at the state or local level. This is the case in the United States, as well as in many other WTO Members.

Page 119, Para 66

*The U.S. trade regimes for environmental services appear very open. The United States has full GATS commitments on environmental services, as defined by the classic GATS classifications (which do not include the distribution of fresh/drinking water). However for two subsectors, sewage services and refuse disposal services, those commitments are limited to services contracted by private industry (Table IV.10). U.S. free-trade agreements contain no reservations for national treatment with respect to environmental services. With respect to the market access obligation, the same modifications apply as in the GATS, for sewage and refuse disposal services contracted by private industry. Commitments by the United States in 1994 and 2012 under the WTO Government Procurement Agreement (GPA) are negatively listed and based on the MTN.GNS/W/120 list. They therefore include environmental services, subject to the reservations listed in annex 4 of the U.S. commitments. While environmental services are not mentioned explicitly in these reservations, the reservation on "public utilities services" cover some environmental services. The government procurement commitments under the various U.S. free-trade agreements echo this exclusion, though in most instances with slightly different wording. The applied regime is very open, including for publicly contracted services, with numerous foreign firms present and treated according to the national treatment principle.*

Question:

*What conditions must foreign firms comply with to qualify as environmental service providers/consultants in the US?*

**RESPONSE:** Professional services in the United States are regulated at the state level. We are unaware of any state that requires licensure in order to provide environmental consulting services. A supplier holding itself out to the public as providing engineering services would require an engineering license.

Page 105, Para 23

*Direct payments*

*Over the past few years, most support to producers has been provided through direct payments that are linked to historic planting and yields. Producers with eligible historical production of wheat, maize, sorghum, barley, oats, rice, soybeans and other oilseeds, upland cotton, and peanuts during the base period are eligible for direct payments. Payments are not linked to production or prices, except for some limits to planting fruits, vegetables, and wild rice, although a pilot project has been developed to allow planting of selected vegetables for processing in seven States for the 2009-12 crop years. Since they were introduced in the 2002 Farm Bill, support to producers provided through direct payments has been relatively constant, averaging about US\$5 billion per year.*

Questions:

1. *Please define what is 'historic planting and yields'?*

**RESPONSE:** Direct payments are made on a farm's "base acres," which are the 1991-1995 or 1998-2001 average acres of the historically planted commodity. The payment yield used in calculating direct payments is the 1981-1985 average yield, excluding the high and low yields, of the historically planted commodity. Under the 2002 Farm Act, producers were given the option of updating historical base acres to reflect more recent planting, but there was no option for updating payment yields.

2. *What amounts to 'eligible historical production'?*

**RESPONSE:** Eligible historical production was originally determined under the Production Flexibility Contract (PFC) program and included 1) land enrolled in acreage reduction programs for any of the crop years 1991 through 1995; 2) land planted or considered planted to program crops under program rules (certified acreage); and 3) land that had been enrolled in the Conservation Reserve Program (CRP) and had a crop acreage base under the former deficiency payment program associated with it. Base acreage associated with land leaving the CRP could be added to an existing PFC or enrolled in a new PFC at the beginning of a fiscal year. Under the 2002 Farm Act, acres historically planted in soybeans, other oilseeds, and peanuts were made eligible for direct payments based on a producer's 1998-2001 planted acres of the newly eligible commodities.

3. *What are the criteria for eligibility for direct payments?*

**RESPONSE:** To be eligible for Direct and Countercyclical Program (DCP) payments, owners, operators, landlords, tenants, or sharecroppers must share in the risk of producing a crop on base acres on a farm enrolled in DCP, and be entitled to share in the crop available for marketing from the base acres or would have shared had a crop been produced. They must also annually report the use of the farm's cropland acreage; comply with conservation and wetland protection requirements on all of their land, and with planting flexibility requirements; use the base acres for agricultural or related activities; protect all base acres from erosion, including providing sufficient cover as determined necessary by the county FSA committee; and controlling weeds.

Farms may be enrolled in DCP if they have base acres and payment yields established for any of the following commodities: wheat; corn; grain sorghum, including dual purpose varieties that can be harvested as grain; barley; oats; upland cotton; long grain rice and medium grain rice (which includes short grain rice), excluding wild rice; soybeans; canola, crambe, flaxseed, mustard seed, rapeseed, safflower, sesame seed and sunflower seed, including oil and non-oil varieties, or any oilseed designated by the USDA secretary; and peanuts.

Individuals may not receive more than \$40,000 in direct payments annually, and individuals with average annual gross nonfarm income greater than \$500,000 or average annual gross farm income greater than \$750,000 are not eligible to receive direct payments at all.

4. *Who could qualify for direct payments? Could the US provide the up-to-date number of 'producers' as defined under the Food, Conservation and Energy Act 2008, that are citizen and non-citizen of the US, and how many non-citizen 'producers' that has received assistance under the Food, Conservation and Energy Act 2008?*

**RESPONSE:** See previous responses for eligibility for direct payments. The only non-citizens eligible for direct payments are resident aliens. A breakout of payments between U.S. citizens and resident aliens is not readily available.

5. *Could the US share on the outcome of the pilot project mentioned?*

**RESPONSE:** The Planting Transferability Pilot Program (PTPP) was introduced under the 2008 Farm Act. Under the program, crop producers in seven Upper Midwest states (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin) may plant select vegetables for processing with an acre-for-acre loss in DCP payments, rather than the market value loss under regular fruit, vegetable, and wild rice (FAV) planting restrictions. Eligible PTPP acreage is capped at specific levels for each participating state, but the overall total cannot exceed 75,000 annually.

Based on data from the 2009-2010 period, the average number of acres planted under the program equalled 13,075 annually, about 17 percent of total allowable acres under the pilot and a small share of national processing vegetable acreage.

Further details on the PTPP can be found at <http://www.ers.usda.gov/media/826842/vgs350.pdf>, pp. 36-40.

Page 58, Para 71

*Between 1 January 2010 and 30 June 2012, the United States made 520 notifications to the WTO Committee on Technical Barriers to Trade of which, 337 were addenda or corrigenda. The notifications were made on behalf of a number of government agencies for a variety of reasons, including: the Environmental Protection Agency for environmental protection; the Consumer Product Safety Commission on product safety; and the Food and Drug Administration for human health and food safety standards. Over the period, the U.S. authorities recognized the need to make improvements in their internal procedures for sub-federal notifications, and initiated a temporary hiatus in notifications in order to make corrections. Therefore, in contrast with the last review period, when 83 sub-federal measures were notified, 16 notifications on sub-federal measures have been made since 1 January 2010, 15 of which have been notified since August 2012.*

Question:

*Are the notifications made by sub-federal entities overseen by the States?*

**RESPONSE:** The U.S. WTO Inquiry Point staff reviews on a regular basis a database of sub-federal proposed measures. The Inquiry Point and the Office of the U.S. Trade Representative work together in close collaboration to notify proposed state technical regulations to the WTO.

Page 60, Para 77

*The agency or agencies responsible for developing technical regulations depend on the product in question and include: the National Highway Traffic Safety Administration for on-road vehicles and tyres; the U.S. Coast Guard for boats; the Alcohol and Tobacco, Tax and Trade Bureau for alcohol and tobacco; the Food and Drug Administration for food, drugs, cosmetics, and medical devices; the Food Safety Inspection Service (FSIS) of the Department of Agriculture for meat, poultry, and egg products; the Environmental Protection Agency (EPA); and the Consumer Product Safety Commission (CPSC) for consumer products not under other agencies' jurisdictions. The National Institute for Standards and Technology (NIST) is the federal agency that coordinates standards activities among federal government agencies with private sector standards-development organizations.*

Question:

*Does the United States recognize any procedure with regard to regulatory cooperation such as equivalence of technical regulations or any other instruments of regulatory co-operations?*

**RESPONSE:** Yes, the United States uses a variety of mechanisms for regulatory cooperation, including, for example, cooperation in standards development organizations; regulator-to-regulator dialogues, such as the International Medical Device Regulatory Forum (IMDRF); regulatory cooperation efforts through regional fora, such as APEC; bilateral regulatory initiatives such as the Regulatory Cooperation Council between Canada and the United States. Depending on the sector and product, U.S. regulators do make equivalency determinations for standards and technical regulations, for example, the Agricultural Marketing Service and its organics standard. Its equivalency procedures for this are on-line at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5087107>.

Page 60, Para 78

*The CPSC is an independent agency set up in 1972 under the Consumer Product Safety Act with general responsibility for ensuring consumer product safety by encouraging the development of effective standards, developing technical regulations where needed, and enforcing compliance with product safety laws and regulations, including the overarching requirement that no product may present an unreasonable risk of injury or death. Although the official preference is to rely on industry's use of voluntary standards, the CPSC and other agencies with responsibility for product and service regulations may develop technical regulations when voluntary standards are not considered adequate or when compliance with voluntary standards is considered unlikely. The government agencies may also be required by law to develop or adopt technical regulations, for example, the Consumer Products Safety Improvement Act required the CPSC to develop technical regulations for toys and all-terrain vehicles. About 200 products are currently subject to technical regulations developed by the CPSC.*

Question:

*What measures does the US take to prevent voluntary standards from becoming disguised technical barriers to trade?*

**RESPONSE:** The American National Standards Institute (ANSI), the U.S. national standards body, has accredited approximately 225 standard development bodies (SDOs), both in the public and private sectors. ANSI has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards set out in Annex 3 of the TBT Agreement.

In addition, to maintain ANSI accreditation, U.S. SDOs are required to adhere consistently to a set of requirements or procedures known as the "ANSI Essential Requirements: Due process requirements for American National Standards," which reflect the TBT Committee Decision principles on international standards development. These due process requirements ensure that standards development processes of ANSI-accredited SDOs are open and impartial manner and allow all interested and affected parties an opportunity to participate in a standard's development. Further, they also ensure that ANSI-accredited SDOs maintain standards development process that reflect openness reflect openness, balance, consensus, and other due-process safeguards such as an opportunity for appeal.

Page 61, Para 81

*At the federal level, institutional responsibility for SPS matters continues to be shared among several government agencies depending on the product and type of risk, while at the state level the authorities may develop their own measures, subject to federal laws and regulations. At the federal level, numerous statutes, along with their implementing regulations, impose SPS requirements in the U.S. market. These statutes include: the Federal Food, Drug, and Cosmetic Act, the Federal Meat Inspection Act, the Plant Protection Act and the Federal Insecticide, Fungicide, and Rodenticide Act. In addition, the Food and Drug Administration (FDA) Food Safety Modernization Act (which amended the Federal Food, Drug, and Cosmetic Act) became law on 4 January 2010 (Box III.1). In*

*general, many SPS measures are subject to the same administrative rulemaking procedures as technical regulations (see above). However, according to the GAO, "[t]he safety and quality of the U.S. food supply is governed by a highly complex system stemming from at least 30 laws related to food safety that are collectively administered by 15 agencies".*

Question:

*In relation to the rule making process in Sanitary and Phytosanitary how does the US consider the parameters to establish that a product is significant or otherwise to US trade?*

**RESPONSE:** Under Executive Order 12866, "Regulatory Planning and Review," OMB is responsible for reviewing "significant regulatory actions" by the agencies, with the exception of the so called "independent" agencies (e.g., CPSC) published in the Federal Register. "Significant regulatory actions" are defined in the Order as regulations that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of this Executive Order.

Those regulatory actions that are likely to impose the economic effects described in subsection (1) above are designated by OMB as "economically significant." This definition is functionally equivalent to the definition of a "major" rule as that term is used in the Congressional Review Act.(2).

For economically significant regulations, the agencies must submit for OMB review, along with the draft regulation, a Regulatory Impact Analysis (RIA). The RIA must provide an assessment of benefits, costs, and potentially effective and reasonably feasible alternatives to the planned regulatory action (see section 6(a)(3)(C)). Preparing RIAs helps agencies evaluate the need for and consequences of possible Federal action. By analyzing alternate ways to structure a rule, agencies can select the best option while providing OIRA and the public a broader understanding of the ranges of issues that may be involved. Accordingly, it is important that a draft RIA be reviewed by agency economists, engineers, and scientists, as well as by agency attorneys, prior to submission to OIRA.

OIRA reviews the draft rule and the RIA for consistency with the regulatory principles stated in the Order, and with the President's policies and priorities. The review determines whether the agency has, in deciding whether and how to regulate, assessed the costs and benefits of available regulatory alternatives (including the alternative of not regulating).

Page 61, Para 82

*The United States is a member of the Codex Alimentarius Commission and the World Organization for Animal Health (OIE), and a contracting party to the International Plant Protection Convention (IPPC). The contact points are in the Food Safety and Inspection Service of USDA for Codex, and the Animal and Plant Health Inspection Services of the USDA for both the OIE and the IPPC.*

Question:

*If the United States is a Member of the OIE and IPPC why does it make application of the international rules and directives conditional upon their appropriateness to the US?*

**RESPONSE:** U.S. regulatory agencies create and apply SPS measures pursuant to U.S. law. In doing so, the regulatory agencies consider international standards, guidelines, and recommendations

when applying SPS measures, consistent with U.S. WTO obligations. Such standards, guidelines, and recommendations are not determinative of U.S. SPS measures, however, particularly where the United States has a higher level of protection than that provided for in the international standard, guideline, or recommendation.



## QUESTIONS FROM MEXICO

B.

**A. Questions on the Report by the United States**

### **IV. Trade policy developments since 2010**

Page 16, paragraphs 60 and 61

*The United States has announced its goal of concluding TPP negotiations in 2013. The White House announced that, during President Obama's visit to South-east Asia, the ASEAN member-countries launched an initiative to expand trade and investment ties in the region, which would lay the groundwork for them to join the TPP. Does the United States believe that the likelihood of continuing to add additional members to the TPP will lead to a delay in reaching the U.S. goal of concluding negotiations in 2013?*

**RESPONSE:** The United States and the ten ASEAN states launched the “U.S.-ASEAN Expanded Economic Engagement” (E3) initiative in November 2012. The E3 is a new framework for economic cooperation designed to expand trade and investment ties between the United States and ASEAN, creating new business opportunities and jobs in all eleven countries. For more information on E3, please refer to the [whitehouse.gov](http://whitehouse.gov) website.

The United States and its negotiating partners share a vision for the TPP based on the long-term objective of reaching an agreement that can potentially expand to include additional countries from the Asia-Pacific region. We continue to discuss with other countries their interest in potentially joining TPP in the future. Potential new entrants must be able to meet the high standards agreed by all TPP members. We believe this is the most effective way to increase trade and investment and deepen regional economic integration. We are confident that we can achieve a comprehensive agreement and continue to work expeditiously towards that end. For more information on TPP, including fact sheets, statements by Ministers and Leaders, and FAQs, please refer to the USTR website.

### **VIII. Small and Medium-Sized Business Trade**

Page 33, paragraph 155

*There are various U.S. agencies responsible for promoting small business exports. There is a proposal to merge these agencies into one in order to make it simpler and easier to provide support to small business owners. Is this proposal likely to be adopted in the near future? Is the hope that if this proposal is approved, it will boost small business exports?*

**RESPONSE:** In January 2012, in an effort to ensure that small businesses have a seat at the table, President Obama elevated the Small Business Administration to a cabinet-level agency. SBA will continue to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise, and to maintain and strengthen the overall economy of the United States.

During the period under review, the Administration also launched BusinessUSA, a one-stop shop to make it easier for businesses to access the services and information they need to help them grow, hire, export, and compete globally. More information on BusinessUSA can be found at: <http://business.usa.gov/>

The National Export Initiative also continues to be a whole-of-government effort, with exports by small and medium businesses as a key priority. The NEI's goal of doubling exports by the end of 2014 is designed so that U.S. Government agencies are focused and working together to ensure that U.S. companies – especially small and medium businesses - have access to markets and can compete on a fair and level basis with foreign competitors, consistent with global trading rules. The Administration is also considering actions to restructure and streamline Federal programs focused on trade and competitiveness.

As established by Executive Order 13534 of March 11, 2010, the Export Promotion Cabinet consists of:

- the Secretary of State;
- the Secretary of the Treasury;
- the Secretary of Agriculture;
- the Secretary of Commerce;
- the Secretary of Labor;
- the Secretary of Energy;
- the Secretary of Transportation;
- the Director of the Office of Management and Budget;
- the United States Trade Representative;
- the Assistant to the President for Economic Policy;
- the National Security Advisor;
- the Chair of the Council of Economic Advisers;
- the President of the Export-Import Bank of the United States;
- the Administrator of the Small Business Administration;
- the President of the Overseas Private Investment Corporation; and
- the Director of the United States Trade and Development Agency.

## **B. Questions on the Report by the Secretariat**

### **XXIII. II. TRADE POLICY AND INVESTMENT REGIMES**

(4) Investment agreements and policies (iii) Investment regulations and restrictions

Page 33, paragraph 25 [sic--page 28, paragraph 34?]

*This paragraph states that there remain a number of restrictions to foreign investment in certain areas. Could the United States specify what areas have restrictions on foreign investment and what type of restrictions they are?*

**RESPONSE:** Foreign investors are generally free to either establish or acquire investments in the United States, subject only to non-discriminatory, generally-applicable laws and regulations. Federal-level measures treat foreign and domestic investors and investments differently in only a small number of sectors. In most cases, the extent of differential treatment is narrow and does not prohibit foreign investment in the particular sector or subsector. A full description of each of these measures is available in the non-conforming measures annexes of recent U.S. BITs and FTAs, available at: <http://www.ustr.gov/>.

### **XXIV. III. TRADE POLICIES AND PRACTICES BY MEASURE**

**(1) Measures Directly Affecting Imports**

Page 30, paragraph 2

*This paragraph gives a explanation of the Automated Commercial Environment. A CBP document on the October 2012 ACE progress report notes that CBP is working with ACE users to determine needs and priorities for delivery of ACE. How are the relevant people consulted and how are the priorities set? Is there a tentative date for full deployment of the program?*

**RESPONSE:** Core functionality for the Automated Commercial Environment (ACE) is planned to be completed in approximately 3 years. This core functionality will establish the foundation for the import/export process. Priorities in scheduling deployments are chosen based on consultation with relevant stakeholders, taking into consideration budget and efficiencies to be gained.

Page 31, last section of paragraph 2

*Given that Congress has not yet approved the extension for implementing the SAFE Act, which requires 100% scanning of all maritime containers shipped to the United States beginning on July 1, 2012, what is the status of implementation of the Act? When will the extension be set or the legal deadline withdrawn?*

**RESPONSE:** The deadline for the 100% scanning requirement has been extended until July 1, 2014. The Secretary of Homeland Security has the authority to extend the deadline again at that time under the conditions outlined in the statute.

Page 31, paragraph 2

*What is the status of implementation of the act requiring 100% cargo scanning on international U.S. inbound flights by December 3, 2012? What impact will this initiative have on international U.S. inbound flight operators?*

**RESPONSE:** Beginning December 3, 2012, all cargo shipments loaded on passenger aircraft must undergo screening for explosives, fulfilling a requirement of the Implementing Recommendations of the 9/11 Commission Act. The screening process announced takes into account costs, business practices, and the potential impact on international partners, both governments and traders.

Page 31, paragraph 3

*This paragraph notes that CBP recently proposed new rules or procedures for the in-bond process, but that final rules have not yet been issued. Does the USA have a planned publication date for the final rules or procedures for the new in-bond process?*

**RESPONSE:** A new comment period regarding the notice of proposed rulemaking for amendments to the inbond process opened in July 2012 and ended in August 2012. CBP is currently analyzing those comments. There is no specific target date at this time for publication of the final notice of rulemaking.

Page 31, paragraph 4

*This paragraph states that the United States is working on the Role of the Broker Initiative. What are the main changes put forth in this initiative? How will these changes affect economic operators?*

**RESPONSE:** CBP's new Role of the Broker initiative seeks to modernize the relationship between the customs broker and U.S. Customs and Border Protection (CBP). One key element of this initiative is to modernize the broker's role by amending certain regulations. The three goals in the new and amended regulations are to: clarify brokers' responsibilities related to importer validation; modernize the regulations to align with current electronic capabilities and business practices; and reinforce the

broker's responsibility to exercise due diligence in conducting business and by introducing a continuing education requirement.

In order to keep interested parties fully aware and involved in the update process, CBP has sought comments and input on all facets of the broker regulations from the widest possible audience. The CBP webpage for this topic can be found at [http://www.cbp.gov/xp/cgov/trade/trade\\_transformation/broker\\_role/](http://www.cbp.gov/xp/cgov/trade/trade_transformation/broker_role/)

**(iii) Rules of origin**

Page 35, paragraph 9

*This paragraph states that the United States has not notified the WTO Committee on Rules of Origin of its preferential rules of origin since 1997. Is there a particular reason why the United States has failed to carry out this notification?*

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

Page 35, (c), paragraph 10

*The Report by the Secretariat notes that different rules apply for domestic products, for example in order to be labeled as "Made in the U.S.A." Given that different rules apply for domestic products, how does the United States ensure that these provisions comply with GATT/WTO Article III.4?*

**RESPONSE:** The United States labelling requirements are fully compliant with its WTO obligations.

**(v) Other charges affecting imports**

**(a) Customs user fees**

Page 42, paragraph 32

*This paragraph states that the United States is expected to issue the final rule on raising the informal entry limit to US\$2,500 in the second half of 2012. Does the United States have a planned date for issuing the rule?*

**RESPONSE:** A final rule raising the informal entry limit to \$2500 was adopted on December 6, 2012. The final rule will go in effect in January 2013. For more information on this change, see, <https://www.federalregister.gov/articles/2012/12/06/2012-29193/informal-entry-limit-and-removal-of-a-formal-entry-requirement>

**(c) Agriculture fees**

Page 44

*Under the Cotton Board Rules and Regulations, which are for cotton research and promotion, the United States levies a fixed assessment on imported cotton and cotton products. It seems the most recent assessment is contained in 76 FR 54078. On June 12, 2012 a proposed rule (77 FR 34855) was issued increasing the value assigned to imported cotton. Similarly, U.S. legislation states that any importer may be reimbursed for assessments levied on cotton produced in the United States. Could you tell us what supporting documents must be submitted by the importer to show that the cotton was produced in the United States? How is this supporting documentation evaluated?*

**RESPONSE:** The Cotton Research and Promotion Program assesses cotton producers and importers of cotton and cotton-containing products. The rate of assessment is \$1.00 per bale plus a supplemental assessment of 5/10 of 1 percent of the value of the bale on cotton producers. An equivalent assessment is calculated on imports of cotton and cotton-containing products.

The objective of the referenced rule was to amend the cotton import supplemental assessment (or the 5/10 of 1 percent of the value of the bale) and change the value of imported cotton so that it reflected the calendar year average of monthly average prices received by U.S. upland cotton producers during 2011. This action is mandated annually by the cotton rules and regulations in 7 CFR 1205.510, which requires imported cotton and cotton-containing products to be the same as those assessed on domestic production of upland cotton.

The Cotton Board administers the Cotton Research and Promotion Program. In order for an importer to receive a reimbursement, the importer should submit a request to the Cotton Board for a reimbursement form or download a reimbursement form from the web site.

The importer must mail a completed application to the Cotton Board. The reimbursement application must show the following:

- 1) Importer of record name, address, phone number, customs service identification number, and a contact person.
- 2) The name for the customs collection district of entry (port) exporting and country of origin.
- 3) Weight of the cotton by HTS.
- 4) Date assessment was paid.
- 5) Total to be reimbursed.
- 6) Certification that the cotton was produced in the United States or is other than upland cotton.
- 7) Proof of payment copy of CBP 7501 (customs entry summary).
- 8) A copy of the commercial invoices filed with customs supporting the entry which show the country of origin of the merchandise or other evidence such as affidavit from the mill, manufacturer or raw cotton contract.
- 9) If the broker is submitting the application on behalf of the importer of record, he/she must submit a letter authorizing the Cotton Board to make the check payable to the broker or a copy of the power of attorney.

The Cotton Board then evaluates the importer's documentation in support of a reimbursement to determine if the cotton was produced in the United States or if the cotton is non-upland.

**(d) Excise taxes**

Page 45, paragraph 38

*This paragraph states that the United States maintains over 100 excise taxes at the federal level on various products and services. The footnote states "For a full detailed description of the taxes and their details, see Joint Committee on Taxation (2011)." Could the United States provide the full reference for the document that should be consulted to see a full detailed description of these taxes?*

**RESPONSE:** Joint Committee on Taxation, Present Law and Background Information on Federal Excise Taxes, January 2011. It is available on JCT's website, [www.jct.gov](http://www.jct.gov).

**(vi) Contingency measures**

**(a) Anti-dumping and countervailing measures**

*Could the United States explain, first, in which type of procedure zeroing continues to be applied and, second, what comparison method is used in these cases?*

*In the annual reviews, it seems as though zeroing is not applied only when the weighted average method is used, which would mean that zeroing could be used when using any other method under Article 2.4 of the Anti-dumping Agreement. Is this right?*

*In which cases would applying the weighted average method not be considered appropriate in an annual review? Cases of targeted dumping? If so, are there other types of cases in which a method other than weighted averages could be used?*

*In cases of targeted dumping, could the United States used the transaction-to-transaction comparison method? If so, would zeroing be applied to these cases?*

**RESPONSE:** As explained in the February 2012 *Federal Register* notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant offsets for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rates. In certain investigations and administrative reviews, the Department of Commerce has evaluated case-specific arguments as to whether an average-to-transaction comparison method is appropriate based the facts of the particular case. The determinations in those investigations and reviews are also published in the *Federal Register*.

**(vii) Quantitative trade measures, restrictions, controls, and licensing**  
**(a) Quantitative restrictions, including prohibitions**

Page 54, paragraph 62

*This paragraph states that the United States has not notified quantitative restrictions since 1999 but that according to the authorities a new notification is under preparation. What type of quantitative restrictions does the new notification under preparation by U.S. authorities refer to?*

**RESPONSE:** The United States most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1.

**(viii) Technical regulations and standards**

Page 58, paragraph 71

*What were the improvements to the internal procedures for sub-federal notifications?*

**RESPONSE:** The U.S. WTO Inquiry Point staff reviews on a regular basis a database of sub-federal proposed measures. The Inquiry Point and the Office of the U.S. Trade Representative work together in close collaboration to ensure that the United States notifies proposed state technical regulations to the WTO. Where appropriate, the Office of the U.S. Trade Representative or other federal agencies work with states as they implement proposed measures.

Page 58, paragraph 72

*What is the aim of the annual report published by the United States since 2010 on measures considered to represent barriers to trade in other countries?*

**RESPONSE:** The aim of the annual report is to respond to the concerns of U.S. companies, farmers, ranchers and manufacturers, which increasingly encounter non-tariff trade barriers in the form of

product standards, testing requirements, and other technical requirements as they seek to sell products and services around the world. The goal is to identify and address unwarranted technical barriers to U.S. exports and discuss areas where engagement has resulted in a reduction in technical barriers.

Page 59, Table III.15

*Could you explain in more detail the procedure for submitting public comments provided for under the Administrative Procedures Act of 1946?*

**RESPONSE:** Under the Administrative Procedure Act of 1946 (APA), before a U.S. agency may issue a final regulation, it must first provide an opportunity for public comment on a proposed rule published in the Federal Register. Any interested person or party, foreign or domestic, may submit comments. The U.S. has enhanced the public's ability to participate in the rulemaking process through its eRulemaking program. A visitor to Regulations.gov can find regulations on a particular subject, determine whether they are open for comment, access important supporting documents, file comments electronically on proposals, and read comments filed by others. The APA does not establish a minimum comment period, however Executive Order 13563 establishes no less than 60-days as the norm. The final rule must be published in the Federal Register no less than 30 days before it is effective. The final rule must provide a statement on the public comments accepted and incorporated into the rule, and/or reasons for not incorporating comments. The only public comments that can be considered in determining the rule are those based strictly on the written submissions made available publicly.

*Is compliance required for programs of work published under the Regulatory Flexibility Act?*

**RESPONSE:** The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their rules on small entities and to evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities when the rules impose a significant economic impact on a substantial number of small entities. Inherent in the RFA is Congress' desire to remove barriers to competition and encourage agencies to consider ways of tailoring regulations to the size of the regulated entities.

The RFA does not require that agencies necessarily minimize a rule's impact on small entities if there are significant legal, policy, factual, or other reasons for the rule's having such an impact. The RFA requires only that agencies determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory alternatives for reducing any significant economic impact on a substantial number of such entities, and explain the reasons for their regulatory choices. Executive Order 13272, signed on August 13, 2002, requires that agencies establish procedures and policies to promote compliance with the RFA.

Page 60, paragraph 76

*What happens if the Office of Management and Budget does not clear new regulations for publication in the Federal Register?*

**RESPONSE:** OMB does not "clear" regulations for publication in the Federal Register. Under Executive Order 12866, OMB oversees an interagency review process prior to the publication of draft "significant" regulations. When OMB concludes its review of a draft regulation, the agency may publish it in the Federal Register. Executive Order 12866 considers "significant" regulations to be ones that raise novel policy issues, require inter-agency coordination, and/or are "economically significant." During OMB's review, the Regulatory Impact Analysis (RIA) and the proposed regulation at issue are examined, and suggestions are made to improve both the RIA and the proposed regulation's cost-effectiveness and to make sure that it comports with the Executive Order's principles and the President's priorities. If the agency refuses to make changes identified during the interagency

review process, or needs more time to make the changes, the agency may withdraw the proposed regulation, or OMB may return the proposed regulation to the agency for reconsideration.

Page 60, paragraph 79

*What mechanisms does the U.S. Government use to promote application of the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the WTO Agreement on Technical Barriers to Trade?*

**RESPONSE:** The American National Standards Institute, a private sector organization and the official U.S. Representative of the United States, has accepted the TBT Code of Good Practice on behalf of its membership of 225 standards development organizations. All public and private standards development organizations have voluntarily accepted the Code of Good Practice. The United States Government provides information to the public on the Code of Good Practice, and the process through which U.S. entities can voluntarily comply, whenever requested.

**(2) Measures Directly Affecting Imports**

**(iv) Official support and related fiscal measures**

Page 70, paragraph 112

*The National Export Initiative set out by the U.S. President in March 2010 has the goal of doubling U.S. exports over five years. In follow-up reports by the White House (September 2010) and the Government Accountability Office (September 2011) Mexico was recognized as an important export market for the USA. What is the U.S. strategy for promoting greater economic and trade integration with Mexico in view of making North America a more competitive region in the global economic and furthering the NEI goals.*

**RESPONSE:** The United States and Mexico work closely to increase trade and strengthen North American competitiveness. In May 2010, President Obama and then Mexican President Calderón issued a joint statement in which they noted: “Mexico and the United States enjoy a vital economic and trading partnership that the Presidents vowed to enhance, reinforcing efforts to create jobs, promote economic recovery and expansion, and shared inclusive prosperity across all levels of society in both countries.” The joint statement, which outlines the work in a number of areas, can be found here:

<http://www.whitehouse.gov/the-press-office/joint-statement-president-barack-obama-and-president-felipe-calder-n>

In addition, the United States also works with Mexico and Canada through the North American Leaders Summit process and the Free Trade Commission established under the North American Free Trade Agreement (NAFTA). The most recent statement, which describes the trilaterally agreed initiatives, by North American Leaders can be found here:

<http://www.whitehouse.gov/the-press-office/2012/04/02/joint-statement-north-american-leaders>

The most recent joint statement by the NAFTA Free Trade Commission describes the work of the Commission and can be found here:

<http://www.ustr.gov/about-us/press-office/press-releases/2012/april/joint-statement-2012-nafta-commission-meeting>

**(3) Other measures affecting investment and trade**

**(ii) State trading enterprises, government corporations, and government enterprises**



Pages 74-75, paragraphs 126-127

*Can one company be considered both a government corporation and a state trading enterprise? What are the criteria for these categories? For example, the Commodity Credit Corporation appears in both categories (Tables III.20 and III.21) Could you expand on this topic?*

**RESPONSE:** “State trading enterprises,” as used in GATT Article XVII, can encompass both government and private entities with special privileges, regulatory or otherwise. In the U.S. domestic regime, the term “government corporations” refers generally to government-owned entities that may provide goods or services with commercial attributes. However, each such entity may be structured differently—depending on the statutory authority under which it is created or its organizational documents. A U.S. Government Corporation may or may not be a “state-trading enterprise” for the purposes of GATT Art. XVII. Listing the Commodity Credit Corporation in both of the cited categories demonstrates a sense of full transparency with regard to the role and authority for this agricultural entity.

**(iii) Government procurement**

Paragraph 128

*With regard to paragraph 128, could you provide the percentage of procurement carried out under treaties?*

**RESPONSE:** Current U.S. procurement statistics are based on data contained in the Federal Procurement Data System (FPDS) for procurements specifically covered under the WTO Agreement on Government Procurement. The data does not capture procurements that are not covered under the GPA such as lower threshold procurements under other trade agreements and defense procurements covered under reciprocal defense procurement agreements. Therefore the United States is unable to provide the percentage of procurement carried out under all international agreements.

Paragraph 129

*Could you indicate the amount of procurement carried out under the exceptions mentioned in paragraph 129?*

**RESPONSE:** The United States provides statistics on procurement covered by the GPA to the WTO Committee on Government Procurement. The United States does not record procurement statistics specifically addressing procurements subject to Buy American requirements and procurements invoking exceptions to Buy American requirements.

Paragraph 137

*On what amount is the 2% excise tax referred to in paragraph 137 applied?*

**RESPONSE:** The tax imposed is equal to 2 percent of the amount of the specified Federal procurement payment. The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. The United States would refer Mexico to the text of the legislation for an elaboration of its provisions.

**(v) Competition policy**

Page 83, paragraph 146

*What are the main differences between the responsibilities of the Department of Justice (DOJ) and the Federal Trade Commission (FTC)?*

**RESPONSE:** The main differences between the responsibilities of the two agencies are as follows:

- DOJ has exclusive authority for criminal enforcement of the antitrust laws. Therefore, conduct for which criminal remedies are most appropriate (*e.g.*, price fixing, bid rigging) are handled exclusively by DOJ.
- FTC has the authority to bring cases of “unfair methods of competition.”
- FTC also has exclusive authority to bring cases involving “unfair and deceptive acts and practices,” which is the source of its consumer protection jurisdiction.

With regard to mergers and civil enforcement against anticompetitive agreements and unilateral conduct, the responsibilities of FTC and DOJ are virtually identical. In practice, FTC and DOJ divide such cases between them based on agency expertise and experience. For example, cases involving the pharmaceutical industry would normally be handled by FTC, and the DOJ handles cases in sectors that are exempted by the FTC Act, such as banking and telecommunications.

*How is the judicial review process on FTC and DOJ resolutions carried out?*

**RESPONSE:** DOJ is a prosecutorial agency, and thus does not resolve cases itself. Its cases are decided by judges of the Federal courts of general jurisdiction, that is by the United States District Courts. Those decisions may be reviewed upon application of either DOJ or the parties to the appropriate United States Court of Appeal and, subsequently by the United States Supreme Court, upon application and in its discretion.

The FTC, on the other hand, uses an administrative model but can seek interim relief in federal District Court. When the FTC prosecutes a case directly through the courts, the process is the same as described above. When it prosecutes a case administratively, the process is as follows:

- First, following an initial investigation by FTC staff, the Commission determines whether there is reason to believe that the law may have been violated and whether a proceeding would be in the public interest. If so, the Commission votes to issue a Complaint. At this point, the FTC staff becomes the prosecutor (“complaint counsel”) and the Commissioners change from a prosecutorial to a judicial function.
- The case is tried by an Administrative Law Judge (“ALJ,”) an independent decision maker appointed under the authority of the Office of Personnel Management, who, based on a preponderance of evidence standard, makes findings of fact and conclusions of law. The trial is guided by the FTC Act, the Administrative Procedure Act, case law interpreting these statutes, and the FTC's Rules of Practice.
- Complaint counsel or a respondent can appeal the ALJ’s decision to the Commission. Following briefing and oral argument, the Commission finds liability or dismisses the Complaint. The FTC’s final decision can be appealed by the parties – but not by complaint counsel -- to the appropriate Court of Appeals, and ultimately to the Supreme Court, in the manner described above.

*Can there be disputes between DOJ and FTC resolutions?*

**RESPONSE:** No. At the outset of any investigation, a procedure is used to “clear” a matter to one agency or the other. Once a matter has been cleared to one agency, the other will take no action in that case, and there is therefore no possibility of a conflicting resolution of the matter.

*What are the dispute resolution mechanisms for the two agencies?*

**RESPONSE:** The sole dispute resolution mechanism between the agencies concerns the question of which agency should receive clearance to handle a particular case. Clearance considerations may be necessary, for example, when a transaction involves multiple sectors in which the relative expertise of each agency differs, or in new sectors in which neither agency has experience. In such cases, the mechanism involves a determination of which agency has the better expertise to investigate the particular matter. If not resolved at staff level, clearance disputes are ultimately resolved through interaction between the Chairman of the FTC and the Assistant Attorney General in charge of the Division.

Page 83, paragraph 147

*What factors are taken into consideration when determining the priority of cases?*

**RESPONSE:** FTC and DOJ review all notified mergers and challenge them whenever it appears that they will substantially lessen competition. In non-merger cases, the FTC and DOJ leadership set priorities, typically considering factors such as: the perceived magnitude of consumer injury, the value of establishing precedent to guide judicial enforcement in cases of novel types of conduct or structure of industries, and whether the conduct is likely to be addressed by private enforcement.

*What penalties are provided for under the Acts mentioned? How are these penalties imposed? Who is the recipient of income from fines? What factors are considered attenuating/aggravating when imposing administrative/criminal penalties?*

**RESPONSE:** : No fines are authorized for civil cases, but restitution and disgorgement can be pursued in appropriate cases. The Sherman Act allows fines and imprisonment for criminal violations of the antitrust laws. See the U.S. Sentencing Guidelines (United States Sentencing Commission, Guidelines Manual (2012)).

*Can DOJ/FTC institute protective measures and securities?*

**RESPONSE:** Both FTC and DOJ may apply to the appropriate Federal District Court for a preliminary injunction that will enjoin anticompetitive conduct until a full determination on the merits may take place. In the case of DOJ, the conduct would be enjoined until the court itself could make a final decision. In the case of FTC, a successful application would enjoin the conduct until the FTC decides the case, or in a case in which a final resolution is sought from a court, when the court makes a final decision. The FTC routinely seeks preliminary injunctions in merger cases and in FTC consumer protection cases. They are sought only occasionally in other cases.

*From DOJ's perspective, how should a surprise inspection be carried out successfully?*

**RESPONSE:** This may be done only in cartel cases and only by search warrant issued by a federal magistrate or district judge..

*Can cartels made up of companies that have no presence in the USA in the form of subsidiaries but that supply their products from their country of origin be penalized?*

**RESPONSE:** Yes, under appropriate circumstances. See the US Department of Justice and Federal Trade Commission's Antitrust Enforcement Guidelines for International Operations, available at <http://www.justice.gov/atr/public/guidelines/internat.htm>.

*What are the limiting factors of the cooperation agreements entered into by DOJ for penalizing international cartels? What are the limiting factors of the cooperation agreements entered into by FTC for penalizing international mergers?*

**RESPONSE:** The FTC and DOJ cooperate with non-U.S. counterparts pursuant to formal bilateral<sup>\*\*\*\*</sup> and multilateral arrangements<sup>\*\*\*\*\*</sup>, although enforcement cooperation also takes place in their absence. These agreements serve as a catalyst for international cooperation, but they are not legally necessary for cooperation to take place. Except for MLATS and MLAAs, they do not change the signatories' laws, including those concerning the treatment of confidential information. Accordingly, these agreements do not allow for sharing confidential information that is otherwise prohibited, absent a waiver from the party.

*How do you determine in practice whether a company has a dominant position? What sort of evidence may be used to show this?*

**RESPONSE:** Section 2 of the Sherman Act prohibits unlawful monopolization, attempts to monopolize and conspiracies to monopolize.<sup>\*\*\*\*\*</sup> The first two of these offenses concern single-firm conduct. The "monopolizing" offense has two elements: (1) "the possession of monopoly power in the relevant market" and (2) "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." The second offense, "attempt to monopolize," requires that the firm be (1) "engaged in predatory or anticompetitive conduct" with (2) "a specific intent to monopolize" and that (3) "dangerously threatens" to monopolize.

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<sup>\*\*\*\*</sup> The United States has bilateral cooperation agreements with nine jurisdictions: Germany (1976); Australia (1982); the European Communities (1991); Canada (1995); Brazil, Israel, and Japan (1999); Mexico (2000); and Chile (2011), and the Agencies entered into Memoranda of Understanding with the Russian Federal Anti-Monopoly Service (2009), the three Chinese Anti-Monopoly agencies (2011), and the Indian Ministry of Corporate Affairs and the Competition Commission of India (2012). See <http://www.ftc.gov/oia/agreements.shtm>. In addition, the United States is party to approximately 80 Mutual Legal Assistance Treaties (MLATs), which are treaties of general application pursuant to which the United States and another country agree to assist one another in criminal law enforcement matters. The United States is also a party to an antitrust-specific mutual legal assistance agreement (MLAA) with Australia, an agreement authorized by domestic

legislation. See International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. § 6201 *et seq.*

<sup>\*\*\*\*\*</sup> The 1995 OECD Council Recommendation on antitrust enforcement cooperation ("OECD Cooperation Recommendation"), provides important general guidance for member countries to follow when an investigation or proceeding may affect another member's important interests. The ICN also recently developed the International Competition Network's Framework for Merger Review Cooperation, available at: <http://www.internationalcompetitionnetwork.org/uploads/2011-2012/icn%20framework%20for%20merger%20review%20cooperation.pdf>

<sup>\*\*\*\*\*</sup> Section 5 of the FTC Act is solely within the jurisdiction of the Federal Trade Commission. Section 2 of the Sherman Act is enforced by the U.S. Department of Justice; actions under Section 2 also may be brought by states and private parties. The Federal Trade Commission does not have jurisdiction under Section 2, but Section 5 of the FTC Act applies to conduct that would also violate the Sherman Act (including violations of Section 2). See, e.g., *FTC v. Cement Institute*, 333 U.S. 683, 694 (1948).

The Division and the FTC determine whether a firm has monopoly power, that is, “the power to control prices or exclude competition,” on a case-by-case basis, based upon an evaluation of the particular situation. The agencies are likely to consider a range of factors (including market shares and market position, durability of market power, barriers to entry and expansion, economies of scale, and buyer power). These factors are applied as part of an overall assessment of the market and the participant’s position therein, rather than in a checklist-type manner and it is not possible in the abstract to say how each of them would be weighed in determining whether “the power to control price or exclude competition” was present.

Evidence used in the assessment of monopoly power typically includes the parties’ own documents, oral or written testimony by the parties and other market participants, and economic evidence that would establish how firms would behave under different competitive conditions. The term “dominance” is not used in U.S. antitrust law.

Additional information on the agencies’ approach to the Assessment of Substantial Market Power, is available at: Section B of the response of the United States Federal Trade Commission and Department of Justice to the ICN’s Unilateral Conduct Working Group Questionnaire addresses <http://www.internationalcompetitionnetwork.org/uploads/questionnaires/uc%20objectives/us%20response.pdf>

*What are the main tasks carried out by DOJ/FTC to advocate for competition?*

**RESPONSE:** FTC and DOJ both respond to and create opportunities to share with regulators and legislators their experience with the costs and benefits of particular types of regulation, with an eye to encouraging regulations that promote competition and benefit consumers and discourages those that impose inappropriate or unintended barriers to competition and costs to consumers.

*What cross-border cooperation mechanisms do the agencies that monitor competition in the USA have?*

**RESPONSE:** If the reference to “agencies that monitor competition in the USA” means the FTC and DOJ, these agencies (as noted above) cooperate with non-U.S. counterparts pursuant to formal bilateral<sup>†††††</sup> and multilateral arrangements,<sup>†††††</sup> although the agencies are also able and willing to cooperate in their absence. The FTC and DOJ encourage informal communication and coordination with their foreign counterparts, subject to confidentiality safeguards.

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<sup>†††††</sup> The United States has bilateral cooperation agreements with nine jurisdictions: Germany (1976); Australia (1982); the European Communities (1991); Canada (1995); Brazil, Israel, and Japan (1999); Mexico (2000); and Chile (2011), and the Agencies entered into Memoranda of Understanding with the Russian Federal Anti-Monopoly Service (2009) and the three Chinese Anti-Monopoly agencies (2011), and the Indian Ministry of Corporate Affairs and the Competition Commission of India (2012). *See* <http://www.ftc.gov/oia/agreements.shtm>. In addition, the United States is party to approximately 70 MLATs, which are treaties of general application pursuant to which the United States and another country agree to assist one another in criminal law enforcement matters. The United States is also a party to an antitrust-specific mutual legal assistance agreement with Australia, an agreement authorized by domestic legislation. *See* International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. § 6201 *et seq.*

<sup>†††††</sup> The 1995 OECD Council Recommendation on antitrust enforcement cooperation (“OECD Cooperation Recommendation”), provides important general guidance for member countries to follow when an investigation or proceeding may affect another member’s important interests. The ICN also recently developed a Framework for Merger Review Cooperation, available at: <http://www.internationalcompetitionnetwork.org/uploads/2011-2012/icn%20framework%20for%20merger%20review%20cooperation.pdf>.

*How could international cooperation between U.S. and other competition agencies be improved?*

**RESPONSE:** The existing framework for international cooperation provides incentives for competition agencies to engage in, and for businesses to facilitate, international cooperation in instances in which there are contemporaneous investigations and overlapping interests. Increased transparency of agency practices and greater awareness by agencies, parties, and third parties of the benefits of enforcement cooperation can strengthen everyone's willingness to engage in and facilitate effective international cooperation. More transparency and certainty about the treatment and use of confidential information can increase the willingness of parties to facilitate international cooperation and agencies to trust each other in the context of exchanging information. In addition, as a practical matter, the Agencies have found that informal contact between agencies – as early as possible in the investigation – is extremely beneficial, and should be promoted.

Page 83, paragraph 148

*How do DOJ/FTC intercede on laws and regulations that create or incentivize anti-competitive practices?*

**RESPONSE:** DOJ and FTC employ their advocacy tools, described above, to address these issues, but do not intervene as parties, but only as *amici*.

*Do DOJ/FTC have the power to penalize anti-competitive practices by government entities?*

**RESPONSE:** Such powers do exist with regard to certain state and local entities. The power that DOJ or FTC has with respect to anticompetitive practices by many federal government entities is the power of persuasion.

Page 84, paragraph 149

*What is the procedure for investigating and applying conditions/penalties on mergers that have anti-competitive effects in the USA?*

**RESPONSE:** The FTC provides extensive information regarding its merger review process on its website. Notably, it has established a "Merger Review" resource page, available at <http://www.ftc.gov/bc/mergers.shtm>, that provides guidance on the investigative process, including a document outlining the steps in the review process, and on remedies, including guidance on negotiating merger remedies. Please refer to the Antitrust Division Manual, *supra*, with regard to the DOJ.

*What kind of evidence is taken into consideration to prove that the potential economic efficiency benefits resulting from a given economic merger are greater than the potential negative impact of the deal?*

**RESPONSE:** Information on the U.S. approach to efficiency claims in merger matters is provided in the U.S. submission to the OECD Roundtable on the Role of Efficiency Claims in Antitrust Proceedings, available at: [http://www.ftc.gov/bc/international/docs/1210efficiencies\\_US.pdf](http://www.ftc.gov/bc/international/docs/1210efficiencies_US.pdf) and detailed in §10 of the DOJ/FTC Horizontal Merger Guidelines, available at: <http://www.ftc.gov/os/2010/08/100819hmg.pdf>.

In part, the Guidelines note that efficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms, and that it is incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm's ability and incentive to compete, and why each would be merger-specific.

*What is the procedure for investigating and applying conditions/penalties on international mergers that have anti-competitive effects in the USA?*

**RESPONSE:** The U.S. antitrust agencies review cross-border and domestic mergers and acquisitions in the same manner, applying the same processes and legal standards. Thus, the procedures referred to above apply equally to cross-border mergers.

Page 84, paragraph 149

*This paragraph states that the Federal Trade Commission amended the Hart-Scott-Rodino Act on pre-merger notification rules and that the new rules include significant changes. Could you tell us what these significant changes are and what their impact will be?*

**RESPONSE:** Following a public comment period, the [Federal Trade Commission](#) and the Department of Justice made changes to the Hart-Scott-Rodino (HSR) rules, the premerger notification form and instructions to reduce the filing burden and streamline the [form](#) parties must file when seeking antitrust clearance of proposed mergers and acquisitions under the HSR Act and the Premerger Notification Rules.

The revisions were part of ongoing efforts by the FTC and DOJ to review their regulations, ensure that the rules are necessary and up-to-date, and eliminate unnecessary or potentially overly burdensome reporting requirements for filers. The changes are intended to make the HSR form easier to complete, reduce the burden for most filers, and make the premerger notification review program more effective for both agencies.

In particular, the revised HSR form deletes several categories of information that, over time, the agencies have viewed as unnecessary to their preliminary merger review. For example, HSR filers are no longer required to provide copies of documents – whether in hard copy or via electronic link – filed with the Securities and Exchange Commission, report economic code “base year” data, or give a detailed breakdown of all the voting securities to be acquired. The new form also requires filers to provide the FTC and DOJ with narrowly focused additional documents that will help expedite the merger review process.

The revised form changes certain kinds of required reporting, such as revenue information by industry NAICS (North American Industry Classification System) code, and the identity of holders and holdings of the entities making a filing. In addition, new concepts are introduced that are designed to expedite the antitrust review, including reporting information about “associates” of the acquiring person. Changes also include minor revisions to the HSR Rules to address omissions from the 2005 Rule changes involving unincorporated entities.

The Final Rules and Form are available at: <http://www.ftc.gov/os/fedreg/2011/07/110707hsrfrm.pdf>.

## **XXV. IV. TRADE POLICIES BY SECTOR**

### **(1) Agriculture**

#### **(ii) Agriculture policies**

Page 103, paragraph 16

*This paragraph states that for the year ending September 30, 2011, the Export Credit Guarantee Program registered guarantees stood at US\$4.1 billion, mostly for exports of wheat, maize, soybeans and soybean products, and cotton. Does the United States have public information about the support granted under the Export Credit Guarantee Program by year, product, country, and credit amount?*

**RESPONSE:** Program utilization by commodity and region is available at the USDA FAS website: <http://www.fas.usda.gov/excredits/Monthly/ecg.html>

Page 104, paragraphs 18 and 19

*Both paragraphs state that the FAS administers a number of programs to promote exports. Does the United States have public information about the annual budgets for each program and the amount of support granted under these programs by year, product, country, and promotion program?*

**RESPONSE:** The requested information is not publically available.  
**XXVI.**

Pages 103-104, paragraphs 16, 18 and 19

*These paragraph describe a number of programs to promote agricultural exports from the United States. Is there a connection between these export promotion programs and the National Export Initiative?*

**RESPONSE:** These programs promote U.S. agriculture and therefore, in some cases may support the objectives of the National Export Initiative.

**XXVII.**

Page 105, paragraph 22

*This paragraph states that the largest budgetary outlays for programs operated by the USDA have been under the Supplemental Nutrition Assistance Program and that most of these funds go towards providing vouchers for purchases of food in retail outlets (including imported as well as domestic products) by people and families with low incomes. Does the United States have statistics that distinguish between the internal aid used to purchase domestic commodities and that used to purchase imported commodities, and statistics on the origin of these products?*

**RESPONSE:** The United States does not collect such statistics or information.

### **(3) Services**

Page 117

*What action has the U.S. Government taken to comply with its commitments under NAFTA to allow international cargo transport services by truck between Mexico and the United States?*

**RESPONSE:** On July 6, 2011, the U.S. Department of Transportation and Mexico's Secretariat of Communications and Transportation signed an agreement that established a reciprocal, phased-in program that provides for the authorization of both Mexican and United States long-haul carriers to engage in cross-border operations. Under the program, Mexican carriers have been applying for and receiving authorization to engage in cross-border operations.

### **(ii) Financial services**

Page 122, paragraph 72

*With regard to the Dodd-Frank Act of July 2010 reforming the U.S. financial system, What is the new and comprehensive regulatory framework and the new markets, entities, and activities to which the regulation will apply, and what are the possible effects of the reform on cross-border application?*

**RESPONSE:** A comprehensive list of ongoing rulemaking under the Act can be found at : <http://www.stlouisfed.org/regreformrules/>





### ADDITIONAL QUESTIONS FROM MEXICO

1. *Chapter III, Trade Policies and Practices By Measure, paragraph 48, states that the U.S. Department of Commerce modified its methodology to address the issue of zeroing in administrative reviews. It further explains that in administrative reviews, except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with monthly weighted average normal values, and will grant an offset where the export price exceeds the normal value. That means that the Department of Commerce has modified its comparison methodology in administrative reviews from weighted average against individual transactions to weighted average against weighted average, except where it deems more appropriate to use another comparison method.*
  - a. *Mexico notes that the U.S. regulations do not define or explain the specific circumstances under which the Department would determine that it is more appropriate to apply a different comparison method. Therefore, Mexico is asking the United States to provide clarification as to the specific circumstances under which the Department would move away from its current comparison method of using weighted averages for administrative reviews and which comparison method the Department would use in such cases.*
  - b. *Mexico would also ask the United States to comment in particular on whether the circumstances under which the Department would deem it more appropriate to use another comparison method are related to finding a pattern of export prices that differs significantly among different purchasers, regions, or time periods and using that as justification for comparing the weighted average to individual transactions, as provided for in Article 2.4.2 of the Anti-dumping Agreement. In that case, Mexico would ask the United States to explain the methodology that it would use to determine whether there is a significantly different pattern of export prices.*

**RESPONSE:** As explained in published *Federal Register* notices, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant offsets for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate.

2. *Moreover, paragraph 48 states that the United States abandoned the use of zeroing when calculating margins in original investigations based on weighted average to weighted average comparisons in 2006. However, it is Mexico's understanding that the Department could also depart from the weighted averages method in original investigations. Mexico would ask the United States to list the instances since 2006 in which it departed from the weighted averages comparison in original investigations, the reasons for the departure, and the method used in each case.*

**RESPONSE:** As explained in published *Federal Register* notices, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant offsets for all such comparisons that show

export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate.

3. *With regard to paragraphs 72 and 77 of the Report by the Secretariat, Mexico notes that the U.S. Congress has promulgated laws that fit the definition of "technical regulations" in accordance with the TBT Agreement. Technical regulations have been subject to dispute settlement proceedings in which Mexico has participated as a complaining country or third party. How does the U.S. Government intend to ensure that Congress complies with Articles 2.5 and 2.9 of the TBT Agreement regarding the preparation, adoption and application of technical regulations in drafting its laws?*

**RESPONSE:** The United States, like Mexico and other Members, endeavors to comply with all WTO obligations, including those under the Agreement on Technical Barriers to Trade. In addition, proposed and final legislation of the U.S. Congress and related information can be found on the THOMAS database of the Library of Congress at <http://thomas.loc.gov/home/thomas.php>.

4. *Furthermore, how will it ensure that the laws originated in Congress comply with Article 2.1 of the TBT Agreement?*

**RESPONSE:** The United States, like Mexico and other Members, endeavors to comply with all WTO obligations, including those under the Agreement on Technical Barriers to Trade.

## QUESTIONS FROM NEW ZEALAND

### REPORT BY THE WTO SECRETARIAT (WT/TPR/S/275)

#### SECTION II: TRADE POLICY AND INVESTMENT REGIMES

##### (4) INVESTMENT AGREEMENTS AND POLICIES

###### (iii) Investment regulations and restrictions

WT/TPR/S/275, p. 28, para. 35-36

*Section II, paragraph 35 notes that a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas: one example provided was a provision in the Agricultural Foreign Investment Disclosure Act that requires foreign persons or an interest by a foreign person in agricultural land to submit a report to the Secretary of Agriculture within a specified timeframe.*

*Section II, paragraph 36 notes that the number of notices received and investigations undertaken by the Committee on Foreign Investment in the United States (CFIUS) has increased steadily.*

#### Questions:

1. *New Zealand would welcome further information about the report required by the Agricultural Foreign Investment Disclosure Act: including
  - a. *What information is required to be provided?*
  - b. *What is the purpose of the report?**

**RESPONSE:** The CRS report cited in paragraph 35 of the Secretariat's Report discusses certain federal-level measures that "impact foreign investment in the United States," including measures that do not restrict foreign investment. The Agricultural Foreign Investment Disclosure Act is one among these types of measures that the report discusses, a measures that is "information-gathering and disclosure in nature," rather than a "restriction" on foreign investment. The report itself, which is public, discusses "major requirements" of the Act, and provides a citation for the Act within the Code of Laws of the United States. Information about data collected pursuant to the Act (and its purpose) can be found at the website of the United States Department of Agriculture (<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=afa>).

2. *Could the United States account for the 70 percent increase in CFIUS notices, and the 60 percent increase in the number of CFIUS investigations in the period 2009 – 2011.*

**RESPONSE:** There was a significant decline in the number of notices of covered transactions from 2008 (165) to 2009 (65) and then an appreciable increase in the number of notices from 2009 to 2010 (93), followed by a further increase in 2011. This trend indicates a general correlation between the number of notices and macroeconomic conditions. While there may have been an increase in the absolute number of CFIUS investigations during the period 2009-2011, the overall proportion of cases going to investigation has remained relatively constant from 2009-2011. CFIUS considers each transaction on a case-by-case basis, and the disposition of any particular case—be it review or investigation—depends on the unique facts and circumstances of the case.

#### SECTION III: TRADE POLICIES AND PRACTICES BY MEASURE

##### (1) MEASURES DIRECTLY AFFECTING IMPORTS

###### (iii) MFN applied tariffs

WT/TPR/S/275, p. 39, para 20

*Table III.4 of the Secretariat's Report notes that the percentage of domestic tariff peaks have remained steady at their 2009 levels, after having increased previously. A vast majority of those peaks (50%) are in the textile and apparel sector. The table also suggests that a large percentage of non-ad valorem tariffs are still applied by the United States.*

Questions:

3. *What action is the United States contemplating to address tariff peaks?*

**RESPONSE:** The U.S. duty structure is a result of several successive rounds of multilateral trade negotiations. As shown in the Table III.4 of the Secretariat's Report, incidence of international tariff peaks (defined as any tariff rate at or above 15 percent) in the U.S. schedule has declined from 6.6 percent in 2002 to 5.0 percent in 2012. As is the case with other Members, the incidence of tariff peaks in the U.S. tariff schedule would be further reduced through balanced, ambitious multilateral trade liberalization.

4. *How transparent are the non-ad valorem tariffs and, in the interests of greater transparency, is the United States giving any consideration to converting these to ad valorem tariffs?*

**RESPONSE:** The United States remains committed to multilateral trade liberalization and views that process as the appropriate means to consider conversions of its non-ad valorem tariffs to ad valorem tariffs.

**(vii) Technical regulations and standards**

WT/TPR/S/275, p. 58, para 71

*Section III, paragraph 71 notes that the United States instituted a temporary hiatus on sub-federal notifications to the WTO Committee on Technical Barriers to Trade (TBT), with only 16 sub-federal notices made since January 2010 (compared with 83 during the previous review period). We note that of the sixteen sub-federal measures notified to the TBT Committee in the review period, fifteen were notified in the three months from August 2012.*

Questions

5. *Does this imbalance of timing reflect the end of the "hiatus" referred to in the report, and are there any other reasons why relatively few sub-federal measures have been notified in the review period (compared to 83 in the previous period)?*

**RESPONSE:** The United States is currently notifying sub-federal measures.

6. *What processes exist to ensure that technical regulations and conformity assessment procedures prepared and adopted by states and sub-federal entities comply with WTO TBT Agreement disciplines and obligations?*

**RESPONSE:** The U.S. WTO Inquiry Point staff reviews on a regular basis a database of sub-federal proposed measures. The Inquiry Point and the Office of the U.S. Trade Representative work together in close collaboration to ensure that the United States notifies proposed state technical regulations to the WTO. Where appropriate, the Office of the U.S. Trade Representative or other federal agencies work with states as they implement proposed measures.

7. *Is state-level regulation subject to a review process similar to that undertaken by the OMB for federal regulation?*

**RESPONSE:** A number of state governments have developed review processes that are similar to the federal-level review process.

**(2) MEASURES DIRECTLY AFFECTING EXPORTS**

**(iv) Official support and related fiscal measures**

**(a) National Export Initiative**

WT/TPR/S/275, p. 70, para 112

*Section III, paragraph 112 notes that the United States has undertaken a National Export Initiative since 2010, with the goal of doubling exports over five years.*

Question

8. *What has been the impact of the National Export Initiative thus far, and which measures does the United States consider to have been the most successful in improving the United States export environment?*

**RESPONSE:** The annual National Export Strategy tracks and measures the Federal Government's progress in implementing the NEI recommendations including the effectiveness of policies and measures undertaken. For full details see the 2011 National Export Strategy at:

<http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf>

The 2012 National Export Strategy is expected to be publically released at the end of the year.

**(3) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

**(ii) State trading enterprises, government corporations, and government enterprises**

WT/TPR/S/275, p. 73, paras 124-127

*Section III para 124 notes that the United States has a number of entities that contain elements of governmental and corporate organization. Paragraph 126 notes that some entities have special privileges and receive budgetary allocations.*

Question

9. *What level of support is provided for similar entities at the sub-federal level?*

**RESPONSE:** Support at the sub-federal level in the form of government assistance that could be construed a subsidy under the Agreement on Subsidies and Countervailing Measures is detailed in the U.S. notification to the Committee on Subsidies and Countervailing Measures (see, for example, G/SCM/N/220/USA; 19 October 2011). Data on other support provided at the sub-federal level is not collected in a systematic manner on a consistent basis.

**(iii) Government procurement**

**(b) United States procurement legislation**

WT/TPR/S/275, p. 76, paras 129-130 and WT/TPR/G/275, p.5

*We note that the United States includes "maintenance of open, competitive markets" among the fundamental features of United States trade policy (U.S. Government Report, I.5 on page 5). In the*

area of government procurement, the importance of competition is also reflected in the Competition in Contracting Act enacted in 1984 which, as described in the WTO Secretariat's report, "introduced more competition through full and open competition in the awarding of government contracts, with the goal of reducing the costs of procurement" (WTO Secretariat Report, paragraph 132 on page 77). The United States government procurement regime however continues to include a number of competition-restricting measures.

As discussed in the WTO Secretariat's report (paragraphs 129-130 on pages 76-77), U.S. Federal Government agencies are generally required under the Buy American Act 1933 to purchase domestic goods (subject to Presidential waivers under the Trade Agreements Act 1979), although an agency is allowed to use a foreign supplier if the price of the domestic product is "unreasonable". The threshold for determining "unreasonable" is generally 6% (12% for a contract involving a small business or labor surplus area, and 50% for the Department of Defense). These explicit value thresholds are a partial restriction of competition, but are at least transparent and allow for evaluation of potential foreign sources.

At the same time, however, the United States pursues the further policy of reserving contracts exclusively for designated groups, including "set-asides" for small business, as described in paragraph 134 on page 77-78 of the WTO Secretariat's report.

#### Questions

10. *Would the United States clarify how and to what extent procuring agencies are required to balance the requirements of the small business set-aside policy against the acknowledged benefits of competition in government procurement?*

**RESPONSE:** The U.S. small business set-aside policy is based on federal statute. The statute seeks to ensure that a fair proportion of contracts or subcontracts for property and services for the federal government are made to small businesses. As the federal procurement laws and regulations recognize, competition limited to small businesses is a type of competitive procedure,—and therefore the government receives benefits of competition even when using a set-aside.

11. *What proportion of total government procurement spending since the 2010 Trade Policy Review was spent in pursuance of 'Buy America' provisions?*

**RESPONSE:** The United States does not have such information.

12. *From data shown in the Federal Procurement Data System [[https://www.fpds.gov/fpdsng\\_cms/](https://www.fpds.gov/fpdsng_cms/)], the market-opening effect of presidential waivers under the Trade Agreements Act 1979 from Buy American Act requirements appears to be relatively insignificant. Would the United States please comment?*

**RESPONSE:** The FPDS has not been able to fully capture the country of origin of goods or services procured by a covered federal agency. Because identifying the country of origin of goods and services procured by the government is a challenge shared by many GPA Parties, the WTO Committee on Government Procurement will undertake a Statistics Work Program when the revised GPA enters into force, which will seek, *inter alia*, to find a more accurate means of capturing country of origin statistics.

#### **(d) Special provisions, exemptions etc**

WT/TPR/S/275, p. 78, para 137

*Section III, paragraph 137 notes that the United States “passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for goods and services. When the law goes into effect, an amount of 2% is applied to foreign entities not party to an international procurement agreement.”*

Question

13. *Could the United States please clarify the present status of this new measure, and why it discriminates against foreign, as distinct from domestic, procurement?*

**RESPONSE:** The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. Pursuant to its terms, the effective date of the legislation was the date of its enactment, January 2, 2011. The U.S. Internal Revenue Service and the Treasury Department are in the process of drafting regulations. This legislation is fully consistent with U.S. obligations under the WTO Agreements and, pursuant to the express terms of the statute, the U.S. government shall apply the legislation “in a manner consistent with United States obligations under international agreements.”

**(iv) Subsidies and other government assistance**

WT/TPR/S/275, p. 79, para 141

*Section III paragraph 141 notes that the agriculture and energy and fuel sectors are the largest recipients of government assistance, and have grown in recent years. The report notes growth in the use of incentives to find alternatives to fossil fuels.*

Question

14. *Could the United States provide an update on the Administration’s plans to reduce and reform its programme of fossil fuel subsidies?*

**RESPONSE:** The U.S. national subsidy phase-out strategy calls for the elimination of around \$4 billion a year in non-R&D preferential tax incentives for the coal, oil, and gas industries, conditional on Congressional action. These tax incentives were also eliminated in the President’s FY 2011, 2012, and 2013 budget proposals; to date, Congress has not acted to remove any of them.

**(v) Competition policy**

WT/TPR/S/275, p. 83, para 148

*Section III paragraph 148 notes a range of immunities from United States anti-trust legislation, particularly relating to agriculture, in particular the Agricultural Marketing Agreement Act of 1937 allows the Secretary of Agriculture to enter into marketing agreements with producers and processors of agricultural commodities, and these are specifically exempt from antitrust laws; the Export Trading Company Act of 1982 provides certain antitrust immunity for export trade and export trade activities; and the Webb-Pomerene Act provides immunity for associations of otherwise competing businesses to engage in collect export sales.*

Question

15. *We would welcome advice from the United States as to how many times these provisions allowing exemptions from antitrust laws have been utilised in the last 15 years and to provide a break-down/summary of the various things that have been exempted.*



**RESPONSE:** Antitrust exemptions and immunities under U.S. antitrust laws are often not a matter of specific notifications or certifications. They are, rather, general applications of law to entities and activities with certain characteristics. Some limited exemptions, particularly those mentioned here, do require specific administrative actions before they apply. Many of the competitively benign activities granted certificates under these statutes would be antitrust-lawful even without the existence of special exemption rights.

No agricultural marketing agreements under the Agricultural Marketing Agreement Act have been authorized by the U.S.D.A. since 1997, and 95 Export Trading Company certifications have been issued since 1997. Information on Webb-Pomerene Act Filings can be found at <http://www.ftc.gov/os/statutes/webbpomerene/index.shtm>. There have been no new Webb-Pomerene Association applications made in recent years, and the number of active Webb-Pomerene Associations remaining is limited to approximately five

#### **SECTION IV: TRADE POLICIES BY SECTOR**

##### **(1) AGRICULTURE**

##### **(ii) Agriculture Policies**

##### **(c) Exports**

WT/TPR/S/275, p. 104, para 19

*Section IV paragraph 19 notes that USDA announced in July 2010 that it would not making invitations for offers available under the Dairy Export Incentive Programme (DEIP) but would continue to monitor market conditions.*

##### Question

*16. Can the United States comment on provisions for DEIP in the next Farm Bill.*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

##### **(iii) Levels of support**

##### **(a) WTO notifications**

WT/TPR/S/275, p. 109, para 36

*We note on page 109, paragraph 36 that total AMS has continued to decline but that total support under the Amber Box has been rising. It is indicated that the increase in total Amber box support is due to an increase in support notified as non-product specific.*

##### Questions

*17. Can the United States provide some examples of the “non-product specific” payments that have increased under the Amber Box.*

**RESPONSE:** The United States refers New Zealand to the U.S. domestic support notifications to the WTO. The United States notes, as an example of increased non-product specific (NPS) Amber Box program spending, that average crop insurance outlays were higher in the 2008-10 period as compared to the previous 3-year period of 2005-07. The United States also notes that U.S. NPS Amber Box spending remains well below the *de minimis* level.

*18. Can the United States comment on any measure it may be contemplating to reverse the trend of increasing total Amber Box payments, in particular any relevant changes being contemplated under the next Farm Bill.*

**RESPONSE:** Discussions on the 2012 Farm Bill are on-going, and the United States is unable to speculate as to content of successor legislation to the 2008 Farm Bill.

## QUESTIONS FROM NIGERIA

### Section II: Trade Policy and Investment Regimes

#### (ii) Unilateral Preferences (African Growth and Opportunity Act (AGOA))

*According to paragraph 25, page 23, of the Secretariat report, we note that the AGOA third-country fabric provision, seen as successful in promoting the textile and apparel industry in Africa as well as supporting many jobs, is set to expire on 30<sup>th</sup> September, 2012. It was also mentioned that the U.S. Congress has introduced legislation in that regard, but it has not been enacted into law at the time of the review.*

*Question- is the United States considering making AGOA permanent, in order to provide greater predictability and legal certainty to investors wishing to take advantage of the scheme?*

**RESPONSE:** AGOA is set to expire in 2015. The Administration has committed to a renewal of AGOA and will work with the U.S. Congress to define what form and length of time that renewal will take.

The Administration was pleased that Congress acted to extend the third-country fabric provisions of AGOA until 2015. The legislation, titled the "African Growth and Opportunity Amendments," was enacted on August 10, 2012.

#### (IV) Subsidies and Government Assistance

*Paragraph 141, page 80 of the Secretariat report, citing the U.S WTO notification indicates that agriculture and energy and fuel sectors are the largest recipients of government assistance and have grown in recent years.*

*Question- (I) Can the U.S explain how its measures in these sectors, are consistent with its obligation under the relevant WTO agreements?*

**RESPONSE:** None of the programs in the subsidy notifications of the United States to the Committee on Subsidies and Countervailing Measures are contingent upon export performance or the use of domestic over imported goods. Therefore, absent a showing that any of the notified programs are causing adverse effects to the interests of another WTO Member, there is no basis to assert that any of the notified programs are inconsistent with U.S. obligations under the Agreement on Subsidies and Countervailing Measures.

*(II) How would the United States treat the implication of shifting towards "amber" policies, especially given the fact that it's "amber" box programmes that address yield and revenue risk have expanded?*

**RESPONSE:** The United States' notified Total Aggregate Measurement of Support (TAMS) was \$4.1 billion in crop year 2010, which is a historical low since notifications began 1995. Notified non-product specific support, which includes the primary U.S. yield and revenue risk programs, remains well below the de minimis level.

**(iv) Tariffs**

*According to paragraph 17, page 38 of the Secretariat report, the United States has been included in the WTO waiver decision of 30<sup>th</sup> November, 2011 which allows U.S. to waive certain WTO obligations in order to implement the nomenclature changes. As at the deadline of 30<sup>th</sup> September, 2012 and the time of the review, the U.S is yet to submit its documentation to the WTO in order to effect the necessary changes to its WTO tariff schedule.*

*Question- Could the U.S. confirm the status and indicate when action will be taken in that regard?*

**RESPONSE:** The United States submitted our Schedule XX in HS2012 to the WTO Secretariat on October 3, 2012.

*Also, in paragraph 24, page 41, of the Secretariat report, we note the WTO tariff bindings of the U.S do not reflect HS changes from 2007-2012, as is the case with most Members, or some other changes that the United States has made domestically but has not yet been notified. Furthermore, while the HS96 and HS02 nomenclature changes have been implemented for the tariff lines concerned, the Chapter notes have not been updated, and they remain as implemented at the time of the Uruguay Round.*

*Question- Could the U.S. clarify the situation and when it intends to address this gap?*

**RESPONSE:** The United States has submitted its Schedule XX of bound commitments in both HS 2007 and HS 2012 to the WTO Secretariat according to the submission dates established in WT/L/830 and WT/L/831, respectively.

**(vii) Quantitative Trade Measures, Restrictions, Controls, and Licensing**

*With reference to paragraph 62, page 54, of the Secretariat Report we note that the United States last notified quantitative restrictions in 1999, and cross –referenced three notifications in the areas of safeguards, import licensing, and textiles, although it was reported that a new notification is under preparation.*

*Question- How soon would the U.S. bring its notification up-to-date for sake of transparency?*

**RESPONSE:** The United States' most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1.

## QUESTIONS FROM NORWAY

### Anti-dumping and countervailing sunset reviews

1. *Norway's experience from participation in US sunset reviews of antidumping and countervailing measures is varied. A case in point relates to the 2011 sunset reviews of the US antidumping and countervailing measures against Norwegian salmon. Extensive participation by the Government of Norway along with the Norwegian industry concerned ultimately proved to be productive. This was not, however, because the US Department of Commerce (DOC) changed its practice in the reviews. The outcome of the 2011 sunset reviews rather changed because the US International Trade Commission (ITC) unanimously voted that no injury could be found on the US industry. Consequently the measures on Norwegian salmon were revoked.*

*The Secretariat's report, in the chapter on Trade policies and practices by measure, presents in Table III.10 an overview of the 738 US anti-dumping sunset reviews conducted from 1998 to end of 2011. It shows that in 271 reviews (36.7 per cent of the cases) the order was revoked.*

*We would appreciate a breakdown of (i) the number of cases revoked due to a no likelihood of dumping finding by the DOC, (ii) the number of cases revoked due to a no likelihood of injury finding by the ITC and (iii) the number of cases revoked due to findings by both the DOC and the ITC.*

*Similarly, Table III.12 provides an overview of the 125 US countervail sunset reviews conducted until the end of 2011. It shows that in 60 reviews (48 per cent of the cases) the order was revoked. We would like to be enlightened of (i) the number of cases revoked due to a no likelihood of subsidy finding by the DOC, (ii) the number of cases revoked due to a no likelihood of injury finding by the ITC and (iii) the number of cases revoked due to findings by both the DOC and the ITC.*

**RESPONSE:** The results (complete with Federal Register citations and dates of publication of the notices) for all of the five-year sunset reviews can be found on the U.S. International Trade Commission's website (<http://pubapps2.usitc.gov/sunset/>). That being said, in the ordinary course of business, the United States does not organize its statistics in the form Norway is requesting. However, from the website one can obtain, on a case-by-case basis, the information that Norway is inquiring about, as well as other detailed information about the various sunset reviews.

2. *We hear occasionally that interested parties decide not to engage actively in sunset reviews, possibly linked to the perception that participation would be a waste of resources as the outcome of a review is expected to conform with the position of the domestic US industry participating in the review anyway.*

*We would therefore appreciate information as to the number of cases where the US industry has requested continuation of (i) antidumping and (ii) countervailing measures, respectively, but where the US authorities have nonetheless revoked the measures in sunset reviews since 1998.*

**RESPONSE:** See response to question above.

## ADDITIONAL QUESTIONS FROM NORWAY

### Trade in Services

*The National Report by the United States stresses that the US maintains one of the world's most open trade regimes. The current U.S. simple average tariff is quite low and U.S. service markets are open to foreign providers and U.S. regulatory processes are transparent and accessible to the public.*

*Also, the Report says that the United States remains committed to preserving and enhancing the WTO's irreplaceable role as the primary forum for multilateral trade liberalization, and will seek to create momentum for market-opening measures that present significant opportunities for producers and consumers.*

*Maritime services have benefited in recent years by considerable expansion fostered by globalization. Many restrictive maritime policies have disappeared or ceased to be applied. The Merchant Marine Act of 1920 regulates the maritime commerce in U.S. waters and between U.S. ports. Section 27, the Jones Act, implies certain restrictions related to for example shipbuilding. We would be interested to hear if there are any processes ongoing or initiatives taken with a view to evaluating the costs and benefits of these various restrictions.*

**RESPONSE:** There are no initiatives in place to modify either the shipbuilding or domestic transportation requirements under the Jones Act.

### Intellectual Property

*Intellectual property (IP) has a central place in the domestic economy and the international trade profile of the United States. The United States is one of the most well established and mature IP jurisdictions, and the legal, economic, and trade policy context of IP continue to evolve significantly. Chapter III. 3. (vi) documents the economic importance of trade in IP.*

*In the light of the legislative changes brought by the America Invents Act, and which are coming into effect step by step, what are the likely effects of the Act upon the backlog of patent applications observed at the USPTO – will the Act contribute to reduce it in practice?*

*Which other measures is the US Government taking or preparing to take in order to further increase patent quality and reduce backlog at the USPTO?*

**RESPONSE:** The America Invents Act (AIA) helps applicants avoid any backlog by providing a fast track option for Patent Processing within twelve months, known as “Track One.” The United States Patent and Trademark Office (USPTO) has been able to offer growing companies an opportunity to have important patents reviewed with a guaranteed twelve-month turnaround. In Fiscal Year 2012, Track One applications reached final disposition in an average of only 5.1 months.

The additional fee resources provided in the law allowed the USPTO to continue to combat the backlog of patent applications and significantly reduce wait times. In FY 2012, the Office was able to hire 1,500 new patent examiners, which contributed to reducing the backlog by 60,000 cases in FY 2012 alone, and allowed pendency to be cut to its lowest level in six years.

In addition, several provisions of the AIA directly improve patent quality, including the creation of pre-issuance submissions and a supplemental examination process.

More details on the AIA can be found at the USPTO website:  
[http://www.uspto.gov/aia\\_implementation/index.jsp](http://www.uspto.gov/aia_implementation/index.jsp).

## QUESTIONS FROM PAKISTAN

### Question No. 1

*The Secretariat Report on Trade Policies and Practices by the US has stated that the Customs and Border Protection Department determines the country of origin for non preferential imports on a case to case basis, often relying on number of court decisions, regulations and agency interpretation to confer origin. This is a complex process, especially where imports from certain origins would attract levies relating to trade defence laws like safeguard and anti-dumping duties etc. The US is requested to reply:*

- (a) Is there a possibility to simplify non preferential rules of origin to facilitate trade at the MFN applied tariff?*
- (b) Whether the US would consider multilaterally agreed non preferential rules of origin, being developed by the Committee on Rules of Origin, to remove ambiguities and facilitate trade?*

**RESPONSE:** The US Customs administration, CBP, proposed a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. Based on the comments received in response to its proposed changes, in September 2011, CBP issued a final rule not adopting new origin and marking rules. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. See <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>

The United States has always taken an active role participating in the WTO Rules of Origin Negotiation, and has no plans to change its participation.

### Question No. 2

*The Secretariat Report has highlighted the contours of preferential rules of origin maintained in various preferential programmes, including RTAs. Market access on preferential tariff can be denied in case of non compliance of the rules of origin determined by the US authorities. The US is requested to comment:*

- (a) Whether these requirements are compatible with the phenomena of global value chain where the value addition would fall short of the value content requirement specified in different programmes.*
- (b) Since the US can remove specific products imported into the US under the GSP Scheme when a country breaches Competitive Need Limitations (CNLs), the rules of origin can play a critical role in determining the quantum of import from specific country. Is there any attempt to simplify the rules of origin or remove Competitive Need Limitations from the GSP Regulations?*

**RESPONSE:** The United States preference programs are compatible with global value chains and with the policy goals of the United States. The unilateral preference programs are intended to benefit



those countries so designated. In the case of reciprocal preference programs, the benefits accrue to those partners that have entered into such an agreement with the United States.

With respect to GSP, the rules of origin are set forth in the statute governing the GSP program. We are not aware of any proposals before the U.S. Congress to change the GSP statutory provisions regarding either the rules of origin or competitive need limitations (CNLs).

**Question No. 3**

- (a) *The Secretariat Report has given a detailed account of “country of origin marking”, maintained by the US since 1890, with various subsequent amendments. Since the ambit of fragmented process of manufacturing is expanding, country of origin marking will not serve its purpose of providing information to the consumers. Is there any attempt to rationalize this discipline by the US?*
- (b) *The US domestic product marking rules prescribe that a product which is made solely of domestic content and the US labour is necessary for the product to be market as “made in the USA”; and the concept of substantial formation does not apply. The US may comment whether the same criteria is applied for export of US products; and whether this criteria would require a change in view of fragmented manufacturing of various parts of a product in different countries as a global value chain.*

**RESPONSE:** The United States believes the U.S. marking disciplines are rational as they were created and are maintained to ensure that the ultimate U.S. purchasers are informed as to the country of origin of a good.

The United States does not maintain rules of origin and marking for goods being exported.

**Question No. 4**

*Although the average MFN applied tariff is very low, tariff peaks exists in 7% of the tariff lines. The vast majority of peaks (around 50%) is in the textile and apparel sector followed by Agriculture products (35%) and footwear (7%). These are the tradable products of developing countries. Can the US consider to unilaterally soften the tariff peaks, which are in the export interest of developing and least developed countries?*

**RESPONSE:** The U.S. duty structure is a result of several successive rounds of multilateral trade negotiations. As shown in the Table III.4 of the Secretariat’s Report, incidence of international tariff peaks (defined as any tariff rate at or above 15 percent) in the U.S. schedule has declined from 6.6 percent in 2002 to 5.0 percent in 2012. As is the case with other Members, the incidence of tariff peaks in the U.S. tariff schedule would be further reduced through balanced, ambitious multilateral trade liberalization.

**Question No. 5**

*Tariff suspensions and reductions, providing new or extended temporary duty relief under the “US Manufacturing Enhancement Act 2010” will expire on 31<sup>st</sup> December 2012. Is the programme likely to continue in 2013 and beyond?*

**RESPONSE:** The U.S. Manufacturing Enhancement Act was passed by Congress in 2010. The United States is not in a position to speculate on whether Congress might take action in the future to provide new or extended temporary duty relief through new legislation.



## QUESTIONS FROM SINGAPORE

### PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

#### Summary

##### Page x (Para 11)

1. *Para 11 states that “Long-standing laws and regulations on rules of origin and marking requirements remain virtually unchanged, albeit their complexity and application remain unnecessarily cumbersome with the possibility of several different rules being applicable across sectors and final outcome being dependent on a number of factors.” Could the US share (i) if there are plans to reduce the complexity of both non-preferential and preferential FTA rules of origin across all sectors, and (ii) if the US has plans to move towards a regime with more regional value content rules in current and future FTAs to help reduce the complexity for companies’ application of rules of origin for exports to the US?*

**RESPONSE:** While the United States does not agree with Secretariat’s characterization of the U.S. rules of origin, U.S. Customs and Border Protection (CBP), did propose a regulatory change to apply the NAFTA Marking Rules (19 CFR Part 102), which rely primarily on changes in tariff classification, rather than the case-by-case determination of substantial transformation, for all country of origin marking purposes. In September 2011, CBP issued a final rule not adopting new origin and marking rules, based on the comments received in response to its proposed changes. A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. For more specific information on the comments and replies, and rational please see, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22588.htm>

##### Page xi (Para 13)

2. *The US uses various trade remedies as part of its trade policy. Some of these, such as anti-dumping measures, can be trade restrictive. With international trade and investment policies playing an important role in the US’ economy, could the US elaborate on its stance on such measures that could be trade restrictive?*

**RESPONSE:** The United States disagrees with Singapore’s characterization of trade remedies. Members have a right to apply trade remedy measures consistent with Article VI of the GATT, the Anti-Dumping Agreement, and the Agreement on Subsidies and Countervailing Measures. Trade remedy measures are remedial mechanisms that *all* WTO members have agreed are necessary to the maintenance of the multilateral trading system. The *legitimate* use of these measures plays an important role in maintaining support for open markets and increased trade.

#### **Trade Policy and Investment Regimes**

Page 27 (Para 31)

3. *The US has announced a new 2012 model BIT. Could the US share how the new 2012 BIT model sharpens disciplines that “address(es) preferential treatment to state-owned enterprises” specifically relating to “the distortions created by certain indigenous innovation policies”?*

**RESPONSE:** The 2004 Model BIT already contained numerous tools to address challenges raised by State-led economies, *i.e.*, economies that organize economic activity to a significant degree on the basis of state-owned enterprises (SOEs) and other mechanisms of state influence and control. The 2012 Model BIT seeks to enhance these tools through new provisions that: (1) discipline the imposition of domestic technology requirements; (2) ensure opportunity for participation in standards-setting; and (3) clarify the application of BIT obligations to state-owned enterprises and other entities exercising delegated government authority. Additional information about these and other revisions in the 2012 Model BIT text can be found at: <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

Page 28 (Para 34 – 35)

4. *The Secretariat Report reflects the US as having an open and transparent investment regime with free movement of capital and profits, and no minimum investment thresholds, but that there remain a number of barriers to foreign investment in certain sectors (e.g. maritime, aircraft, mining, energy, etc). Could the US share details of steps taken to reduce these barriers during the period of the review and if there are plans to lift these barriers in the future?*

**RESPONSE:** There are not at present any proposals within the U.S. Government for significant revision to measures impacting foreign investment. The CRS report cited in Paragraph 35 of the Secretariat’s Report, also noted that foreign investment in the United States is subject to restrictions in only a very small number sectors.

Page 28 (Para 36)

5. *The US’ Committee on Foreign Investment (CFIUS) has the authority to review transactions that could result in control of a US business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that cannot be adequately and appropriately addressed by other laws, CFIUS is authorised to negotiate or impose mitigation measures. If the risks cannot be mitigated, CFIUS can also make recommendations for the President to suspend or prohibit the transaction. While CFIUS operates on a voluntary basis, CFIUS also has the authority to initiate a review of any transaction that may raise national security concerns. Could the US clarify under what circumstances CFIUS would initiate such a review and what aspects in a transaction could trigger national security concerns? In addition, could the US share if there are plans to review CFIUS to improve transparency in its decision-making process?*

**RESPONSE:** Foreign investors are not required to notify CFIUS of their transactions, but instead decide themselves whether to file if they believe national security considerations might arise. However, while the process is essentially voluntary and the vast majority of CFIUS cases are the result of voluntary notices, CFIUS has the authority to initiate a review of any transaction that may raise national security concerns. CFIUS agencies monitor merger and acquisition activity, identify transactions that have not been voluntarily notified to CFIUS but may present national security considerations, and assess whether additional information regarding the transaction or the authority of section 721 is required to identify or address any national security concerns. When a CFIUS agency believes that a non-notified transaction may be a covered transaction and may raise national security considerations, the agency may self-initiate a review of the transaction under section 721. Alternatively, if CFIUS believes that the transaction may raise national security considerations and may be a covered transaction, CFIUS may contact the parties and request further information about

the transaction, partly to help to determine whether the transaction is a covered transaction. If CFIUS makes such a determination, it may request that the parties file a notice. In most cases in which CFIUS has made inquiries of parties to transactions, the parties respond by filing a voluntary notice.

CFIUS has published guidance on types of transactions that have posed national security considerations. (See guidance that Treasury published on December 8, 2008, in the *Federal Register*, available on the CFIUS webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>). Furthermore, the statute, executive order, regulations, and guidance setting forth the CFIUS process are fully and publicly disclosed on the CFIUS website.

### **Trade Policies And Practices By Measure**

#### Page 30 (Para 2)

6. *The US is implementing, in phases, the Automated Commercial Environment (ACE), an electronic commercial trade processing system developed to facilitate trade and strengthen border security. Could the US share other examples, such as risk-based targeting, which the ACE system adopts/ practices to facilitate trade while strengthening border security? Also, would the ACE system be available or applicable to all traders? Would traders without an ACE account still be able to interact with the CBP?*

**RESPONSE:** Yes, ACE is envisioned to be available to all importers and parties involved in the international supply chain. ACE utilizes accounts, and is a web-based portal. Traders without an ACE account would be able to interact with CBP, but not through ACE.

#### Page 42 (Para 32 and Para 35)

7. *The US charges fees for the processing of commercial merchandise and to recover processing costs in ensuring that carriers, passengers, and their personal effects entering the US are compliant with customs laws. Could the US clarify how these Customs user fees would be collected (i.e. through electronic means or physical payment at goods' point of entry)?*

**RESPONSE:** Customs users will continue to have the same options that are currently available, which includes physical payment, electronic payment, and periodic monthly payments.

#### Page 44 (Para 36)

8. *The US charges a fee on certain merchandise arriving by vessel in order to maintain the navigation channels, where the ad valorem fee of 0.125% is assessed on the declared value for commercial cargo entering the US. Could the US clarify if the Harbor Maintenance Tax would be applicable to empty or private vessels?*

**RESPONSE:** The HMT is not applicable to non-commercial vessels, nor is it applicable to a vessel that is either not loading or unloading commercial cargo.

#### Page 53, (Para 57):

9. *There have been two changes with respect to the practice and procedure of US safeguard laws. The second involves the USITC "publishing notice of an interim rule as part of its Rules of Practice and Procedure to amend its rules relating to the conduct of investigations under legislation implementing safeguard investigations under the NAFTA and make them applicable to other FTAs with similar procedures." Could the US share how these*

*changes in rules would be made “applicable to other FTAs with similar procedures”, specifically the USSFTA?*

**RESPONSE:** The rule, which the USITC has since adopted as a final rule (see next paragraph), addresses matters that are common to the FTA safeguard investigations that the USITC is authorized to conduct, such as the types of entities that may file a petition, the information that must be included in a petition, the time for USITC determinations and reporting, and procedures for the limited disclosure of confidential business information under administrative protective order in those instances in which the USITC is authorized to make such disclosure. The rule also identifies the U.S. statutory provisions that implement the FTA safeguard provisions and authorize the USITC to conduct investigations and make determinations.

The interim rule was adopted as a final rule (subject to correction of three typographical errors) effective June 25, 2012, the date on which the USITC’s notice of final rulemaking was published in the *Federal Register* (77 Fed.Reg. 37804); a copy of the notice can be viewed on (and downloaded from) the USITC’s website at [http://usitc.gov/secretary/fed\\_reg\\_notices/rules/2012-15346.pdf](http://usitc.gov/secretary/fed_reg_notices/rules/2012-15346.pdf). The full text of the final rule can be found on the USITC’s website at [http://usitc.gov/secretary/fed\\_reg\\_notices/rules/itcrules0212.pdf](http://usitc.gov/secretary/fed_reg_notices/rules/itcrules0212.pdf).

Pages 62-63, (Para 82 Box III.1)

10. *Singapore notes that the US is working out the details of the specific regulations relating to the Food Safety Modernisation Act (FSMA). We would appreciate if the US could share further details on the proposed implementation plans and timelines, especially in relation to the sections on “Preventive Control”, “Safety of Imported Food”, “Inspection” and “Laboratory and Third-party Accreditation”. This would allow Singapore to better apprise our companies so that they can comply accordingly with the regulations.*

**RESPONSE:** There are a number of rulemakings required by the FDA Food Safety Modernization Act (FSMA). One of the rules mentioned above has issued and the others are in various stages of development. The interim final rule on Establishment and Maintenance of Records issued in February 2012 and is in effect. FSMA expands FDA’s former records access beyond records related to a specific suspect article of food which FDA reasonably believes is adulterated and presents a threat of serious adverse health consequences or death to humans or animals to now include records relating to any article of food that is reasonably likely to be affected in a similar manner. In addition, FDA can now access records related to articles of food for which FDA believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animal.

With regard to the other rulemakings, FDA is working diligently to issue the rules required by FSMA.

Regarding timelines, the rules that have not issued yet will be, when first published, proposed rules. Following the notice-and-comment process, we will take comment on these rules and then, considering those comments, finalize the proposals. There will be several opportunities for public engagement during the notice and comment periods for each rule. The timing of when a final rule takes effect will depend on the particular rule, but we do expect that the rules will have phase-in periods.

Page 60 (Para 77)

11. *Singapore understands that the Food and Drug Administration is the agency responsible for developing technical regulations for medical devices. We would like to seek more information on how*

*the upcoming excise tax on medical devices will be implemented. We would appreciate clarification on the following:-*

- *How will the excise tax be implemented?*

**RESPONSE:** The United States' Internal Revenue Service (IRS) has published documents providing guidance on this issue. In particular, on December 5, 2012, the IRS issued final regulations providing guidance on the excise tax. These regulations were published in the Federal Register on December 7, 2012. §§§§§§ Additionally, the IRS issued Notice 2012-77, available on the IRS's website, which provides interim guidance regarding the determination of the sale price and other issues related to the tax.

Like other manufacturers excise taxes, the medical device excise tax is to be reported on IRS Form 720. Chapter 11 and 12 of IRS Publication 510, also available on the IRS website, provide information regarding filing, deposits, and payments. \*\*\*\*\*

- *What will the timelines be for the roll out of the tax?*

**RESPONSE:** The tax applies to sales of taxable medical devices after December 31, 2012. We would also encourage you to consult the aforementioned documents. For example, Notice 2012-77 addresses when transition relief from deposit penalties may be available.

- *How will the tax be implemented on importers and overseas manufacturers?*

**RESPONSE:** In general, the tax is imposed on the sale of a taxable medical device in the United States. Thus, an importer will be liable for the tax when the importer sells the device. Overseas manufacturers will not be liable for the tax, unless the overseas manufacturer is also the importer, and thus seller, of the device for excise tax purposes.

- *How will the tax be enforced on foreign entities?*

**RESPONSE:** The tax applies to sales of taxable medical devices in the United States by the manufacturer, producer, or importer of the devices. Thus, if a foreign manufacturer exports taxable medical devices to the United States, the U.S. importer will pay the tax, if applicable, on the sale of the device.

- *How will the tax impact foreign exports of medical technology equipment and products into the US?*

**RESPONSE:** The excise tax does not discriminate against products manufactured abroad.

- *How will the US ensure the universal applicability of the tax to all products, both foreign and domestically produced?*

**RESPONSE:** As noted, the tax applies to sales of taxable medical devices in the United States, regardless of where production of the device occurs.

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§§§§§§ 77 Fed. Reg. 72924 (Dec. 7, 2012).  
\*\*\*\*\* <http://www.irs.gov/pub/irs-pdf/p510.pdf>

- *Who will bear the eventual costs of the tax? Would it be the consumers, product owners, or co-shared among all suppliers?*

**RESPONSE:** Since the tax is imposed upon the sale of a taxable medical device by the importer or manufacturer, there is generally no action required by an individual consumer.

- *Will the tax create an imbalance in the market conditions for imports versus domestically produced products?*

**RESPONSE:** As noted previously, the excise tax does not discriminate against products based on where they are manufactured.

Page 61 (Para 81)

12. *Paragraph 81 mentions that at state level, authorities may develop their own measures, subject to federal laws and regulations. Singapore notes that in California, there is a ballot initiative known as Proposition 37 requiring foods manufactured from Genetically Modified (GM) Food Ingredients to be labelled as such. We are concerned over the requirement's cost implications to businesses. The US has consistently advocated voluntary labelling of GM food products. In this context, could the US clarify its stance regarding the labelling of GM food products and its views on California's Proposition 37?*

**RESPONSE:** *California's Proposition 37 was not adopted. FDA draft guidance on labelling of food produced using bioengineering is available at: <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059098.htm>*

Page 65 (Paras 89 and 90)

13. *Singapore notes that the data collected through Automated Export System (AES) would be used for statistical purposes, as well as to support controls. Could the US share how risk management is applied to the advance information collected to ensure the security of US' exports?*

**RESPONSE:** The Automated Export System (AES) is a joint venture between CBP, the Foreign Trade Division of the Bureau of the Census (Commerce), the Bureau of Industry and Security (Commerce), the Directorate of Defense Trade Controls (State), other Federal agencies, and the export trade community. It is the central point through which export shipment data required by multiple agencies is filed electronically to Customs. AES is a nationwide system operational at all ports and for all methods of transportation. It was designed to ensure compliance with and enforcement of laws relating to exporting, improve trade statistics, reduce duplicate reporting to multiple agencies, and improve customer service.

CBP verifies AES records and related export documentation to determine that the Electronic Export Information (EEI) is properly filed, and to determine the appropriate enforcement procedures. One such enforcement activity is the verification that the Internal Transaction Number (ITN), exemption citation or in-bond number is clearly stated on export documents and provided to the carriers within the prescribed timeframes. In addition CBP will utilize its Automated Targeting System (ATS) to screen the electronic export information to target those export shipments that are deemed at risk for being noncompliant with U.S. export laws and controls.



14. *Singapore further notes that hardcopy documents on exports are not required for submissions filed electronically through the AES. Could the US share if fees are payable by AES users when filing the export information? Also, what is the processing period in which the user would be able to expect a response? Could the US share examples of the type of export data collected through the AES?*

**RESPONSE:** Since late 2008, the paper Shipper's Export Declaration has been eliminated and U.S. Principal Parties in Interest or their agents have been required to file electronically through the AES. There is no fee to file exports, although direct filing to AES requires the filers to establish a telecommunications infrastructure with CBP at their own expense. To permit companies unable to establish this infrastructure to file electronically, the Census Bureau established and maintains an internet interface to the AES, called AESDirect. There is no charge to the filer to report through AESDirect.

Unless approved to participate in the postdeparture filing program (also known as Option 4), filers must submit their information prior to exportation. The precise deadline varies by mode of transit. Postdeparture filers have up to 10 calendar days to file. (A proposed regulation change would reduce that to 5 calendar days.) They receive responses from the AES within a few minutes as to any errors or improbable responses. Errors include format issues, invalid codes, etc. Improbable responses include items such as an unusually high price or an unlikely mode of transit (e.g. coal via mail). There are also compliance alerts if it appears that there was a violation of regulations (such as licensed goods being filed postdeparture).

Additional questions for the exporter may arise from CBP's targeting activities.

The following link lists the data elements collected in the AES. The commodity information is collected under the Census Bureau's authority. The Vessel Manifest information is collected under CBP's authority.

<http://www.census.gov/foreign-trade/aes/documentlibrary/aesparticipantsdata.html>

Page 69, Para 107:

15. *The US has launched the Export Control Reform Initiative (ECR Initiative), which is slated to be implemented in three phases. Could the US share the expected time frame in which the implementation of all three phases is expected to be completed?*

**RESPONSE:** The United States has deployed a three-phase implementation plan. The United States has developed and applied a methodology for rebuilding the control lists, has already published a series of proposed rules for public comment in 2012, will publish the first final rules in early 2013, and will continue to publish the remaining proposed and final rules on a rolling schedule throughout 2013. Some aspects of implementation could require legislation to implement a government reorganization that would consolidate the current system into a single control list, single licensing agency, single primary enforcement coordination agency, and single information technology system. To follow developments on the reform initiative, visit [www.export.gov/ecr](http://www.export.gov/ecr) where details on all actions on the initiative are posted.

Page 76 (Para 128)

16. *The US' "spending on federal procurement contracts amounted to US\$517 billion approximately". Could the US provide the total estimated value of state level government procurement contracts and the percentage of such contracts that are made available for participation by foreign suppliers, or covered under US' GPA commitments?*

**RESPONSE:** The United States includes statistics on the procurement conducted by the 37 states covered by the GPA in the statistics reported to the WTO Committee on Government Procurement.

Page 78 (Para 138)

17. *Paragraph 138 states that "procurement at sub-central level is a matter of state law". Could the US provide more information on how it ensures that the state entities committed under the WTO-GPA comply with the obligations, especially given that these entities are not covered by the Federal Acquisition Regulations?*

**RESPONSE:** Each state is responsible for the conduct of its own procurement, including compliance with international agreements where its procurement is subject to such an agreement. The federal government does not monitor such compliance. However, it may consult with a state if concerns are raised with regard to the state's compliance with an international agreement.

## **PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT**

### **Trade Policy Developments since 2010**

Page 18 (Para 75)

18. *The US has worked with APEC member economies to establish commercially useful de minimis values that will exempt low-value shipments from duties or taxes. What is the de minimis value and how was the value determined?*

**RESPONSE:** In 2011 APEC economies agreed to establish commercially useful de minimis values that under normal circumstances exempt express and postal shipments from customs duties or taxes and from certain entry documentation requirements. Economies participating in the APEC "Pathfinder to enhance supply chain connectivity by establishing a baseline de minimis value" agreed to exempt express and postal shipments from customs duties or taxes and from certain entry documentation requirements for shipments valued at or less than \$100 USD recognizing, however, that economies may choose not to apply such exemptions for restricted goods or from taxes that are also applied to domestic goods. These economies could also commit to implementing a de minimis value of \$100 USD or higher by the end of 2012.

Page 28 (Para 126)

19. *We understand that the US has restrictions on the import of meat, poultry, and egg products from Singapore, as we are not listed as an eligible source. Could the US please elaborate on the criteria of being placed on the eligibility list and the prospects of including Singapore on the eligibility list?*

**RESPONSE:** In order for a country to be listed as eligible to export meat, poultry, or egg products to the United States, the U.S. Department of Agriculture (USDA) must first determine that that country's applicable regulatory system is equivalent to USDA's system.

Singapore has only requested USDA make an equivalency determination for meat and poultry products. USDA has responded to the request and sent its initial equivalence package, Self Report

Tool (SRT) to Singapore. The SRT contains the equivalence criteria and questions that Singapore needs to complete and submit to USDA. As of date, USDA has not received any response from Singapore.

### **PART III: OTHER QUESTIONS**

#### **BSE Measures**

20. *Singapore notes that US has, in consultation with trade partners and various stakeholders, proposed a final set of rules for BSE measures. Singapore would like to request for updates to this set of rules.*

**RESPONSE:** The BSE comprehensive rule is currently being finalized for publication. It is expected that the final rule will be published in 2013.

#### **Foot and Mouth Disease**

21. *Singapore further notes that the intent of this rule is to align the US BSE measures with those of OIE, thus rendering the recognition of BSE risk status to be based on OIE's definition. Singapore would like to clarify if the US intends to do the same for other diseases, such as Foot and Mouth Disease (FMD). Singapore would like to reiterate that Singapore is free from FMD. The recognition of that status by the US could thus facilitate the export of meat from Singapore to the US.*

**RESPONSE:** The United States does not intend to alter its FMD rules at this time. Upon official request from Singapore, the United States would evaluate Singapore's FMD status through established procedures as outlined in USDA regulations.

#### **Customs – Single Window**

22. *Does the US have plans to bring the ACE (for imports) and AES (for exports) under one single window to facilitate all import and export trade submissions to the US?*

**RESPONSE:** Core functionality for the Automated Commercial Environment (ACE) is planned to be completed in approximately 3 years. This core functionality will establish the foundation for the import/export process.

## QUESTIONS FROM SOUTH AFRICA

### REPORT BY THE SECRETARIAT (WT/TPR/S/275)

#### Financial Services

#### Part IV. Trade Policies by Sector: (3) Services (ii) Financial Services:

##### Paragraph 69, Page 121

*The Secretariat Report states that foreign banks from 57 countries and territories have a presence in the United States of America.*

*1. Can the USA elaborate on what proportion of foreign banks operating in the USA are from developing countries and the type of presence (e.g. branch, representative office, etc.)?*

**RESPONSE:** Foreign owned or controlled banking institutions operating in the United States are listed in detail at: <http://www.federalreserve.gov/releases/iba/201209/bytype.htm>.

#### Part IV. Trade Policies by Sector: (3) Services (ii) Financial Services:

##### Paragraph 74, Page 122

*The Secretariat Report notes that the Board of Governors of the Federal Reserve must ‘consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.*

*2. Can the USA explain what criteria are employed to determine whether or not a system of financial regulation for risk mitigation is ‘appropriate’?*

**RESPONSE:** Under the Bank Holding Company Act, the Board of Governors of the Federal Reserve System (“Board”) must find comprehensive consolidated supervision (“CCS”) when approving a merger or acquisition involving a foreign bank. See 12 U.S.C. § 1842(c)(3)(B). The Board found CCS for Industrial and Commercial Bank of China Limited on May 9, 2012. See: <http://www.federalreserve.gov/newsevents/press/orders/order20120509a.pdf>

Under the Board’s Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in the Board’s Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank

and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is determinative, and other elements may inform the Board's determination. Under U.S. law, the Board's CCS determination is specific to the particular banking organization applying to acquire a U.S. bank.

## **REPORT BY THE SECRETARIAT (WT/TPR/S/275)**

### **Part III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) Measures Directly Affecting Imports (viii) Technical regulations and standard**

##### Paragraph 70, Page 58

*Title IV of the Trade Agreements Act of 1979, as amended, is the legal basis for implementing the TBT Agreement in the United States. 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 on standards-related activities and in discussions and negotiations with foreign countries on standards-related matters. The Trade Agreements Act requires the USTR to inform and consult with federal agencies with expertise in the matters under discussion and negotiation. The United States submitted a notification on the implementation and administration of the TBT Agreement in February 1996. The enquiry point and notification authority under the Agreement is the National Institute of Standards and Technology (NIST) of the Department of Commerce.*

*1. Can the USA state if any of the discussions or negotiations have been concluded? If yes, with which WTO members, and on which specific standard-related matters?*

**RESPONSE:** The following notifications under Article 10.7 have been made regarding agreements and negotiations with other countries during the review period:

- Memorandum of Understanding between the State Committee of Ukraine for Technical Regulation and Consumer Policy and the American National Standards Institute. (Notification made by the Ukraine on August 20, 2012 G/TBT/10.7/N/114).
- Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment. (Notification made by Mexico, August 22, 2011 G/TBT/10.7/N/109).

The following notifications were made to the WTO Committee on Regional Trade Agreements during the review period:

- Korea-United States Free Trade Agreement, which includes a chapter on Technical Barriers to Trade, was notified on March 15, 2012 (WT/REG311/N/1).
- Colombia-United States Free Trade Agreement, which includes a chapter on Technical Barriers to Trade, was notified on May 8, 2012 (WT/REG314/N/1).

- Panama-United States Free Trade Agreement, which includes a chapter on Technical Barriers to Trade, was notified on October 29, 2012 (WT/REG324/N/1).

#### **Part IV. Trade Policies by Sector**

##### **(1) Fisheries**

##### **(ii) Trade**

###### Paragraph 51, Page 113

*Exports have increased steadily over the past few years and are much more diverse than imports; the top nine products (at HS 2002 six-digit level) make up just over half of total fish exports. The main exports are frozen fish fillets but export growth has been particularly strong for Pacific and sockeye salmon (Table IV.7). The main destinations for the principal exports are the European Union and Canada with considerable quantities sent to China for processing.*

1. *(Highlighted sentence) Can the USA indicate if the final products, after processing by China are recorded in the USA trade data as value added products, or as final products by China?*

**RESPONSE:** U.S. products shipped to China are counted in U.S. exports. Products processed in China and exported to countries other than the United States would not be reflected in U.S. trade statistics.

## QUESTIONS FROM SWITZERLAND

### Report by the Secretariat

#### I. ECONOMIC ENVIRONMENT

##### (1) Monetary, Fiscal and Other Policies

*Paras. 11/12, Table 1.1. The Secretariat's report suggests that fighting against the economic and financial crisis required an unprecedented level of budgetary stimulus. Regarding long-term fiscal challenges, could the U.S. authorities indicate whether there are any plans to stabilize the public debt to GDP ratio in the medium term? Also, did the U.S. government run a stress-test of its public finances by assuming a considerable rise in interest rates?*

**RESPONSE:** Budget negotiations for the coming year are going on at this time. However, the President's proposed framework for deficit reduction, laid out in the Fiscal Year 2013 Budget, charts a sustainable fiscal course, ensuring that the budget deficit will fall to a sustainable level in the next 10 years and beyond. Deficit-reduction measures are phased in gradually to avoid disrupting the economic recovery. Ineffective spending programs are eliminated, while tax expenditures on the Nation's wealthiest taxpayers are limited. Targeted investment initiatives, including those for education, infrastructure, and personal saving, are paid for by eliminating ineffective tax cuts to high-income taxpayers. The deficit reduction from the cuts mandated by the Budget Control Act of 2011 and the expiration of the tax cuts on upper-income Americans enacted between 2001 and 2003, combined with the winding down of operations in Afghanistan and Iraq, will bring deficits down to approximately 2.8 percent of GDP near the end of the 10-year budget window.

The Administration bases its budget projections on the most reasonable and accurate economic forecasts available.

*In para. 13, the Secretariat's report notes that the Fed has been very active in recent times, using a wide range of policies, some unconventional, to aid economic recovery. From late 2010 to mid-2011, the Fed conducted a second round of quantitative easing due to the financial crisis and its aftermath. Inflation expectations have risen recently in the United States. This raises the question on how the U.S. authorities intend to manage a stabilization of inflation expectations to avoid at some point a possible sharp surge in inflation given the very expansionary monetary policy pursued in recent years?*

**RESPONSE:** The Federal Reserve is an independent agency and responsible for U.S. monetary policy. Its Chairman, Ben Bernanke, reported recently that inflation in the United States has averaged close to 2 percent per year for several decades and is close to that today, low interest rate policies that the Fed has been following for about five years have not led to increased inflation, and the public's expectations of inflation over the long run remain quite stable. (<http://www.federalreserve.gov/newsevents/speech/bernanke20121001a.pdf>)

The Federal Reserve Act mandates that the Federal Reserve pursue policies to promote effectively the goals of maximum employment, stable prices and moderate long-term interest rates. The Federal Reserve recently announced that low rates would continue as long as the unemployment rate remains above 6.5 percent or until inflation looks likely to exceed 2.5 percent.

*In paras 21 and 22, the Secretariat's report notes that technological developments and innovation in the U.S. energy sector are credited with improving the trade balance (in volume terms) with falling import volumes. Also, the prospects for further increases in domestic production of oil and natural gas are quite high. In light of the rising domestic energy production, do the U.S. authorities consider changes in their export regime for crude petroleum?*

**RESPONSE:** U.S. crude oil exports are governed by the Export Administration Act of 1979, as amended; 50 U.S.C. App. 2406 (see notification: G/MA/QR/N/USA/1, 5 October 2012). We are not in a position to opine on whether the U.S. Congress may consider legislative changes to this law.

*In para. 29, the Secretariat's report notes that given the beneficial impact of FDI on the US economy and jobs, the U.S. Administration has recently created SelectUSA, described as a one-stop shop to seek and attract investment in the United States. Could the U.S. authorities indicate whether the SelectUSA initiative will actively seek to diversify the sources of foreign direct investment? If so, what are the foreign countries where SelectUSA will predominantly be active?*

**RESPONSE:** Established by an Executive Order of the President in 2011, SelectUSA is the first federal initiative to promote business investment in the United States. SelectUSA works with firms and U.S. economic development organizations to provide information, guidance, and counseling on the U.S. economic climate and federal rules and regulations related to business investment in the United States. It operates under strict geographic neutrality and does not steer investments towards one U.S. location over another. While SelectUSA works with investors around the world, it has focused its FY12 and FY13 proactive outreach and engagement efforts in 30 global markets that represent nearly 90 percent of all FDI in the United States. They are: Australia, Austria, Belgium, Brazil, Canada, China and Hong Kong, Denmark, Finland, France, Germany, India, Ireland, Israel, Italy, Japan, Korea, Kuwait, Mexico, Netherlands, New Zealand, Norway, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, United Arab Emirates, and the United Kingdom.

The Website for SelectUSA is: <http://selectusa.commerce.gov/>

## **II TRADE AND INVESTMENT POLICY FRAMEWORK**

### **(3) Preferential Trade Agreements and Arrangements**

#### **(i) Unilateral preferences**

*Para. 19: The Secretariat's report notes that according to the President's Trade Policy Agenda, the growing competitiveness of many emerging market GSP beneficiaries may prompt review and reform of the GSP programme. To avoid causing uncertainties and unpredictability to GSP users and in view of ensuring long-term efficiency of the GSP, in particular via predictability for its users, the EU decided in 2012, as of 1.1.2014, to grant its GSP an unlimited duration (Switzerland did so also in 2007). What are the views of the U.S. authorities on this ? Wouldn't an unlimited duration increase the use of the system beyond its present rather modest if not minimal use (<1% of imports) ? Also, are there already first thoughts about a review and reform of the GSP past July 31, 2013 ? Would this review entail focusing on the countries most in need for preferences, similar to the EU GSP, which will as of 1.1.2014 exclude Upper Middle Income Economies as well as countries with which Free Trade Agreements are in force ?*

**RESPONSE:** As noted in the Secretariat's report, the U.S. Congress is responsible for initiating and passing legislation to amend and re-authorize U.S. unilateral preference programs, including GSP. In the past, the Administration has supported the longest possible extension of GSP authorization so as to provide greater certainty for both U.S. businesses and developing country exporters who benefit from these programs. However, in determining the length of the period for authorization, the



Congress is bound by its rules to find funding offsets for the foregone tariff revenue caused by GSP and other such programs. As a result, in recent years the challenge of identifying long-term funding offsets has led to reauthorization periods for the GSP program of two years or less.

It is not yet clear whether possible reforms to the GSP program will be on the Congressional agenda in 2013, and the Administration is not in a position to speculate on what specific reforms Congress might consider. For its part, the Obama Administration believes it is important that any prospective reform of the GSP program take into account both the needs of the world's poorest countries and the fact that many emerging market countries may no longer need preferential access to compete in the U.S. market in many product sectors.

*Para. 20: While being well aware that the unilateral preferences granted by the United States do go beyond the GSP, it is rather puzzling to witness an almost 20% decrease in its use in 2011. While the Secretariat's report explains it as a consequence from the graduation of Equatorial Guinea and the shifting of imports from one preference programme to another, i.e. Angola moving from GSP to AGOA preferences, could the U.S. authorities explain how one country and one commodity such as crude oil can have such an important role on imports under the GSP?*

**RESPONSE:** As shown in Table II.4 in the Secretariat's report, crude petroleum – which is eligible for duty-free entry under GSP only for least-developed beneficiary countries – was the top product category among U.S. imports under the GSP program in 2010. Given the high volume of trade in this product, a change in the GSP eligibility of an oil-producing beneficiary country or shifts in claims from one preference program to another could certainly affect the level of total U.S. imports under the GSP program.

#### **(4) Investment Agreements and Policies**

##### **(iii) Investment regulations and restrictions**

*In para. 36, the Secretariat's report states that the number of notices and the number of investigations by the Committee on Foreign Investment in the United States (CFIUS) has increased steadily between 2009 and 2011. Table II.11 shows that the notices withdrawn during investigation have increased in that timeframe too. With clear procedures it could be expected that companies should be in position to structure transactions and to judge whether to submit a notice or to avoid review. Could the U.S. authorities indicate how this increase in notices withdrawn is to be explained? Was the number of companies seeking a review increasing? Is there data available for the years 2009, 2010 and 2011?*

**RESPONSE:** There has been no material change in the number of notices withdrawn during investigation. Furthermore, as discussed in the CFIUS Annual Report, available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius), parties have requested withdrawal for a number of reasons over the years, and some of these cases are subsequently re-filed. CFIUS considers each transaction on a case-by-case basis, and the disposition of any particular case depends on the unique facts and circumstances of the case. The number of notices had increased from 65 in 2009 to 111 in 2011 coinciding with recovery from the global financial crisis in correlation with the global macroeconomy. Data from 2009 to 2011 is available in Table II.11.

Also, according to **para. 36**, the CFIUS is authorized to negotiate or impose mitigation measures. Could the U.S. authorities indicate with how many companies the CFIUS has negotiated or imposed mitigation measures (agreements) in the years 2009, 2010 and 2011?

**RESPONSE:** CFIUS negotiated five mitigation agreements in 2009, nine in 2010, and eight in 2011. Additional information regarding CFIUS mitigation measures is available in the CFIUS Annual Report.

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) Measures Directly Affecting Imports**

##### **(i) Customs procedures**

*Para. 2 of the Secretariat's report states that the "SAFE Port Act, as amended, requires 100% scanning of all maritime containers shipped to the United States by 1 July 2012. On 2 May 2012, in accordance with the statute, DHS Secretary submitted to Congress her intent to extend the deadline by two years. New proposed legislation to extend or eliminate the statutory deadline has not been passed into law." Could the U.S. authorities clarify what this means for the requirement of 100% scanning of all maritime containers shipped to the United States? We understand that the DHS Secretary submitted to Congress the proposal to extend the deadline by two years. Does this mean that the requirement does not apply until further legislation is passed that will set the deadline for the requirement to apply?*

**RESPONSE:** The deadline has been extended until at least July 1, 2014, and further legislation is not needed to extend it again. The Secretary of Homeland Security has the authority to extend the deadline again at that time under the conditions outlined in the statute.

*Para. 2 equally states that "The law required 100% cargo scanning on international U.S. inbound flights, originally by 31 December 2011. However, the TSA postponed this deadline and instituted a new deadline of 3 December 2012 for implementation." Has the deadline of 3 December for the 100% cargo scanning been met and is the requirement for 100% cargo scanning on international U.S. inbound flights now in force?*

**RESPONSE:** Beginning December 3, 2012, all U.S. inbound cargo shipments loaded on passenger aircraft must undergo screening for explosives.

*Para. 4 of the Secretariat's report describes the rules pertaining to customs brokers. U.S. laws only allow licensed customs brokers to transact customs business on behalf of others. The paragraph states that "CBP regulations prescribe eligibility requirements (age, citizenship, etc.) and qualifications (licence exam, fees, and approval by CBP) to become a licensed customs broker." Could the U.S. authorities specify the exact eligibility requirements ?*

**RESPONSE:** To be eligible to be a U.S. Customs broker an individual must: be at least 21 years of age, not be a current Federal Government employee, be a U.S. citizen, and possess good moral character. Once eligible to be a Customs broker, an individual must: pass the Customs Broker License Examination, submit a broker license application with appropriate fees, and be approved by CBP.

##### **(iv) Tariffs**

###### **(a) Tariff nomenclature**

*According to para. 17 of the Secretariat's report, the United States did not implement one set of HS2012 changes, i.e. the deletion of subheadings 3702.91 to 3702.95 and the insertion of new subheadings 3702.96, 3702.97 and 3702.98. Could the U.S. authorities indicate for which reasons this set of HS2012 changes has not been implemented and when it will be the case ?*

**RESPONSE:** With regards to the HS2012 changes, the United States acknowledges the need to delete subheadings 3702.91 to 3702.95 and to replace those with new subheadings 3702.96, 3702.97 and 3702.98. The failure to make this change was an accidental omission and steps are being taken to rectify the situation. The United States intends to make these changes and submit the necessary documentation to the WTO as soon as possible.

According to **para. 18** of the Secretariat's report, the United States did not notify 11 sets of changes involving the footwear sector. Thus, the nomenclature of the U.S. WTO schedule does not match the one of the national tariff. Could the U.S. authorities indicate when the US intends to notify these 11 sets of changes ?

**RESPONSE:** On October 31, 2011, the President issued Proclamation 8742 to modify the Harmonized Tariff Schedule of the United States with respect to certain footwear, in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System. These changes became effective on December 3, 2011.

The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect these changes to the Harmonized Tariff Schedule of the United States as soon as possible.

**(b) MFN applied tariffs**

**Para. 22** of the Secretariat's report indicates that several hundreds of tariff duty suspensions and reductions have been grouped into a law and provide temporary duty relief for certain products (cars, chemicals, medical devices and sporting goods) until December 2012. Could the U.S. authorities indicate whether the duty relief will be extended ? If yes, until when and for which products ?

**RESPONSE:** The U.S. Manufacturing Enhancement Act was passed by Congress in 2010. The United States is not in a position to speculate on whether Congress might take action in the future to provide new or extended temporary duty relief through new legislation.

**(c) WTO bindings**

According to **para. 24** of the Secretariat's report, some changes made to the WTO tariff schedule have not yet been notified. In particular, the United States has not yet notified the changes (duty elimination) to its schedule of concessions related to the 3rd and 4th revision of the pharmaceutical initiative. The 3rd revision was implemented on July 1, 2007 and the 4th revision was implemented on January 1, 2011. Could the U.S. authorities explain the reasons for these delays in notifying and indicate when they intend to notify these changes given that notifications represent an important step toward improving the transparency of trade measures?

**RESPONSE:** On December 21, 2010, the President issued Proclamation 8618 to modify the Harmonized Tariff Schedule of the United States to reflect duty eliminations on certain pharmaceuticals and chemical intermediates negotiated under the auspices of the WTO (4th revision of the pharmaceutical initiative). These changes became effective on January 1, 2011.

On December 29, 2006, the President issued Proclamation 8095 to modify the Harmonized Tariff Schedule of the United States to reflect duty eliminations for certain pharmaceuticals and chemical intermediates negotiated under the auspices of the WTO (3rd revision of the pharmaceutical initiative). These changes became effective on February 3, 2007.

The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect these changes to the Harmonized Tariff Schedule of the United States as soon as possible.

Also, according to **para. 24**, the Chapter notes relating to the HS96 and HS02 nomenclature changes as well as some amendments relating to certain tobacco tariffs pursuant to art. XXVIII GATT

*renegotiations have not been implemented in the US WTO Schedule. Could the U.S. authorities indicate how and when does they intend to remedy to that situation ?*

**RESPONSE:** The United States notified the conclusion of the Article XXVIII negotiations (see G/SECRET/2.Add1) and provided a copy of the U.S. HTS changes to the WTO.

**(vi) Contingency measures**

**(a) Anti-dumping and countervailing measures**

*In para. 43, the Secretariat's report notes that the initiation of anti-dumping investigations has increased substantially in 2011 after only a few initiations in 2010. Could the U.S. authorities indicate whether the impact of anti-dumping measures on the inputs used by U.S. companies involved in global supply chains is considered explicitly in the decision to introduce or not anti-dumping duties on certain products ? Also, how do the authorities reconcile the wide use of anti-dumping measures with the need to facilitate structural adjustment in order to improve the external competitiveness of U.S. companies, including those involved in global supply chains ?*

**RESPONSE:** The United States administers its trade remedy laws in strict accordance with WTO rules. Antidumping investigations are initiated in response to petitions filed by the U.S. industry. The decision to impose an antidumping measure is based purely on a factual determination of whether dumping exists and whether that dumping has caused material injury to a domestic industry. Where dumping, injury, and a causal link have been found, the United States will impose an antidumping measure. No other factors are taken into consideration before imposing an antidumping measure.

**(ix) Sanitary and phytosanitary measures**

*Para. 84 of the Secretariat's report: in light of the experience gained since the entry into force of the FDA Food Safety Modernization Act (FSMA), could the U.S. authorities indicate how the new inspection regime improved the supervision of potential sanitary risk linked to imported foods ? Also, could they indicate what are the lessons learnt? Furthermore, based on FDA's experience and confidence building measures with specific partners under this new regime, how do the U.S. authorities assess the possibility of an amendment of FSMA, which would strengthen the role of system audits ?*

**RESPONSE:** The FDA Food Safety Modernization Act (FSMA) provides FDA with a variety of new authorities to help ensure the safety of imported foods. An array of tools can be applied to imported food to help ensure safety, including basic border control activities such as examination, sampling and analysis, facility registration, foreign inspections, and other verification activities. In the future, FDA will add tools to help ensure the safety of imported foods as rulemakings are finalized and implemented.

FDA has increased the number of routine inspections of all food facilities to meet new requirements mandated by FSMA. FSMA required FDA to immediately increase inspections of both foreign and domestic food facilities, including manufacturers/processors, packers, repackers, and holders of foods under FDA jurisdiction, and mandated an inspection frequency, based on risk, for food facilities. FDA will continue to employ foreign inspection and its other import-related tools in a manner ensuring that resources are allocated according to risk. An amendment to FSMA is not necessary for FDA to implement risk-based import policies.

*Para. 86 of the Secretariat's report mentions that ,a number of different agencies are involved in developing, implementing, and enforcing SPS measures'. It can be assumed that this rather complex structure could cause SPS related decisions to take more time than necessarily needed and thus result in unjustified barriers to trade, particularly when it comes to suspend SPS measures that are no*

*longer justified. Taking appropriately into consideration changes of a BSE risk status of the World Organisation for Animal Health (OIE) could be affected by the complex structures in the United States just described. Could the U.S. authorities explain the U.S.-internal procedure to adjust the import regulation once a lower OIE BSE risk status is published? Also, could the U.S. authorities describe in detail the timeframe needed for this procedure?*

**RESPONSE:** The BSE comprehensive rule is currently being finalized for publication. It is expected that the final rule will be published in 2013. The United States believes that this rule, once final, will be consistent with OIE guidelines.

**(2) Measures Directly Affecting Exports**

**(iv) Official support and related fiscal measures**

**(b) National Export Initiative**

*With respect to **para. 112**, could the U.S. authorities indicate what is the overall government budget for the implementation of President Obama's National Export Initiative ? Besides Ex-Im Bank, who else is in charge of carrying out the National Export Initiative?*

**RESPONSE:** In his State of the Union address in January 2010, President Obama launched the National Export Initiative (NEI) and set a goal of doubling U.S. exports in five years to support two million additional jobs in the United States.

To aid in achieving this goal, the President issued Executive Order 13534 on March 11, 2010, establishing eight policy priorities for the NEI and creating an Export Promotion Cabinet. The Trade Promotion Coordination Committee (TPCC) established by Executive Order 12870 of September 30, 1993 is tasked with helping to implement the NEI and serves as the secretariat for the Export Promotion Cabinet. As established by Executive Order 13534 of March 11, 2010, the Export Promotion Cabinet consists of:

- the Secretary of State;
- the Secretary of the Treasury;
- the Secretary of Agriculture;
- the Secretary of Commerce;
- the Secretary of Labor;
- the Secretary of Energy;
- the Secretary of Transportation;
- the Director of the Office of Management and Budget;
- the United States Trade Representative;
- the Assistant to the President for Economic Policy;
- the National Security Advisor;
- the Chair of the Council of Economic Advisers;
- the President of the Export-Import Bank of the United States;
- the Administrator of the Small Business Administration;
- the President of the Overseas Private Investment Corporation; and
- the Director of the United States Trade and Development Agency.

**(c) Finance, insurance, and guarantees**

*With respect to **para. 114**, could the U.S. authorities indicate whether Ex-Im Bank also provides railway export financing, e.g. via direct loans or special financing programs? If yes, what are the volumes of the exports financed? If no, is there a demand for railway sector financing?*

**RESPONSE:** U.S. Ex-Im Bank will provide financing for the rail sector (mainly locomotives) under any of our programs – direct loans, guarantees, and export credit insurance. There are no special programs specifically designed for railway sector exports. Demand for Ex-Im financing in this sector has been modest over the past several years averaging several millions of dollars annually.

*With respect to **para. 117: Table III.18** suggests that despite a difficult economic environment Ex-Im Bank roughly doubled its financing activities between 2008 - 2011. This is a remarkable achievement. Many export credit agencies have had stagnating business and then reacted to the financial and economic crisis by introducing new programs and instruments. Could the U.S. authorities indicate, besides the support of the National Export Initiative (NEI), what new instruments Ex-Im Bank introduced to double its business activities in just four years? In case no new instruments or discounts were introduced, what have been the main drivers/sectors of business activities for Ex-Im Bank during that period?*

**RESPONSE:** U.S. Ex-Im Bank provides financing when the private market is either unable or unwilling. The financial crisis that began in 2008 has continued to ripple throughout the global economy with the most recent series of challenges having emerged in Europe with the sovereign debt and banking crises. Consequently, the global export finance banking community has been adversely affected and in some cases, very significantly to the point where lenders have retreated entirely, or are able to extend financing in very limited situations in very limited amounts on very limited terms. For those banks that are still able and willing to lend, the cost of funding and the interest rates charged by lenders include a liquidity premium that translates into much higher spreads than normal. From a domestic perspective, Ex-Im has seen a dramatic surge in demand for its financing in all areas of lending but especially in the project and structured finance space where demand has grown five to six fold. These two areas are also where most of the largest ticket items with the longest tenors exist. In addition, Ex-Im's guarantee has been used to access the capital markets for large aircraft financing where demand has doubled.

While the Bank has undertaken minor program tweaks to better fit various needs, it has not introduced any new core programs. The increasingly limited commercial bank capacity and very competitive Ex-Im programs have combined to drive activity and record levels.

### **(3) Other Measures Affecting Investment and Trade**

#### **(i) Business framework and business investment incentives**

In **para. 121**, the Secretariat's report affirms that tax measures were adopted to promote investment incentives. **Para. 123** describes further measures taken by the Small Business Administration (SBA) by granting loans, loan guaranties etc. In the WEF Global Competitive Report 2011 the United States ranks 58 of 142 countries in what relates to the "burden of government regulation". Do the U.S. authorities intend to take measures in this regard with a view to promote foreign direct investments (FDI) further ?

**RESPONSE:** The Administration has undertaken ambitious steps toward minimizing regulatory burdens and avoiding unjustified regulatory costs to the U.S. economy. For example, in January 2011, President Obama issued Executive Order 13563, which calls on all agencies to conduct a thorough retrospective review of existing rules, and imposes a series of new requirements designed to reduce regulatory burdens and costs. As of May 2012, over two dozen executive department and federal agencies had identified hundreds of initiatives to reduce costs, simplify the regulatory system, and eliminate redundancy and inconsistency.

## **IV. TRADE POLICIES BY SECTOR**

### **(1) Agriculture**

#### **(ii) Agriculture policies**

**(a) Trade**

*Para. 13 of the Secretariat's report mentions that the fill rates of tariff quotas vary significantly. The tariff quota fill rate is low for most cheese quotas. A rather complex system of different quotas for different types of cheese - each with quota shares reserved for specific countries resp. importers - is in place.*

*Could the U.S. authorities explain what type of quota share (country, historic, or other) is showing the lowest fill rate?*

**RESPONSE:** The fill rates are strongly affected by market factors, not by the type of license. Information about the dairy import licensing program, including a monthly circular showing fill rates, can be found at:<http://www.fas.usda.gov/itp/imports/usdairy.asp>.

*Given the low quota fill rates, what measures have the United States taken in the past to increase the fill rate of the cheese quotas ?*

**RESPONSE:** The dairy import licensing regulations contains several mechanisms that provide incentives to fill the quotas. Any importer who does not fill at least 85 percent of any license amount becomes ineligible for that same license (type of cheese and country) the following year. Thus there is a strong incentive to use a license, or surrender some or all of it. License amounts that are surrendered, or for any reason not allocated, are available for reallocation upon request by any eligible applicant.

*As can be seen in the respective MA:2 notifications, the quota fill rates have not increased in 2010 and 2011. What changes in the cheese quota regime are the United States considering in order to increase the quota fill rates?*

**RESPONSE:** The fill rates are strongly affected by market factors. As noted, the current regulation provides incentives for importers to fill all of the licensed dairy import quotas.

## QUESTIONS FROM THAILAND

### **PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT**

#### **I. ECONOMIC ENVIRONMENT**

Pages 12-13 (paragraphs 28-29)

*Question 1: The WTO Secretariat Report provides an overview of the foreign direct investment in the US. Could the US please provide information on the US investment outflow including the amount, sectors and destination countries of such investment?*

**RESPONSE:** Commerce's Bureau of Economic Analysis produces these statistics. Information is located at: <http://www.bea.gov/international/index.htm#omc> and <http://www.bea.gov/international/di1usdbal.htm>

#### **XXVIII. TRADE POLICY AND INVESTMENT REGIMES**

**Page 17 (paragraph 13)**

*Question 2: The WTO Secretariat Report indicates that the legislation approving the US free trade agreements with Colombia, the Republic of Korea, and Panama was enacted by the Congress and signed into law by the President in October 2011. Nevertheless, the US-Panama FTA is not yet in force. Thailand would appreciate it if the US could inform us a time frame that the US-Panama FTA is expected to enter into force.*

**RESPONSE:** The U.S.-Panama Trade Promotion Agreement entered into force on October 31, 2012. See WT/REG324/N/1; S/C/N/658, dated 30 October 2012.

Page 19 (paragraph 18)

*Question 3: The WTO Secretariat Report indicates that the United States gives unilateral preferential treatment to imports from several countries. In order to receive benefits under one or more of the preference programmes, countries have to meet eligibility criteria, which vary by programme, but may include meeting international commitments in worker rights and investment practices, as well as foreign policy objectives such as having an extradition treaty or combating trade in illegal drugs, and other technical criteria such as adhering to rules of origin. Thailand would appreciate it if the United States could clarify more on how the US determines that countries, who have been granted unilateral trade preferences, have met eligibility criteria especially international commitments in worker rights?*

**RESPONSE:** Each U.S. trade preference program is subject to specific statutory and regulatory guidelines regarding the review of country eligibility; the review processes vary somewhat from program to program. However, one common element is that country reviews under each of the four U.S. unilateral preference programs draw on information provided via a public comment process and involve direct engagement with the governments of countries under review. With respect to worker rights, the United States reviews and analyzes information on how individual beneficiaries provide internationally recognized worker rights, as defined in the U.S. laws authorizing each of its trade preference programs. This information is drawn from a wide variety of sources and analysis, including petitions from the public, legal studies of a beneficiary's laws, reports by international organizations related to worker rights and working conditions, and information provided by beneficiary governments, NGOs and labor and business stakeholders. See <http://www.ustr.gov/trade-topics/trade-development/preference-programs> for more information.



Page 20 (paragraph 19)

*Question 4: The WTO Secretariat report states that the US Congress may consider changes or reforms in the GSP and ATPA programs when it next takes up renewal of these two programs, probably in the first half of 2013. In this regard, Thailand would like to know whether there is the prospect for GSP reform next year and if the reform occurs, what is it expected to cover?*

**RESPONSE:** It is not yet clear whether possible reforms to the GSP program will be on the Congressional agenda in 2013, and the Administration is not in a position to speculate on what specific reforms Congress might consider. For its part, the Obama Administration believes it is important that any prospective reform of the GSP program take into account both the needs of the world's poorest countries and the fact that many emerging market countries may no longer need preferential access to compete in the U.S. market in some product sectors.

Pages 27-28 (paragraphs 33-37)

*Question 5: The WTO Secretariat Report provides information about the US rules and regulations on investment. Thailand would like to seek greater information on the following points: (1) What are the measures the US used for retaining investment within the US?*

**RESPONSE:** It is the policy of the United States government to regulate foreign investment as little as possible. An open investment regime fosters economic growth, increases the competitiveness of companies, and promotes job creation. As international competition for capital intensifies, it becomes increasingly important for countries to offer investors a stable and non-discriminatory policy and regulatory environment. The United States continues to offer such an investment environment, and it seeks to encourage the development of similar policy regimes in other economies.

*(2) Does the US provide any incentives or preferential treatment, whether at the federal or state level, to the US investors who invest outside the US?*

**RESPONSE:** The Overseas Private Insurance Corporation (OPIC), the U.S. Government's development finance institution, provides financial products to help U.S. businesses expand into emerging markets, including loans and loan guaranties, political risk insurance, and support for private equity investment funds. OPIC insurance is available to U.S. citizens; corporations, partnerships or other associations created under the laws of the United States, its states or territories, and beneficially owned by U.S. citizens; foreign corporations that are more than 95 percent owned by investors eligible under the above criteria; and other foreign entities that are 100 percent U.S.-owned (additional information is available at <http://www.opic.gov/>).

*(3) Which US agency is in charge of the US investment outflow?*

**RESPONSE:** The United States Government does not have an agency charged with overall responsibility for outbound investment flow. Different aspects of investment policy that impact on outbound U.S. investment are the responsibility of different Government agencies. For example, the United States Commercial Service (a component of the Department of Commerce) provides counseling and market intelligence services to U.S. companies interested in doing business overseas; the Office of the United States Trade Representative negotiates international trade and investment agreements to increase market access for U.S. businesses in foreign markets; and the Overseas Private Investment Corporation provides financial products (such as political risk insurance) to support the expansion of U.S. businesses into foreign markets.

### **III. TRADE POLICIES AND PRACTICES BY MEASURES**

Page 30 (paragraph 2)

*Question 6: The WTO Secretariat Report provides information about the US initiatives to facilitate trade, secure border and enforce laws and regulations including C-TPAT, ACE, CSI and SFI. Thailand would like to seek greater information on the following points; (1) the requirement and benefit of joining the C-TPAT program and (2) the progress of 100% scanning under the CSI program.*

**RESPONSE:** Information on the C-TPAT program, who may join, and benefits may be found at the following link. [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/ctpat/](http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/)

The deadline for the 100% scanning requirement will not go into effect until July 1, 2014, and the Secretary of Homeland Security has the authority to extend it again at that time under the conditions outlined in the statute.

Page 35 (paragraph 9)

*Question 7: The WTO Secretariat Report indicates that the U.S. preferential rules of origin have not been notified to the WTO since 1997. Nevertheless, the US has established several FTAs with her trade partners since that time. To create transparency and facilitate trade, Thailand would like to request for some details on the US's preferential rules of origin and urge the US to provide updated information on preferential trade rules to WTO.*

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

Pages 48-49 (paragraph 48)

*Question 8: The WTO Secretariat Report points out about the US Department of Commerce's (DOC) February 2012 decision to modify its methodology to address so-called "zeroing" in administrative, new shipper, expedited and sunset reviews. However, the Report does not note that DOC's February 2012 methodology modification allows the use of zeroing where appropriated which includes the circumstance where "Target Dumping" is deployed in an investigation or review. Thailand would like to seek clarification on the following points:*

(1) *How does the use of zeroing in cases of Target Dumping, or other cases where DOC deem appropriated, comply with WTO obligations provided adverse DSB ruling on many precedent cases in the past?*

**RESPONSE:** The change in the calculation of dumping margins announced in the February 14, 2012, notice addressed the dispute settlement findings regarding "zeroing" in administrative reviews. The change in the calculation of dumping margins announced in a 2006 notice (71 Fed. Reg. 77722 (Dec. 27, 2006)) addressed the findings regarding "zeroing" in investigations.

(2) *The specific criteria on which DOC will base its future determinations in regard to when the Zeroing practice is suitable.*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

(3) *Whether the US intends to maintain its current policy of only revising completed investigations and reviews that used zeroing when challenged through formal WTO DSB.*

**RESPONSE:** The final modification provides that the revised methodology would be applicable in any determinations made pursuant to section 129 of the Uruguay Round Agreements Act (19 U.S.C. 3538).

Pages 54, 57 (paragraphs 60 and 67)

*Question 9: The WTO Secretariat Report mentions the Lacey Act, pointing to the US efforts in addressing the trafficking of endangered plant or animal life. To ensure that the measure does not unfairly harm developing countries and comply with customs-related WTO obligations and general WTO non-discrimination disciplines, Thailand would like to seek greater information on the following points:*

(1) *Is there any expected future expansion of the list of prohibited goods under the Lacey Act?*

**RESPONSE:** The Lacey Act prohibitions apply to all plants. The term “plant” is defined as any wild member of the plant kingdom, however, the statute excludes common food crops, common cultivars (except trees), scientific specimens, and nursery plants. The requirement to file a plant import declaration for covered plants and plant products is being enforced on a phased-in basis. Any changes in the schedule for the enforcement of the import declaration will be published in advance in the Federal Register and made available on the website of United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS): [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/](http://www.aphis.usda.gov/plant_health/lacey_act/).

(2) *Is there any available information from the US industry, importers or consumers on the current or likely trade effects of the US customs security and enforcement efforts relating to the Lacey Act?*

**RESPONSE:** We are not aware of any such information.

Page 54 (paragraph 61)

*Question 10: The WTO Secretariat Report states that the US maintains quotas or quantitative restrictions on products outside of the agriculture TRQs. Could the U.S. please explain the reasons for maintaining quotas or quantitative restrictions on products outside of the agriculture TRQ?*

**RESPONSE:** The tariff rate quotas for both tuna fish and for broomcorn brooms were negotiated as part of the Uruguay Round. The United States has no current plans to unilaterally change its tariff quotas for these products. The United States would, of course, make any required changes pursuant to any future multilateral agreement.

Pages 69-70 (paragraphs 107-109)

*Question 11: The WTO Secretariat Report provides an overview of the US Export Control Reform Initiative (ECR initiative) in which the U.S. attempts to improve her export control system by creating a single national control list with single licensing and enforcement unit. It would be appreciated if the US could inform us the progress of the ECR initiative and when this initiative is expected to be fully implemented.*

**RESPONSE:** The United States has deployed a three-phase implementation plan. The United States has developed and applied a methodology for rebuilding the control lists, has already published a series of proposed rules for public comment in 2012, will publish the first final rules in early 2013, and will continue to publish the remaining proposed and final rules on a rolling schedule throughout

2013. Some aspects of implementation could require legislation to implement a government reorganization that would consolidate the current system into a single control list, single licensing agency, single primary enforcement coordination agency, and single information technology system. To follow developments on the reform initiative, visit [www.export.gov/ecr](http://www.export.gov/ecr) where details on all actions on the initiative are posted.

Page 70 (paragraph 110)

*Question 12: The WTO Secretariat Report indicates that under the Agreement on Agriculture, the United States has the right to provide export subsidies for 14 agricultural products. Thailand would like to know whether U.S. government has any expected future reform of such mechanism or not, especially with regard to the U.S. sugar program.*

**RESPONSE:** The United States is currently engaged in discussions for the 2012 Farm Bill and is unable to indicate what changes will be made to past programs. The United States notes that it does not have export subsidy reduction commitments for sugar.

Page 71 (paragraph 115)

*Question 13: The WTO Secretariat Report indicates that Ex-Im Bank operates in 186 countries around the world and has identified nine key markets (Brazil, Colombia, India, Mexico, Nigeria, South Africa, Turkey, and Viet Nam). Thailand would appreciate it if the US could clarify more on the following points:*

(1) *What are the criteria to identify, evaluate, and select the key markets?*

**RESPONSE:** The criteria include the following: size of export market for U.S. firms; projected growth; projected infrastructure needs; Ex-Im's current market penetration in the market; congressionally mandated markets; and markets where Ex-Im's financing could make a difference.

(2) *Whether the U.S. Ex-Im Bank grants the benefit financing programmes to key market's buyers more than others or not. If yes, then what kind of special benefits they receive?*

**RESPONSE:** U.S. Ex-Im Bank has several key strategic initiatives (some mandated by Congress) - including small business, environment, Sub-Saharan Africa and medical technologies - that the Bank promotes globally. Otherwise, Ex-Im neither selects certain industries for special treatment nor prevents other transactions in other industries from going forward, so long as there is a reasonable assurance of repayment.

Page 78 (paragraph 137)

*Question 14: The WTO Secretariat Report states that the US passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for goods and services. When the law goes into effect, an amount of 2% is applied to foreign entities not party to an international procurement agreement. This is understood to apply to countries that are not members of the GPA or do not have a free trade agreement with the United States. The regulatory changes to implement the law have not been finalized. It would be appreciated if the US could provide us more information about this new legislation, particularly whom does the legislation will apply to and also the time frame that it is expected to enter into effect.*

**RESPONSE:** The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. The United States would refer Thailand to the text of the legislation for an elaboration of its provisions. Pursuant to its terms, the effective date of the

legislation was the date of its enactment, January 2, 2011. The U.S. Internal Revenue Service and the Treasury Department are in the process of drafting regulations.

Page 84 (paragraph 149)

*Question 15: The WTO Secretariat Report indicates that in 2011, the Federal Trade Commission amended the Hart-Scott-Rodino Pre-merger notification rules and the form for reporting the proposed merger. The new rules, effective as of 18 August 2011, include significant changes. Additionally in 2010, the Department of Justice and the FTC amended the Horizontal Merger Guidelines. The amendments retained the core elements of the previous guidelines but contain a number of important clarifications concerning market definition, and expand the discussion on assessing unilateral effects. Could the US please elaborate more on the major changes of the amendment of the Hart-Scott-Rodino Pre-merger notification rules and the form for reporting the proposed merger and the Horizontal Merger Guidelines concerning market definition, and assessing unilateral effects?*

**RESPONSE:** Following a public comment period, the Federal Trade Commission and the Department of Justice made changes to the Hart-Scott-Rodino (HSR) rules, the premerger notification form and instructions to reduce the filing burden and streamline the [form](#) parties must file when seeking antitrust clearance of proposed mergers and acquisitions under the HSR Act and the Premerger Notification Rules.

The revisions were part of ongoing efforts by the FTC and DOJ to review their regulations, ensure that the rules are necessary and up-to-date, and eliminate unnecessary or potentially overly burdensome reporting requirements for business. The changes are intended to make the HSR form easier to complete, reduce the burden for most filers, and make the premerger notification review program more effective for both agencies.

In particular, the revised HSR form deletes several categories of information that, over time, the agencies have viewed as unnecessary to their preliminary merger review. For example, HSR filers are no longer required to provide copies of documents – whether in hard copy or via electronic link – filed with the Securities and Exchange Commission, report economic code “base year” data, or give a detailed breakdown of all the voting securities to be acquired. The new form also requires filers to provide the FTC and DOJ with narrowly focused additional documents that will help expedite the merger review process.

The revised form changes certain kinds of required reporting, such as revenue information by industry NAICS (North American Industry Classification System) code, and the identity of holders and holdings of the entities making a filing. In addition, new concepts are introduced that are designed to expedite the antitrust review, including reporting information about “associates” of the acquiring person. Changes also include minor revisions to the HSR Rules to address omissions from the 2005 Rule changes involving unincorporated entities.

The Final Rules and Form are available at <http://www.ftc.gov/os/fedreg/2011/07/110707hsrfrn.pdf>.

The 2010 Horizontal Merger Guidelines (the “Guidelines”), were developed after extensive public consultations, including with non-US agencies, and updated the 1992 guidelines in several important ways. The Guidelines:

- Clarify that merger analysis does not use a single methodology, but is a fact-specific process through which the agencies use a variety of tools to analyze the evidence to determine whether a merger may substantially lessen competition.

- Introduce a new section on “Evidence of Adverse Competitive Effects.” This section discusses several categories and sources of evidence that the agencies, in their experience, have found informative in predicting the likely competitive effects of mergers.
- Explain that market definition is not an end itself or a necessary starting point of merger analysis, and market concentration is a tool that is useful to the extent it illuminates the merger’s likely competitive effects.
- Provide an updated explanation of the hypothetical monopolist test used to define relevant antitrust markets and how the agencies implement that test in practice.
- Update the concentration thresholds that determine whether a transaction warrants further scrutiny by the agencies.
- Provide an expanded discussion of how the agencies evaluate unilateral competitive effects, including effects on innovation.
- Provide an updated section on coordinated effects. The guidelines clarify that coordinated effects, like unilateral effects, include conduct not otherwise condemned by the antitrust laws.
- Provide a simplified discussion of how the agencies evaluate whether entry into the relevant market is so easy that a merger is not likely to enhance market power.
- Add new sections on powerful buyers, mergers between competing buyers, and partial acquisitions.

With regard to market definition more specifically, the U.S. recently submitted a paper to the OECD as part of the Competition Committee’s roundtable on market definition. This paper, available at [http://www.ftc.gov/bc/international/docs/062012Market%20definition\\_U.S.pdf](http://www.ftc.gov/bc/international/docs/062012Market%20definition_U.S.pdf), describes how the agencies approach market definition, including in the merger context. It references changes made in the Guidelines, including the introduction of the value of diverted sales as an indicator of upward pricing pressure, and provides a current picture of how the agencies employ market definition and the approaches outlined in the guidelines.

The Guidelines are available at <http://www.ftc.gov/os/2010/08/100819hmg.pdf>.

#### **IV. TRADE POLICIES BY SECTOR**

Pages 108-110 (paragraphs 35-40)

*Question 16: The WTO Secretariat report provides a current status of the Farm Bill, the 2008 provisions of which are set to expire between late-2012 and early-2013. Thailand would appreciate it if the US could provide us more information on:*

*(1) The current status of Farm bill renewal*

*(2) Whether expected provisions in any Farm Bill renewal legislation, including those related to sugar and aquaculture, will be WTO-consistent*

**RESPONSE:** At this time, the United States is unable to indicate when there will be a new Farm Bill or if the 2008 Farm Bill will be extended and if so, for how long. The United States expects that the Farm Bill will be consistent with U.S. WTO obligations.

Pages 114-117 (paragraphs 52-63)

*Question 17: The WTO Secretariat report provides an overview of US international fisheries policy on illegal, unreported and unregulated (IUU) fishing, highlighting US participation in such international initiatives as the South Pacific Tuna Treaty. Thailand would like to seek the greater information from the US on this issue:*

*(1) Whether the United States seeks entrance into any further international IUU agreement.*

**RESPONSE:** In the ongoing TPP negotiations, the United States is seeking disciplines to curb illegal, unreported, and unregulated fishing.

(2) *Whether the United States intends to modify its customs-related rules to facilitate lawful, non-IUU trade in fish and fish products.*

**RESPONSE:** We cannot speculate on future policies or potential modifications to our current system for importing legally-obtained fish and fish products.

Pages 122-123 (paragraphs 72-76)

Question 18: *According to the Dodd-Frank Act, which allows the Board of Governors to apply enhanced supervision and prudential standards for Systemically Important Financial Institutions (SIFIs), what areas are of special concern in regulating SIFIs and how does the US evaluate the effectiveness of such regulation?*

**RESPONSE:** On January 5, 2012 the Federal Reserve Board requested comment on proposed rules that would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

See [http://www.stlouisfed.org/regreformrules/Pdfs/2012-3-7\\_FRS\\_Comment\\_ext\\_for\\_prudential\\_standards\\_for\\_covered\\_companies.pdf](http://www.stlouisfed.org/regreformrules/Pdfs/2012-3-7_FRS_Comment_ext_for_prudential_standards_for_covered_companies.pdf)

With respect to nonbank financial companies that were historically outside the existing regulatory framework for bank holding companies, the Dodd-Frank Act provided for: (i) the establishment of the Financial Stability Oversight Council (the Council), which has the authority to designate nonbank financial companies that could pose a threat to financial stability; (ii) a new framework for consolidated supervision and regulation by the Federal Reserve of nonbank financial companies designated by the Council; and (iii) improved tools for the resolution of failed nonbank financial companies.

## **PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT**

### **VI. TRADE AND ENVIRONMENT**

Pages 31-32 (paragraphs 145-149)

Question 19: *The US report provides an overview of US work on environment-related trade matters through multilateral, regional and bilateral trade initiatives, specifically citing US efforts: (i) within the World Trade Organization (WTO) to address fishery subsidies; (ii) within Asia-Pacific Economic Cooperation countries to address illegal logging and associated trade and trade in illegally harvested species; and (iii) with its free trade agreement (FTA) partners to ensure compliance with the relevant FTAs' environment-related provisions. In addition, the US report also mentions US efforts to strengthen environmental standards in countries entering into a bilateral investment treaty (BIT) with the United States, and to intensify monitoring and enforcement of environment-related FTA commitments, e.g., under US-Peru FTA.*

*Thailand would like to seek greater information with respect to: (1) steps Thailand may take to avoid US environment enforcement-related action against it, where applicable; (2) steps the United States is taking to ensure that intensified efforts in such environmental and trade matters comply with WTO obligations; (3) any expected future course of policy in this regard, perhaps in the context of bilateral or regional trade agreements, such as the Trans-Pacific Partnership (TPP); and (5) the likely content of environment-related provisions in any future trade negotiation mandate, i.e., Trade Promotion Authority (TPA).*

**RESPONSE:** The United States is convinced that open trade and investment policies can and should be mutually supportive with our environmental protection policies, and we continue to seek to enhance the mutual supportiveness of trade and environment policies across multiple fronts, including through multilateral, regional, and bilateral initiatives. The United States is committed to implement its environmental policies in a manner consistent with its WTO obligations, and expects other WTO Members to act consistent with their WTO obligations as well.

We cannot speculate on future policies or the content of legislation that the Congress may enact in the future.

## **VII. TRADE AND LABOR**

Pages 32-33 (paragraph 150)

*Question 20: The US Report indicates that the US has continued its efforts to enhance U.S. Government engagement with trade partners to improve respect for labor rights. It would be appreciated if the US could provide information on principles or methods of the US in determining the trade partner to be improved respect for labor right and also procedures in engaging to improve respect for labor rights in such trade partner.*

**RESPONSE:** In U.S. trade agreements and the laws authorizing trade preference programs, the United States points to international labor standards, such as those embodied in ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*, as the basis for countries' respect for labor rights. In its engagement with its trade partners, the United States funds technical assistance programs and provides technical expertise in assisting countries to meet these international standards, including through the labor cooperation mechanisms of U.S. trade agreements. The United States also encourages tripartite dialogue among governments, business, and labor representatives in achieving these standards.



## QUESTIONS FROM TRINIDAD AND TOBAGO

### PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/275)

#### II. TRADE POLICY AND INVESTMENT REGIMES (3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS

##### Page 27, Paragraph 32

*Mention is made of the intention to pursue more Trade and Investment Agreements (TIFAs) with the African and Middle East countries.*

1. *What priority does the US attach to completion of the current negotiation of the TIFA with Caribbean countries? What is the schedule for completion of these negotiations?*

**RESPONSE:** The United States attaches a high priority to completing TIFA negotiations with Caribbean countries. We expect to conclude the negotiations in early 2013.

##### Page 17, paragraph 13

2. *Can the USA provide a timeframe when the USA-Panama Free Trade Agreement will enter into force?*

**RESPONSE:** The U.S.-Panama Trade Promotion Agreement entered into force on October 31, 2012. See WT/REG324/N/1; S/C/N/658, dated 30 October 2012.

##### Page 28, paragraph 35

*The Secretariat Report states "According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations".*

3. *Please provide details of the US federal laws and regulations which act as barriers or may restrict foreign investment in the sectors mentioned.*

**RESPONSE:** The Congressional Research Service (CRS) report cited in Paragraph 35 of the Secretariat's Report discusses a number of federal-level measures that "have an impact on foreign investment in the United States," including measures that do not restrict foreign investment. Indeed, the report notes that "there are not across-the-board, blanket restrictions on foreign investment in the United States." The CRS report referenced in the Secretariat's Report itself provides detail on each of the federal-level measures it discusses. The report is publicly available, and its bibliographical information is provided in the "References" section of the Secretariat's Report.

#### III. TRADE POLICIES AND PRACTICES BY MEASURE

##### Page 42, paragraph 32

*Merchandise Processing Fee*

*According to the Secretariat Report “Since 1985 the United States has imposed fees for the processing of commercial merchandise. Several revisions to the law or new laws that have modified the fees, changed how they are assessed, and created exemptions. The Merchandise Processing Fee (MPF) was created in 1986, and since 1990 has been applied differently depending on whether the import is an informal or formal entry. For informal entries, the MPFs are: US\$2 for automated entries, US\$6 for manual entries not prepared by CBP, and US\$9 for manual entries prepared by CBP. For formal entries there is an ad valorem fee with caps for minimum (US\$25) and maximum (US\$485) rates. Currently, the informal entry limit for merchandise is US\$2,000, but there is a proposed rule by the Department of Homeland Security and the Department of Treasury to raise the limit to US\$2,500. The final rule is expected to be issued in the second half of 2012”*

4. *Can the USA provide details of the final rule which was expected to be completed in the second half of 2012.*

**RESPONSE:** The final rule raising the informal entry limit was adopted on December 6, 2012. The final rule will go in effect in January 2013. For more information on this change and MPF rates, see: <https://www.federalregister.gov/articles/2012/12/06/2012-29193/informal-entry-limit-and-removal-of-a-formal-entry-requirement>

Page 54, paragraph 62

*According to the Secretariat Report, “The United States last notified quantitative restrictions in 1999, and cross-referenced three notifications in the areas of safeguards, import licensing, and textile. According to the authorities, a new notification is under preparation.”*

5. *Can USA please indicate an expected timeline for the completion and submission of this notification in fulfillment of its WTO obligations?*

**RESPONSE:** The United States’ most recent notification on Quantitative Restrictions, submitted on October 3, 2012, was issued under G/MA/QR/N/USA/1.

Page 54 Table III.14

*Products Subject to U.S. Import Licensing Procedures 2011*

*The amount of time in advance of importation within which a permit must be applied for is not specified in the regulations. A permit cannot be granted immediately upon request. Prior review of the application is required. There are no limitations as to the period of the year during which permit applications may be made. Permit applications are processed and effected by one office*

6. *Please indicate an estimated processing time for this permit given that they are not granted immediately. Please indicate a time frame for the prior review.*

**RESPONSE:** The amount of processing time and timeframe for prior review can only be determined on a product-by-product, case-by-case basis. As noted by the Secretariat, the permit system is not used to restrict the quantity or value of imports, but only to protect domestic agriculture from the introduction or entry of animal diseases or disease vectors. Permits for products apply to all countries depending on disease status and type of product (see U.S. “Replies to Questionnaire on Import Licensing Procedures,” G/LIC/N/3/USA/9, September 25, 2012). The United States implements its import licensing regime in accordance with Article 1.2 of the WTO Agreement on Import Licensing Procedures.

Page 62, Box III.1

*The FDA Food Safety Modernization Act (FSMA) provides for technical cooperation.*

7. *Can the United States advise whether the Programme of cooperation been rolled out? If so, what are the mechanisms to allow small developing countries to benefit from this support programme.*

**RESPONSE:** Section 305 of FSMA requires FDA to develop a comprehensive plan to expand technical, scientific and regulatory food safety capacity of foreign governments and their respective food industries in countries from which foods are exported to the United States. The statutory deadline for developing the plan is two years from date of enactment of the Act, which is January 4, 2013. Further, FDA is required to develop the capacity-building plan in consultation with certain stakeholders, including representatives of the food industry, officials from other federal agencies, foreign government officials, non-governmental organizations that represent the interests of consumers, and other stakeholders. FDA has not yet published the capacity building plan. The capacity-building plan shall include, as appropriate:

1. Recommendations for bilateral and multilateral arrangements and agreements, including providing for responsibilities of exporting countries to ensure food safety;
2. Provisions for secure electronic data sharing;
3. Provisions for mutual recognition of inspection reports;
4. Training of foreign governments and food producers on U.S. requirements for safe food;
5. Recommendations on whether and how to harmonize requirements under the Codex Alimentarius; and
6. Provisions for multilateral acceptance of laboratory methods and testing and detection techniques.

FDA hosted a one-day public meeting entitled “International Capacity Building with Respect to Food Safety” on June 19, 2012 in Washington, DC. The purpose of this public meeting was to provide interested persons a forum to learn about FDA’s current thinking on the international capacity building plan and offer an opportunity for the public to provide comments.

## QUESTIONS FROM TURKEY

### REPORT BY THE UNITED STATES

#### II. The United States Economic and Trade Environment

pg. 10, para. 29-30

*In the Government Report it is stated that “Weak housing market and high levels of household debt, are the legacies of the bubble that preceded the recent financial crisis. Conditions are improving in the housing sector, and households have made significant strides with regard to balance sheet repair, but in neither case has the United States returned to pre-bubble norms.” “U.S. economy is vulnerable to global economic conditions, particularly the situation in Europe.”*

*How will the US economy overcome these challenges?*

**RESPONSE:** The Administration has embarked on a series of multifaceted and fiscally responsible actions in partnership with private market participants and housing regulators to proactively repair the housing market and ease the transition to a new and stable equilibrium. The new policy initiatives seek to enable refinancing, to unlock access to credit for responsible underwater homeowners, to reallocate foreclosed properties to the rental market, to prevent unnecessary foreclosures for borrowers struggling with temporary loss of income, to implement sustainable modifications of delinquent loans, and to repair the frayed infrastructure of mortgage servicing and mortgage finance.

The U.S. economy continues to grow despite the situation in Europe. However, like every country in the international community, it has a strong interest in the successful resolution of the crisis. The Administration is engaging with European governments both bilaterally and in multilateral forums. The United States has also been involved in the response to the crisis through its role in the IMF. The Administration continues to urge movement along several dimensions in Europe: robust implementation of countries' agreed fiscal and structural reform programs, in the context of steps that euro-area leaders have outlined to reform fiscal governance in the euro area; a more substantial financial firewall to ensure that governments can borrow at sustainable interest rates while executing policies to strengthen the foundations for growth and to reduce their debts; and measures to ensure that European banks have sufficient liquidity and are adequately capitalized to maintain the full confidence of depositors and creditors. Global and U.S. economic performance will depend, in part, on the swift resolution of problems in the euro area. In such times of global economic and financial disequilibrium, U.S. coordination with international partners remains essential.

#### XXIX. Trade Policy Developments Since 2010

pg. 20, para. 84

*In the Government Report it is indicated that comprehensive trade agreement between US and EU is on the agenda.*

*Within this framework, could the Delegation kindly provide further information about the recent developments regarding the possible US-EU Free Trade Agreement?*

**RESPONSE:** The U.S.-EU High Level Working Group, established by the U.S.-EU Summit in November 2011, has been exploring the possibility of comprehensive trade negotiations between the United States and the EU. The Working Group needs to do additional work on several issues before it will be ready to issue final recommendations. The date on which the Working Group will issue its final report is still under consideration.

## **REPORT BY THE SECRETARIAT**

### **II. TRADE POLICY AND INVESTMENT REGIMES**

#### **(3) INVESTMENT AGREEMENTS AND POLICIES,**

A.

B. Page 28, para.35

*It is stated by the Secretariat that “According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations”.*

*Some of these restrictions may serve as obstacles to liberal investment regime that a free market economy is expected to have. In this regard, does the US Government plan to take steps for further liberalization of investment regime? If they have such plans, could they share their agenda?*

C.

**RESPONSE:** There are not at present any proposals within the U.S. Government for significant revision to measures impacting foreign investment. As noted in the CRS report cited in Paragraph 35 of the Secretariat’s Report, foreign investment in the United States is subject to restrictions in only a very small number sectors.

#### **D. (4) Investment Agreements and Policies, pg.28, para.35**

*The Secretariat Report cites that “Where The Committee on Foreign Investment in the United States (CFIUS) identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction.”*

*Could the Delegation enlighten the membership about the details of mitigation measures that CFIUS may impose on the investment transactions? In addition, could the Delegation share with the membership the criteria used for deciding whether a transaction affects the national security or not?*

**RESPONSE:** Information describing mitigation measures required by CFIUS is available in the CFIUS Annual Report, available on the CFIUS website at [www.treasury.gov/CFIUS](http://www.treasury.gov/CFIUS).

CFIUS has published guidance on types of transactions that have posed national security considerations. (See guidance that Treasury published on December 8, 2008, in the *Federal Register*, available on the CFIUS webpage at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>).

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) Measures Directly Affecting Imports, pg.30, para. 2**

The Secretariat notes that *“Beyond the basic importing topics of classification, valuation, and origin and marking, CBP is responsible for a number of initiatives to facilitate trade, better secure U.S. borders, and enforce U.S. laws and regulations. These include:*

***Container Security Initiative (CSI)**, launched in the aftermath of the 9/11 terrorist attacks in order to address the threat to border security posed by the use of maritime container shipments. As more than 11 million cargo containers arrive at U.S. ports every year, CBP has developed a pre-screening process to assess risk and, if necessary, containers are inspected abroad before being shipped to the United States. CSI is now in operation in 58 ports world-wide and pre-screens over 80% of maritime container cargo destined for the United States.”*

*Could the US Government elaborate on their future plans for the CSI? Does the US Governemnt have any plan to change the coverage of the CSI or to end the implementation of the CSI?*

**RESPONSE:** CSI is now operational at ports in North America, Europe, Asia, Africa, the Middle East, and Latin and Central America. CBP’s 58 operational CSI ports now prescreen over 80 percent of all maritime containerized cargo imported into the United States. At this time there are no plans to expand to other ports or places beyond the current ports that are currently active.

**(1) Measures Directly Affecting Imports, pg.30, para. 2**

*The Secretariat notes that “Beyond the basic importing topics of classification, valuation, and origin and marking, CBP is responsible for a number of initiatives to facilitate trade, better secure U.S. borders, and enforce U.S. laws and regulations. These include:*

***Secure Freight Initiative (SFI)**, initiated in response to the Security and Accountability for Every (SAFE) Port Act to evaluate the feasibility of requiring 100% scanning of maritime cargo containers. The SAFE Port Act, as amended, requires 100% scanning of all maritime containers shipped to the United States by 1 July 2012. On 2 May 2012, in accordance with the statute, DHS Secretary submitted to Congress her intent to extend the deadline by two years. New proposed legislation to extend or eliminate the statutory deadline has not been passed into law...”*

*Could the US delegation kindly provide us up-to-date information about the extension of the statutory deadline?*

**RESPONSE:** In May 2012, DHS Secretary Napolitano issued a report and letter to Congress extending to July 2014 the deadline to implement 100% scanning.

**(1) Measures Directly Affecting Imports**

page 48-49, para. 48

*The Secretariat Report cites that “The United States abandoned the use of zeroing when calculating margins in original investigations based on weighted average to weighted average comparisons in 2006. However, in February 2012, after publishing a proposed modification, receiving public comments, and consulting with Congress, the U.S. Department of Commerce modified its methodology to address the issue of zeroing in administrative, new shipper, expedited, and sunset reviews. In administrative reviews, “except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted average export prices with*

*monthly weighted average normal values, and will grant an offset" where the export price exceeds the normal value. Further, in sunset reviews "it will not rely on weighted average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent." The new rules apply to all reviews pending before the Department for which preliminary results were issued after 16 April 2012."*

*Concerning the dumping calculation methodology in administrative reviews;*

- i) What are the rules and procedures used to determine the "appropriateness" of a case to apply monthly normal value- monthly export price comparison subject to offset if necessary?*
- ii) What is the context of an "offset" to be granted in the event of an export price exceeds normal value?*

**RESPONSE:** As explained in the February 2012 notice, in investigations and reviews, except where the Department of Commerce determines that application of a different comparison method is more appropriate, the Department of Commerce will compare weighted-average export prices with weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and the antidumping duty assessment rate. In certain investigations and administrative reviews, the Department of Commerce has evaluated whether an average-to-transaction comparison method is appropriate, based on the facts of the particular case.

#### **(1) Measures Directly Affecting Exports**

Page70, para. 112

*It is stated by the Secretariat that: "Under Executive Order 13534 of 11 March 2010, the President set out the National Export Initiative (NEI) with the goal of doubling exports over five years by "helping firms – especially small businesses – overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps". The NEI addresses several issues intended to increase exports, including: developing programmes that improve information and other technical assistance to first-time exporters, and assist current exporters in identifying new export opportunities in international markets; promoting existing federal resources for export assistance; increasing the availability of export credits to SMEs; promoting exports of goods and services through trade missions and commercial advocacy; improving market access by actively opening new markets; reducing significant barriers to trade, and enforcing trade agreements; and promoting balanced growth in the global economy."*

*Could the US delegation kindly inform us about the specifics of steps they plan to take in the near future, under the NEI framework? Could the delegation let us know that in which geographical markets they do particularly put emphasis with respect to trade promotion ?*

**RESPONSE:** The annual National Export Strategy tracks and measures the Federal Government's progress in implementing the NEI recommendations, and also describes activities in particular areas and regions of the world, such as deepening engagement with major emerging markets. For full details see the 2011 National Export Strategy at:

<http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf>

The 2012 National Export Strategy is expected to be publically released at the end of the year.

### **(3) Other Measures Affecting Investment and Trade**

Page 73, para. 121

*The Secretariat notes that “More recently, the President proposed a new framework for business tax reform in February 2012. The proposed reforms include provisions to: (a) eliminate dozens of tax loopholes and subsidies, broaden the base and cut the corporate tax rate to spur growth in America; (b) strengthen American manufacturing and innovation; (c) strengthen the international tax system, including establishing a new minimum tax on foreign earnings, to encourage domestic investment; (d) simplify and cut taxes for America's small businesses; and (e) restore fiscal responsibility and “not add a dime to the deficit”*

*Could the US delegation provide us with some details pertaining to the President's proposal, particularly on the provisions included in the reform to “strengthen the international tax system, including establishing a new minimum tax on foreign earnings, to encourage domestic investment”?*

**RESPONSE:** The proposal would strengthen the international tax system by requiring companies to pay a minimum tax on overseas profits, remove tax deductions for moving production overseas and provide new incentives for bringing production back to the United States. It also includes other reforms to reduce incentives to shift income and assets overseas, such as, for example, taxing currently the excess profits associated with shifting intangible assets to low tax jurisdictions. Additional details can be found at:

<http://www.treasury.gov/resource-center/tax-policy/Documents/The-Presidents-Framework-for-Business-Tax-Reform-02-22-2012.pdf>

### **(3) Other Measures Affecting Investment and Trade**

Page 78, para. 137

*The Secretariat Report states that “The United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for goods and services. When the law goes into effect, an amount of 2% is applied to foreign entities not party to an international procurement agreement. This is understood to apply to countries that are not members of the GPA or do not have a free-trade agreement with the United States. The regulatory changes to implement the law have not been finalized; the changes will follow the FAR rulemaking procedures before entering into effect.”*

*Could the US Delegation share their rationale for this legislation and the schedule for the entry into force of the same legislation?*

**RESPONSE:** The text of the referenced legislation, Section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, is available on the Internet at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ347/pdf/PLAW-111publ347.pdf>. The text of this legislation speaks for itself, and the United States does not have additional information to provide concerning the rationale of the legislation. The U.S. Internal Revenue Service and the Treasury Department are in the process of drafting regulations. The statute is effective for payments received pursuant to contracts entered into on and after January 2, 2011.

## **III. TRADE POLICIES BY SECTOR**

### **(1) Agriculture**



Page 107, para. 30 and pg. 111, Table IV.5

*It is stated by the Secretariat that: “Sugar processors qualify for marketing loans (without provisions for marketing loan gains or loan deficiency payments), and production is supported by other schemes. The sugar programme ‘uses price supports, domestic marketing allotments, and tariff-rate quotas (TRQs) to influence the amount of sugar available to the U.S. market. The program supports U.S. sugar prices above comparable levels in the world market’”*

*Could the US Delegation elaborate on the evolution of the OECD indicator cited in Table IV.5 (“SCT as % gross farm receipts” for refined sugar), from 2006 to 2011? Particularly, in comparison with the evolution of the OECD average and in the light of the most recent OECD statistics showing that 2011 rates are 27% and 11% for the US and OECD average, respectively.*

**RESPONSE:** The OECD, not the United States, developed the SCT indicator and the OECD uses its own specific definitions and methodologies for its calculation, therefore we cannot elaborate on the evolution of said indicator. It is important to note that OECD’s classification and calculation methods for measuring single commodity transfers are not comparable to WTO’s measures for product-specific support.

## QUESTIONS FROM UKRAINE

### **XXX. REPORT BY THE SECRETARIAT**

#### **XXXI.**

#### **XXXII. TRADE POLICIES AND PRACTICES BY MEASURE**

*Paragraph 21 notes that approximately 7% of tariff lines are considered to have peaks, some as high as 350% (tobacco) (Chart III.2) The vast majority of peaks (around 50%) are in the textile and apparel sector, followed by agricultural products (35%), and footwear (7%). Commodities that are subject to TRQs generally have peak tariffs in the out-of-quota tariff line and many tariffs that are non-ad valorem are also peak tariffs.*

*Question. How does the US plan to reduce tariff peaks for these tariff lines?*

**RESPONSE:** The U.S. duty structure is a result of several successive rounds of multilateral trade negotiations. As shown in the Table III.4 of the Secretariat's Report, incidence of international tariff peaks (defined as any tariff rate at or above 15 percent) in the U.S. schedule has declined from 6.6 percent in 2002 to 5.0 percent in 2012. As is the case with other Members, the incidence of tariff peaks in the U.S. tariff schedule would be further reduced through balanced, ambitious multilateral trade liberalization.

*Paragraph 24 notes that the legal change to amend certain tobacco tariffs, pursuant to Article XXVIII renegotiations, has not been implemented at the WTO, while it appears the United States proceeded domestically with these changes long ago (G/SECRET/2, 8 March 1995 has not been approved or certified. Tobacco changes implemented by Presidential Proclamation 6821).*

*Question. When does the US plan to fulfil the procedure under Article XXVIII since it appears the United States proceeded domestically with these changes long ago?*

**RESPONSE:** The United States notified the conclusion of the Article XXVIII negotiations (see G/SECRET/2.Add1) and provided a copy of the U.S. HTS changes to the WTO.

*Paragraph 30 states that sugar processors qualify for marketing loans (without provisions for marketing loan gains or loan deficiency payments), and production is supported by other schemes. The sugar programme "uses price supports, domestic marketing allotments, and tariff-rate quotas (TRQs) to influence the amount of sugar available to the U.S. market. The program supports U.S. sugar prices above comparable levels in the world market." Under the marketing loan programme, sugar processors rather than producers may take out loans and they agree to pay the producers at a rate proportional to the loan. To prevent sugar being transferred to the CCC to settle a marketing assistance loan, an overall allotment quantity is applied, to limit marketing, along with other provisions designed to manage domestic supply commensurate with domestic demand.*

*Question: We would ask United States to provide additional clarification concerning sugar price support policy - what measures of sugar price support are used to influence the amount of sugar available to the U.S. market and what are the measures for supporting sugar prices above comparable levels in the world market?*

**RESPONSE:** The amount of sugar available in the U.S. market depends on the marketing allotment quantities granted to domestic producers and the quantity of sugar other countries choose to export to the United States under the tariffs and tariff-rate quotas established under the WTO and our other trade agreements. Price support is also provided through the marketing loan program, under which processors may take loans based on their sugar production and forfeit the sugar under loan in lieu of repayment if market prices fall below the statutory loan rate.

### **III. Trade Policies and practices by measure**

#### **1. Measures directly affecting import**

##### **(vi) Contingency measures, Anti-dumping and countervailing measures, paragraphs 47, 48 pp. 48, 49:**

*The Secretariat Report notes that pursuant to commitments undertaken in the Uruguay Round, the United States began reviewing outstanding AD orders in force starting in July 1998.*

*In February 2012, after publishing a proposed modification, receiving public comments, and consulting with Congress, the U.S. Department of Commerce modified its methodology to address the issue of zeroing in administrative, new shipper, expedited, and sunset reviews.*

*Question: Could the USA, please, clarify the procedure of recalculating of dumping margin for a country that in original anti-dumping investigation was defined as a country with non-market economy but later obtained the market economy status? How could an exporter from such country initiate the review, if it has not supplied its production to the US market during the period after the application of anti-dumping measures because of high level of anti-dumping duty (dumping margin was based on "surrogate" price)?*

**RESPONSE:** The process for reviewing an antidumping duty margin is the same for all countries, whether designated as a market economy or as a non-market economy. The United States has a retrospective assessment system, under which final liability for antidumping duties is determined after merchandise is imported. The most frequently used procedure for determining such liability is an administrative review under 19 U.S.C. 1675(a) and 19 CFR 351.213.

*Paragraph 57 notes that on 26 January 2012, the USITC published notice of an interim rule as part of its Rules of Practice and Procedure to amend its rules relating to the conduct of investigations under legislation implementing safeguard provisions in free trade agreements. In essence, these rules expand upon the current rules for bilateral safeguard investigations under the NAFTA and make them applicable to other FTAs with similar procedures. On 25 June 2012, the interim rule was adopted as a final rule.*

*Question: Please, provide more information and what are the details of the procedure of bilateral safeguard investigations under the FTAs?*

**RESPONSE:** The rule, which the USITC has since adopted as a final rule (see next paragraph), addresses matters that are common to the FTA safeguard investigations that the USITC is authorized to conduct, such as the types of entities that may file a petition, the information that must be included

in a petition, the time for USITC determinations and reporting, and procedures for the limited disclosure of confidential business information under administrative protective order in those instances in which the USITC is authorized to make such disclosure. The rule also identifies the U.S. statutory provisions that implement the FTA safeguard provisions and authorize the USITC to conduct investigations and make determinations.

The interim rule was adopted as a final rule (subject to correction of three typographical errors) effective June 25, 2012, the date on which the USITC's notice of final rulemaking was published in the *Federal Register* (77 Fed.Reg. 37804); a copy of the notice can be viewed on (and downloaded from) the USITC's website at [http://usitc.gov/secretary/fed\\_reg\\_notices/rules/2012-15346.pdf](http://usitc.gov/secretary/fed_reg_notices/rules/2012-15346.pdf). The full text of the final rule can be found on the USITC's website at [http://usitc.gov/secretary/fed\\_reg\\_notices/rules/itcrules0212.pdf](http://usitc.gov/secretary/fed_reg_notices/rules/itcrules0212.pdf).

#### **(iv) Tariffs**

*According to the WTO communication G/MA/279 of January 9, 2012 your country reserved rights under Article XXVIII:5 of the GATT 1994 to modify tariff schedule during 2012 - 2014.*

*Question: We kindly ask you to provide information concerning goods intended for modification of the bound levels.*

**RESPONSE:** The United States, like many other Members, reserves its rights under XXVIII:5 as a formality. Currently, we have no intention of raising our bound tariffs.

***Paragraph 71** notes that Ex-Im Bank provides export financing through various programmes, inter alia: working capital guarantees for lenders (normally commercial banks) on secured, short-term working capital loans to finance the production of goods for export by U.S. companies, particularly small businesses; short and medium-term export credit insurance to exporters and lenders against the risk of default on debt obligations used to finance export contracts; and special financing programmes such as aircraft finance, project finance, and supply chain finance.*

*Question: Could USA please clarify how these programmes correspond with the provisions of Agreement on Subsidies and Countervailing measures, in particular with Article 3 and Annex 1?*

**RESPONSE:** All of U.S. Ex-Im Bank programs operate on a fully self-sustaining basis and operate within the guidelines of the OECD Arrangement on Export Credits, where applicable, and are fully compliant with the WTO requirements.

**Paragraph 82** notes that *The Volcker rule, as embodied in Section 619 of the Dodd-Frank Act (Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds), generally contains two prohibitions. It prohibits "banking entities" (insured depository institutions, bank holding companies, and their subsidiaries or affiliates) from engaging in short-term proprietary trading of any security, derivative, and certain other financial instruments for a banking entity's own account, subject to certain exemptions. In addition, it prohibits "banking entities" from acquiring or retaining any equity, partnership, or other ownership interest in or from sponsoring a hedge fund or private equity fund, subject to certain exemptions. The term "banking entities" includes foreign banks that maintain branches or agencies in the United States or that own U.S. banks or commercial lending companies in the United States. These banks, as well as their parent holding companies, are referred to in U.S. regulations as "foreign banking organizations".*

*Question: Could the U.S. provide clarifications on the objectives and rationale for the "Volcker rule" implementation and application?*

*Taking into account further liberalization of trade in services are there any plans to abolish prohibitions contained in the "Volcker rule"?*

**RESPONSE:** The OCC, Board, FDIC, and SEC (the Agencies) proposed a rule to implement the Dodd Frank Act Section 619 prohibitions and restrictions on the ability of banking entities and nonbank financial companies to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. The Agencies requested comment on the potential impacts that the proposal may have on banking entities and the businesses in which they engage.

Please see: [http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7\\_OCC-FRS-FDIC-SEC\\_Prohibitions\\_restrictions\\_on\\_proprietary\\_trading.pdf](http://www.stlouisfed.org/regreformrules/Pdfs/2011-11-7_OCC-FRS-FDIC-SEC_Prohibitions_restrictions_on_proprietary_trading.pdf).

**(i) Government procurement**

*Question: Could the U.S. provide number of contracts awarded by national or foreign providers during 2010-2011?*

**RESPONSE:** The United States has reported its statistics to the WTO Committee on Government Procurement through 2008. Beginning with 2009 procurement, the United States has changed its reporting methodology to more precisely reflect options exercised in contracts. It will submit the statistics for 2009-2011 to the WTO Committee as soon as that information is available.

*Question: How does the US ensure that any existing Buy American provisions are applied in line with its GPA obligations?*

**RESPONSE:** The Federal Acquisition Regulation provides for the implementation of Buy American provisions, which includes Part 25, which specifies that such provisions are not applied to goods purchased from countries with which the United States has a trade agreement that provides for reciprocal access.

*Question: The Secretariat report states that "In August 2010, the US notified the final Regulation implementing the Buy American provision in the American Recovery and Reinvestment Act of 2009 (ARRA) pursuant to art.XXIV:5(b)"*

*Could the U.S. provide the main features of the final Regulation, what is it expected to achieve?*

**RESPONSE:** That Regulation provided that the Buy American provision in the American Recovery and Reinvestment Act would not be applied to goods from countries with which the United States has a trade agreement that provides for reciprocal access.

*Question: The Secretariat report states that “Nearly all federal agencies are required to comply with the Federal Acquisition Regulation (FAR), but certain agencies are exempt.*

*Could the U.S. indicate what agencies are exempt and what are those criteria for exemption?*

**RESPONSE:** The United States does not have a list of all agencies that are not required to comply with the Federal Acquisition Regulation (FAR), nor does it have criteria for their exemption. The FAR System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies ([http://www.usa.gov/Agencies/Federal/Executive.shtml#Executive\\_Departments](http://www.usa.gov/Agencies/Federal/Executive.shtml#Executive_Departments)). Executive agencies are required to comply with the FAR. Some Independent Agencies and Government Corporation, such as the Small Business Administration and the General Services Administration elect to follow the FAR.

## **Trade-related intellectual property rights**

*Question: With regard to the U.S. Trademark Law are Geographical indications subject to certain provisions for recognition and protection of rights?*

**RESPONSE:** The United States protects geographical indications through its trademark system as certification marks, collective marks and trademarks. The U.S. trademark system provides the requisite protection set forth in the geographical indications sections of the TRIPS Agreement; recognizes prior-in-time trademark rights and allows generic terms to remain in the public domain for producers' and manufacturers' use to refer to their products. Geographic signs used on non-originating goods/services that would mislead or deceive consumers are not eligible for registration as a trademark, or as part of a trademark. Complementary protection for and recognition of names of viticultural significance used on wine and spirits labels of both domestic and foreign origin is available under the U.S. Federal Alcohol Labeling Act, administered by the Alcohol Tax and Trade Bureau (TTB).

## ADDITIONAL QUESTIONS FROM UKRAINE

### 1. Questions on the Report by the WTO Secretariat, Chapter II, Trade Policy and Investment Regimes

#### Section 3, Preferential Trade Agreements and Arrangements

##### (ii) Unilateral preferences

*Paragraph 19 of the Report by the Secretariat notes that, during the past two years, the Congress of the United States has held significant policy discussions on prospective reform of some of the programmes establishing unilateral preferences. It clarifies that the legal authority for the Generalised System of Preference (GSP) and the Andean Trade Preference Act (ATPA) programmes lapsed on 31 December 2010 and 12 February 2011, respectively. In October 2011, legislation was enacted re-authorising the two programmes until 31 July 2013. According to the report, the Congress of the United States may consider changes or reforms in the GSP and the ATPA programmes when it next takes up renewal of these two programmes, probably in the first half of 2013. According to the President's Trade Policy Agenda, "the growing competitiveness of many emerging-market GSP beneficiaries may prompt review and reform of the GSP programme".*

*Question: Could the United States provide more details on how it intends to reform its GSP programme and what the applicable definition of the category of "emerging-market GSP beneficiaries" is?*

**RESPONSE:** It is not yet clear whether possible reforms to the GSP program will be on the Congressional agenda in 2013, and the Administration is not in a position to speculate on what specific reforms Congress might consider. For its part, the Obama Administration believes it is important that any prospective reform of the GSP program take into account both the needs of the world's poorest countries and the fact that many emerging market countries may no longer need preferential access to compete in the U.S. market in some product sectors.

While there is no set definition of "emerging markets," these are generally considered to be those lower- to upper-middle-income developing country economies that are experiencing strong economic growth and that are playing a growing role in global markets.

### 2. Questions on the Report by the WTO Secretariat, Chapter III, Trade Policies and Practices by Measure

#### Section 1, Measures Directly Affecting Imports

##### (i) Customs procedures

*Paragraph 1 of the Report by the Secretariat notes that the United States Customs and Border Protection (CBP), an agency of the Department of Homeland Security, is responsible for a number of initiatives to facilitate trade, better secure U.S. borders, and enforce the laws and regulations of the United States. These include, inter alia, the Container Security Initiative (CSI), and the Secure Freight Initiative (SFI). The first was launched in the aftermath of the 9/11 terrorist attacks in order to address the threat to border security posed by the use of maritime container shipments. According to the Report, under this initiative, the*

*CBP has developed a pre-screening process to assess risk and, if necessary, containers are inspected abroad before being shipped to the United States. The SFI was initiated to evaluate the feasibility of a requirement that 100% of all maritime containers shipped to the United States be scanned by 1 July 2012, established by the Security and Accountability for Every (SAFE) Port Act. According to the report, on 2 May 2012, in accordance with the statute, the Department of Homeland Security Secretary submitted to Congress her intent to extend the deadline by two years. New proposed legislation to extend or eliminate the statutory deadline has not been passed into law. Complimentary rules and procedures for ensuring security of air cargo on passenger aircraft were enacted (Implementing Recommendations of the 9/11 Commission Act) and the law is under the purview of the Transportation Security Administration (TSA), another agency of the Department of Homeland Security. The law required 100% cargo scanning on international U.S. inbound flights, originally by 31 December 2011. However, the TSA postponed this deadline and instituted a new deadline of 3 December 2012 for implementation.*

*Questions:*

*Could the United States confirm that the proposed legislation to extend or eliminate the statutory deadline has not yet been passed into law? If this is the case, what does the United States intend to do?*

*Could the United States clarify whether the deadline postponed by the TSA to 3 December 2012 has, in fact, expired and the complementary rules and procedures to ensure the security of air cargo to freight and passenger are now in force, requiring 100% cargo scanning on international U.S.-inbound flights?*

*Has the United States factored-in the trade impact of these measures on operators, in terms of increasing costs and pre-shipment inspection procedures?*

*Could the United States describe how both the CSI and SFI procedures are trade-facilitating in nature?*

**RESPONSE:** The deadline for implementation of the 100% scanning requirement has been extended and will not go into effect until July 1, 2014. The Secretary of Homeland Security has the authority to extend it again at that time under the conditions outlined in the statute. The requirement still applies, but the deadline for implementation has been changed.

As for air cargo screening, beginning December 3, 2012, all cargo shipments loaded on passenger aircraft must undergo screening for explosives, fulfilling a requirement of the Implementing Recommendations of the 9/11 Commission Act.

In an effort to respond to numerous considerations, such as the impact on international trade flows and costs, TSA worked closely with other governments, international organizations, and industry partners to increase the security of air cargo without restricting the movement of goods and commerce. The original deadline of August 2010, was extended to allow for full participation including costs and concerns of all parties affected by the new requirement. The process announced takes into account costs, business practices, and the impact on our international partners, both governments and their traders.



**(iii) Rules of origin**  
**(b) Preferential rules of origin**

*Paragraph 9 of the Report by the Secretariat notes that the preferential rules of origin of the United States have not been notified to the WTO Committee on Rules of Origin since 1997.*

*Question:*

*In light of the obligation under Paragraph 4 of Annex II of the Agreement on Rules of Origin, could the United States clarify when it intends to notify these measures to the WTO?*

**RESPONSE:** The United States submitted its notification on the U.S. preferential rules of origin to the WTO Secretariat on Friday, December 13, 2012.

**(vii) Quantitative trade measures, restrictions, controls and licensing**  
**(b) Import licensing**

*Paragraph 63 of the Report by the Secretariat notes that the United States requires import licenses for 15 categories of products, including steel. The description provided in Table III.14 of the report clarifies that the final rules extending the system until 21 March 2013 was published on 18 March 2009 and that it is possible to renew and extend the programme pending administrative review and approval. It also states that the licensing requirement is not intended to restrict the quantity or value of imports, but to provide “fast and reliable statistical information on steel imports to both the government and the public”.*

*Questions:*

*Could the United States clarify whether it considers this import licensing requirement automatic or non-automatic?*

**RESPONSE:** The import licensing requirement is automatic.

*Could the United States clarify whether it intends to extend the program beyond 21 March 2013?*

**RESPONSE:** Please see the United States notification of its import licensing procedures in accordance with Article 7.3 of the WTO Agreement on Import Licensing Procedures in particular, page 14 of G/LIC/N/3/USA/9, dated September 25, 2012. The notification states that “The Commerce Department will follow similar notice, public comment and publication procedures as it considers whether to extend the SIMA program beyond March 2013.” The United States is, therefore, in the process of considering whether to extend the program beyond March 21, 2013 and has requested comments from the public (see also Federal Register volume 77, number 219, Tuesday, November 13, 2012, Proposed Rules, pages 67593-67595).

*The United States maintains a system of import licensing for specialty sugar. Table III.14 of the Report by the Secretariat clarifies that such system is aimed at providing exporters access to the U.S. domestic market at the low tier tariff (i.e., to allow entry of certain refined sugars not widely available in the United States to fulfill the demand in niche markets). The US also regulates licenses for importation of sugar exempt from quota. According to the Report by*

*the Secretariat, these licenses are intended to increase the utilization of excess domestic refining capacity and improve employment in refining and related industries.*

*Questions:*

*Could the United States clarify the functioning of the import licensing system as applied to increase the utilization of excess domestic refining capacity?*

*In particular, what are the timeframes involved in the issuance of licenses and what are the mechanisms to subject the importation of sugar exempt from quota to licensing in a way that de facto restricts trade in the periods when there is no need to “increase the utilization of excess domestic refining capacity and improve employment in refining and related industries”?*

**RESPONSE:** The regulation involving the sugar exempt from quota can be found at 7 Code of Federal Regulations (CFR) Part 1530. The licenses are permanent, and all decisions about importing and exporting sugar under a license are made by the licensee.

#### **(ix) Sanitary and phytosanitary measures**

*Paragraph 81 of the Report by the Secretariat notes that the Food and Drug Administration Food Safety Modernization Act became law in January 2011. The main contents of the Act are described in Box III.1.*

*Questions:*

*In relation to the registration of food facilities, could the United States clarify the requirements for registration of foreign food facilities?*

**RESPONSE:** All food facilities that are required to register with FDA under section 415 of the FD&C Act, including foreign facilities (as defined in 21 CFR 1.227(b)(2)), must renew their registrations with FDA, as required by section 102 of FSMA. Registrants are required to submit registrations to FDA containing the information described in section 415(a)(2) of the FD&C Act, including the new information added by section 102 of FSMA.

*Could the United States clarify the application of the criterion of “reasonable probability” of serious adverse effects on human or animal health (as reported in Box III.1), which allows the Food and Drug Administration to suspend the registration of a food facility?*

**RESPONSE:** Under Section 415(b) of the FD&C Act, if FDA determines that food manufactured, processed, packed, received, or held by a registered facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals, FDA may by order suspend the registration of a facility that:

- Created, caused or was otherwise responsible for such reasonable probability; or
- Knew of or had reason to know of such reasonable probability and packed, received or held such food.

FDA will determine whether food, manufactured, processed, packed, received, or held by a registered facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals FDA on a case-by-case basis as such a determination depends on an assessment of the unique facts for each situation. FDA has issued an order suspending the registration of a food facility action under section 415 of the FD&C Act recently. For more information on that event and

to access a copy of the Agency's suspension order, please visit <http://www.fda.gov/Food/FoodSafety/CORENetwork/ucm320413.htm>.

*In relation to the safety of imported food, could the United States clarify the functioning of the Foreign Supplier Verification Program and the Voluntary Qualified Importer Program?*

**RESPONSE:** The Foreign Supplier Verification Program requires importers to conduct risk-based foreign supplier verification activities to verify that imported food is not, among other things, adulterated and that it was produced in compliance with FDA's preventive controls requirements and produce safety standards, where applicable.

Section 302 of the statute requires FDA to establish a voluntary, user-fee funded voluntary qualified importer program (VQIP) to expedite entry into the United States of imported food from eligible, qualified importers. To be eligible to participate in VQIP, an importer must offer food for importation from a facility that has a certification by an accredited third party. The new law directs FDA to issue guidance on participation in and compliance with VQIP.

*When does the United States intend to notify the implementing regulations for the Foreign Supplier Verification Program?*

**RESPONSE:** FDA is working diligently to issue the rules required by FSMA. We will notify the implementing regulations to the WTO once they are issued and published in the *Federal Register*.

*In relation to laboratory and third-party accreditation requirements, could the United States clarify whether the U.S. Food and Drugs Administration has issued the rules for the accreditation of laboratories and for the recognition of accreditation bodies under Sections 422 and 307, respectively?*

**RESPONSE:** FDA has not yet issued proposed rules for laboratory accreditation and accreditation of third-party auditors.

**Section 2, Measures Directly Affecting Exports**  
**(iv) Official support and related fiscal measures**  
**(c) Finance, insurance, and guarantees**

*According to Paragraph 116 of the Report by the Secretariat, certain ocean borne cargoes financed by Ex-Im Bank direct loans and long term guarantees exceeding US\$20 million or with a repayment period of more than seven years must be transported on U.S. flagged vessels, unless a waiver is obtained from the U.S. Maritime Administration. According to the U.S. Maritime Administration, 10 waivers were granted in 2010 and 16 in 2011.*

*Questions:*

*Could the United States provide further information on the functioning of the restriction applied to ocean borne cargoes financed by Ex-Im Bank direct loans and long term guarantees and, similarly to the waiver that may be accorded to non-U.S. flagged vessels? In particular, could the US clarify how said restriction to the flag of the transport operator, as opposed to the cargo being transported, is non-discriminatory in nature?*

**RESPONSE:** As a matter of policy, cargo benefitting from Ex-Im Bank programs should be transported on U.S.-flag vessels, unless a suitable U.S.-flag vessel is not available at a

reasonable rate. We further note that the United States has not undertaken services commitments in regard to maritime services.

*Paragraph 117 of the Report by the Secretariat states that, since 2008, the Ex-Im Bank has greatly increased its export financing through loans, guarantees, and export credit insurance. Under the National Export Initiative, the Bank has increased its efforts to provide export financing for small businesses, through the Small Business (Global Access) initiative, launched in 2011, and the development of new products, such as express insurance and an online application process.*

*Questions:*

*Could the United States provide more details on the National Export Initiative and its contribution in the area of export assistance and export financing?*

*Could the United States provide more information on the Ex-Im Bank's export financing efforts under the National Export Initiative?*

**RESPONSE:** Global Access for Small Business is an initiative dedicated to dramatically increasing the number of small businesses exporting goods and services to maintain and support U.S. jobs. Global Access is being supported by a wide variety of businesses, financial and government partners and is part of the National Export Initiative. In addition to its standard export credit programs, export credit insurance, pre and post shipment guarantees, and direct loans, Ex-Im introduced several new complementary products aimed at SME exporter needs. Finally, Ex-Im has redesigned its website with a special portal dedicated to small Business. More details on these efforts can be found at [www.exim.gov](http://www.exim.gov).

### **Section 3, Other Measures Affecting Investment and Trade** **(iii) Government procurement**

*According to Paragraph 131 of the Report by the Secretariat, U.S. procurement legislation includes specific rules on what qualifies as an "American good" for procurement purposes (i.e., specific origin rules that differ from rules of origin and marking for importation purposes). In particular, non manufactures are considered U.S. products if mined or produced in the United States; manufactures are considered U.S. products if manufactured in the United States and the cost of U.S. components is more than 50% of the overall cost of all components. In addition, special rules apply for construction contracts, whereby origin is not based on the nationality of the contractor or similar, but on the origin of the articles, materials, and supplies used by the contractor in constructing or repairing the building or work.*

*Question:*

*Could the United States clarify whether these origin requirements apply to procurement covered by the WTO Agreement on Government Procurement?*

**RESPONSE:** The United States can confirm that the origin requirements referenced in the question do not apply to government procurement covered by the WTO Agreement on Government Procurement.

### **3. Questions on the Report by the WTO Secretariat, Chapter IV, Trade Policies by Sector**

#### **Section 1, Agriculture (ii) Agriculture policies**

*According to Paragraph 11 of the Report by the Secretariat, there have been no major changes to agriculture policies in the United States since the last Trade Policy Review and the Food, Conservation, and Energy Act of 2008 remains the basis for most agricultural programmes and will remain so until it expires. The report states that some of the provisions of the 2008 Act expire on 30 September 2012, others on 31 December 2012, and others in 2013 at the end of the 2012 crop year. Should the 2008 Act expire without enactment of successor legislation or a temporary extension, farm programmes will revert 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.*

*Question:*

*Could the United States clarify the current legal framework applicable to its various agricultural programmes?*

**RESPONSE:** As noted in the report, some provisions of the 2008 Farm Bill have expired; others will expire on December 31, 2012; others will expire at the end of the 2012 crop year; and yet others are governed by permanent legislation that does not expire. Therefore, the legal framework is complex and varies by provision. The United States is unable to speculate as to when new legislation will be adopted.

#### **(a) Trade Imports**

*According to Paragraph 14 of the Report by the Secretariat, the United States has reserved the right to use the Special Agricultural Safeguard (SSG) on 189 tariff lines, mostly dairy products, sugar products, products containing sugar and/or dairy ingredients, and cotton. While the volume based SSG was last used in 2003, the price based safeguard has been applied more frequently (e.g., on 48 tariff lines in 2010, and 59 lines in 2009). According to the report, whenever an importer declares a price for out-of-quota imports that is below the level where the SSG is applicable, the additional duty is automatically applied. Therefore, in many cases the SSG is applied to small quantities such as 4 kg of fresh cheddar cheese or 3 kg of chocolate bars.*

*Questions:*

*Can the United States provide detailed statistics with respect to its use of SSGs per product, per country of origin of the goods and in relation to the volume and/or price triggers that have prompted the United States' administration to activate such instruments during the years following its last Trade Policy Review?*

**RESPONSE:** The United States annually notifies SSG use and provides quantity data on the use of the SSG by tariff line as a Committee on Agriculture best practice. The United States does not break down SSG use to the country of origin level.

*With respect to the statement in the report that “whenever an importer declares a price for out-of-quota imports that is below the level where the SSG is applicable, the additional duty is automatically applied”, can the United States indicate how this mechanism, which in its practical application appears to be tantamount to a variable levy and to lack the necessary predictability which is essential to international trade, complies with the relevant part of Article 5 of the Agreement on Agriculture (in particular, paragraphs 4, 5 and 7 thereof)?*

**RESPONSE:** The United States automatically applies price-based special safeguards (SSGs) on all products that were subject to tariffication in the Uruguay Round. The safeguard rates and trigger prices are published in the tariff schedule of the United States, so that there is transparency as to when the safeguard duty will be applied. The safeguard is applied in this manner for ease of administration and is fully consistent with the provisions of Article 5 of the Agreement on Agriculture.

**(iii) Levels of support  
(a) WTO notifications**

*Paragraph 37 of the of the Report by the Secretariat states that support for sugar has remained constant at about US\$1.2 billion while support for dairy declined to about US\$3 billion and that the high level of support for these two commodities reflects the market-price support programmes in place and the methodology used to calculate the value of support compared with that used for other commodities.*

*Question:*

*Could the United States provide additional information and statistics on market-price support programmes in place and the methodology that it uses to calculate the value of support for sugar as compared to the ones used vis-à-vis other commodities (i.e., dairy, cereals, etc.)?*

**RESPONSE:** *The United States refers Ukraine to its domestic support notifications for data and information on the U.S. sugar and other support programs. For market price support commodities (dairy products and sugar), the United States follows the provisions in Annex 3 of the Agreement of Agriculture. For other commodities, the value of support is reported as budgetary outlays.*

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