



16 February 2015

(15-0929)

Page: 1/444

**Trade Policy Review Body**  
**16 and 18 December 2014**

Original: English/Spanish  
anglais/espagnol  
inglés/pañol

**TRADE POLICY REVIEW**

THE UNITED STATES OF AMERICA  
MINUTES OF THE MEETING

*Addendum*

*Chairperson: H.E. Mrs. Mariam MD Salleh (Malaysia)*

This document contains the advance written questions and additional questions by WTO Members, and replies provided by the United States of America.<sup>1</sup>

**Organe d'examen des politiques commerciales**  
**16 et 18 décembre 2014**

**EXAMEN DES POLITIQUES COMMERCIALES**

ÉTATS-UNIS D'AMÉRIQUE  
COMPTE RENDU DE LA RÉUNION

*Addendum*

*Présidente: S.E. Mme. Mariam MD Salleh (Malaisie)*

Le présent document contient les questions écrites communiquées à l'avance par les Membres de l'OMC, leurs questions additionnelles, et les réponses fournies par États-Unis d'Amérique.<sup>1</sup>

**Órgano de Examen de las Políticas Comerciales**  
**16 y 18 de diciembre de 2014**

**EXAMEN DE LAS POLÍTICAS COMERCIALES**

ESTADOS UNIDOS  
ACTA DE LA REUNIÓN

*Addendum*

*Presidenta: Excma. Sra. Mariam MD Salleh (Malasia)*

En el presente documento figuran las preguntas presentadas anticipadamente por escrito y las preguntas adicionales de los Miembros de la OMC, así como las respuestas facilitadas por Estados Unidos.<sup>1</sup>

<sup>1</sup> In English and Spanish only./En anglais et espagnol seulement./En inglés y español solamente.

## ANTIGUA AND BARBUDA

*Contained in the Government report of the United States Trade policy Review 2014, under section 4, subheading (4.1) entitled "WTO Agreements and Initiatives" in particular paragraph 4.6, it is stated, "to ensure the enforcement of WTO Agreements, the United States has been one of the World's most frequent users of the WTO dispute settlement procedures....." further "that it has obtained favourable settlements and rulings in virtually all sectors, including manufacturing, intellectual property, agriculture and services".*

*In light of the above, the Government of Antigua and Barbuda would like to draw the attention of the United States to the unresolved dispute entitled WT/DS 285: United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services, here after referred to as the "dispute" involving the aforementioned parties.*

*The Appellate body upheld the Panel's ruling concerning the dispute on the following grounds:*

- *that the United States' Schedule includes a commitment to grant full market access in gambling and betting services; and*
- *The United States acts inconsistently with Article XVI:1 and sub-paragraphs (a) and (c) of Article XVI:2 by maintaining certain limitations on market access not specified in its Schedule.*

*Further, the compliance panel in 2007 ruled that the United States had failed to comply with the recommendations and rulings of the DSB and in a binding verdict, the final arbitrator ruled that the annual level of nullification or impairments of benefits accruing to Antigua and Barbuda is US\$21 million.*

*To date, the United States has not complied with the rulings and recommendations of the DSB in relation to the dispute and has not even compensated Antigua and Barbuda up to one year's worth of the value of the level of nullification or impairments of benefits accruing to Antigua and Barbuda by the final arbitrator due to the U.S. non-compliance.*

*Juxtaposed to the above, please see the following questions from the Government of Antigua and Barbuda to the United States:*

**Question 1:** *With remote, domestic gaming now fully legalised in one state within the jurisdiction of the United States (New Jersey) while in the states of Nevada and Delaware some remote gaming services have been legally approved and are now being offered, coupled with the fact that the U.S. is still acting in violation of its WTO GATS Commitment which ought to grant full market access to foreign suppliers in the gambling and betting services sector, Does the United States accept that this ongoing practise stated above, goes against two critical principles of the WTO that is, freer trade and trade without discrimination?*

**RESPONSE:** **The United States recognizes the obligation of WTO Members to act in a manner consistent with the WTO Agreements and Members' schedules of commitments. Where the WTO Dispute Settlement Body determines that a measure implemented by a Member is not in conformity with a WTO Agreement, including commitments scheduled thereunder, that Member should bring itself into conformity in accordance with provisions of the DSU and other WTO Agreements. In the case of the dispute referenced above, the United States is working with the government of Antigua and Barbuda to resolve the dispute in a manner which allows the United States to bring itself into conformity with its legal obligations.**

**Question 2:** *How does the United States intend to resolve the legal conflict that now exists between its GATS Commitments relating to gambling and betting services and expanding remote gaming within the United States that excludes foreign companies?*

**RESPONSE:** **The United States is working with the government of Antigua and Barbuda and on a multilateral basis to resolve this issue. First, the United States has put forth, pursuant to Article XXI of the GATS, a generous package of services concessions as compensation for removing internet gambling from the U.S. schedule. Antigua and Barbuda is the sole WTO Member preventing the United States from completing this process. The United States remains committed to working with Antigua and Barbuda to resolve this issue. Second, the**

**United States remains committed to working with Antigua and Barbuda on a bilateral basis to resolve the dispute referenced above in a mutually beneficial manner.**

*Question 3: Does the United States recognise and accept the critical role the Dispute Settlement Pillar of the WTO plays and that all of the DSB rulings and recommendations ought to be promptly implemented?*

**RESPONSE: Please see the U.S. response to question 1 above.**

*Question 4: Does the United States accept that all the rulings and recommendations of the DSB specific to its actions forms a part of its international legal obligations under the ambit of the WTO?*

**RESPONSE:** Where the WTO Dispute Settlement Body determines that a measure implemented by a Member is not in conformity with a WTO Agreement, including commitments scheduled thereunder, that Member should bring itself into conformity in accordance with provisions of the DSU and other WTO Agreements.

*Question 5: Is it the intention of the United States to resolve its long standing dispute involving the small developing country economy of Antigua and Barbuda?*

**RESPONSE: Yes. Despite the difficulties we have had in the past – in 2008, for example, the United States and Antigua and Barbuda worked together for months and finally agreed on a settlement package, only to have Antigua and Barbuda subsequently repudiate that agreement – the United States remains committed to working with Antigua and Barbuda to resolve this dispute.**

*Question 6: What are the domestic factors within the United States that have hindered the country's political will in engaging meaningfully with Antigua and Barbuda in an effort to resolve the dispute in a manner that seriously considers the economic fallout that Antigua and Barbuda continues to experience due to your non-compliance?*

**RESPONSE: The United States disputes the premise of the question. The United States has been working with Antigua and Barbuda, in good faith and on an ongoing basis, to resolve the referenced dispute in a mutually beneficial manner.**

*Question 7: When does the United States intend to formally respond to Antigua and Barbuda's proposal tabled in late August 2014 in an effort to resolve the dispute?*

**RESPONSE: The United States has met with the Prime Minister of Antigua and Barbuda in September to discuss the issue with the new government. The United States remains committed to working with Antigua and Barbuda on to reach a realistic, mutually beneficial resolution of the dispute.**

*Question 8: Does the United States recognise the negative impact of non-compliance in relation to the predictability of a rules based system such as the WTO?*

**RESPONSE: Recognizing the obligation of WTO Members to bring themselves into conformity with their legal obligations under the WTO agreements, the United States is committed to continuing to work with Antigua and Barbuda on an ongoing basis to resolve the referenced dispute in a mutually beneficial manner without the need for further legal proceedings.**

**ARGENTINA*****I. Informe de la Secretaría WT/TPR/S/307.*****Resumen del informe**

1) En el párrafo 5 de la Sección titulada "Resumen", el reporte menciona que uno de los desarrollos más importantes de política comercial de los Estados Unidos durante el período de revisión ha sido la promulgación de la nueva ley agrícola el 7 de febrero de 2014. Asimismo, se menciona que la nueva ley representa un cambio considerable en la política agropecuaria para varios productos y este cambio está basado en la eliminación del sistema de pagos directos desacoplados hacia instrumentos de subsidios vinculados con los precios.

Considerando que Estados Unidos es uno de los principales productores, exportadores e importadores de productos agropecuarios y que los subsidios vinculados a los precios son los más distorsivos de la producción y el comercio, ¿podrían los Estados Unidos esbozar cómo esta modificación de su política agropecuaria contribuye al objetivo de largo plazo acordado en el Acuerdo de Agricultura de la OMC de establecer un sistema de comercio agropecuario equitativo y orientado al mercado?

**Sección 1 de entorno económico**

**RESPONSE: The 2014 Farm Bill emphasizes farmers' participation in crop insurance programs. Congress terminated the Direct and Counter-cyclical Payment program, as well as both market price support and export subsidies for dairy products.**

**The United States remains committed to its current WTO commitments and calls upon all Members to abide by their existing commitments and obligations, including to transparency through the timely and consistent notification of all production- and trade-distorting measures. Abiding by existing rules and increased transparency are fundamental for achieving the WTO's long-term objectives.**

2) Párrafos 1.3., 1.10 y 1.23.: En los dos primeros párrafos se indica que uno de los motores del crecimiento de la economía estadounidense en estos últimos años ha sido la demanda interna, habiendo aumentado el consumo privado (principal componente del PIB de los Estados Unidos) en forma continua gracias a la "mejora del mercado laboral, el incremento de los ingresos personales disponibles y el aumento de la riqueza de los hogares como consecuencia de la subida de los precios de las acciones y la vivienda". En el párrafo 2.5 del Informe del gobierno también se señala que "el gasto de los consumidores" ha sido uno de los factores que más ha contribuido al crecimiento de la economía de EEUU.

No obstante ello, en el Informe de la Secretaría (párrafos 1.10 y 1.23) se indica que mientras las exportaciones de mercancías de EEUU alcanzaron un nivel sin precedentes en 2013, las importaciones disminuyeron por primera vez en cinco años, atribuyéndose ello a una más débil demanda interna por importaciones.

a) ¿Cómo se condice un alto consumo, uno de los motores principales del crecimiento económico estadounidense en los últimos tiempos según se menciona en los Informes, con una débil demanda interna por productos importados?

b) ¿Se ha implementado una política de compra nacional? O

c) ¿Cuál sería el motivo por el cual ese alto consumo actual no se haya visto reflejado en un mayor incremento de las importaciones?

**RESPONSE: Since the recession, the growth in both U.S. goods and services exports and imports have trended downward. U.S. export growth was 17% in 2010, 15% in 2011, 4% in 2012, and 3% in 2013. U.S. import growth was 19% in 2010, 14% in 2011, 3% in 2012, and 0.1% in 2013. The lower growth rate in recent years is a product of higher growth in the earlier recovery period following the recession, and slower world growth in the latter period.**

**U.S. goods and services imports have also been affected by the declining demand for imported oil due to increased U.S. oil production, lower prices, and sluggish U.S. economic growth. Excluding oil, U.S. goods and services imports increased 4.6% in 2012 and 2.0% in 2013. Thus far in 2014, total imports are up 3.3% and imports excluding oil is up 5%. There is no national purchasing policy.**

*Sección 2. Régimen de comercio y de inversión.*

3) Párrafo 2.6: En este párrafo se indica que el Presidente de los EEUU ha destacado la importancia de obtener la autorización para negociar acuerdos comerciales (TPA), "EN VISTA DE LAS DOS PRINCIPALES NEGOCIACIONES REGIONALES QUE LOS ESTADOS UNIDOS TIENEN LA INTENCIÓN DE CONCLUIR O EN LAS QUE QUIEREN REALIZAR PROGRESOS SIGNIFICATIVOS": ¿Cuál es la perspectiva para la aprobación por parte del Congreso de los EE.UU. de una autorización para negociar acuerdos comerciales, en particular acuerdos multilaterales en la OMC?

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.**

4) En el párrafo 2.14 el informe menciona que otras de las prioridades de la política comercial para el periodo 2013-14 es la "lucha contra los obstáculos no arancelarios". Se solicita tener a bien indicar que medidas o iniciativas aplica Estados Unidos para encarar este tema y explicar si la política comercial también implica luchar contra todas las medidas que distorsionan el comercio y no solo las medidas en frontera.

**RESPONSE: Paragraph 2.14 notes that combatting non-tariff barriers is one of many priorities. We constantly engage our many trading partners to remove all types of barriers in an effort to expand trade. Additional information can be found in the 2013 and 2014 Trade Policy Agendas and 2012 and 2013 Annual Reports.**

<http://www.ustr.gov/sites/default/files/AnnualReport%20Final2013.pdf>

<http://www.ustr.gov/sites/default/files/2014%20Trade%20Policy%20Agenda%20and%202013%20Annual%20Report.pdf>

5) Párrafo 2.15: Aquí sí se hace referencia al Programa de Doha para el Desarrollo, indicando que, tras la reunión Ministerial de Bali, Estados Unidos busca "tomar la iniciativa", "marcar un nuevo rumbo y buscar nuevas formas de encarar otros aspectos de la Ronda".

- a) ¿A qué se refiere con estas expresiones, sobre todo con "marcar un nuevo rumbo y buscar nuevas formas de encarar otros aspectos de la Ronda"?.
- b) ¿A qué "nuevo rumbo" y "nuevas formas" se refiere?

**RESPONSE: As the United States has previously noted, if we are to succeed in developing a post-Bali work program by July, as agreed by WTO Members, it will be imperative for us to go about this work in different ways than those that characterized our efforts in the first half of this year, or for that matter, in the prior half-decade. Members up to this point have made no progress in coming to terms with what a work program would look like, what levels of ambition it would entail, or what degrees of detail it would contain. Thus, from the perspective of the United States, it seems clear that, moving into the new year, our governments will need to approach the task of developing a post-Bali work program in very different ways from what came before.**

6) El párrafo 2.17 del reporte describe que EEUU desempeñó un papel activo en las negociaciones para llegar a un acuerdo sobre Facilitación de Comercio en el denominado "Paquete de Bali". Al respecto,

- a) ¿Podría EEUU adelantar cuáles son sus expectativas y principales áreas de prioridad en el proceso del Programa de Trabajo Post-Bali?
- b) ¿Podría EEUU comentar si ha tomado a la última versión de las Modalidades Agrícolas (TN/AG/W/4/Rev.4) como base de la nueva Ley Agrícola promulgada en febrero de 2014 y, en ese caso, podría identificar qué cambios ha introducido respecto al régimen anterior para hacerlo más compatible con dichas Modalidades?

**RESPONSE: Our government is currently fully engaged in evaluating the core areas of the Doha Round – agriculture, industrial goods and services – and we are committed to bringing forward our creativity and fresh thinking. In our view, a balance between ambition and doability will be key. Regarding TN/AG/W/4/Rev.4, the United States has been clear for years that we have fundamental and significant problems with that draft text. These problems prevented us from agreeing to the draft in 2008 and will prevent us from agreeing to it in 2015.**

7) El párrafo 2.19 informa que EEUU no presentó las últimas notificaciones agrícolas en materia de subvenciones a la exportación, ayuda interna y utilización de los contingentes arancelarios. ¿Podría explicar EEUU las causas de la demora en su presentación y cuándo estima que las mismas podrían ser presentadas?

**RESPONSE: The United States submits each of these annual notifications to the Committee on Agriculture regularly. The United States recently submitted its domestic support notification for agriculture, G/AG/N/USA/100, dated December 8, 2014. Please see G/AG/N/USA/99, dated November 5, 2014, for the latest U.S. notification on export subsidies. On tariff quotas, please see G/AG/N/USA/94, dated February 5, 2014 for the latest MA:2 notification on quota fill.**

8) En el párrafo 2.32 el informe indica que el Sistema Generalizado de Preferencias de los Estados Unidos, su principal programa mundial de preferencias para los países en desarrollo y los PMA, quedó sin efecto el 31 de julio de 2013. Por consiguiente, las importaciones amparadas por las disposiciones del SGP están sujetas a aranceles NMF desde el 1º de agosto de 2013.

a) ¿Cuáles son las razones por las cuales este sistema ya no se encuentra vigente?

**RESPONSE: Legal authorization of the GSP program expired on July 31, 2013.**

b) ¿Es una situación temporal o definitiva?

**RESPONSE: GSP authorization has expired on previous occasions. In every past instance, Congress ultimately acted to extend the program. The Administration supports reauthorization of the GSP program by the U.S. Congress at the earliest opportunity.**

c) ¿Qué medidas piensa tomar el gobierno al respecto?

**RESPONSE: See response to Question 8b.**

d) ¿Por qué razones estando suspendido el programa el gobierno continúa evaluando la condición de beneficiarios de algunos países, incluyendo la exigencia de requisitos en materia laboral y de inversiones?

**RESPONSE: The Administration has continued its work on GSP country practice reviews, even during the program's suspension, in anticipation that Congress will ultimately renew the GSP program.**

e) ¿Cómo se compatibiliza esta suspensión con uno de los objetivos de la política comercial de los Estados Unidos para el periodo 2013-2014 que es el de "promover el comercio y el desarrollo"?

**RESPONSE: The United States Government remains committed to promoting global economic growth and development through expanded trade and has undertaken a broad array of programs toward this end, including trade capacity building programs and other unilateral preference programs, such as the African Growth and Opportunity Act and the Caribbean Basin Initiative.**

f) Algunos países fueron objeto de suspensión del SGP previos a esa fecha, por cuestiones consideradas ajenas al SGP:

(i) ¿Podría Estados Unidos, informar sobre las cuestiones que derivan en suspensión de un país del SGP?

**RESPONSE: As the Secretariat report notes, country eligibility criteria for GSP include matters related to worker rights, child labor, and enforcement of intellectual property rights and arbitral awards. The full list of statutory country eligibility criteria for the GSP program are provided in 19 USC Sections 2661-2462, which can be found online at: [http://www.ustr.gov/webfm\\_send/3129](http://www.ustr.gov/webfm_send/3129).**

(ii) ¿Cómo estas cuestiones ajenas al SGP se vinculan con aspectos comerciales?

**RESPONSE: The GSP program is administered consistent the laws and regulations governing the program, which can be found online at: <http://www.ustr.gov/trade->**

**[topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.](#)**

- 9) Párrafos 2.49, 2.50 y 2.51: En estos párrafos se hace referencia a dos programas de EEUU tendientes a atraer inversiones, como el programa SelectUSA y el programa "Make it in America".
- ¿Podría Estados Unidos proporcionar mayor información sobre esos dos programas?
  - ¿Han accedido empresas extranjeras a los fondos disponibles bajo este último programa?
  - ¿Qué requisitos se exigen para poder acceder a los mismos?
  - ¿Qué empresas son beneficiarias?
  - ¿Qué beneficios se otorgan para atraer inversiones?
  - ¿Se les otorgan a estas empresas otros beneficios además del monto inicial que se les concede?

**RESPONSE:** The Make it in America program was a one-time program, carried out in 2012, to identify innovative projects focused on increasing investment and employment. Further information is available at: [www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge](http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge). The winning projects are described at <http://www.eda.gov/challenges/MakeItInAmerica/winners.htm>. Information about the SelectUSA program is available at <http://selectusa.commerce.gov>. The SelectUSA websites contains a searchable database of over 70 different federal incentive programs designed to encourage business investment across a range of sectors (<http://selectusa.commerce.gov/investment-incentives>).

- 10) En el párrafo 2.52 el informe menciona que el Comité de Inversiones Extranjeras de los Estados Unidos (CFIUS) examina las transacciones de inversión extranjera "abarcadas" (comprendidas en su ámbito de competencia) para determinar si constituyen una amenaza para la seguridad nacional. ¿Cuáles son los criterios utilizados para considerar que una inversión extranjera puede "amenazar la seguridad nacional"?

**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).

- 11) En el párrafo 2.56 el informe indica que subsisten algunas leyes o reglamentos que restringen las inversiones en determinados sectores, imponen prescripciones en materia de recopilación de información sobre dichas inversiones o las dificultan de algún modo. ¿Cuáles son las razones por las cuales se mantienen estas restricciones?

**RESPONSE:** As Paragraph 2.56 of the Secretariat's Report notes, the United States has an open investment regime with few formal barriers to FDI. The measures referred to in paragraph 2.56 and identified in Table 2.4 of the Report include several that do not restrict foreign investment in the United States. These include, for example, laws relating to the collection of statistical data about services trade and foreign investment in the United States, as well as laws that on their face limit foreign participation in certain activities but do not prohibit foreign investors from participating in these activities through enterprises established in the United States. Further information on each of the statutes discussed in this section of the Report can be found at the source cited in Table 2.4, and the statutes themselves are available at: <http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>.

Sección 3. Políticas y prácticas comerciales, por medidas.

Subsección 3.1. sobre medidas que afectan las importaciones.

Subsección 3.1.1. sobre procedimientos y requisitos aduaneros.

- 12) ¿Podría Estados Unidos desarrollar con más detalle el gráfico 3.1., que hace referencia al proceso de importación en los Estados Unidos?

**RESPONSE:** The report correctly identifies the three main time frames that exist in the importation of goods process in the United States: pre-entry of goods, entry of the goods

**into the customs territory of the United States, and post-entry. Further, information about basic importing and exporting from the United States can be found on the CBP website at <http://www.cbp.gov/trade/basic-import-export>.**

13) En el párrafo 3.3 se indica que el artículo 2013 de la Ley de Seguridad Portuaria (SAFE) prevé la elaboración de un reglamento para exigir la presentación de datos adicionales con el fin de reforzar el procedimiento para determinar altos niveles de riesgo; se debe facilitar información apropiada en materia de seguridad antes de que las mercancías se carguen en buques cuyo destino sea los Estados Unidos. En ese sentido, se elaboró en 2009 la norma relativa a la declaración de seguridad del importador (ISF). ¿Exactamente qué tipo de información adicional se exige o se puede exigir en virtud de esta norma?

**RESPONSE: Section 203 of the Security and Accountability for Every Port Act (SAFE Port Act) and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002, required CBP to promulgate regulations that required importers and vessel operating carriers to provide advance data for purposes of enhancing security. The Importer Security Filing requirements were crafted as a result.**

The requirements were published in the Federal Register on Nov 28, 2008 and have been in effect since January 26, 2009. A phased enforcement strategy went into effect on January 26, 2010. The regulations can be found at 19 CFR Part 149, and further information about the requirements, the regulations, and other FAQs, can be found here, <http://www.cbp.gov/border-security/ports-entry/cargo-security/importer-security-filing-102>.

14) En el párrafo 3.3, el informe menciona que Estados Unidos desde 2003, los reglamentos del Servicio de Aduanas y Protección de Fronteras (CBP) exigen la transmisión electrónica anticipada al CBP de información sobre la carga que llega o sale y prevén distintas fechas de entrada en vigor en función del modo de transporte. ¿Podría Estados Unidos explicar dónde encontrar estos reglamentos y explicar cuáles son las fechas previstas según el medio de transporte?

**RESPONSE: The mandatory requirement for the advance electronic transmission of cargo information from all four modes of transportation has been in place for a decade. The timing for transmission is unique to the type of carrier and is found in the regulations in the parts pertinent to the carrier. Regulations implementing the advance electronic transmission of cargo data for vessels is found in 19 CFR Part 4; truck and rail is 19 CFR Part 123; and air cargo is Part 122. Further information about the 2003 law and regulations including FAQs and other implementation information can be found at <http://www.cbp.gov/border-security/ports-entry/carriers>.**

15) En el párrafo 3.4 se indica que las autoridades aduaneras de los Estados Unidos tienen previsto sustituir progresivamente el Sistema Automatizado de Comercio (ACS) por la Plataforma Comercial Autorizada (ACE) a fin de establecer un mecanismo de ventanilla única electrónica. Se solicita indicar el cronograma previsto para sustituir el ACS y las medidas nuevas que se prevén aplicar en virtud del ACE.

**RESPONSE: CBP will complete the development of core trade processing capabilities in ACE and decommission corresponding capabilities in legacy systems by the end of 2016. As part of the plan to complete ACE by 2016, CBP has established three mandatory use dates:**

- May 1, 2015: mandatory use of ACE for all electronic manifest filings;
- November 1, 2015: mandatory use of ACE for all electronic cargo release and entry summary filings; and
- October 1, 2016- mandatory use of ACE for all remaining electronic portions of the cargo release process.

**More detailed information about ACE including scheduled updates, outreach calendars, technical specifications, training and reference guides, frequently asked questions, and other resources can be found at: <http://www.cbp.gov/trade/automated>.**

16) En el párrafo 3.6 el informe aclara que el Presidente de los Estados Unidos emitió recientemente la "Racionalización de los procesos de exportación e importación para las empresas estadounidenses" que requiere la puesta en marcha, antes de 2016, de un proyecto de ventanilla única denominado Sistema de Datos sobre el Comercio Internacional (ITDS).

- 
- a) ¿Cómo se complementa este sistema con la Plataforma Comercial Autorizada?  
 b) ¿Implica una doble presentación de información para el operador comercial?

**RESPONSE:** ACE is the name of the automated system that will implement the ITDS. CBP will complete the development of core trade processing capabilities in ACE and decommission corresponding capabilities in legacy systems by the end of 2016. At that time, ACE will become the Single Window for trade processing, the primary system through which the international trade community will submit import/export data and the Government will determine admissibility. Through ACE as the Single Window, manual processes will be streamlined and automated, paper will be greatly reduced, and the international trade community will be able to more easily and efficiently comply with U.S. laws and regulations. There will not be a double submission of information.

17) En el párrafo 3.9 se indica que el Servicio de Aduanas y Protección de Frontera (CBP) admite las resoluciones anticipadas en las operaciones aduaneras, a través de las cuales los importadores pueden solicitar una decisión jurídica vinculante que les asegure cómo tratarán el producto las autoridades aduaneras cuando sea importado.

- a) ¿Sobre qué aspectos de la operatoria aduanera se puede solicitar una resolución anticipada?

**RESPONSE:** An advance ruling may be requested regarding an official interpretation of a customs laws, regulation or procedure in relation to a specifically described transaction.

- b) ¿Cómo se realiza el trámite y ante qué organismo?

**RESPONSE:** Customs and Border Protection is the agency that issues advance rulings on customs matters. The specific regulations are found in 19 CFR Part 177. Here is a link to advance rulings on the CBP website, <http://www.cbp.gov/trade/nafta/guide-customs-procedures/advance-ruling-procedures>.

- c) ¿Qué plazos existen para la adopción de estas resoluciones?

**RESPONSE:** The U.S. does not set forth deadlines for advance rulings. Nonetheless, the U.S endeavors to issue rulings within 90 days of receipt of information necessary to issue a ruling and often issues classification rulings within 30 days of receipt.

18) En el párrafo 3.10, se explica que las resoluciones anticipadas vinculantes se publican en la Web, en el Sistema de búsqueda en línea de decisiones aduaneras (CROSS) o en el Boletín y decisiones del servicio de Aduanas, en un plazo de 90 días contados a partir de la fecha en que se adoptó la decisión, y tienen fuerza obligatoria para el CBP. Sin embargo, no parece que existan plazos para la adopción de esas resoluciones.

- a) ¿Cuáles son los plazos omitidos en el informe?  
 b) En caso de no existir tales plazos, ¿cuáles son las razones que explican esta falencia?

**RESPONSE:** The U.S. does not plan to set a deadline for advance rulings as the issuance of a ruling depends on the submission of information to CBP, which could come later than the initial ruling request. The U.S endeavors to issue rulings within 90 days of receipt of information necessary to issue a ruling and often issues classification rulings within 30 days of receipt.

19) En el párrafo 3.11 el informe indica que, a finales de 2011, el CBP anunció un proyecto piloto simplificado de entrada para la tramitación acelerada de las importaciones que llegarán por vía aérea. ¿En qué instancias se encuentra actualmente este programa y los resultados que se obtuvieron?

**RESPONSE:** On November 9, 2011 CBP published a Federal Register Notice (76 FR 69755), announcing the Cargo Release/Simplified Entry pilot for the air mode of transportation.

On June 4, 2012, CBP announced the delivery of Cargo Release/Simplified Entry with the first Simplified Entry filings at Indianapolis, Chicago and Atlanta. CBP initially selected nine filers to participate in the pilot: AN Deringer, Expeditors, FedEx Trade Networks, FH Kaysing, Janel Group of New York, Kuehne & Nagel, Inc., Livingston International, Page & Jones, Inc and UPS. Based on the success of the initial pilot, CBP has expanded the Cargo Release/Simplified Entry pilot.

**On August 14, 2012, CBP published a Federal Register Notice (77 FR 48527), announcing the expansion of the pilot test of Cargo Release/Simplified Entry to additional participants. As a result, CBP has selected eleven new trade pilot participants: Alliance Customs Clearance Inc., Barthco International Inc. dba OHL International, CEVA Logistics, CSI Weiss-Rohlig USA Inc., Damco Customs Services, Inc., DHL Express, Inc. (USA), Future Forwarding Company, NEC Corporation of America, Scarbrough International, Ltd., Schenker, Inc., and UTC Overseas, Inc.**

**In addition to the three initial pilot ports, CBP has expanded the pilot to ten additional airports: Seattle, San Francisco, Oakland, Los Angeles, Dallas/Ft. Worth, Houston, Miami, JFK, Newark and Boston. In early November CBP will further expand the pilot to three additional ports, Detroit, Memphis, and Anchorage.**

**As of October 23, 2012, over 28,000 Simplified Entries have been filed for over 580 importers of record.**

**CBP will continue to build upon the Simplified Entry Pilot with future deployments of additional functionality until Cargo Release is fully available in ACE. For additional information on Simplified Entry/Cargo Release, including the Frequently Asked Questions, please continue to check the CBP website. <http://www.cbp.gov/trade/process-improvement-initiatives/simplified-entry/ac-se-expansion>.**

20) *En el párrafo 3.13 el informe explica brevemente ciertas características del programa C-TPAT (Asociación Aduanera y Comercial contra el Terrorismo). Se solicita explicar en detalle los requisitos que deben cumplir las empresas para acceder a cada uno de los tres tipos de niveles de certificaciones.*

**RESPONSE:** The application process for the C-TPAT program is done online. A company representative will fill out the application on a secure website called the C-TPAT Portal (<https://ctpat.cbp.dhs.gov/>). There are two components to the application process: the Company Profile (<http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/company-profile>) and the Security Profile. The company profile section of the application will ask for information such as addresses, contact information. Once the company profile is complete and the "Submit" button is clicked, an account is created in the C-TPAT Portal. When this account has been created, the company representative will then enter information into the Security Profile. The Security Profile section of the website contains questions of a more detailed nature that the Supply Chain Security Specialist (SCSS) who reviews the file will use to determine the company's ability to meet C-TPAT minimum security requirements.

Once the security profile is reviewed and accepted, the company will be accepted into the C-TPAT program and will start receiving some benefits. At this time, the SCSS assigned to your account will contact the company in order to set up a site visit to observe security practices at your location(s). When the SCSS reviews the company's operations and has found them to meet C-TPAT requirements, the company will become validated as a Tier II company, and will begin receiving the full benefits of the C-TPAT Program. It should be noted that only C-TPAT importers receive a Tier level; Tier 1 for Certified companies, Tier 2 for certified validated companies and Tier 3 for certified exceeding ("exceeding" means that the company is going above and beyond the minimum security requirements for the program). More information on the C-TPAT minimum security requirements can be found here, <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/security-criteria>.

21) *En el párrafo 3.14, el informe indica que el CBP ha firmado acuerdos de reconocimiento mutuo con siete administraciones aduaneras. Estos acuerdos establecen un vínculo entre los distintos programas internacionales de asociación industrial que permite reconocer y validar las constataciones de los participantes. Se basan en cuestiones relacionadas con la seguridad; no tratan de aspectos relacionados con la observancia. Al mes de junio de 2014, la C-TPAT había suscrito acuerdos de reconocimiento mutuo con el Canadá, la UE, el Japón, Jordania, la República de Corea, Nueva Zelanda y el Taipeí Chino. Todos menos el de Jordania se están aplicando en la actualidad.*

a) *¿Podría Estados Unidos explicar cuáles son los requisitos que debe cumplir un país para acceder a este tipo de acuerdos?*

- b) ¿Podrían indicar en qué consisten estos acuerdos y que requisitos solicita el CBP para la firma de los mismos?  
 c) ¿Existen negociaciones en marcha para firmar más acuerdos de este tipo?

**RESPONSE:** The essential concept of MR is that C-TPAT and the foreign program are compatible so that one program may recognize the validation findings of the other program. Mutual Recognition as a concept is reflected in the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, a strategy designed with the support of the United States which enables Customs Administrations to work together to improve their capability in detecting high-risk consignments and expediting the movement of legitimate cargo.

The C-TPAT MR process involves four phases:

1. A side-by-side comparison of the program requirements and an overview of the implemented Authorized Economic Operator (AEO) program. This is designed to determine if the programs align on basic principles and to determine if there is a security aspect in the AEO program.
2. A pilot program of joint validation and observation visits. This is designed to determine if the programs align in basic practice.
3. The signing of a Mutual Recognition Arrangement (MRA).
4. The development of MR operational procedures, primarily those associated with information sharing. This is also referred to as the implementation phase.

Before CBP engages a foreign Customs Administrations towards Mutual Recognition, four prerequisites must be met:

5. The foreign Customs Administration must have a full fledged operational program in place –i.e. not a program in development or a pilot program.
6. The foreign partnership program must have a strong validation process built into its program.
7. The foreign partnership program must have a strong security component built into its program.
8. The foreign Customs Administration must have a Customs Mutual Assistance Agreement (CMAA) in place with the US.

CBP intends to initiate MRA talks with other countries in Central America, South America, the Caribbean, Africa, and Asia over the next few years. CBP is currently in MRA negotiations with China and Switzerland.

- 22) En el párrafo 3.15 se informa la existencia de "Programa de Autoevaluación de los Importadores", que aparentemente se aplica en el marco del C-TPAT.
- a) ¿En qué consiste exactamente este programa?
  - b) ¿Qué relación tiene con el C-TPAT?
  - c) ¿Cuáles son exactamente los beneficios para los importadores?

**RESPONSE:** To participate in the ISA program, an importer must be C-TPAT certified and a U.S. or Canada resident importer with at least 2 years of importing history with CBP. Applicants are required to submit a signed Memorandum of Understanding (MOU) in which the importer agrees to comply with the requirements of the program, documented policies and procedures for the company's import process, and an ISA Questionnaire and self-testing plan.

Some of the incentives of ISA membership include expedited cargo release, Importer Trade Activity (ITRA) Data free of charge, removal from Regulatory Audit's audit pool, and the assignment of a National Account Manager.

- 23) Según el párrafo 3.18, Estados Unidos anunció que sometería a prueba el Programa de Comerciantes de Confianza a fin de reforzar la seguridad, identificar las actividades comerciales de bajo riesgo y mejorar la eficiencia del comercio. ¿Podría Estados Unidos explicar en qué consiste esta evaluación?

**RESPONSE:** As was stated in the Secretariat's report the test phase for the Trusted Trader program will be for 18 months and will have 10 participants. The evaluation will be based

**on the participant's feedback in conjunction with the feedback of the agencies involved, the costs, benefits, and areas of improvement based on that 18-month test period.**

24) *Se solicita explicar cuáles son los beneficios de la implementación de la Plataforma Comercial Autorizada (ACE), además de los descriptos en el informe y si existe algún mecanismo de consulta (página web, etc.) a través del cual las empresas puedan plantear sus inquietudes.*

**RESPONSE:** Through ACE as the Single Window, manual processes will be streamlined and automated, paper will be eliminated, and the international trade community will be able to more easily and efficiently comply with U.S. laws and regulations. U.S. Customs and Border Protection (CBP) has been conducting outreach with local ports and trade communities since 2013 and will continue to do so through ongoing outreach activities such as on-site visits, association-specific conferences, and webinars, well in advance of the mandatory dates. This outreach will ensure that the trade community has sufficient advice and advance notice to allow for a smooth transition to the new system. More detailed information about ACE including scheduled updates, outreach calendars, technical specifications, training and reference guides, frequently asked questions, and other resources can be found at: [www.cbp.gov/trade/ace](http://www.cbp.gov/trade/ace).

25) *En el párrafo 3.23 el informe explica que en 2012, el Consejo de Zonas Francas, que se ocupa de supervisar y vigilar el sistema de zonas francas de los Estados Unidos, aprobó nuevos reglamentos para esas zonas en los que se abordan distintas cuestiones pero cuya finalidad principal es simplificar el procedimiento de solicitud y reducir el tiempo necesario para establecer una zona o iniciar actividades manufactureras en ella. Además, los trámites burocráticos requieren ahora menos documentación.*

a) *¿Podría Estados Unidos explicar cuáles son las cuestiones que se abordan para simplificar el proceso de solicitud y reducir los tiempos?*

b) *¿En qué consisten los nuevos reglamentos y en qué cambiaron la operatoria de estas zonas francas hasta 2012?*

*Subsección 3.1.3. sobre normas de origen.*

**RESPONSE:** The primary change in the 2012 regulations decreased the time required to review a company's request for production authority within a FTZ. In the prior regulations this type of application required a 12-month review, which has been reduced to a 120-day process for most requests. In addition, through both the regulations and previous changes adopted by the FTZ Board, the processing time needed for a company's site to receive FTZ designation has been significantly reduced from 10 months to as little as 30 days. The processing time reductions were accomplished through a full reassessment of the procedures needed and information required for each type of request, with previous requirements eliminated or reduced wherever possible. Essentially, the reductions in processing time for production within a FTZ resulted in a vastly simplified review for the majority of cases, while allowing for a more detailed review where warranted by the circumstances.

The FTZ Board's reassessment of its procedures in 2012 was intended in part to better meet the needs of business in the United States. Statistics from 2012 and 2013, with record numbers of cases reviewed by the FTZ Board, indicate that there was a demand from the business community for simplified access to the FTZ program. However, due to the range of factors that enter into companies' location decisions, it is not practicable to try to assess the degree to which access to FTZs contributes to individual companies' location decisions.

26) *En el párrafo 3.29 se menciona que las normas estadounidenses sobre la marca del país de origen son distintas e independientes de las decisiones en materia de admisibilidad a efectos aduaneros. Cabe la posibilidad de que en el momento de su importación un artículo sea declarado como procedente de un país y sin embargo lleve una etiqueta que indique otro país como lugar de fabricación a efectos del mercado. ¿Podrían explicar con mayor nivel de detalle esta aparente contradicción?*

**RESPONSE:** United States marking requirements (19 USC 1304) require 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.

**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. Such requirements are not inconsistent with labeling requirements and are compliant with the United States' WTO obligations.**

**There may be rare circumstances in which a good may be eligible for preferential treatment in those preference programs that do not utilize the substantial transformation test for customs duty purposes, but for those programs that do apply the substantial transformation test, the marking would be the same country.**

27) *En el párrafo 3.30 el informe menciona que para justificar una solicitud de trato preferencial, los importadores deben conservar los documentos que deben presentar al CBP previa solicitud. ¿Podría Estados Unidos enumerar cuales son los documentos que se deben presentar al CBP?*

**RESPONSE:** Businesses must keep records (referred to as the "(a)(1)(A) list") that they have to prepare for the entry of merchandise. This list is in Treasury Directive 96-1, as well as in the customs regulations under 19 CFR 163, Appendix A. Others required are those business, financial, and accounting records ordinarily maintained for normal business transactions. Further information about recordkeeping requirements can be found at: <http://www.cbp.gov/trade/trade-community/outreach-programs/entry-summary/recordkeeping>.

*Subsección 3.1.4. sobre aranceles.*

28) *En el párrafo 3.32 el informe explica que otros cambios propuestos han consistido en rectificar la designación o descripción incorrecta de determinados productos químicos. ¿Cuáles son exactamente esos productos químicos?*

**RESPONSE:** The products referred to in the report are primarily photographic film products in Chapter 37. Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the U.S. International Trade Commission conducted an investigation and sought public comment on the proposed changes. No requests for changes to the Commission's recommendation were received. The required Congressional layover period has been completed. The omitted HTS provisions are expected to be proclaimed by the President by the end of 2014, and it is expected that the effective date of these modifications will be February 3, 2012, the date on which the other 2012 changes to the Harmonized System were reflected in the HTS by Presidential Proclamation 8771. No change in duty treatment would result upon the implementation of the omitted provisions.

29) *El párrafo 3.40 indica que los compromisos arancelarios de Estados Unidos en la OMC se actualizaron por última vez en 2011, tras la aprobación de los cambios de nomenclatura del SA 2002. Sin embargo, algunas de las modificaciones introducidas en el Arancel de Aduanas Armonizado (HTSUS) aún no se han notificado a la OMC, entre ellas las revisiones tercera y cuarta de la lista de productos farmacéuticos abarcados, las notas de capítulo y las negociaciones sobre el tabaco con arreglo al artículo XXVIII.*

- a) *¿Por qué razones aún no se han notificado a la OMC estos cambios?*
- b) *¿Piensa el gobierno cumplir prontamente con este compromiso asumido en el marco de la OMC?*

**RESPONSE:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm), specifically: [http://www.usitc.gov/tariff\\_affairs/hts\\_documents/PP8742.pdf](http://www.usitc.gov/tariff_affairs/hts_documents/PP8742.pdf) is the full text of the Presidential Proclamation regarding the changes, as published in the Federal Register.

30) *El párrafo 3.41 menciona que dos líneas arancelarias relativas al petróleo crudo siguen sin consolidarse en el marco de la OMC. ¿Por qué razones aún no se han consolidado estas dos líneas arancelarias relativas al petróleo?*

**RESPONSE: These two tariff lines (2709.00.10 and 2709.00.20) were not bound as part of the Uruguay Round and in prior GATT negotiations for reasons of national security. They are currently applied at 5.25 cents per barrel and 10.5 cents per barrel respectively.**

*Subsección 3.1.5. sobre otras cargas que afectan a las importaciones.*

31) *El párrafo 3.43 indica la existencia de un "gravamen por tramitación de mercancías (MPF)" que se aplica a todas las importaciones formales e informales y se emplea para compensar el costo de las operaciones comerciales del CBP.*

a) *¿Qué diferencia existe, de acuerdo a la legislación de los Estados Unidos, entre una importación "formal" y una "informal"?*

b) *¿Bajo qué criterios se determinan los gravámenes aplicables en virtud de este impuesto?*

**RESPONSE: Formal entries are commercial shipments of goods valued over US\$2500, while informal entries of merchandise are those commercial shipment valued below US\$2500 or consisting of personal shipments. The informal entry amount was increased in 2012, by a notice in the Federal register at 77 FR 72720 (December 6, 2012), and those regulations are found at 19 CFR Part 143.21. Formal entry regulations are found in 19 CFR Part 141.**

**The Merchandise Processing fee for formal entries is an *ad valorem* fee of 0.3464%. The fee is based on the value of the merchandise being imported, not including duty, freight, and insurance charges. The maximum amount of the fee shall not exceed US\$485 and shall not be less than US\$25. For informal entries: US\$2 if the entry is automated and not prepared by CBP personnel, US\$6 if the entry is manual and not prepared by CBP personnel, and US\$9 whether automated or manual, prepared by CBP personnel.**

32) *En el párrafo 3.51, el informe menciona durante el período examinado se revisaron los tipos del impuesto especial que grava el transporte aéreo y se modificaron las normas y reglamentos internos relativos a los dispositivos médicos, los servicios de bronceado y las instituciones financieras extranjeras.*

a) *¿Cuáles fueron las razones de estas modificaciones?*

b) *¿Podría especificar estas modificaciones?*

**RESPONSE: Generally, the nominal amount of the tax on the use of international travel facilities is adjusted annually with inflation. For further information, refer to the following online sites:**

<http://www.irs.gov/pub/irs-prior/p510--2012.pdf>;

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/api/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf](http://www.faa.gov/about/office_org/headquarters_offices/api/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf).

**With respect to the medical device excise tax, the IRS and the Treasury Department issued Notice 2012-77 on Dec. 5, 2012, (<http://www.irs.gov/pub/irs-drop/n-12-77.pdf>) to provide interim guidance on certain issues related to the medical device excise tax. This Notice solicited comments from taxpayers about these rules and no final determination has been made yet on these issues.**

Tanning services excise tax final regulations were published on June 11, 2013 (<http://www.gpo.gov/fdsys/pkg/FR-2013-06-11/pdf/2013-13876.pdf>). These are final regulations and reflect comments received on preliminary regulations. One of the clarification in the final regulations is that prepaid monthly membership and enrollment fees are subject to the tax even if the member does not use the tanning services for the period which the fees are related.

Final regulations for information reporting by foreign financial institutions and withholding on certain payments to these institutions were release April 8, 2013 ([http://www.irs.gov/irb/2013-15\\_IRB/ar16.html](http://www.irs.gov/irb/2013-15_IRB/ar16.html)). Many comments were received and the comments and the regulatory responses are listed in the section, "Summary of Comments and Explanations of Revisions." This guidance is part of the guidance provided as a result of FATCA. (<http://www.irs.gov/Businesses/Corporations/FATCA-Regulations-and-Other-Guidance>)

33) *El párrafo 3.52 indica que, además de los impuestos especiales federales, se aplican impuestos especiales estatales a los cigarrillos, otros productos del tabaco, combustibles para motores,*

aguardientes destilados, vino y cerveza. Los tipos varían considerablemente de un Estado a otro. Se aplican asimismo algunos impuestos especiales de consumo a nivel local o municipal. Se solicita tener a bien brindar detalles exactos sobre los tipos de impuestos aplicables a estos productos.

**RESPONSE: Tax rates at the local or municipal level are not readily available in one place. State tax rates can be found but may aggregate across products. For example, tobacco taxes for products other than cigarettes may be combined. Getting excise tax rates for specific products and localities would require extensive research and contacting each local government.**

However, there is some data available primarily on state excise tax rates. Data on tobacco taxes at the state and local government level can be found at the *Tax Burden on Tobacco, Historical Compilation, Volume 48, 2013* ([http://www.taxadmin.org/fta/tobacco/papers/tax\\_burden\\_2013.pdf](http://www.taxadmin.org/fta/tobacco/papers/tax_burden_2013.pdf)). State excise tax rates are available for motor fuels, distilled spirits, wine, and beer at the Federation of Tax Administrators (FTA) website, [http://www.taxadmin.org/fta/rate/tax\\_stru.html](http://www.taxadmin.org/fta/rate/tax_stru.html). The FTA also notes whether State retail sales taxes are applied on top of the excise tax rates.

Subsección 3.1.6. sobre prohibiciones, restricciones y licencias de importación.

34) El párrafo 3.57 indica que los Estados Unidos exigen licencias de importación (que pueden ser automáticas o no automáticas) para importar determinadas categorías de productos. Seis departamentos del Gobierno están facultados para establecer prescripciones en materia de licencias, en virtud de diversas leyes y por varios motivos. ¿Cuáles son los motivos por los cuales el gobierno de los Estados Unidos puede exigir licencias de importación?

**RESPONSE: Please see our notification under Article 7.3 of the Agreement of Import Licensing Procedures (G/LIC/N/3/USA/11).**

35) En la nota al pie N° 50, el informe indica que, en su notificación a la OMC, los Estados Unidos no hicieron ninguna distinción entre licencias automáticas y no automáticas. No obstante, la nota al pie aclara que es evidente que varias de las licencias no son automáticas. ¿Podrían explicar esta situación?

**RESPONSE: Please see our notification under Article 7.3 of the Agreement of Import Licensing Procedures (G/LIC/N/3/USA/11).**

36) En el párrafo 3.58 se indica que, en febrero de 2013 el Departamento de Agricultura propuso una norma para modificar determinados aspectos del Programa de licencias de importación para los productos lácteos, incluido el método de expedición de licencias. Se solicita tener a bien indicar en qué instancia se encuentra esta propuesta de norma y las modificaciones introduce en el sistema de expedición de licencias.

Subsección 3.1.7 sobre medidas antidumping, compensatorias y de salvaguardias.

**RESPONSE: USDA is in the process of rulemaking regarding the dairy import licensing program at this time, and further notices will be forthcoming.**

37) El párrafo 3.63 indica que se introdujeron algunos cambios y actualizaciones en los reglamentos internos relativos a las investigaciones sobre derechos antidumping y derechos compensatorios, tales como prórroga de los plazos de presentación, modificación de la definición de "información fáctica" y los plazos para presentarla, modificación de los requisitos de certificación de la información fáctica presentada durante el procedimiento y la incorporación de una disposición que refuerza la rendición de cuentas de los representantes, abogados y no abogados, que comparecen en las actuaciones. Al parecer, estos cambios afectan al procedimiento de investigación, haciéndolo más complejo. ¿Podría explicar las razones de estas reformas?

**RESPONSE: All of the changes to regulations mentioned above were notified to both the WTO Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures. The basis for each change is explained in more detail in the relevant notifications.**

38) En el párrafo 3.64 se indica que, en lo que se refiere a la práctica con respecto a economías no de mercado en el marco de los procedimientos antidumping, el Departamento de Comercio dejará de

*considerar a esas economías como "exportadoras condicionalmente". ¿Podrían explicar con mayor nivel de detalle en qué consiste este cambio?*

**RESPONSE:** The change referenced in the question identifies a published change in practice by the United States involving the discontinuation of the conditional review of the nonmarket economy entity in antidumping nonmarket economy cases. Now, if an interested party wants the U.S. Department of Commerce (Commerce) to conduct such a review, it must request such a review of the entity in accordance with Commerce's regulations.

More detailed information regarding this change in practice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>.

39) En el párrafo 3.66 el informe menciona que en 2013 las medidas antidumping y compensatorias se incrementaron un 18% con respecto a 2010 y que hubo un considerable aumento de las medidas aplicadas a los "mercados emergentes", mientras que el número de medidas aplicadas a los países desarrollados disminuyó. Asimismo, en 2013 se iniciaron 39 investigaciones, mientras que la media de los años anteriores era de 9 investigaciones por año. ¿A qué atribuye el gobierno de los Estados Unidos este incremento en el número de medidas e inicio de investigaciones durante el periodo bajo examen y el cambio en la composición de los países objeto de ellas, tanto las referentes a antidumping como las referidas a derechos compensatorios?

**RESPONSE:** The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.

40) Respecto a las revisión por extinción de las medidas antidumping, en los últimos años ha existido una tendencia a disminuir la revocaciones. El 90% de las revisiones condujeron al mantenimiento de las órdenes. ¿Podría EEUU dar mayor información sobre los factores que conducen al mantenimiento de las órdenes antidumping?

**RESPONSE:** In determining whether revocation of a countervailing duty order or an antidumping order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the U.S. International Trade Commission (USITC) considers the factors set out in U.S. law at 19 U.S.C. § 1675a(a). In determining whether revocation of a countervailing duty order or antidumping duty order 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 U.S. Department of Commerce (Commerce) considers the factors set out in U.S. law at 19 U.S.C. §§ 1675a(b) and (c), respectively.

The determinations in each sunset review conducted by the USITC or Commerce are case-specific. The results for all sunset reviews can be found on the USITC's website (<http://pubapps2.usitc.gov/sunset/>). From this website, Members can obtain, on a case-by-case basis, information about the rationale for either the continuation or termination of a countervailing duty or an antidumping duty order.

*Subsección 3.1.8 sobre reglamentos y normas técnicas.*

41) En el párrafo 3.75 el informe indica Estados Unidos actualmente está examinando las prácticas reglamentarias relacionadas con la participación de los organismos de reglamentación federales en la elaboración y aplicación de normas y en las actividades de evaluación de la conformidad.

a) ¿En qué consiste el examen?

**RESPONSE:** A description of the process to consider revisions to Circular A-119 can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-11/pdf/2014-02891.pdf>.

b) ¿Se están considerando reformas a estas prácticas?

**RESPONSE: Please see the answer to question (a).**

c) De ser así, ¿qué tipo de reformas se están considerando?

**RESPONSE: Please see the answer to question (a).**

42) En el párrafo 3.77 se indica que, según la revisión propuesta de la Circular A-11966, se mantiene una "marcada preferencia" por la utilización de normas consensuales voluntarias en el ámbito de la reglamentación y las actividades de contratación del Gobierno Federal, pero reconoce que en el mercado (y particularmente, en el campo de la tecnología de la información) se aplican también normas no elaboradas sobre la base del consenso que pueden ser pertinentes o necesarias a los efectos de la reglamentación. Por favor indicar cuáles son y en qué casos se aplican estas normas no elaboradas.

**RESPONSE: The proposed revisions to A-119 indicate that in cases where no suitable voluntary consensus standards exists, an agency may use suitable voluntary standards that are not developed by voluntary consensus bodies. When the use of existing voluntary consensus standards would be inconsistent with applicable law or otherwise impractical, agencies have the discretion under section 12(d) of the NTTAA to use voluntary standards that are not developed by voluntary consensus bodies.**

43) En el párrafo 3.78 el informe indica, en materia de reglamentación técnica, la Oficina de Información y Cuestiones de Reglamentación (OIRA) debe revisar, antes de su publicación, todas las medidas reglamentarias "importantes" adoptadas por los organismos federales, para lo cual estos deben remitir a la OIRA los proyectos de medidas reglamentarias junto con, entre otras cosas, una evaluación de sus costos y beneficios potenciales. ¿A qué se considera una medida reglamentaria "importante"?

**RESPONSE: Section 2(f) of Executive Order 12866, "Regulatory Planning and Review," define "significant regulatory action" as any regulatory action that is likely to result in a rule that may:**

- (1) Have an annual effect on the economy of US\$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 or planned 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 set forth in this Executive order.**

**The full text of Executive Order 12866 can be found here: [http://www.reginfo.gov/public/jsp/Utilities/EO\\_12866.pdf](http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf).**

44) En el párrafo 3.80 el informe indica que, en 2013, Estados Unidos notificó 269 obstáculos al comercio a la OMC, cifra superior a la de años anteriores. ¿A qué se debe este incremento?

**RESPONSE: There are numerous conceivable factors that may affect the increase in notifications, and therefore the United States does not have an explanation for the change.**

45) En el párrafo 3.82 el informe menciona que, en 2012, el Gobierno anunció la puesta en marcha, en colaboración con el ANSI, de un nuevo mecanismo de financiación cuyo objetivo es ayudar a los países en desarrollo a cumplir los compromisos contraídos en el marco del Acuerdo OTC. Se solicita indicar en qué instancia se encuentra este proyecto así como también información sobre sus aspectos normativos y operativos.

**RESPONSE:** The USAID-ANSI Standards Alliance assistance facility, launched in 2012, provides resources and expertise to enable developing countries to effectively implement the TBT Agreement. The focus of these efforts in developing countries includes efforts: to improve practices related to notification of technical regulations and conformity assessment procedures to the WTO; to strengthen domestic practices related to adopting relevant international standards; and to clarify and streamline regulatory processes for products. Under the Standards Alliance, ANSI is working with ten partner countries/regions according to work plans tailored to individual country needs, some of which include activities focused on standards development. Quarterly reports for the last year can be found here: <http://standardsalliance.ansi.org/>.

46) En el párrafo 3.83 se explica que, dependiendo del sector, los Estados Unidos utilizan una amplia gama de mecanismos para evaluar la conformidad (declaración de conformidad del proveedor, prueba o certificación por terceros, etc.). ¿Podría Estados Unidos explicar las características de estos mecanismos?

**RESPONSE:** As the Secretariat report notes, "The United States relies on a broad range of approaches to conformity assessment, depending on the sector (supplier's declaration of conformity, third-party testing or certification, etc.). Accreditation programmes are operated by all levels of government and the private sector, and frequently rely on private-sector conformity assessment bodies." In other words, the procedures for accreditation of conformity assessment bodies will vary, depending on the particular standard or technical regulation.

The National Institute for Standards and Technology (NIST), under the National Technology Transfer and Advancement Act, is responsible for working with U.S. government agencies to coordinate conformity assessment activities, with private sector conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity. OMB Circular A-119 *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* provides additional guidance to agencies regarding conformity assessment, including directing the Secretary of Commerce to issues guidance to the agencies to improve coordination on conformity assessment. NIST has published *Guidance on Federal Conformity Assessment Activities*, which can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2000-08-10/pdf/00-20262.pdf>.

#### Subsección 3.1.9 - Prescripciones sanitarias y fitosanitarias

47) En el párrafo 3.88 el informe menciona que la FDA ha anunciado que antes de promulgar las normas definitivas publicará revisiones de varias de las propuestas de reglamento previamente publicadas y dará a las partes interesadas la oportunidad de formular observaciones. ¿Cuáles son y cómo funcionan los mecanismos que permiten a las partes interesadas formular observaciones a las normas mencionadas?

**RESPONSE:** FDA issues rules by means of notice and comment rulemaking conducted pursuant to the Administrative Procedures Act (APA), a U.S. statute. Under the procedures for notice and comment rulemaking, any interested party may submit comments to provide its views on a proposed regulation. Proposed rules are published in the Federal Register (FR) (which is accessible online) so that the public may familiarize itself with the proposal and become aware of the opportunity for comment. The proposed rule and supporting documents are also filed in FDA's official docket on <http://www.regulations.gov>. In addition to following the requirements of the APA, FDA, as appropriate, notifies proposed rules to the WTO SPS Committee so that our trading partners can review them and be aware of the opportunity to provide written comments.

FDA considers comments on the proposed rule received during the comment period, and considers revising the rule in light of those comments. When it issues a final rule, in the preamble, FDA discusses the significant comments received on the proposed rule. The final rule is also published in the FR and on FDA's official docket on: <http://www.regulations.gov>.

48) En el párrafo 3.89 se indica que la legislación estadounidense exige que los importadores remitan un aviso de los envíos de determinados productos alimenticios. Se solicita explicar en detalle

*en las formalidades y requisitos que debe cumplir el operador comercial para cumplir con este aviso previo.*

**RESPONSE:** Federal law requires that FDA receive prior notice when human and animal food (unless exempt) is imported or offered for import into the United States. The Food Safety Modernization Act (FSMA) updated this requirement, providing that a person submitting a prior notice must report the name of any country to which the article of food has been refused entry. The final Prior Notice of Imported Food regulation is found in Title 21 of the U.S. Code of Federal Regulations (CFR), Part 1, Subpart I. Operators may file a prior notice through FDA's website ([www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/ucm2006836.htm](http://www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/ucm2006836.htm)), or may enlist the help of others, including customs brokers, to assist with this process.

49) *El párrafo 3.90 indica que la Ley 111-353 autoriza a la FDA a aplicar un gravamen a determinadas instalaciones nacionales y extranjeras y a la reinspección de los importadores, cuando anteriormente era la FDA quien asumía los costos de estas actividades.*

- a) *¿Cuáles son las razones de este cambio?*
- b) *¿Cómo se determina el gravamen?*

**RESPONSE:** FSMA authorizes FDA to assess and collect fees for certain re-inspections of domestic and foreign facilities, and for certain importer re-inspections, that result from a previous inspection where FDA has determined that non-compliance was materially related to food safety requirements of the Food, Drug & Cosmetic Act. The fee charged by FDA would be based on the number of direct hours spent on such re-inspections. More information can be found on FDA's website at: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm257982.htm>.

**FDA has not assessed or collected any of these re-inspection fees to date.**

50) *Los párrafos 3.87 a 3.90 describen diferentes aspectos de la Ley de Modernización de la Inocuidad de los Alimentos. Dicha Ley es una significativa reforma en el control de la inocuidad de los alimentos, tanto nacionales como importados. La misma entró en vigencia el 4 de enero de 2011 y la Administración de Alimentos y Medicamentos (FDA, por sus siglas en inglés) publicó siete propuestas de norma para su implementación entre 2013 y 2014.*

*Cabe destacar que la Ley de Modernización de la Inocuidad de los Alimentos exige un significativo incremento en el control de los alimentos importados y obligó a la FDA a inspeccionar 600 establecimientos extranjeros en 2011 y a duplicar esta cantidad anualmente durante los próximos 5 años (alcanzarían 19.200 inspecciones en 2016). Antes de la promulgación de la ley, la FDA inspeccionaba menos de un tercio de los establecimientos extranjeros que exportaban sus alimentos a los Estados Unidos. En tal sentido, ¿podría EEUU especificar si ha contemplado establecer un sistema de control para los alimentos importados basado en la determinación de equivalencia entre los organismos de control de los países y el Servicio de Inspección de la Inocuidad de Alimentos del Departamento de Agricultura (FSIS/USDA, por sus siglas en inglés), de acuerdo con el artículo 4 del Acuerdo MSF, la Decisión 19 del Comité MSF y los Principios para la Inspección y Certificación de Importaciones y Exportaciones de Alimentos del CODEX, en lugar de un sistema de control basado en la inspección individual de las empresas exportadoras?*

**RESPONSE:** FSIS and FDA regulate the safety of different products. The Food Safety Modernization Act (FSMA) applies to the food safety activities of FDA. It does not apply to the activities of USDA's FSIS. An FSIS determination to recognize a trading partner's inspection system with respect to a meat or poultry product does not imply the safety of FDA-regulated products from that trading partner.

### *Subsección 3.2. Medidas que afectan exportaciones*

#### *Subsección 3.2.1. de procedimientos y requisitos de exportación.*

51) *En el párrafo 3.99 se indica que, por lo general se exige que las exportaciones se clasifiquen utilizando la nomenclatura de la Lista B de clasificación de las exportaciones, elaborada por la Oficina del Censo de los Estados Unidos (que sigue la nomenclatura del SA, pero se diferencia del Arancel de Aduana de los Estados Unidos (HTSUS)), y no se actualiza con la misma frecuencia. Pero en algunos casos, los exportadores pueden utilizar la clasificación del HTSUS al presentar la documentación a través del AES. Se solicita tener a bien:*

- a) *indicar específicamente en qué casos se exige a los exportadores que utilicen la clasificación de la Lista B; y*

**RESPONSE:** The Harmonized Tariff Schedule of the United States, Annotated for Statistical Purposes (HTSUSA) can be used for reporting exports except where the level of detail collected for exports is greater than that collected for imports. Here's a link to the HTS codes that are not valid for AES. [<#concordance.](http://www.census.gov/foreign-trade/aes/documentlibrary/index.html)

b) en qué casos se les permite utilizar la clasificación HTSUS.

**RESPONSE:** Except for HTSUSA codes listed in the link above, HTSUSA codes may be used in filing exports declarations.

Subsección 3.2.3. sobre prohibiciones, restricciones y licencias de exportación.

52) El párrafo 3.104 indica que los Estados Unidos aplican restricciones, regímenes de licencias, controles adicionales y prohibiciones de exportar diversos productos por razones de seguridad nacional o de política exterior. Asimismo, el cuadro 3.9 indica que se aplican restricciones a las exportaciones de productos agropecuarios de "mucho valor" o "valor añadido".

a) ¿Cuáles son exactamente las razones por las cuales Estados Unidos puede aplicar restricciones a las exportaciones bajo los criterios de "seguridad nacional" o de "política exterior"?

**RESPONSE:** As noted in the Secretariat's report the main items subject to export licenses are munitions, certain military items and dual use items. Others pertain to trade in endangered species, food and drug safety and controlled substances. We believe the reason to restrict exports of these items should be well understood.

b) ¿En el caso específico de los productos agropecuarios, que significan exactamente los criterios de "mucho valor" o "valor añadido"?

**RESPONSE:** The table erroneously includes programs under the Department of Agriculture as export restrictions. All of these programs pertain to programs applicable to domestic producers as well as importers in the areas of food safety, organic certification, and marketing orders.

53) El párrafo 3.105 hace referencia a la existencia de una Lista de Control de Comercio (LCC) para las exportaciones. ¿En qué consiste esta lista y qué criterios se utilizan para su conformación?

**RESPONSE:** The Commerce Control List is reproduced in Table 3.10 of the Secretariat's Report and is also viewable at the Department of Commerce website provided with Table 3.10. As noted in paragraph 3.105, the Export Administration Regulations govern this Commerce Control List.

The Commerce Department's Bureau of Industry and Security (BIS) maintains the CCL which includes "items" -- i.e., "commodities," "software," and "technology" -- subject to the authority of BIS. The CCL contains items that are strictly commercial, dual-use (i.e., those that have both commercial and military or proliferation applications), and militarily less sensitive, upon which a license requirement may be imposed. The list the items controlled on the CCL is largely based on multilateral export control regimes.

Subsección 3.2.4 sobre apoyo y promoción de las exportaciones.

54) El párrafo 3.112. indica que el Comité de Coordinación para el Fomento del Comercio (TPCC) es el principal organismo interinstitucional del Gobierno que coordina las políticas de promoción de las exportaciones y que cada año establece su estrategia nacional de exportación, en la que determina un orden de prioridades. No obstante, desde 2012 no publica ningún documento al respecto.

a) ¿Por qué no se hacen más públicas estas estrategias?

**RESPONSE:** All National Export Strategies are made public.

b) ¿Está prevista una publicación actualizada de este informe?

**RESPONSE:** A revised National Export Strategy capturing the updated vision of the National Export Initiative, NEI/NEXT, will be published within the next several months.

c) ¿Bajo qué estrategias se viene trabajando dado que en los últimos 2 años no ha habido publicaciones al respecto?

**RESPONSE: The strategies under which work is taking place are captured in the NEI/NEXT Strategic Framework, [www.trade.gov/neinext/neinext-strategic-framework.pdf](http://www.trade.gov/neinext/neinext-strategic-framework.pdf), published by the TPCC Secretariat in May 2014.**

55) *En mayo de 2014, los Estados Unidos lanzaron una nueva iniciativa de exportación denominada NEI/NEXT, como continuación de la adoptada en 2010 (NEI). ¿Podría EEUU dar información detallada sobre los nuevos elementos incorporados o modificados en comparación con el marco vigente anterior?*

**RESPONSE: Feedback from customer surveys on the NEI and focus groups across the country – reaching more than 6,000 clients and partners – showed that U.S. companies are well-positioned to capitalize on growing opportunities around the world and offered suggestions on how to improve upon the NEI. NEI/NEXT is a new customer service-driven strategy with improved information resources that will help American businesses capitalize on existing and new opportunities to sell Made-in-America goods and services abroad. NEI/NEXT is focused on improving data of use to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help.**

56) *En el párrafo 3.116 el informe indica que el Presidente de los EE.UU. anunció, como parte de las iniciativas para revitalizar la economía después de la crisis económica de 2009, la Iniciativa NEI, un programa que abarcaría a todo el Gobierno y tendría por fin promover las exportaciones para duplicar su volumen en un plazo de cinco años. Su principal objetivo era reforzar las actividades de promoción y fomento del comercio, mejorar el acceso a la financiación, reducir los obstáculos a la actividad comercial y velar por el cumplimiento de las normas comerciales, poniendo especial atención en el desarrollo de programas de exportación para las PyMEs.*

a) *¿En qué consiste la promoción de las exportaciones que llevarían a duplicar el volumen de las mismas?*

**RESPONSE: We did not reach the President's goal of doubling exports under the NEI – in part because of unexpectedly strong global economic headwinds and macroeconomic factors outside our control.**

b) *¿En qué consisten los programas de exportación para las PyMEs al que refiere la iniciativa?*

**RESPONSE: NEI/NEXT is focused on improving data of use to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help. In addition to the Small Business Administration, the Export-Import Bank and the Department of Commerce assist small and medium sized enterprises.**

57) *En el párrafo 3.117 el informe indica que, aunque las exportaciones han aumentado considerablemente (un 44% en 2013 en comparación con 2009) se ha reconocido que el programa NEI no cumplirá su objetivo de duplicar las exportaciones en cinco años. No obstante, desde que se lanzó la Iniciativa hay más empresas que exportan y el crecimiento de las exportaciones ha llegado a niveles nunca alcanzados. No obstante, solo un pequeño porcentaje de las empresas estadounidenses exporta y, la mayoría de las que lo hacen solo exporta a un mercado.*

a) *¿En este aumento de las exportaciones (44% de 2009 a 2013), se han tomado en cuenta solamente las exportaciones de empresas de origen estadounidense o toda empresa exportadora localizada en dicho territorio?*

**RESPONSE: It includes all exporting enterprises located in the United States.**

b) *Si en el 44% no se hubiesen tomado en cuenta las empresas de capital extranjero, ¿Se tomó en cuenta en qué proporción podría aumentar dicho porcentaje en total, siendo posible acercarse a la meta propuesta de duplicar las exportaciones?*

**RESPONSE: See answer to A. N/A**

58) En el párrafo 3.118 el informe indica que, en mayo de 2014, se lanzó la Iniciativa NEI/NEXT como sucesora de la Iniciativa Nacional de Exportaciones (NEI), la cual tiene cinco objetivos principales: conectar más empresas estadounidenses con clientes mundiales, racionalizar los servicios y procedimientos de exportación de Estados Unidos, ampliar el acceso a la financiación, promover las exportaciones y la IED y ayudar a las economías en desarrollo a mejorar las condiciones para la actividad empresarial a fin de abrir nuevos mercados. Es un proyecto a largo plazo destinado a ayudar a las empresas estadounidenses a explotar al máximo su potencial exportador y crear puestos de trabajo en Estados Unidos y de sostenerlos.

a) ¿En qué consiste la ayuda a las economías en desarrollo para mejorar las condiciones para la actividad empresarial a fin de abrir nuevos mercados?

**RESPONSE:** The U.S. government helps developing countries improve their economic policy environment so that the private sector can spur growth. MCC programs are focus on economic growth and USAID has a long history partnering with countries to improve the investment climate for small and medium enterprises. Some recent examples include:

- USAID supported Mozambique's introduction of a court-supervised reorganization procedure for resolving insolvency and strengthening creditors' rights.
- In Kosovo, USAID worked with the government to reduce construction permit fees and introduce phased inspections for construction, making it easier for companies to acquire construction permits.
- In Jamaica, USAID supported the government in establishing more predictable and consistent tax collection procedures for businesses
- In Mexico, USAID trained judges & lawyers on best commercial and contract practices, role of mediation, and alternative dispute resolution mechanisms.
- In Pakistan, USAID provided technical assistance and equipment to enable real-time automated processing and reconciliation of export and import documents, thereby increasing expediency.

**USAID Press Releases:** (specific examples of reforms we supported captured in the World Bank Doing Business reports)

[www.usaid.gov/news-information/press-releases/oct-29-2014-usaid-support-top-reformers-highlighted-world-bank-group-doing](http://www.usaid.gov/news-information/press-releases/oct-29-2014-usaid-support-top-reformers-highlighted-world-bank-group-doing)

[www.usaid.gov/news-information/press-releases/oct-31-2013-usaid-supports-reforming-governments-doing-business-2014](http://www.usaid.gov/news-information/press-releases/oct-31-2013-usaid-supports-reforming-governments-doing-business-2014)

**MCC Information:** <http://www.mcc.gov/>

b) ¿Hay algún listado definido de cuales serían esas economías?

**RESPONSE:** There is not a defined list of countries.

c) ¿La Iniciativa solo está enfocada a empresas locales 100% o también podrían participar empresas establecidas en territorio estadounidense de capital extranjero?, teniendo en cuenta que parte de su recurso humano es nativo de dicho lugar.

**RESPONSE:** No. Foreign-owned companies can and do take advantage of Department of Commerce and other programs.

59) El cuadro 3.12 describe brevemente una serie de programas de programas específicos para prestar apoyo a las exportaciones. Sin embargo, solo se menciona el Departamento gubernamental a cargo del programa, el nombre del programa y la actividad específica. Se solicita tener a bien dar más información sobre estos programas, tales como montos, plazos, tipos de ayuda, requisitos de acceso a la ayuda, etc.

**RESPONSE:** Please refer to the report referenced by the Secretariat as the source for the Table as well as the U.S. Government websites cited in the CRS report.

Subsección 3.2.5. – Financiación, seguro y garantía de las exportación.

60) El párrafo 3.122 describe el programa Ex-Im Bank, el cual proporciona préstamos directos, garantías y seguros para ayudar a financiar las exportaciones de bienes y servicios de los Estados Unidos.

a) ¿Podría EEUU indicar qué porcentaje de dichas ayudas está destinada a productos agrícolas, y en dicho caso, a qué productos y qué destinos específicamente?

**RESPONSE:** In FY2013, the Ex-Im Bank's direct loans, guarantees, and insurance supported agricultural products totaling US\$638 million. The agricultural products supported by the Ex-Im Bank vary widely, and for many of the transactions, the export destination varies. Mexico, Russia, El Salvador, Panama, and Ukraine were the top identifiable markets for agricultural products supported by the Ex-Im Bank direct loans, guarantees, and insurance.

b) En virtud de su componente distorsivo para el comercio internacional, ¿dichas medidas están siendo notificadas a la OMC?

**RESPONSE:** All agricultural support is on terms of one-year or less and bears a market-related fee which is meant to encourage maximum use of private insurance.

61) En el párrafo 3.122 se indica que en 2012, el Congreso fijó en 100.000 millones de dólares el límite para la concesión de créditos del Banco de Exportación-Importación (Banco EX-IM), límite que en el ejercicio de 2014 se elevará a 140.000 millones de dólares. Asimismo, se indica que cuando es necesario prestar apoyo financiero porque existe una situación de riesgo o de incertidumbre política, el Banco cubre el déficit de financiación de las exportaciones y ayuda a crear condiciones equitativas para los exportadores que compiten con otros que tienen el respaldo o reciben de ellos de gobiernos extranjeros una financiación similar.

a) ¿Cuáles son las razones de haber incrementado casi en un 50% el volumen de dinero disponible para los créditos del Banco EX-IM?

**RESPONSE:** The lending authority is established by Congress. The increase in the lending authority to US\$140 billion was a result of the Export-Import Bank Reauthorization Act of 2012 (HR 2072 of the 112<sup>th</sup> Congress). Of the increase in the lending Authority, the report from the House of Representatives said this:

Section 3 would allow the bank to continue providing new loans, guarantees, and insurance through 2015. Section 4 would increase Ex-Im's maximum allowable financial exposure to US\$120 billion in 2012, US\$140 billion in 2013, and US\$160 billion each year thereafter. CBO estimates that such an increase would allow Ex-Im to continue expanding at its recent rate of about 15% a year.

See: <https://www.congress.gov/congressional-report/112th-congress/house-report/201/1>.

b) ¿A qué se considera una situación de riesgo o de incertidumbre política?

**RESPONSE:** There are no set criteria; each situation is individually evaluated based on the particular circumstances.

c) ¿Cuáles son los criterios que se utilizan para determinar si las condiciones para los exportadores que compiten con las empresas norteamericanas son "equitativas"?

**RESPONSE:** Among other factors, the official financing available to competing exporters in the market is considered. More generally, in considering and approving all transactions, the Ex-Im Bank complies with all OECD's "Arrangement on Officially Supported Export Credits."

62) El principal objetivo del Banco EX-IM es ofrecer préstamos directos, garantías y seguros para ayudar a financiar las exportaciones estadounidenses de mercaderías y servicios. Hasta el momento del examen, aun no contaba con la reautorización para continuar operando en un nuevo periodo. ¿Está prevista alguna estrategia o entidad que eventualmente suplante sus funciones?

**RESPONSE:** The Ex-Im Bank's charter was reauthorized by Congress in September 2014. The new date of expiration is June 30, 2015.

63) En el párrafo 3.126 se menciona la existencia de la Corporación de Inversiones Privadas en el Extranjero (OPIC), institución que facilita las inversiones de los Estados Unidos en países en desarrollo proporcionando a financiación, garantías, seguros contra riesgos políticos y apoyo a los fondos privados de inversión. Se solicita tener a bien brindar más detalles sobre las operaciones que

realiza la OPIC, tales como montos de financiamiento, apoyo o seguros, requisitos que deben cumplir los inversores, tipos de inversiones abarcadas así como también países de destino de las inversiones alcanzados por sus operaciones.

Subsección 3.3 sobre medidas que afectan la producción y el comercio.

Subsección 3.3.1. sobre incentivos.

**RESPONSE:** OPIC is able to consider projects in more than 150 developing and post-conflict countries. A full list of countries where OPIC operates is available at <http://www.opic.gov/doing-business-us/OPIC-policies/where-we-operate>. As a general matter, OPIC activities are not limited to particular sectors. However, OPIC is categorically prohibited from supporting certain types of projects. These prohibitions are listed at: <http://www.opic.gov/doing-business-us/applicant-screener/insurance-eligibility-checklist#1>.

64) El párrafo 3.131 describe la existencia de la "Ley de alivio de la carga impositiva de los contribuyentes" que prorroga la amortización adicional del 50% aplicable durante el primer año a los bienes que cumplan los requisitos y que se adquieran y comiencen a explotarse entre el 1º de enero de 2013 y el 31 de diciembre de 2013. Se solicita tener a bien dar una explicación más detallada acerca de los requisitos que deben cumplir dichos bienes y los beneficiarios del alivio.

**RESPONSE:** The American Taxpayer Relief Act of 2012 extended the 50% additional first-year depreciation deduction for one year through 2013 (through 2014 for certain longer-lived and transportation property). Under the provision, qualified property with a depreciation life of 7 years or less placed in service in 2013 is eligible. In general, eligible property is new equipment and prepackaged software. An example for five-year property is presented below comparing the regular depreciation schedule (MACRS) with the effect of modification of the 50% bonus depreciation. Bonus depreciation accelerates depreciation deductions, but does not extend them beyond the assigned life of the property, or allow for depreciating more than the purchase price of the property.

While it applies to the 2002 to 2009 period, using tax return data, takeup rates relative to eligible investment generally were in the 50% to 60% range for subchapter C corporations and S corporations, and 33% to 43% for partnerships and sole proprietorships. (John Kitchen and Matthew Knittel, "Business Use of Special Provisions for Accelerated Depreciation: Section 179 Expensing and Bonus Depreciation, 2002-09," November 2001.) Bonus depreciation was available to a broad range of companies. Takeup rates relative to the amount of eligible investment appears to be influenced by factors such as whether the business was in a loss position.

#### Regular Depreciation and Bonus Depreciation Schedules (%) for 5-year Property

	Year					
	1	2	3	4	5	6
Regular Depreciation	20.00	32.00	19.20	11.52	11.52	5.76
With Bonus Depreciation	60.00	16.00	9.60	5.76	5.76	2.88

65) El párrafo 3.131 describe también que la ley prevé la prórroga por un año de varias bonificaciones fiscales, entre ellas una bonificación para las instalaciones de carga de combustibles alternativos; bonificaciones sobre el consumo de combustibles alternativos; la prórroga modificación de las bonificaciones para los productores de biocombustibles derivados de la celulosa; incentivos para el biodiésel y el gasóleo de fuentes renovables; y una bonificación especial para las plantas de producción de biocombustibles derivados de la celulosa. ¿Podrán los EEUU describir en detalle los fondos, los beneficiarios, los programas y las implicaciones de dichos desembolsos?

**RESPONSE:** The American Taxpayer Relief Act of 2012 was estimated to cost US\$3,916 billion between 2011 and 2022 (<https://www.jct.gov/publications.html?func=startdown&id=4509>). Most of this cost was for individual taxpayer relief in terms of lower tax rates and permanently adjusting the individual alternative minimum tax to not apply to as many people. Business tax incentives accounted for roughly US\$60 billion of this total. Extension and modification of credits for renewable energy were included costing approximately US\$13 billion over 2011 and 2022. Specific provisions that were temporarily extended through the end of calendar year 2013 include the New Markets Tax Credit costing US\$1,794 million over 2011 to 2022, the credit for production of cellulosic biofuel with a maximum credit of US\$1.01 per gallon costing

**US\$49 million over 2011 to 2022, extension of credits for biodiesel and renewable diesel costing US\$2,181 million over 2011 to 2022, and the credit for energy-efficient appliances costing US\$659 million over 2011 to 2022. Many of these programs were included in the United States' most recent subsidy notification (see, G/SCM/N/253/USA).**

66) *El párrafo 3.133 indica que los Estados Unidos, con el objetivo de mejorar el marco nacional para las empresas fomentando la innovación del sector privado, la Ley de Incentivos para la Inversión en Tecnologías Innovadoras, de 2013, prevé bonificaciones por inversiones en capital de empresas de alta tecnología o de biotecnología que empleen a menos de 500 trabajadores. Se solicita indicar más información sobre el tipo de bonificación que beneficia a estas empresas.*

**RESPONSE:** The Innovative Technologies Investment Incentive Act of 2013 did not become law. The President in his FY2015 Budget (<http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2015.pdf>) proposed some incentives for investment and production of innovative technologies. These include a tax credit for investment in property used in advanced energy manufacturing, a tax credit for the production of advanced technology vehicles, a tax credit for medium- and heavy-duty alternative-fuel commercial vehicles, a tax credit for cellulosic biofuels, and a tax credit for construction of energy-efficient new homes. Combined these proposals were estimated to cost approximately US\$11 billion between 2015 and 2024. However, none of these proposals have become law.

67) *En el párrafo 3.135 se menciona que se está debatiendo en Estados Unidos una reforma fiscal para simplificar el código de impuestos a las sociedades y rebajar el tipo máximo. Se solicita brindar más detalles sobre esta reforma, tales como en qué consisten exactamente todas las medidas de simplificación y en qué proporción se rebajaría el tipo máximo.*

**RESPONSE:** Business tax reform in particular continues to be discussed though none of the proposals has been adopted into law. Representative Dave Camp has held many hearings and produced a comprehensive tax reform plan that has been released to the public in parts. (<http://waysandmeans.house.gov/taxreform/>) Similarly, Senator Max Baucus released a series of discussion documents detailing a tax reform proposal. (<http://www.finance.senate.gov/issue/?id=7D222262-D589-4D5E-A2AB-1504273E2E61>) While, neither proposal was adopted into law, discussions in Congress and with the President are ongoing.

68) *En el párrafo 3.137 se menciona que la Administración de la Pequeña Empresa (SBA) ofrece asesoramiento y ayuda financiera a las pequeñas empresas mediante, entre otras cosas, garantías de préstamos y oportunidades de contratación pública con el Gobierno Federal. Dentro de este marco, la SBA tiene 32 programas permanentes, y en el ejercicio de 2013 aprobó 101.066 préstamos. Se agradecerá indicar cuáles son y en qué consisten los 32 programas que aplica la SBA, los sectores productivos abarcados y los tipos de ayuda (montos, plazos, tasas de interés, etc.).*

**RESPONSE: SBA does not have 32 programs. SBA has 17 major programs, under the broad categories of Capital, Contracting, Counseling/Technical Assistance, and Innovation:**

- Capital: 7(a) business loans; 504 (Certified Development Corporation) loans; Microloans; Disaster loans; Surety Bonds; Small Business Investment Companies
- Contracting: Prime contracting; HUB Zones; 8(a) Business Development
- Counseling/Technical Assistance: International Trade; Small Business Development Centers; Women Business Centers; Veteran Business Centers; SCORE; 7(j) Management Assistance
- Innovation: Small Business Innovation and Research; Small Business Technology Transfer

Each of these programs is described in full on the SBA website (see, <https://www.sba.gov/>). The primary program is the 7(a) loan guaranty program. Under this program SBA provides a guaranty on a loan when the lender certifies that it would not make the loan without a guaranty due to the perceived greater risk of the credit (borrower). Because of the perceived greater risk, the business is often left with the choice of not getting a business loan or obtaining a loan with an SBA guaranty. SBA charges to take that risk (guaranteed shares vary from 50% to 90% of the loan amount, depending on the loan size and program), which passes through to the borrower. The guaranty fee that SBA charges on the guaranteed portion of the loan is tiered: 2% on loans up to

**US\$150,000, 3% on loans from 500,001 to 700,000, 3.5% on loans 700,001 to US\$1 million, and 3.75% on guaranteed portion over US\$1 million. As a result, the borrower typically pays a higher total cost than it would if it were able to obtain financing without SBA support. SBA programs assist small business in nearly every sector of the economy.**

*Subsección 3.3.2 sobre subvenciones y otros tipos de ayuda pública.*

69) En el párrafo 3.141 se indica que, aunque los Estados Unidos han ido reduciendo gradualmente sus medidas de estímulo fiscal, algunos programas siguen en pie, los cuales se originaron a raíz de la crisis mundial de 2008-12 para restablecer la demanda, estabilizar los mercados financieros y promover la reincorporación a la fuerza de trabajo. No obstante el informe indica en carios de sus tramos que existieron signos evidentes de recuperación económica en el periodo examinado y que se prevén una mayor recuperación a futuro.

- a) ¿Piensa el gobierno de los Estados Unidos revisar la aplicación de estas medidas de estímulo a medida que la economía continúe recuperándose?
- b) ¿Tales programas han sido notificados a la OMC?
- c) Si no fuera así ¿Cuáles son las razones para que EEUU no haya considerado necesario notificarlos?

**RESPONSE:** Most of the stimulus programs provided relief to individuals or to subnational governments. When analyzed for the 2009 through 2013 period, Recovery spending can be broken down into seven broad categories. (See Council of Economic Advisers, The Economic Impact of the American Recovery and Investment Act Five Years Later, February 2014, [http://www.whitehouse.gov/sites/default/files/docs/cea\\_arrareport.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_arrareport.pdf)) As shown below, most of the fiscal support was for individuals (45%) and subnational governments and public outlays (51%) with business tax incentives accounting for the rest. The focus of the bill was on helping families through a difficult economic period by encouraging the jobs. Approximately half of public investment focused infrastructure, such as roads, bridges, and labor, while the rest supported technology, such as scientific research and clean energy. Possible trade effects of any of the provision have not been assessed as far as we know.

**Table 1**

	Functional Category	2009 through 2013
1.	Individual Tax Cuts	181.7
2.	Individual Alternative Minimum Tax Relief	69.0
3.	Aid to Directly Impacted Individuals	111.5
4.	State Fiscal Relief	143.0
5.	Public Investment Outlays	270.5
6.	Business Tax Incentives	28.8
7.	Total	804.6

In general, stimulus from ARRA and subsequent acts enacted in 2009 through 2012 has been tapering. Including the ARRA spending with that through 2012, approximately US\$1,479 billion of fiscal support was available between 2009 and 2012, a four year period, while for 2009 through 2019, a ten year period, this support falls to US\$709 billion. (See Table 4, Council of Economic Advisers, The Economic Impact of the American Recovery and Investment Act Five Years Later, February 2014, [http://www.whitehouse.gov/sites/default/files/docs/cea\\_arrareport.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_arrareport.pdf)) Moreover, stimulus provisions were often frontloaded to have more immediate impact.

All of the programs that met the definition of a "subsidy" under the Agreement on Subsidies and Countervailing Measures were notified to the WTO. Much of the stimulus "subsidy" spending provided funding for pre-existing programs (see, eg, G/SCM/N/253/USA, p. 19). Therefore, the U.S. subsidy notification does not have a specific heading for the ARRA.

70) El párrafo 3.143 menciona que Estados Unidos aplica un programa denominado "Asistencia para el Ajuste a la Liberalización del Comercio (TAA), el cual ayuda a las empresas y los trabajadores a adaptarse a la liberalización del comercio. En 2011, el Presidente autorizó una prórroga de los programas en favor de los trabajadores, las empresas y los agricultores hasta el 31 de diciembre de 2014. Se solicita tener a bien explicar en detalle en qué consiste la asistencia que brinda este programa.

**RESPONSE:** The Trade Adjustment Assistance (TAA) program offers a variety of benefits and services to workers impacted by foreign trade, who have lost their jobs. Through the provision of a number of benefits and services, the TAA program provides trade-affected workers with opportunities to obtain the support, resources, skills, and credentials they need to return to the workforce in a good job. These include training, employment and case management services, job search allowances, relocation allowances, reemployment and alternative TAA wage subsidies for older workers, and income support in the form of Trade Readjustment Allowances (TRA). Annual public reports and detailed information on the operations and outcomes of the program can be found on the U.S. Department of Labor's website for TAA (<http://www.doleta.gov/tradeact/>). As to assistance for companies, Trade Adjustment Assistance for Firms, provides financial assistance to manufacturers affected by import competition. Sponsored by the U.S. Department of Commerce, this cost sharing federal assistance program pays for half the cost of consultants or industry-specific experts for projects that improve a manufacturer's competitiveness (<http://www.taacenters.org/>).

71) En el párrafo 3.138 se señala que no existe un marco legal general que rija a los subsidios, sino que estos son objeto de programas particulares bajo la administración de distintas agencias a nivel federal. Recientemente, la NOAA ha publicado en el Federal Register un aviso para iniciar una revisión al Financing Fisheries Program (FFP) que habilitaría subsidios destinados a la construcción o el reemplazo de buques pesqueros.

¿Ha considerado EEUU que, aún teniendo en cuenta los mejores y más eficientes programas de administración pesquera, no siempre constituyen una garantía para eliminar los efectos adversos de los subsidios al medio ambiente o a la sobre pesca?

**RESPONSE:** The United States considers strong fisheries management systems and subsidy disciplines can be complementary and mutually supportive. NOAA anticipates that the program will apply only in fisheries where total allowable catch is controlled through fisheries quotas and loans will not be provided in fisheries that are deemed overfished or subject to overfishing. We note that the US\$41 million increase in the program represents the additional amount of loans that can be provided under the program. The lending rate under this program is generally above the government's cost of funds. The program has historically been self-financing.

#### Subsección 3.3.3. de política de competencia

72) En el párrafo 3.148 el informe indica que, de conformidad con la legislación y la práctica de los Estados Unidos, los acuerdos entre competidores que limitan de forma no razonable el comercio interno interestatal y el comercio exterior, es decir, los que entrañan la fijación de precios, la manipulación de subastas, la distribución de clientes o territorios o la restricción de la producción, pueden ser objeto de investigaciones penales y de demandas civiles. Estos acuerdos, considerados violaciones per se de las políticas y prácticas antimonopolio de los Estados Unidos, se consideran ilegales sin investigar el daño o la justificación mercantil de su utilización. Se solicita tener a bien explicar cómo funciona el procedimiento en estos casos.

**RESPONSE:** We understand Argentina's question to ask the United States to identify and describe legal procedures that it uses to enforce U.S. antitrust laws against "per se" illegal agreements. Answers to this question can be found in the U.S. Department of Justice's Antitrust Division Manual, Chapters III.C.1, III.F., IV.F, and VII.A, found at <http://www.justice.gov/atr/public/divisionmanual/index.html>.

#### Subsección 3.3.4. sobre comercio de Estado y empresas comerciales del Estado.

73) En el párrafo 3.161 se indica que, en lo que respecta a las empresas de propiedad estatal, siguen interviniendo en actividades comerciales, aunque en escala relativamente limitada, y que existe un porcentaje relativamente bajo de este tipo de empresas. Se solicita proporcionar un listado de las empresas de propiedad estatal o bien el sitio web en donde se publique esta información.

**RESPONSE:** There is no WTO definition of "state owned enterprises" in any of the existing WTO agreements; therefore, the United States is not in a position to provide a list of such entities in the context of a WTO TPR. The report referenced in the Secretariat's report is from the OECD, which itself does not have an established, agreed upon definition of state owned enterprises.

74) Párrafo 3.162: ¿Qué diferencias existen, de acuerdo al criterio del gobierno de los Estados Unidos, entre una "empresa del estado" y una "empresa patrocinada por el Gobierno"?

**RESPONSE:** Government corporations (e.g., Overseas Private Investment Corporation) are revenue generating enterprises that are legally distinct but operated by the federal government.

In comparison, government sponsored enterprises (e.g., Federal Home Loan Mortgage Corporation – Freddie Mac) are privately held corporations with public purposes created by the U.S. Congress.

75) En el párrafo 3.165 se indica que el Gobierno ha establecido una serie de instituciones financieras por motivos de política pública, entidades "cuasi gubernamentales", que se conocen como empresas "patrocinadas" por el Gobierno, que tienen facultades para conceder créditos en todo el país, y que gozan de privilegios especiales o reciben ayuda del Gobierno Federal. Se solicita tener a bien indicar:

- a) Las razones por las cuales se establece una empresa "patrocinada".
- b) Un listado completo de estas empresas.
- c) Los requisitos que debe cumplir una empresa para adquirir el carácter de "patrocinada".
- d) Cuáles son los "privilegios" y la ayuda de los que gozan este tipo de empresas.

Subsección 3.3.5. sobre contratación pública.

**RESPONSE:** As mentioned in the response to the question above, government sponsored enterprises are privately held corporations with public purposes created by the U.S. Congress. Further information regarding these entities can be found at: <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/gov.pdf> or from the entity's specific website.

76) En el párrafo 3.167 se indica que, a finales de 2010, Estados Unidos aprobó nuevas disposiciones para crear un impuesto federal de consumo aplicable a las entidades extranjeras que percibieran pagos por la compra de bienes y servicios, y que cuando la ley entre en vigor, se aplicará un gravamen del 2% a las entidades de países que no sean parte en un acuerdo internacional sobre contratación pública. Se solicita tener a bien indicar:

- a) Las causas que motivan la creación de una Ley que discrimina a empresas según su país de origen formen parte o no de un acuerdo internacional.

**RESPONSE:** The legislation was passed by the U.S. Congress and the legislative history does not indicate the policy intent behind the 2% federal excise tax.

- b) La fecha (o las condiciones que deberían darse) prevista para la entrada en vigor de la Ley.

**RESPONSE:** The effective date of the statute 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.

- c) Los tipos de acuerdos sobre contratación pública abarcaría.

**RESPONSE:** The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

- d) Si esta Ley tendrá implicancias sobre otros instrumentos jurídicos en materia de contratación pública que también diferencian a los productos extranjeros con respecto a los nacionales, como la Ley de Promoción de Compra de Productos Estadounidenses (Buy American Act) y la Ley de Acuerdos Comerciales de 1979, que otorga exenciones del cumplimiento de las prescripciones discriminatorias en materia de compras respecto de las compras abarcadas por el Acuerdo sobre Contratación Pública de la OMC y los acuerdos de libre comercio.

**RESPONSE:** The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

77) Con respecto a la Ley de Promoción de Compra de Productos Estadounidenses (*Buy American Act*) mencionada en el párrafo 3.168 se solicita indicar específicamente cuáles son los sectores abarcados por dicha Ley.

**RESPONSE: 100% of goods procured by the Federal government is subject to the Buy American Act. The Buy American Act is waived for eligible products in acquisitions covered by the WTO Government Procurement Agreement and relevant free trade agreements (FTA).**

78) En el párrafo 3.172 el informe indica que el Departamento de Defensa utiliza diversos métodos de contratación, incluidas las listas de la Administración de Servicios Generales (GSA). Por favor se solicita indicar cuáles son esos métodos.

**RESPONSE: The Department of Defense uses the same procurement methods as other U.S. Federal Government agencies under the Federal Acquisition Regulation (FAR). The FAR provides for the use of open tendering, selective tendering, and limited tendering, with a preference for open tendering. See FAR part 6. The FAR allows for procurements to be conducted using sealed bidding or negotiated procedures. See FAR parts 14 and 15. The reference to the use of GSA Schedules in paragraph 3.172 is to the "GSA Multiple Award Schedules" described in paragraph 3.171. The Department of Defense may issue delivery orders for goods or task orders for services under these GSA contracts.**

79) En el párrafo 3.177 el informe indica que, conforme a la parte 13 del FAR, se utiliza un "procedimiento de adquisición simplificado" para las compras de hasta 150.000 dólares que normalmente se reservan a las pequeñas empresas (contratos reservados) si hay expectativas razonables de que al menos dos puedan suministrar el producto o servicio en forma competitiva en términos de precios de mercado, calidad y distribución. La Ley de la Pequeña Empresa de 1953 establece que las pequeñas empresas recibirán una "proporción equitativa" de contratos federales. El Congreso ha fijado como objetivo la adjudicación del 23% de los contratos a pequeñas empresas a todos los niveles del Gobierno."

a) ¿En qué consiste el "Procedimiento de adquisición simplificado"?

**RESPONSE: The simplified procurement procedures streamline the procurement process to reduce administrative costs; to improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts; to promote efficiency and economy in contracting; and to avoid unnecessary burdens for agencies and contractors. Simplified procurement procedures include the solicitation of quotes and issuance of purchase orders, and the use of blanket purchase agreements for repetitive needs to negotiate in advance of an actual order a supplier's terms and pricing for those goods or services.**

b) ¿Qué criterios se utilizan para determinar si una empresa es "competitiva en términos de precios de mercado, calidad y distribución"?

**RESPONSE: FAR subpart 19.5 addresses the criteria for setting aside procurements for small business. FAR section 19.502-2 provides that the procuring official must determine that there is a reasonable expectation that at least two responsible small businesses will submit offers and that the award will be made at fair market prices. The small business also must be able to meet the procuring entity's needs in terms of delivery.**

80) Párrafo 3.183. ¿Podrían indicar en qué casos concretos la ley estadounidense permite la contratación pública de proveedores extranjeros?

**RESPONSE: Under the Trade Agreements Act of 1979, Congress granted the President authority to waive discriminatory purchasing requirements for eligible products from designated countries (19 USC § 2511(a)). GPA members are designated countries under the Trade Agreements Act (19 U.S.C. §§ 2511(b), 2518). The President delegated this waiver authority to the U.S. Trade Representative (Executive Order No. 12,260, Dec. 31, 1980, as amended). The U.S. Trade Representative has waived the Buy American Act requirements consistent with U.S. obligations under the GPA for eligible products from GPA member economies.**

### 3.3.6 Derechos de propiedad intelectual

81) En el párrafo 3.197 se destaca que Estados Unidos introdujo discusiones en el Consejo ADPIC sobre PI e innovación, así como sobre el rol de la PI en el deporte, además de haber contribuido a las discusiones referidas a PI y tecnologías vinculadas con el clima. Respecto de esto último destacamos que entendemos de suma importancia la innovación, especialmente en materia de adaptación al Cambio Climático, pero consideramos que ésta por si sola no es suficiente sino que debe necesariamente ir acompañada de correspondientes acciones en pos de fomentar la transferencia de tales tecnologías. Por lo expuesto, agradeceríamos que EEUU detalle qué acciones ha desarrollado en materia de transferencia de tecnologías, especialmente aquellas vinculadas al clima, considerando los compromisos asumidos en el marco del artículo 66.2 del Acuerdo sobre los ADPIC y el artículo 4.1.c de la Convención Marco de las Naciones Unidas sobre el Cambio Climático.

**RESPONSE: The United States annual reports pursuant to Article 66.2 and Article 67 of the TRIPS Agreement to the WTO TRIPS Council provide detailed descriptions of U.S. technology transfer and technical cooperation activities globally. The United States submitted reports most recently to the TRIPS Council on October 22 (IP/C/W/601/Add.6) and on October 23 (IP/C/W/602/Add.6). These reports are available to all WTO members.**

82) En el párrafo 3.204 se menciona que, en el período examinado, el Gobierno anunció una serie de iniciativas basadas en las reformas de la Ley Leahy-Smith sobre Invenciones (AIA) destinadas a mejorar el sistema de patentes, fomentar la innovación y proteger a los innovadores de los denominados "litigios infundados".

a) ¿Qué se entiende por "litigios infundados"?

**RESPONSE: The Leahy-Smith America Invents Act ("AIA") created administrative trial proceedings to be conducted by the Patent Trial and Appeal Board ("PTAB") as a cost-effective alternative to litigation. Consistent with statutory provisions and legislative intent of the AIA, strong public policy exists to limit discovery in AIA proceedings. Thus, the scope of discovery in AIA trials before the Board differs significantly from the scope of discovery generally available under the Federal Rules of Civil Procedure in district court litigation. Benefits of limited discovery include lowering costs, minimizing complexity, and shortening periods required for dispute resolution. The PTAB also addresses these considerations in light of the one-year statutory deadline (absent limited exceptions) for completing AIA trials.**

b) ¿En qué instancias se encuentran estas iniciativas actualmente?

**RESPONSE: The status of current initiatives may be found on the Leahy-Smith American Invents Act Implementation page on the USPTO website.**  
[http://www.uspto.gov/aia\\_implementation/](http://www.uspto.gov/aia_implementation/)

83) En el párrafo 3.205 el informe indica que estaba prevista la renovación anual del Programa piloto "Patentes para la Humanidad", que promovía iniciativas para aprovechar tecnologías patentadas para hacer frente a necesidades humanitarias. Se solicita indicar en qué instancia se encuentra este proyecto actualmente.

**RESPONSE: On April 3, 2014, the USPTO published a notice in the Federal Register titled "Patents for Humanity Program" (79 FR 18670) announcing that Patents for Humanity is an annual awards competition.**

Sección 4 - Políticas comerciales por sector.

Sección 4.1. – Agricultura

Subsección 4.1.1 - Ley de Agricultura de 2014

84) Uno de los desarrollos más importantes de política comercial de los Estados Unidos, durante el período de revisión, ha sido la promulgación de la nueva ley agrícola el 7 de febrero de 2014. La nueva ley representa un cambio considerable en la política agropecuaria para varios productos y este cambio está basado en la eliminación del sistema de pagos directos desacoplados hacia instrumentos de subsidios vinculados con los precios.

¿Considerando que los Estados Unidos es uno de los principales productores, exportadores e importadores de productos agropecuarios y que los subsidios vinculados a los precios son los más distorsivos de la producción y el comercio, podrían los Estados Unidos esbozar cómo esta modificación de su política agropecuaria contribuye al objetivo de largo plazo acordado en el Acuerdo de

*Agricultura de la OMC de establecer un sistema de comercio agropecuario equitativo y orientado al mercado?*

**RESPONSE: See response to Question 1.**

85) *En el párrafo 4.2, se menciona que el gasto proyectado de la nueva Ley Agrícola 2014 sería de US\$489.000 millones durante los 5 años de duración de la ley. El informe indica que este gasto representaría un ahorro de US\$5.000 millones con relación a la ley anterior (Ley Agrícola de 2008). La nueva Ley Agrícola vincula los desembolsos en materia de subsidios al precio de mercado del producto beneficiado por el régimen. Considerando el contexto actual de reducción de los precios internacionales de muchos productos básicos:*

a) *¿Esperan los Estados Unidos que el gasto de la nueva Ley Agrícola 2014 se mantenga en el mismo nivel que el oportunamente estimado por la Oficina de Presupuesto del Congreso (CBO)?*

**RESPONSE: The costs of new commodity and crop insurance programs will be finally determined by producer program choices, and price and yield outcomes influenced by variable market and weather events. Because these factors are uncertain, estimates of future spending under the 2014 Farm Bill are also uncertain.**

**New estimates for expenditures under the PLC and ARC programs, as well as for other Farm Bill programs, will be available in February 2015 in conjunction with release of the USDA Baseline and the U.S. FY2016 Budget.**

b) *¿Han realizado nuevas estimaciones de gasto en función de las nuevas proyecciones de precios?*

**RESPONSE: See response to question a) above.**

c) *¿Cómo consideran los Estados Unidos que se modificará el nivel de apoyo a los productores como consecuencia de la estructura de subsidios de la nueva ley agrícola?*

**RESPONSE: The 2014 Farm Bill includes language requiring the Secretary of Agriculture to make adjustments in expenditures if it is determined that payments in any reporting period may exceed allowable limits under the Agreement on Agriculture.**

86) *El párrafo 4.3 menciona que uno de los cambios más significativos que afectan la estructura de la política agropecuaria para los productos agropecuarios es la eliminación de los pagos directos desacoplados de la producción, piedra angular de la política norteamericana desde la Ronda Uruguay, y su reemplazo por dos nuevos programas, una Cobertura por Pérdida de Precio (PLC por sus siglas en inglés) y una Cobertura del Riesgo Agrícola (ARC por sus siglas en inglés):*

a) *Se solicita tener a bien indicar bajo qué disposiciones del Acuerdo sobre Agricultura están amparados los nuevos programas.*

**RESPONSE: The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.**

b) *Dado que los "precios de referencia" de los productos agrícolas (por ej. soja, maíz, trigo, etc.) utilizados para el otorgamiento de los subsidios a los productores bajo el PLC y el ARC previstos en la nueva Ley 2014 han sido incrementados en un 50% en promedio respecto a los estipulados en la Ley 2008, la probabilidad de que se activen (y por ende, se otorguen subsidios a los productores) es mucho más elevada que con la anterior Ley Agrícola. Dado que los precios de referencia de los productos agrícolas (por ej. soja, maíz, trigo, etc.) utilizados para el cálculo de los subsidios que recibirán los productores dentro de la nueva ley 2014 son superiores a los que existían en la ley 2008:*

(i) *¿Cuál consideran los Estados Unidos que será el potencial efecto de distorsión sobre la producción y el comercio de la nueva ley?*

**RESPONSE: PLC and ARC payments are made on historical production without reference to current production removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

(ii) ¿Podría explicar cómo la consistencia de esta evolución con el compromiso de reforma de la agricultura previsto en el Acuerdo sobre Agricultura y las negociaciones agrícolas de la Ronda de Doha?

**RESPONSE:** The 2014 Farm Bill does not change the U.S. position in the agricultural negotiation of the Doha Development Agenda. The United States is prepared to negotiate seriously about meaningful reforms, in particular market access opening, and will be prepared to do its part.

c) Adicionalmente y teniendo en cuenta que en muchos de los productos beneficiados EEUU está dentro de los principales tres productores o exportadores mundiales, ¿podría mencionar si realizó algún estudio de cómo estos nuevos programas afectarán la producción y exportación en Países en Desarrollo y Menos Adelantados competidores?

**RESPONSE:** The United States does not foresee any reduction in the competitiveness of foreign agricultural production or imported products, from any country, with U.S. agricultural products as a result of these changes in the 2014 Farm Bill. Although the new ARC and PLC programs make payments when prices or revenue decline, they are decoupled from actual farm production decisions. The 2014 Farm Bill eliminated both market price support and export subsidies for dairy products. The United States would also note that U.S. agricultural tariffs, both bound and applied, continue to be amongst the lowest in the world, affording export opportunities to all U.S. trading partners.

87) Paragraph 4.4

a) Can the USA please inform about farmer's reallocation of base acreage with the purpose of "more closely" aligning base acres with recent plantings?

**RESPONSE:** The 2014 Farm Bill language gives producers a one-time opportunity to reallocate their base acreage to reflect more recent planting and yield history. The base acreage in effect on September 30, 2013, was first established under the 1996 Farm Bill by averaging planted and considered planted acreage for crop years 1991-95 for wheat, corn, grain sorghum, barley, oats, upland cotton, and rice (note that upland cotton is not a covered commodity under the 2014 Farm Bill). Base acreage was added for other oilseeds and peanuts under the 2002 Farm Bill based on average plantings for crop years 1998-2001 and for pulse crops under the 2008 Farm Bill based on average plantings for crop years 1998-2001. Under the 2014 Farm Bill, producers may reallocate their farm's base acreage in proportion to the average of planted acreage of the covered commodities on the farm for crop years 2009-12. The base acreage may not increase from the base acreage in effect on September 30, 2013. No new base acreage may be established for a farm. See the ARC/PLC fact sheet for more information at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pf&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplc.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pf&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplc.html).

b) Wouldn't this reallocation impact on farmer's rational expectations on further base acre reallocation or updating in the next Farm Bill?

**RESPONSE:** Producers have no basis for the expectation of further reallocation of or updating of base acreage in the next Farm Bill as such updating and reallocation has occurred infrequently, as noted in the previous response.

88) El párrafo 4.4 dispone "CON ARREGLO AL PROGRAMA PLC, SE OTORGAN PRIMAS DE COMPLEMENTO CUANDO LOS PRECIOS DE LOS PRODUCTOS BÁSICOS CAEN POR DEBAJO DE LOS "PRECIOS DE REFERENCIA" REGLAMENTARIOS". Se solicita tener a bien explicar cómo se establecieron estos "precios de referencia".

**RESPONSE:** The reference prices in the Price Loss Coverage (PLC) program were established in the 2014 Farm Bill.

89) Paragraph 4.5: Does the USA agree that a program that insures revenue would be more trade distorting than one that only insures prices, as it would also cover production losses?

**RESPONSE:** No. Both the Price Loss Coverage (PLC) program and the Agricultural Risk Coverage (ARC) programs are paid on historical production without reference to current

**production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

90) *En el párrafo 4.8, se menciona que algunos programas relativos a los productos lácteos han sido eliminados en la nueva Ley Agrícola 2014, sin embargo se han implementado dos instrumentos nuevos.*

a) *Por favor, indique la manera en que los nuevos programas se aplican.*

**RESPONSE:** The Dairy Margin Protection Program (DMP) provides a guarantee of the margin between the national price of milk and national feed costs paid on a percentage of historical production (25% to 90%) rather than actual production. The program has a base level (a US\$4 per hundredweight margin) that is available to all dairy producers for a set annual administrative fee; however, a producer may purchase additional higher levels of margin coverage for an additional premium. Purchasing higher levels of coverage on historical production greater than 4 million pounds results in higher premiums for producers. Payments will only be made when the margin falls below the selected coverage level for an averaged specified consecutive two-month period (January-February; March-April; May-June; July-August; September-October; November-December).

The Dairy Product Donation Program (DPDP) provides dairy products to domestic low-income groups when dairy margins are exceptionally low. The DPDP is triggered when the actual dairy production margin has been US\$4.00 or less per hundredweight for each of the two preceding months. Once triggered, the U.S. Department of Agriculture will purchase dairy products at prevailing market prices until the programme is terminated.

**The DPDP is terminated under a variety of scenarios specified in legislation, such as but not limited to:**

- i. after three consecutive months regardless of margin; and
- ii. when the margin has been greater than US\$4.00 for the preceding month.

b) *Además el párrafo menciona el cambio de orientación en las políticas orientadas a este sector, ¿podría Estados Unidos, explicar con mayor detalle este cambio de orientación?*

**RESPONSE:** The new dairy programs are both described above. The programs eliminated by the Farm Bill included the Milk Income Loss Contract (MILC) which was a direct payment program that made payments when milk prices fell below a trigger level that adjusted with feed cost changes, the Dairy Product Price Support Program that supported dairy product prices by providing a standing offer to purchase bulk dairy products at fixed prices and store those products until market prices recovered and a Dairy Export Incentive Program (DEIP) that provided bonuses to exporters to close the gap between U.S. and world dairy product prices.

91) Párrafo 4.9.: Al referirse a la nueva Ley Agrícola de los EEUU ("Farm Bill"), indica que "LA SUSTITUCIÓN DE LOS PAGOS DIRECTOS DESVINCULADOS POR INSTRUMENTOS TALES COMO LAS PRIMAS DE COMPLEMENTO VINCULADAS A LOS PRECIOS CORRIENTES PODRÍA CAUSAR MAYORES DISTORSIONES DEL COMERCIO Y LA PRODUCCIÓN"

a) *¿Podría Estados Unidos aclarar esta afirmación?*

**RESPONSE:** Although the new ARC and PLC programs make payments when prices or revenue decline, they are decoupled from actual farm production decisions. The United States also notes that it has eliminated both market price support and export subsidies for dairy products.

b) *¿Qué opinión le merece a Estados Unidos lo allí mencionado por la Secretaría?*

**RESPONSE: See response above.**

92) *The last sentences of Paragraphs 4.2 and 4.9 say:*

4.2. "[...]. THE 2014 FARM BILL CONTINUES A LONG-TERM POLICY SHIFT FROM THE TRADITIONAL COMMODITY, CONSERVATION, AND DISASTER PAYMENTS TOWARDS SUBSIDIZED CROP INSURANCE (CHART 4.2)."

**4.9. "[...].HOWEVER, THE MOVE FROM DECOUPLED DIRECT PAYMENTS TO DEFICIENCY-PAYMENT TYPE INSTRUMENTS LINKED TO CURRENT PRICES COULD POTENTIALLY CAUSE AN INCREASE IN TRADE AND PRODUCTION DISTORTIONS."**

*Can the USA please explain how this policy shift reported by the Secretariat is consistent with the Doha Round agriculture mandate?*

**RESPONSE:** The 2014 Farm Bill provides an updated farm safety net for producers, emphasizing farmers' participation in crop insurance programs. Payments under the new programs continue to be decoupled from actual farm production decisions. The 2014 Farm Bill does not change the U.S. position in the agricultural negotiation of the Doha Development Agenda. The United States is prepared to negotiate seriously about meaningful reforms, in particular market access opening, and will be prepared to do its part.

93) *Circuit breaker in paragraph 4.10:*

a) *Does the so called "circuit breaker provision" apply to all subsidies programs?*

**RESPONSE:** The Secretary of Agriculture has the authority to ensure the United States remains within its WTO commitments for domestic support through reduction in expenditures for programs authorized under Title I of the Farm Bill.

b) *Could you please describe how the circuit breaker would operate in practical terms.*

**RESPONSE:** The legislation states that if the Secretary determines that expenditures will exceed the United States' domestic support commitments, the Secretary is authorized to make adjustments to expenditures under Title I of the Farm Bill to ensure expenditures do not exceed the allowable levels. Prior to making such adjustments, the Secretary would notify Congress.

c) *Could you specify how the circuit breaker provision applies on export credit, export guarantee or export insurance programs?*

**RESPONSE:** The United States notes that export credit, export guarantee, and export insurance programs are not domestic support programs or subject to any limits on expenditures.

*Subsección 4.1.1.2.2 - Cobertura de pérdidas relacionadas con los precios*

94) *Paragraph 4.14: Could you inform of the eligible base acres for the 2014 Farm Bill?*

**RESPONSE:** The amount of estimated eligible base acres is 257.5 million acres.

95) *Could the U.S. inform which domestic support programs under the 2014 Farm Bill may benefit any agricultural producers of an agricultural base product?*

**RESPONSE:** Agricultural Risk Coverage (County and Individual), Price Loss Coverage, Cotton Transition Assistance Program, Marketing Assistance Loans and Loan Deficiency Payments, Payments in Lieu of Loan Deficiency Payments for Grazed Acreage, Recourse Loans, and Sugar Nonrecourse Loans.

96) *Does the 2014 Farm Bill provide for domestic support to agricultural products that are not agricultural base products?*

**RESPONSE:** The 2014 Farm Bill provides new "buy-up" provisions under the Non-insured Crop Disaster Assistance Program (Sec. 12305), introduces the new Margin Protection Program for Dairy (Sec. 1401-1410) and re-instates the livestock disaster programs and Tree Assistance Program (Sec. 1501). Note that a larger list of covered commodities are eligible for marketing assistance loans than are eligible for ARC/PLC

97) *Could the USA inform the values of production in 2013 of each of the crops that may benefit or are eligible in each of following domestic support programmes:*

a) *Price Loss Coverage (PLC).*

b) *Agricultural Risk Coverage (ARC).*

- c) Marketing Loan Programme (MLP).
- d) Federal Crop Insurance Programme (FCIP).
- e) Supplemental Coverage Option Programme (SCO).

**RESPONSE:** The United States notes that the PLC and ARC programs are based primarily on historical production. Further, programs introduced under the 2014 Farm Bill were not implemented in 2013. The following table provides the requested information for PLC, ARC, and the marketing loan program eligible commodities. Starting in 2015, SCO will be available for spring barley, corn, soybeans, wheat, sorghum, cotton, and rice. Starting in 2016, USDA Risk Management Agency (RMA) will begin expanding SCO to other commodities. Data on 2012 value of production can be found in the United States domestic support notification for FY2012.

**Table 2 Crop Value of Production for the United States, 2013**

(1,000 dollars)

Commodity	Price Loss Coverage	Agricultural Risk Coverage	Marketing Loan Program
Barley	1,271,986	1,271,986	1,271,986
Canola	440,419	440,419	440,419
Chickpeas, Large	86,963	86,963	86,963
Chickpeas, Small	17,290	17,290	17,290
Corn	62,716,048	62,716,048	62,716,048
Crambe	N.A.	N.A.	N.A.
Dry Peas	232,710	232,710	232,710
Flaxseed	48,145	48,145	48,145
Grain Sorghum	1,695,764	1,695,764	1,695,764
Honey	1/	1/	317
Lentils	104,387	104,387	104,387
Mustard Seed	14,328	14,328	14,328
Mohair	1/	1/	3,361
Oats	239,326	239,326	239,326
Peanuts	1,082,871	1,082,871	1,082,871
Rapeseed	486	486	486
Rice	3,025,992	3,025,992	3,025,992
Safflower	58,107	58,107	58,107
Sesame Seed	N.A.	N.A.	N.A.
Soybeans	41,837,286	41,837,286	41,837,286
Sugar	N.A.	N.A.	N.A.
Sunflower	445,970	445,970	445,970
All Cotton	1/	1/	5,198,750
Wheat	14,404,734	14,404,734	14,404,734
Wool			39,213

N.A. = not available.

Program does not apply to commodities with a blank entry.

Sources: Crop Values 2013 (February 2014), NASS/USDA. Sheep and Goats, January 31, 2014, USDA/NASS.

98) De acuerdo al párrafo 4.16, el programa de Pagos Contracíclicos (CCP) era notificado en la Medida Global de Ayuda de EEUU como "NO específico por producto", bajo el argumento de que dichos pagos no pueden atribuirse a un producto específico. Teniendo en cuenta que el PLC es un programa muy similar que reemplazará al CCP, y que los productos beneficiados serían los mismos, ¿podría EEUU aclarar si notificará también este programa como "no específico por producto", o si podrá efectivamente contabilizar la asignación de estos pagos de manera individual a cada producto, de manera de poder notificarlo correctamente como "ayuda específica por producto"? Al responder esta pregunta se agradecerá tener en cuenta que el PLC (al igual que su predecesor CCP) tiene precios de referencia a nivel de producto.

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of this program as part of its official domestic support notification.

99) El párrafo 4.17 establece que, como alternativa al programa PLC, los agricultores pueden acogerse al programa ARC, ya que cubre los mismos productos. ¿Pueden los agricultores recibir los beneficios de ambos programas?

**RESPONSE: No. Producers must choose between ARC and PLC and may not be enrolled in both for a single commodity.**

100) ¿De qué manera Estados Unidos garantiza que los programas mencionados anteriormente no causen distorsión del comercio y a la producción?

Subsección 4.1.1.2.3 - Cobertura de riesgos agrícolas

**RESPONSE: These programs are paid on historical production without reference to current production removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

101) El párrafo 4.18 destaca que en la nueva Ley Agrícola, el programa Agricultural Risk Coverage (ARC) tiene como objetivo cubrir pérdidas de ingresos de los agricultores en función de ingresos indicativos de referencia. De acuerdo a sus características, el programa cubre el 85% de las pérdidas de la superficie de base histórica si el productor elige la opción de ARC a nivel de Condado, y el 65% de las pérdidas de la superficie de base histórica si el productor elige la opción de ARC a nivel individual. ¿Podría explicar a qué se debe esta diferencia en la cobertura?

**RESPONSE: The differential coverage levels were mandated in the 2014 Farm Bill.**

Subsección 4.1.1.2.6 Productos lácteos

102) En el párrafo 4.29 se describe el Programa de protección de los márgenes de utilidad de los fabricantes de productos lácteos (MPPDP).

a) Teniendo en cuenta que este programa incluye el movimiento de dos variables (precio de la leche en explotación y costo de los piensos) para determinar el monto de ayuda al productor: ¿Podría explicar cómo se determinan ambas variables? ¿Qué fuentes se utilizan?

**RESPONSE: USDA will calculate the actual dairy production margin using the national "all-milk price" minus the national "average feed cost," as those terms are specified in the 2014 Farm Bill. If the actual dairy production margin calculation produces a negative number, then the margin will be considered zero. The term "all-milk price" is defined in the 2014 Farm Bill to mean the average price received, per cwt of milk, by dairy operations for all milk sold to plants and dealers in the United States, and is published in the Agricultural Prices publication of the National Agricultural Statistics Service (NASS), USDA. The term "average feed cost" is defined to mean the average cost of feed used by a dairy operation to produce a cwt of milk. The sum of:**

- 1.0728 times the price of corn per bushel;
- 0.00735 times the price of soybean meal per ton; and
- 0.0137 times the price of alfalfa hay per ton.

The price of corn is the full month price received by farmers during the month in the United States as reported in the monthly Agricultural Prices report by USDA NASS; The price of soybean-meal is the Central Illinois full month soybean meal price delivered by rail as reported in the USDA AMS Market News-Monthly; and the price of alfalfa hay is the full month price received during the month by farmers in the United States for alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS.

b) El nuevo Programa de protección de los márgenes de utilidad de los fabricantes de productos lácteos comenzará a aplicarse a más tardar el 1º de septiembre de 2014. ¿Podrían confirmar si efectivamente el programa ya se encuentra en vigencia?

**RESPONSE: Yes the program is in force. Margins at this time are above the US\$8 per cwt maximum coverage level so no payments will be made to enrolled producers for the September-October 2014 period.**

103) En el párrafo 4.31 se describe el Programa de Donación de Productos Lácteos (DPDP). Al respecto:

a) ¿Está previsto que los productos comprados bajo el programa se destinen a asistencia nutricional de individuos de bajos ingreso al exterior de EEUU, o únicamente al interior? Si fuese el segundo caso, ¿qué mecanismos están previstos para evitar que las organizaciones públicas y privadas lo exporten?

**RESPONSE: Products purchased under the program are domestic use only. Regulations for the existing USDA Food and Nutrition Service (FNS) programs will govern how the products will be distributed. Public or private nonprofit organizations that receive Dairy Product Donation Program products may transfer those products to other nonprofits only if the transferee will likewise distribute to domestic low-income recipients without cost or waste, consistent with existing FNS regulations. FNS regulations in 7 CFR 250.13(d)(1) provide that donated foods "be distributed only to recipient agencies and individual recipients eligible to receive them" under applicable program regulations. FNS regulations in 7 CFR 250.13(a)(1)(ii) provide that donated foods "not be sold, exchanged or otherwise disposed of without the approval of the Department."**

b) ¿Está previsto algún límite, en volumen o presupuesto total, en la ejecución de este Programa?

**RESPONSE: No.**

c) ¿Qué ocurriría si después de la distribución al interior de EEUU, aún existieran excedentes de productos lácteos?

**RESPONSE: Purchases are made after consultation with food assistance groups on their needs for donation. Only food required by the agencies will be purchased. No excess dairy products will remain or be stored by USDA.**

d) ¿Teniendo en cuenta la respuesta brindada por los EEUU en ocasión del 74 Comité de Agricultura de la OMC, cuándo estima EEUU que dispondrá de una lista con los productos comprendidos bajo este programa?

**RESPONSE: The list of products will be assembled in the months leading up to the anticipated beginning of purchases for the program. Margins are far above levels that would trigger purchases, so product lists are not being assembled at this time.**

#### Subsección 4.1.1.4.1 - Ayuda alimentaria

104) Párrafo 4.44 sobre la ayuda alimentaria internacional.

a) ¿Podría EEUU indicar qué herramientas están previstas para que el sistema de monetización de la ayuda alimentaria se ajuste a las previsiones incluidas en el artículo 10.4 del Acuerdo sobre Agricultura, particularmente en lo relativo a su vinculación con las exportaciones comerciales y a los Principios FAO sobre colocación de excedentes?

**RESPONSE: The United States conducts a market analysis before each monetization that is entitled the "Market Analysis for Monetization" (MAM). Each MAM analyzes the supply and demand in the recipient country for the commodity to be monetized to ensure donations from the United States do not displace locally produced or imported commodities.**

b) Could the USA explain the rationale for keeping a 15% minimum floor of monetized food aid?

**RESPONSE: The 15% minimum on the monetization of food aid applies only to the Office of Food for Peace's non-emergency development food aid programs, not to emergency food aid programs. In Fiscal Year 2014, USAID's Office of Food for Peace utilized monetization in just a-one country, Bangladesh.**

c) Paragraph 4.44 says that providing cash to the organizations distributing food aid, would allow them to cover implementation costs and other expenses. This would eliminate the need to use monetization to generate cash in many situations and allow USAID to reduce monetization to the 15% floor, according to the U.S. authorities.

(i) Wouldn't it be better -both from the perspective of reduction of distortions and humanitarian considerations- to deliver non-emergency food aid in "cash only" or by buying food from local farmers in the recipient country?

(ii) Why does the U.S. not take the approach of "cash only" for non-emergency food aid?

**RESPONSE: The United States embraces the use of innovative modalities and flexibilities to deliver food assistance. In 2010, the Emergency Food Assistance Program, through the International Disaster Assistance account, was created to provide cash for food assistance programs. Changes In the Agricultural Act of 2014 embrace new modalities as well, allowing a portion of Title II resources to be used for food vouchers, cash transfers, and local and regional procurement.**

105) *En el párrafo 4.45 el informe describe el nuevo "programa de compras locales y regionales de ayuda alimentaria" que se estableció en la nueva Ley Agrícola.*

a) *¿Podría EEUU explicar en qué consiste este programa y como se va a implementar?*

**RESPONSE: The Agricultural Act of 2014 converted the pilot local and regional procurement program authorized in the 2008 Farm Bill into a permanent program intended to respond to crises and disasters and to support the use of locally-produced food in existing food assistance programs, including the McGovern-Dole International Food for Education and Child Nutrition Program.**

b) *¿Cuál es límite de financiación que podrá otorgar dicho programa?*

**RESPONSE: The Agricultural Act of 2014 did not include mandatory funding for the program but authorized appropriations up to US\$80 million per year.**

c) *¿Bajo qué compartimiento pretende notificarlo a la OMC?*

**RESPONSE: The United States has notified this program under Table NF:1, as actions taken within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries.**

*Subsección 4.1.1.4.2 - Garantías de crédito a la exportación*

106) *El párrafo 4.46 describe el programa de Garantías de Crédito a la Exportación (GSM-102). Considerando que el informe del OSD (WT/DS267) concluyó que el programa GSM-102 otorgó una subvención a las exportaciones de determinados productos agropecuarios:*

**RESPONSE: The United States is not aware of any finding that GSM-102, in its current form, is an export subsidy.**

a) *¿Son todos los productos agropecuarios elegibles para beneficiarse de este programa?*

**RESPONSE: Please see our website at: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.**

b) *En caso que no fuera así, ¿podría indicar qué productos no pueden beneficiarse de este programa?*

**RESPONSE: See answer a) above.**

c) *¿Podría EEUU indicar qué herramientas están previstas, a efectos de garantizar que dicho programa no resulte en una elusión de los compromisos asumidos en el Acuerdo sobre Agricultura en materia de subvenciones a las exportaciones?*

**RESPONSE: The Export Credit Guarantee Program complies with all WTO disciplines, including those on agricultural subsidies.**

d) *¿Podría brindar alguna precisión respecto de cuando espera poner el régimen GMS-102 en conformidad con las reglas OMC?*

**RESPONSE: See answer c) above.**

e) *¿Podría precisar cuál es la postura de EEUU acerca del compromiso de eliminación de todas las formas de subsidios a la exportación prevista en el Mandato de la Ronda Doha?*

**RESPONSE: The United States is fully committed to the elimination of all direct export subsidies.**

f) ¿Cómo adecuaría este programa para dar cumplimiento a la eliminación de toda forma de subvenciones a la exportación?

**RESPONSE: See answer c) above***Subsección 4.1.1.4.3 - Promoción de las exportaciones*

107) Con respecto a lo mencionado en el párrafo 4.48, ¿qué tipos de actividades de promoción de exportaciones están previstas en el Programa de Acceso a los Mercados (Ley Pública 113-79, artículo 3102)?

**RESPONSE: Under the MAP, FAS provides cost-share assistance to eligible U.S. organizations for activities such as consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research, and technical assistance.**

108) De acuerdo al párrafo 4.48, el Programa de Promoción de los Mercados Extranjeros (artículo 3103) facilita fondos de contraparte principalmente para la exportación de productos básicos genéricos y a granel (32,7 millones de dólares EE.UU. en el ejercicio de 2013). ¿Podría EEUU explicar cómo opera dicho Programa y en qué medida se acoge a las normas de la OMC para asegurar que dicho programa no se transforme en un subsidio distorsivo?

*Subsección 4.1.1.10.3 - Plan de protección complementaria de los ingresos de los productores de algodón americano (upland)*

**RESPONSE: Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. These programs are widely available export promotion and advisory services.**

109) En el párrafo 4.61 el informe describe el programa de Stacked Income Protection Plan (STAX). Tomando en cuenta el Mandato de la Ronda de Doha sobre las subvenciones al algodón:

a) ¿Cuál es el motivo por el cual EEUU considera que los productores de algodón necesitan de una protección complementaria adicional diferenciada del resto de los productores agrícolas de EEUU?

**RESPONSE: Cotton producers are not eligible to enroll in the ARC and PLC programs afforded to other commodities under Title I of the 2014 Farm Bill.**

b) ¿Podría EEUU indicar si ha calculado el impacto de estas medidas sobre las expectativas de los productores locales y sobre los productores de los países en desarrollo?

**RESPONSE: The United States has made no official determination as to impacts, if any, of these programs on cotton producers in developing countries.**

*Subsección 4.1.1.2.8 - Criterios de selección*

110) De acuerdo a la Public Law 113-79, Sección 1114(d), los productores agrícolas con menos de 10 acres "de base" están excluidos de los programas PLC y ARC, excepto si son socialmente desfavorecidos.

a) ¿Podría EEUU indicar cuáles son los motivos para realizar dicha exclusión y qué parámetros tuvo en cuenta al fijar la base de 10 acres?

**RESPONSE: The Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) mandated that farms with 10 or fewer base acres were prohibited from receiving direct and countercyclical payments (DCP) or Average Crop Revenue Election (ACRE) program payments (see Sections 1101(d) and 1302(d)). Farms owned by limited-resource and socially disadvantaged owners<sup>4</sup> were exempt from this "base-10" provision. These same provisions are in the 2014 Farm Bill (see Section 1114(d) regarding the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs. USDA's Economic Research Service conducted a study of the impacts of the 2008 Farm Bill provision, and also provides**

**background information; it can be found at: <http://www.ers.usda.gov/media/116368/eib84.pdf>.**

b) *Con respecto a los programas PLC y ARC, ¿podría EEUU especificar si existen otros tipos de ayudas alternativas que estén a disposición de los productores con menos de 10 acres "de base"?*

**RESPONSE: The 10-acre base provision in the 2014 Farm Bill applies only to ARC and PLC. Producers with fewer than 10 acres are eligible for programs such as the Non-insured Crop Disaster Assistance Program (NAP) and marketing assistance loans. Special provisions mandated in several programs apply to limited resource, socially disadvantaged, and beginning farmers, but are not defined relative to 10 acres (those producers must meet other criteria, but it is not based on acreage).**

*Subsección 4.1.2 - Aranceles agrícolas y contingentes arancelarios*

111) *De acuerdo al párrafo 4.64, la utilización de las cuotas arancelarias varía por producto, pero la mayoría de las cuotas arancelarias no han sido llenadas o han tenido un nivel bajo de utilización durante el período bajo revisión, con la excepción de azúcar.*

a) *¿Podría indicar EEUU si recibió alguna preocupación específica o consulta de algún Miembro sobre llenado de cuotas en el Comité de Agricultura, al amparo del "Entendimiento relativo a las disposiciones sobre la Administración de los contingentes arancelarios de los productos agropecuarios, según se definen en el artículo 2 del Acuerdo sobre la Agricultura" (WT/L/914), surgido de la 9º Conferencia Ministerial?*

**RESPONSE: There has been no formal inquiry regarding U.S. tariff-rate quota fills under said understanding (WT/L/914). The United States continues to be forthcoming in outlining its tariff-rate quotas and their administration to all interested Members.**

b) *¿Han evaluado los Estados Unidos una simplificación en la administración de las cuotas arancelarias agrícolas con el objetivo de incrementar su utilización?*

**RESPONSE: The United States has evaluated the utilization of its tariff-rate quotas and is confident the under fill is not due to the administration of its quotas. The United States is committed to bolster transparency in all tariff-rate quota systems and encourages the implementation of the Bali Ministerial Understanding on Tariff Rate Quota Administration.**

c) *¿Podría señalar si podría simplificarse esta administración de cuotas arancelarias:*  
 (i) *eliminando las licencias de importación para quesos; y*

**RESPONSE: The United States has no current plans to eliminate its dairy import licensing system. The current dairy import licensing regulations contain several mechanisms that provide incentives to fill the quotas. Any importer who does not fill at least 85% 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 made available for reallocation upon request by any eligible applicant.**

**In addition, if a country falls short of its allocated amount, importers can request to globalize the licenses and enter the remaining balance or a portion thereof from any country during that quota year.**

*(ii) cambiando en forma apropiada para los países exportadores las fechas de apertura para la cuota de maní?*

**RESPONSE: The United States has no current plans to modify the administration of the peanut tariff-rate quota. The peanut quota is administered on a first come, first-served basis.**

112) *Párrafo 4.83. ¿A qué atribuye el gobierno de los Estados Unidos la baja utilización de los contingentes arancelarios?*

**RESPONSE: The fill rates for tariff-rate quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff quota to another and from year to**

**year. Most of the tariff rate quotas with very low fill rates are administered on a first come, first-served basis. For a more detailed indication of the allocation methods for U.S. tariff rate quotas, the United States would direct Argentina's attention to G/AG/N/USA/2/add.3, dated October 5, 2001.**

*Subsección 4.1.3 - Nivel de ayuda*

113) *De acuerdo al párrafo 4.68 la reducción en los niveles de apoyo al sector agropecuario por parte de los Estados Unidos debe ser atribuido al incremento en el precio de los productos en el mercado mundial y no a una reforma de su política. ¿Cómo considera Estados Unidos que se modificará el nivel de apoyo a los productores bajo la nueva ley agrícola en el contexto internacional actual y el previsto mientras la Ley Agrícola 2014 esté en vigor?*

**RESPONSE: The 2014 Farm Bill emphasizes farmers' participation in crop insurance programs. Congress terminated the Direct and Countercyclical Payment program. New programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives. Further, there are some countervailing factors in certain U.S. farm programs, which will provide lower payments when commodity prices fall and remain low.**

114) *¿Podría EEUU especificar bajo qué categoría del documento G/AG/2 notificará cada uno de los siguientes programas: PLC, ARC, SCO, STAX, NAP, LIP, LFP, ELAP, TAP, GSM-102, MPPD y DPDP?*

**RESPONSE: The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United will notify the classification of these programs as part of its official domestic support notification. The United States refers Argentina to its official domestic support notifications for how other programs are notified.**

115) *The Secretariat's report, based on the OECD work, seems to conclude that the decline in support notified since 2002 was largely attributable to higher world market prices for agricultural commodities, rather than policy reform.*

**RESPONSE: It is important to note that the OECD's classification and calculation methods for measuring domestic support differ from those used by the WTO. The United States remains confident that the programs under the 2014 Farm Bill will conform with the United States' WTO commitments.**

a) *Does the USA agree with this conclusion that points to absence of policy reform?*

**RESPONSE: The 2014 Farm Bill will conform with the United States' WTO commitments. The United States initially proposed that it would liberalize its agricultural policies as part of a broader reform in a Doha context. This ambition was not evident in proposals from other members, in particular those which focused on creating loop-holes to protect their sensitivities even as they requested concessions from their trading partners. If and when WTO members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.**

b) *If not, what would be the elements in the 2014 Farm Bill that would drive trade and production distorting support to a substantial reduction?*

**RESPONSE: The 2014 Farm Bill emphasizes farmers' participation in crop insurance programs. Congress terminated the Direct and Countercyclical Payment program. New programs are paid on historical production without reference to current production removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives. Further, there are some countervailing factors in certain U.S. farm programs, which will provide lower payments when commodity prices fall and remain low.**

c) *If reduction of support was driven mainly by higher international prices, does the USA agree that lower international prices would increase trade and production distorting support?*

**RESPONSE: See response to b) above.**

*d) Have the USA considered such lower price scenarios when drafting the 2014 Farm Bill, in particular its impacts on developing countries and on the agriculture negotiations of the Doha Round?*

**RESPONSE: See response to b) above.**

**The United States initially proposed that it would liberalize its agricultural policies as part of a broader reform in a Doha context. This ambition was not evident in proposals from other members, in particular those which focused on creating loop-holes to protect their sensitivities even as they requested concessions from their trading partners. If and when WTO members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.**

*Sección 4.2. sobre servicios.*

*116) En los párrafos 4.142 y 4.143 el informe indica que las leyes de preferencias en relación con la carga obligan a los expedidores a utilizar buques de pabellón estadounidense para el transporte marítimo de cargas destinadas al Gobierno de los Estados Unidos, pero que existe la posibilidad de solicitar exenciones. En este sentido, el Departamento de Seguridad Interior solo concede "en interés de la defensa nacional", es decir, solo en casos excepcionales. Se solicita indicar en qué situaciones concretas se pueden solicitar exenciones y en qué casos (dando ejemplos concretos recientes) efectivamente se han concedido tales exenciones.*

**RESPONSE: A temporary waiver from the U.S.-flag requirement may be obtained only if the Secretary of the Department of Defense or the Department of Homeland Security makes a determination that such a waiver is "necessary in the interest of national defense." This determination is subject to the discretion of the Secretary. Examples of situations where a waiver was granted include the Exxon Valdez accident in 1989 and Hurricanes Katrina and Rita in 2005.**

*II. Informe del Gobierno de los EE.UU. / Report by the U.S. Government (WT/TPR/G307).**Question 117) Paragraph 1.1.*

*a) Does the U.S. commitment "to an ambitious trade and investment strategy" include substantial reduction or elimination of agricultural and fisheries subsidies?*

**RESPONSE: The United States is committed to making progress wherever possible on the Doha Development Agenda (DDA), based on common efforts. 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 based on active commitment and participation from all Members, both developed and developing. However, the DDA negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point.**

*b) Does the U.S. agree that subsidies are contrary to market oriented trading system?*

**RESPONSE: Absent any showing that subsidies are prohibited or causing adverse effects to the interests of another WTO Member under WTO rules, there is no basis to assert that subsidies are necessarily inconsistent with a market-oriented trading system or obligations under the WTO and the Agreement on Subsidies and Countervailing Measures.**

*Question 118) Paragraph 1.2.*

*Being the WTO a bulwark against protectionism, does the U.S. agree that the protectionism and support are concentrated in the agricultural and fisheries sectors?*

**RESPONSE: Absent any showing that agricultural and fisheries sector supports are causing adverse trade effects, and if compliant with WTO obligations, there is no basis to characterize these supports as protectionist.**

**Moreover, 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-distorting measures. We want to encourage healthy debate and, where possible, explore the potential for the negotiation of new trade opportunities.**

*Question 119) Paragraph 1.4 - Free Trade Agreements*

*The increasing amount of market access concessions by the USA under its Free Trade Agreements erode the value of the market access concessions by the USA to be made under the Doha Round Mandate, since these multilateral market access concessions tend to be less ambitious than under free trade agreements.*

- a) *Wouldn't this erosion of U.S. multilateral market access concessions limit the real multilateral contribution of the U.S. in the area of agricultural and fisheries subsidies (untouched by free trade agreements)?*

**RESPONSE: A 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 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 increase participation in liberalizing efforts at the WTO.**

*Question 120) Paragraph 2.4.*

*The U.S. asserts that it maintains "one of the world's most open trade regimes", but this does not seem to be applicable to market access for agricultural products and for market access in services.*

- a) *Would the U.S. undertake strong commitments for the liberalization of these two sectors?*  
 b) *If so, what would be the main undertakings by the U.S. at the multilateral level under the DDA?*

**RESPONSE: The United States is committed to making progress wherever possible on the Doha Development Agenda (DDA), based on common efforts. 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 based on active commitment and participation from all Members, both developed and developing. However, the DDA negotiations are not complete. Therefore, discussion of possible DDA commitments would be premature at this point.**

*Question 121) Paragraph 3.4. This paragraph reports on activities of the Trade Policy Review Group (TPRG) administered by the USTR, including public hearings on trade policies issues.*

- a) *Could you comment on the omission of the Doha Round negotiations under the activities of the TPRG?*  
 b) *Have any public hearings or similar activities on the Doha Round negotiations been carried out by the TPRG?*  
 c) *If so, please inform which ones (with dates) with their available sources.*

**RESPONSE: Since the Doha Round's launch in 2001 and in the many years since, the United States has undertaken countless, extensive domestic consultations with all relevant stakeholders, both through the TPRG, with our Congress, and with our many stakeholders. In fact it is these domestic consultations that drive our positions in the Round, including that any outcome be ambitious and balanced, with all WTO Members contributing commensurate to their trading status.**

*Question 122) Párrafos 5.14, 5.15 y 5.16*

*En los mencionados párrafos se hace referencia a la asistencia que brinda EEUU, a través de diversos programas, al desarrollo del sector algodonero en varios países de África, entre ellos los denominados C-4. En el párrafo 5.14 se indica, por ejemplo, que "los Estados Unidos ha movilizado a sus organismos de desarrollo para que ayuden a Benín, Burkina Faso, el Chad, Malí y el Senegal, países de África Occidental, a superar los obstáculos a que se enfrentan en el sector algodonero." ¿No considera Estados Unidos que el principal obstáculo que enfrentan esos países son los subsidios a la exportación que se aplican a este sector en países desarrollados y que la mejor forma de asistencia sería cumplir con lo acordado en la Ministerial de Hong Kong, eliminando, por ejemplo, tales subsidios?*

**RESPONSE: The United States is committed to making progress in the Doha Development Agenda, to create new trade opportunities for all Members, both developed and developing. The United States has stopped using agricultural export subsidies. The United States is happy that it has been able to work with the Members listed in the question in order to assist in the development of their cotton sectors.**

*Question 123) Protocolo de enmienda del Acuerdo de la OMC para incorporar el Acuerdo de Facilitación de Comercio: La reciente aprobación por parte del Consejo General de la decisión sobre este tema no ha permitido que esta cuestión sea abordada en los informes del Gobierno y de la Secretaría.*

- a) ¿Podría EEUU confirmar que el Poder Ejecutivo remitirá al Congreso de EE.UU. el Protocolo de Enmienda con el Acuerdo sobre Facilitación de Comercio para que su aprobación?
- b) ¿Podría estimar el tiempo que llevaría este proceso de aprobación legislativa?

**RESPONSE: The United States can accept the WTO Trade Facilitation Agreement Protocol of Amendment by submission of a letter to the WTO as its instrument of acceptance. With submission of this letter, which USTR is already preparing, the United States' acceptance will be complete.**

*Comercio y medio ambiente / Trade and environment  
Subvenciones a la pesca / fisheries subsidies*

*Question 124) Taking into consideration the TPR reports (WT/TPR/G/307 and S/307), especially on the importance that the USA assigns to trade and environment it springs to mind some contradiction in the U.S. Trade Policy of the US, regarding recent policy evolution in fisheries subsidies, the Fisheries Financing Program (FFP) on Construction of New Replacement Fishing Vessels.*

*Government support to the fishing industry can promote overfishing by increasing fishing effort artificially and making fishing more profitable than it would be without subsidies. Yet, the specific details of how much some countries, including the United States, are subsidizing their fishing industries are still not known.*

- a) Has the U.S. quantified the amount of government subsidies will be given to the U.S. fishing industry, on the proposed change to its Fisheries Financing Program (FFP) to finance fishing vessel construction and refurbishment that would increase fishing capacity?

**RESPONSE: The FFP is still under review. The National Oceanic and Atmospheric Administration (NOAA) at the Department of Commerce solicited public comment on the Advance Notice of Proposed Rulemaking it issued in June 2014, and will again solicit public comment in connection with any Notice of Proposed Rulemaking regarding the FFP. Information regarding the rulemaking is available online at <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0062-0006>. NOAA anticipates that the program will apply only in fisheries where total allowable catch is controlled through fisheries quotas. Loans will not be provided in fisheries that are deemed overfished or subject to overfishing. We note that the US\$41 million increase in the program represents the additional amount of loans that can be provided under the program. The lending rate under this program is generally above the government's cost of funds. The program has historically been self-financing.**

- b) Does the USA evaluate the contribution of these subsidies to overfishing, habitat disruption and conservation?

**RESPONSE: As noted in response to (a) above, NOAA anticipates that the program will apply only in fisheries where total allowable catch is controlled through fisheries quotas. Loans will not be provided in fisheries that are deemed overfished or subject to overfishing.**

- c) Could the USA inform about the comments received on the request of comments by the advance notice of proposed rulemaking?

**RESPONSE: Information regarding the rulemaking and the public comments that have been submitted are available online at <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0062-0006>.**

d) Could you inform about the public opinion reaction in the USA about this increase of fisheries subsidies?

**RESPONSE: Information regarding the rulemaking and the public comments that have been submitted are available online at <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0062-0006>.**

Question 125) Last year there have been politically relevant declarations against fisheries subsidies. Members States of Friends of Fish, including the USA, issued a statement in Bali (December 2013) reiterating the commitment to agreeing to ambitious and effective disciplines on fisheries subsidies, and pledging to refrain from introducing new fisheries subsidies that contribute to overfishing or overcapacity or extend or enhance existing such subsidies.

A standstill was reiterated by the APEC Ocean-Related Ministerial Meeting Joint Statement, the 'Xiamen Declaration' (August 2014). The outcome of Secretary of State John Kerry's Oceans Conference, "Our Ocean Action Plan", agreed to eliminate fisheries subsidies that contribute to overfishing and overcapacity of fishing fleets. Furthermore, and within a general pledge, the St. Petersburg Declaration in September 2013 also extended the standstill.

a) Irrespective of the amount of fisheries subsidies to be provided, their increase is contrary to the political commitments by the USA in the Friends of Fish Declarations, the APEC Xiamen Declaration and the St. Petersburg Declaration. Could the USA please explain why it does no comply with these politically relevant commitments?

**RESPONSE: The United States has long been committed to disciplining harmful fisheries subsidies. Our policy with respect to this issue has not changed, and the United States takes seriously the political commitments that it has made in various fora. The National Oceanic and Atmospheric Administration (NOAA) at the Department of Commerce is considering modifications to the FFP with this policy in mind. We look forward to continuing to work with Argentina and other Friends of Fish in the WTO and other fora to discipline harmful fisheries subsidies that contribute to overfishing and overcapacity.**

b) Are the USA concerned that such an extension of the FFP risks undermining the US' leadership role on global fisheries subsidies reform and wider oceans issues?

**RESPONSE: The United States has long been a leader and advocate in support of disciplines on harmful fisheries subsidies in the WTO and in other fora. We are pursuing ambitious commitments on fisheries subsidies in free trade agreements under negotiation. The United States remains committed to securing an ambitious result on fisheries subsidies and stands ready to continue this work in the WTO and other fora.**

Question 126) The USA is reported to have an interest in environmental issues when pursuing trade agreements as informed by the Secretariat's Report (WT/TPR/G/307, section 6):

"6.1. Since the last U.S. Trade Policy Review, the United States has achieved significant results on trade and environment matters in multiple fora, including through regional and bilateral trade initiatives. In the TPP negotiations, the United States continued to press for commitments to address environmental issues, including conservation challenges in the Asia Pacific region, such as combating wildlife trafficking and illegal logging and addressing marine fisheries issues, as well as commitments to liberalize trade in environmental goods and services. In the T-TIP negotiations, the Administration is seeking ambitious environmental commitments including those relating to the protection and conservation of wildlife, marine fisheries, and forest resources. The Administration has also continued to prioritize implementation of the free trade agreements currently in force."

In the Doha Round negotiations has prioritized market access in goods (agricultural and non-agricultural) and in services. Why do the USA not have the same interest to comply with Doha Round mandate on fisheries subsidies, taking into account that this mandate has been reinforced by the Paragraph 173 of the Rio+20 Outcome Document?

**RESPONSE:** The United States has long been a leader and advocate in support of disciplines on harmful fisheries subsidies in the WTO and in other fora. The United States remains committed to securing an ambitious multilateral result on fisheries subsidies and stands ready to continue this work in the WTO and other fora. The United States strongly supports enhanced transparency commitments for fisheries subsidies as called for in Paragraph 173 of the Rio+20 declaration. Our WTO subsidy notifications have consistently included detailed information regarding U.S. fisheries programs, at both the central and sub-central levels of government (see, e.g., G/SCM/N/253/USA). The United States has also devoted considerable time and resources to uncover fisheries programs of others and bringing them to the attention of the Committee on Subsidies and Countervailing Measures. Most recently, the United States made a submission under Article 25.10 of the Agreement on Subsidies and Countervailing Measures identifying over a dozen legal measures in China relating to fisheries assistance programs and providing access to full translations of each measure (see, G/SCM/Q2/CHN/51).

### *III. Otras Fuentes / Other sources*

#### *A. OMC, Comité de Agricultura, sesión ordinaria / WTO, Committee on Agriculture, regular session.*

Question 127) At the 74th. Regular Session of the Committee on Agriculture (June 2014): The following questions were raised but the USA could not respond to them because the new Farm Bill had not been fully implemented at that time. Does the current state of implementation of the Farm Bill allow a response for the questions below?

a) If yes, please answer the following questions:

(i) Commodity provisions: (G/AG/W/135, questions in 1.17.1(d)(iii)).

(i-a) Based on new target prices and USDA price projections, what is the Amber Box (Current Total Aggregate Measures of Support) estimated for the next five years?

**RESPONSE:** We cannot say what the level of AMS support will be under the new Farm Bill. Any effort to estimate support levels would depend on a number of critical assumptions. We do have a sense of the range of parameters and those suggest that the United States will be within its commitments. We are assisted by the fact that there are some countervailing factors in our programs. For example, while lower commodity prices increase payments under some programs, they decrease the likelihood or size of other payments.

(ii-b) Is there a mechanism to foresee well in advance the possibility of AMS commitments being overstepped in a scenario of falling prices?

**RESPONSE:** The United States expects the 2014 Farm Bill to remain within its WTO commitments. Moreover, the 2014 Farm Bill, like previous Farm Bills, contains a "circuit breaker" that, in the unlikely scenario that payments are expected to exceed commitment levels, gives the Secretary of Agriculture the authority to ensure the United States does not exceed those commitments.

(ii) The newly established Margin Protection Program (MPP, Sections 1401-1410).

(ii-a) Has the USDA evaluated the impact on the rational expectations of dairy producers which could increase production as a result of their perception of less risk for dairy production? (G/AG/W/135, question in 1.17.1(c)(iii)).

**RESPONSE:** USDA expects no net increases in milk production because of risk reduction provided by the MPP. Expected MPP outlays are offset by outlay reductions associated with the elimination of the Milk Income Loss Contract Program, the Dairy Product Price Support Program, and the Dairy Export Incentive Program.

(ii-b) Do the Farm Bill or USDA implementation regulations foresee any means to reduce the level of subsidies that MPP might add? (G/AG/W/135, question in 1.17.1(c)(iv)).

**RESPONSE:** Payment rate calculations and premium rates for program participants are fixed in the Farm Bill for the life of the program: September 1, 2014 through December 31,

**2018. USDA expects no net increases in milk production because of risk reduction provided by MPP. Expected MPP outlays are offset by outlay reductions associated with the elimination of the Milk Income Loss Contract Program, the Dairy Product Price Support Program and the Dairy Export Incentive Program.**

b) If the Farm Bill is still totally or partially pending implementation, please inform about the current status and the roadmap for its implementation, including legislative or administrative action plan.

**RESPONSE:** Many of the Farm Bill regulations that are needed before producers can sign up for programs have been published in the Federal Register, including regulations for ARC/PLC, the new dairy margin program, and others. These regulations can be found at: <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-ii>.

Producers have until December 19, 2014, to sign up for the new dairy margin program for calendar years 2014 and 2015. Information on the dairy margin program can be found at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=dmpp&topic=landing>.

The timing of producer ARC/PLC decisions is as follows:

--Base Reallocation/Yield Updating—Landowners can update their yields and reallocate bases between September 29, 2014 and February 27, 2015.

--Program Election—Producers can choose among ARC-County, ARC-Individual, and PLC between November 17, 2014 and March 31, 2015. This is a one-time election that will be in effect through the 2018 crop.

--Program Enrollment—Producers must enroll annually. The first enrollment period (for 2014 and 2015 crops) is mid-April 2015 through the summer (no exact dates yet).

The remaining farm bill regulations to be published as of December 4, 2014, include: the Noninsured Crop Disaster Assistance Program (disaster assistance for commodities not covered by crop insurance); marketing assistance loans for 2015-18 crops; Biomass Crop Assistance Program; conservation compliance linkage with crop insurance; and the Conservation Reserve Program.

Question 128) Regarding questions in the commodity provisions section on:

a) Spending level the USA answered "[...] The 2014 Farm Bill reduced overall agricultural spending. Any differences among the programmes do not impact U.S. commitments [...]" (G/AG/W/135, question in 1.17.1(b)).

According to press information by Reuters, "US farmers set to get huge government payouts despite bumper harvest":

- "The (farm) bill actually did little to rein in costs," said Republican Representative Tom Petri of Wisconsin, in an emailed statement. "What we're seeing is a program that still costs far more than it should and fails to include reforms that actually save taxpayer dollars."

- "The farm bill's new programs were meant to cost the taxpayer less by replacing a nearly two-decade-old scheme of direct cash payments to farmers, which were about US\$5 billion a year and were made regardless of need. But the payouts for 2014 now look likely to far exceed that amount." Could the USA please:

- (i) Specify why the Farm Bill will spend more than initially expected?
- (ii) What is the current estimation of yearly spending in subsidies in commodity crops, dairy and sugar, including non-product specific programmes?

**RESPONSE:** The costs of new commodity and crop insurance programs will be finally determined by producer program choices, and price and yield outcomes influenced by variable market and weather events. Because these factors are uncertain, estimates of future spending under the 2014 Farm Bill are also uncertain. Initial projections by the Congressional Budget Office used baseline assumptions about enrollment, prices, and revenue outcomes. More recent estimates make different, and varied, assumptions.

USDA has projected payments under the PLC and ARC programs based on an enrollment split of 24% PLC and 76% ARC and price declines of at least 15% from 2014 prices. Under these assumptions, PLC and ARC payments are estimated to be US\$28.6 billion for crop years 2014-18. USDA estimates that payments for these 5 crop years will be spread across FY2016-20. Although USDA's current estimates exceed earlier Congressional Budget Office

**projections, in the USDA projection, ARC payments account for 67% of total payments. If PLC enrollment is higher than the 24% assumed for the USDA estimates, total payments would show a smaller increase over earlier projections.**

**New estimates for expenditures under the PLC and ARC programs, as well as for other Farm Bill programs, will be available in February 2015 in conjunction with release of the USDA Baseline and the U.S. FY2016 Budget.**

b) The rationale for increasing reference prices by more than 50% in crops covered by the Farm Bill Commodity provisions the USA gave the following answer (G/AG/W/135, question in 1.17.1(d)(i)): "The reference prices were determined by Congress and reflect a significant shift in market dynamics seen over the past several years. Given these new market dynamics and growing global demand, it is unlikely that prices will fall to the very low levels seen in the 1996-2005 period."

Taking into the account the abrupt fall on international prices, does the USA still hold that prices will not reach the 1996-2005 levels?

**RESPONSE: The United States Department of Agriculture forecasts that prices are unlikely to fall to levels that low.**

Question 129) Regarding two questions whether exportation of dairy products purchased under the Dairy Product Donation Program (DPDP; (G/AG/W/135, questions in 1.17.1(d) (iii) and (iv)), the USA answered as follows:

"Products purchased under the programme will be distributed to public and private non-profit organizations for the purpose of nutritional assistance for low-income individuals, not purchases of bulk commodities. Organizations will be prohibited from selling products back into commercial markets, including commercial export markets. The programme has not yet been implemented, so it is premature to identify what specific mechanisms will be in place for purposes of implementing and administering the programme".

a) Has the governmental provision that prohibits organizations from selling products back into commercial markets, including commercial export markets been established?

**RESPONSE: Yes.**

b) If yes, please identify that provision informing if it is in force.

**RESPONSE: USDA Food and Nutrition Service (FNS) regulations in 7 CFR 250.13.**

#### **B. Impact of the Farm Bill in planted areas of each crop**

Question 130) Can the USA confirm that the cotton base acres are being reallocated for use of other "covered" commodities under Section 1111(6) of the Farm Bill because those cotton base areas are not eligible for PLC payments or ARC payments, as established by Section 1114(b)?

**RESPONSE: No. The 2014 Farm Bill removed upland cotton as a covered commodity for the ARC/PLC programs and prior upland cotton base acres cannot be reallocated (as described in section 1112) to the base acreage of another covered commodity. Upland cotton base acres become generic base acres for use in ARC/PLC. Generic base acres are retained on the farm at the tract level and may: (a) not be reallocated; (b) be planted to any crop; (c) receive ARC or PLC payments for the acres planted to a covered commodity; (d) be reduced for CRP participation; (e) be reduced when taken out of agricultural production; or (f) be reduced on farms having more base acres than available cropland.**

**Generic base acres planted to a covered commodity are eligible for ARC/PLC payments and will be attributed to a covered commodity pursuant to rules established by USDA.**

Question 131) Can the USA inform which "covered" commodities have increased their planting areas since the 2012-2013 crop year to the 2013-2014 crop year?

**RESPONSE: See response to Question 132 below.**

Question 132) Are there any estimations of this shift for the crop year 2014-15?

**RESPONSE: USDA's National Agricultural Statistics Service provides planted area statistics that (except for crambe and sesame seed) can be downloaded using the "Quick Stats" link on USDA's National Agricultural Statistics Service website, for 2012-13, 2013-14, and 2014-15. The following table compares the planted acreages for the covered commodities for 2012-13, 2013-14, and 2014-15:**

**Table 3 Planted Acres of Covered Commodities: U.S. Totals, 2012/13-2014/15 (Acres)**

<b>Covered Commodity</b>	<b>Crop Year</b>			<b>Change from Previous Year</b>	
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2013</b>	<b>2014</b>
Barley	3,660,000	3,528,000	2,975,000	(132,000)	(553,000)
Canola	1,754,400	1,348,000	1,711,500	(406,400)	363,500
Chickpeas, Large	138,400	170,500	157,200	32,100	(13,300)
Chickpeas, Small	69,500	45,200	66,900	(24,300)	21,700
Corn	97,291,000	95,365,000	90,885,000	(1,926,000)	(4,480,000)
Crambe 1/	3	28	32	25	4
Dry Peas 2/	668,500	878,000	958,000	209,500	80,000
Flaxseed	349,000	181,000	332,000	(168,000)	151,000
Grain Sorghum	6,259,000	8,061,000	7,213,000	1,802,000	(848,000)
Lentils	463,000	362,000	280,000	(101,000)	(82,000)
Mustard Seed	51,100	45,000	36,000	(6,100)	(9,000)
Oats	2,700,000	2,980,000	2,723,000	280,000	(257,000)
Peanuts	1,638,000	1,067,000	1,342,000	(571,000)	275,000
Rapeseed	2,500.0	1,700.0	2,600.0	(800)	900
Rice, Long Grain	1,994,000	1,781,000	2,201,000	(213,000)	420,000
Rice, Medium/Short Grain	706,000	708,000	730,000	2,000	22,000
Safflower	169,800	175,500	183,500	5,700	8,000
Sesame Seed 1/	47,754	107,876	98,667	60,122	(9,210)
Soybeans	77,198,000	76,840,000	84,184,000	(358,000)	7,344,000
Sunflower	1,658,000	1,279,000	1,186,000	(379,000)	(93,000)
Wheat	55,294,000	56,236,000	56,822,000	942,000	586,000
US Total	252,111,957	251,159,804	254,087,399	(952,153)	2,927,595
<b>1/ Reported to FSA (No NASS data)</b>					

Question 133) According to the new Farm Bill signed by the President of the USA in February 2014, potential payments for the Price Loss Coverage (PLC) and the Agriculture Risk Coverage (ARC) programs are paid on the farm's bases associated with a covered commodity, such as wheat, oats, and barley, corn, grain sorghum, long grain rice, medium grain rice, pulse crops, soybeans, other oilseeds, and peanuts, having cotton (which profits from the STAX program) been excluded from PLC or ARC programs.

For a given crop year, the farmer's covered commodity base (e.g. peanuts in suitable regions) will be the sum of the current base assigned to that covered commodity plus any generic base (e.g., cotton) temporarily assigned. Payment acres for price loss coverage (PLC) or agricultural risk coverage (ARC) with the county option will be 85% of the base acres for the covered commodity. Payment acres for agricultural risk coverage (ARC) with the individual option will be 65% of the base acres also for that same covered commodity.

As a result, some USA producers have expressed their concern in the sense that moving the cotton base (now "generic base") to other program crops could overload their production in the coming years, as for instance in the case of peanuts. It has already become apparent that the peanut industry is planning for a major expansion in the next season, with new buying points and warehouses being planned.

a) Could the USA explain how it intends to prevent peanut prices from dropping significantly due to oversupply?

**RESPONSE: The domestic program for peanuts is market-oriented and relies upon market prices to provide peanut producers with signals to either contract or expand production. Both the future acreage and price of peanuts in the United States will be determined by the relative future prices for peanuts and competing crops—principally, corn and cotton. Generic base will be allocated according to expected market returns from competing crops.**

b) How do the USA expect to avoid the resulting distortion of competition among local and foreign suppliers?

**RESPONSE: See response to question 133a).**

c) Have the USA considered the adverse effect of the measure described above on peanut farmers in developing countries?

**RESPONSE: Since the core of the new programs eschew input subsidies and administered price schemes, and decouple payments from production decisions and instead base them on historical production, producers have the incentive to plant based on their expectations of highest market return.**

**C. Other sources of information or commitments:**

Question 134) G-20 Standstill: How would the USA prevent increases of subsidies, in particular agricultural and fisheries subsidies, as regards the standstill in the St. Petersburg G-20 Declaration ?

**RESPONSE: In the 2014 Farm Bill, Members of Congress decided to provide an updated farm safety net for producers, emphasizing farmers' participation in crop insurance programs. As part of this decision, Congress terminated the Direct and Countercyclical Payment program.**

Further, the United States has continued to promote policies that limit the trade- and production-distorting effects of its programs. New programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives. Further, there are some countervailing factors in certain U.S. farm programs, which will provide lower payments when commodity prices fall and remain low.

**D. Trends in U.S. Domestic Support**

Question 135) The preceding charts "US Domestic Support (amber, de minimis, blue & green box direct payments)" and "Evolution of categories of U.S. subsidies (distorting and minimally distorting)" illustrate the permanent nature of agricultural subsidies in the U.S. and it shows that there has been no legislation enacted since the Uruguay Round in favor of a reduction in the trend of U.S. domestic support (also see table below "Summary of Domestic Support USA 1995-2011").

**RESPONSE: U.S. domestic support has seen changes with each successive farm bill. The 2014 Farm Bill made a number of program changes. The United States eliminated market price support and export subsidies, which were provided to dairy products. In addition, several commodity programs were eliminated and new ones were introduced. The PLC and ARC programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

The only visible relevant changes in U.S. domestic support trend all along this long period two decades are those resulting from cyclical variations due to changes in international prices for agricultural products. Moreover, the U.S. agricultural subsidy policy follows a counter-cyclical pattern that benefits U.S. farmers at the expense of farmers in the rest of the world, since these farmers have to absorb the adjustment in produced quantities that U.S. will not undertake.

In view of the 2014 Farm Bill (Agricultural Act of 2014), does the U.S. think this new legislation will break this permanent pattern and promote reform through reduction of subsidies even when international agricultural prices are low?

**RESPONSE: U.S. domestic support has seen changes with each successive farm bill. The 2014 Farm Bill made a number of program changes. The United States eliminated market price support and export subsidies, which were provided to dairy products. In addition, several commodity programs were eliminated and new ones were introduced. The PLC and ARC programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

## SUMMARY OF DOMESTIC SUPPORT USA 1995-2011

(US\$ Millions)

	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
AMS	6.214	5.897	6.238	10.392	16.862	16.843	14.482	9.637	6.950	11.629	12.943	7.742	6.260	6.255	4.267	4.119	4.654
<i>De Minimis</i>	1.646	1.153	1.077	4.741	7.434	7.341	7.052	6.690	3.237	6.458	5.979	3.601	2.260	9.382	7.857	5.880	9.714
Blue Box	7.030	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Green Box - Para.2,3,4	43.281	44.378	42.760	40.629	40.743	40.931	43.130	48.270	53.318	57.059	62.017	64.954	65.155	76.271	90.346	107.989	114.087
Green Box - Direct Payments	2.752	7.437	8.489	9.191	9.006	9.126	7.542	10.051	10.744	10.366	10.311	11.071	11.007	9.947	10.433	10.969	11.030
<b>Total</b>	<b>60.923</b>	<b>58.865</b>	<b>58.564</b>	<b>64.953</b>	<b>74.045</b>	<b>74.241</b>	<b>72.206</b>	<b>74.649</b>	<b>74.249</b>	<b>85.512</b>	<b>91.250</b>	<b>87.368</b>	<b>84.681</b>	<b>101.854</b>	<b>112.903</b>	<b>128.958</b>	<b>139.485</b>
<b><i>Total Direct Payments (A:B:G) + MPS</i></b>	<b><u>17.642</u></b>	<b><u>14.487</u></b>	<b><u>15.804</u></b>	<b><u>24.324</u></b>	<b><u>33.302</u></b>	<b><u>33.310</u></b>	<b><u>29.076</u></b>	<b><u>26.379</u></b>	<b><u>20.931</u></b>	<b><u>28.453</u></b>	<b><u>29.233</u></b>	<b><u>22.414</u></b>	<b><u>19.526</u></b>	<b><u>25.583</u></b>	<b><u>22.557</u></b>	<b><u>20.969</u></b>	<b><u>25.398</u></b>
-																	
<b>Non Green Box Subsidies</b>	<b>14.890</b>	<b>7.050</b>	<b>7.315</b>	<b>15.133</b>	<b>24.296</b>	<b>24.184</b>	<b>21.534</b>	<b>16.328</b>	<b>10.187</b>	<b>18.087</b>	<b>18.922</b>	<b>11.343</b>	<b>8.519</b>	<b>15.636</b>	<b>12.124</b>	<b>10.000</b>	<b>14.368</b>

"2014 - Año de Homenaje al Almirante Guillermo Brown, en el Bicentenario del Combate Naval de Montevideo."

**ADDITIONAL QUESTIONS FROM ARGENTINA**

*Respuesta N° 5*

1. *En su respuesta Estados Unidos manifiesta que, en 2015, los gobiernos de los países Miembros de la OMC tendrán que abordar la agenda de trabajo post-Bali de manera muy diferente a la que lo hicieron en 2014. ¿Podría explicar Estados Unidos de que manera piensa encarar esta agenda de trabajo, a la luz de los acuerdos alcanzados en la última reunión del Consejo General con respecto al Acuerdo sobre Facilitación del Comercio y las existencias públicas con fines de seguridad alimentaria?*

**RESPONSE:** The United States is committed to making progress wherever possible on the Doha Development Agenda (DDA), based on common efforts. 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 based on active commitment and participation from all Members, both developed and developing.

*Respuesta N° 8*

2. *Con respecto al Sistema Generalizado de Preferencia (SGP), el cual quedó sin efecto el 31/7/2013, se solicita conocer exactamente cuáles son las acciones concretas que piensa tomar el gobierno de Estados Unidos con miras a restaurar la vigencia de este sistema.*

**RESPONSE:** As noted in response to earlier questions, restoration of the GSP program requires action by the U.S. Congress. The Administration supports Congressional action to reauthorize the GSP program at the earliest opportunity and continues to engage with Members of Congress to advance this objective.

*Respuesta N° 18*

3. *¿Por qué razones Estados Unidos no tiene un previsto establecer plazos para las resoluciones anticipadas?*

**RESPONSE:** The advance ruling process in the United States is a program available to interested parties who choose to request a decision as to how their goods may be treated by Customs and Border Protection upon entry in the United States. No person is required to request an advance ruling. As demonstrated by the widespread use of rulings by traders, the United States issues rulings in a time-sensitive manner that allows traders to use rulings for a wide range of issues. In addition, the time to issue a particular ruling may vary based on the complexity of the issue, and in some cases CBP invites the requester to use additional time to provide more information to ensure accuracy of the ruling.

*Respuesta N° 23*

4. *Se solicita explicar cuáles son los requisitos que debe cumplir una empresa extranjera para participar del Programa de Comerciantes de Confianza.*

**RESPONSE:** The Trusted Trader program is currently a pilot test program. A Federal Register Notice, reference 79 FR 34334, was posted to the public June 16, 2014, to solicit volunteer participants. Nine participant volunteers were selected for Phase I of the program. Selected applicants were notified the week of October 6, 2014. The test period for the pilot will run for at least 18 months to adequately test the full process from beginning to end including application submission, vetting, validation and the annual review or notification process. This period will be used to provide an evaluation assessment and apply experiences of the test period. Additional volunteers will be sought in later phases as the program is further developed.

Respuesta N° 32

5. El informe de la Secretaría menciona que durante el período examinado se revisaron los tipos del impuesto especial que grava el transporte aéreo y se modificaron las normas y reglamentos internos relativos a los dispositivos médicos, los servicios de bronceado y las instituciones financieras extranjeras. ¿Podrían explicar específicamente cuáles fueron las razones de estas modificaciones?

**RESPONSE:** Generally, the nominal amount of the tax on the use of international travel facilities is adjusted annually with inflation. For further information, refer to the following online sites:

<http://www.irs.gov/pub/irs-prior/p510--2012.pdf>;

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf](http://www.faa.gov/about/office_org/headquarters_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf).

With respect to the medical device excise tax, the IRS and the Treasury Department issued Notice 2012-77 on Dec. 5, 2012, (<http://www.irs.gov/pub/irs-drop/n-12-77.pdf>) to provide interim guidance on certain issues related to the medical device excise tax. This Notice solicited comments from taxpayers about these rules and no final determination has been made yet on these issues.

Tanning services excise tax final regulations were published on June 11, 2013 (<http://www.gpo.gov/fdsys/pkg/FR-2013-06-11/pdf/2013-13876.pdf>). These are final regulations and reflect comments received on preliminary regulations. One of the clarification in the final regulations is that prepaid monthly membership and enrollment fees are subject to the tax even if the member does not use the tanning services for the period which the fees are related.

Final regulations for information reporting by foreign financial institutions and withholding on certain payments to these institutions were release April 8, 2013 ([http://www.irs.gov/irb/2013-15\\_IRB/ar16.html](http://www.irs.gov/irb/2013-15_IRB/ar16.html)). Many comments were received and the comments and the regulatory responses are listed in the section, "Summary of Comments and Explanations of Revisions." This guidance is part of the guidance provided as a result of FATCA. (<http://www.irs.gov/Businesses/Corporations/FATCA-Regulations-and-Other-Guidance>)

Respuesta N° 44

6. Se solicita brindar una explicación acerca de las razones por las cuales se incrementó, con respecto a otros años, el número de notificaciones de obstáculos técnicos al comercio durante el año 2013.

**RESPONSE:** The number of TBT notifications in a given year depends on the number of proposed technical regulations and conformity assessment procedures developed. The number of proposed technical regulations and conformity assessment procedures developed will inevitably vary from year to year, as regulatory needs and priorities and other factors fluctuate.

Respuesta N° 54

7. El informe de la Secretaría indica que el Comité de Coordinación para el Fomento del Comercio (TPCC) es el principal organismo interinstitucional del Gobierno que coordina las políticas de promoción de las exportaciones y que cada año establece su estrategia nacional de exportación, en la que determina un orden de prioridades. No obstante, el informe indica que desde 2012 no publica ningún documento al respecto. Sin embargo en su respuesta Estados Unidos manifiesta que todos estos informes son públicos. ¿Podrían explicar esta contradicción entre el informe y la respuesta de los Estados Unidos? ¿Dónde se publican estos informes?

**RESPONSE:** In November 2013, Commerce Secretary Penny Pritzker announced that federal agencies would take a fresh look at the National Export Initiative (NEI) and propose a new strategy to help broaden and deepen the base of U.S. exporters. In May

**2014, Secretary Pritzker launched this export strategy, outlining how the Administration would build on progress made through the NEI with a successor initiative, NEI/NEXT. The TPCC Secretariat published the NEI/NEXT strategic framework (published at [www.trade.gov/neinext/neinext-strategic-framework.pdf](http://www.trade.gov/neinext/neinext-strategic-framework.pdf)) in May 2014. The TPCC Secretariat anticipates reporting out on past year's efforts and upcoming priorities under NEI/NEXT in a National Export Strategy during the first half of 2015.**

*Respuesta N° 56*

8. *Si bien entendemos del informe que no se llegó a cumplir la meta de duplicar las exportaciones, la pregunta hacia hincapié acerca de cuáles eran las estrategias planteadas para poder alcanzar dicha meta, independientemente de no haber podido llegar al objetivo. ¿Podrían brindar una explicación al respecto?*

**RESPONSE:** The National Export Initiative launched in 2010 had five main components, or strategies. First, the Administration improved advocacy and trade promotion efforts. Second, the Administration increased access to export financing. Third, agencies reinforced their efforts to remove barriers to trade so that as many markets as possible are open to U.S. products and services. Fourth, the United States robustly enforced trade rules, ensuring America's trade partners live up to their obligations. Fifth, the Administration pursued policies at the global level to promote strong, sustainable, and balanced growth.

9. *¿Podrían explicar con mayor detalle en qué consisten los beneficios otorgados a las PyMEs en el marco del programa NEI/NEXT?*

**RESPONSE:** Direct benefits are not "granted" to SMEs under NEI/NEXT, rather this initiative is about aligning federal programs and priorities to better meet the export-related needs of SMEs. For example, NEI/NEXT objectives include:

- Streamlining the export paperwork filing and reporting process;
- Making it easier for SMEs to access federal export-related assistance and financing;
- Providing more industry-specific information on export opportunities and providing international trade counselors tools on an industry-specialized basis;
- Working closely with regional and state-based entities who provide export-related services to provide SMEs with a coordinated export assistance environment; and
- Reflecting the export-related needs of SMEs in national policies and trade agreements.

*Respuesta N° 58*

10. *Con respecto a la Iniciativa NEI/NEXT, se solicita conocer cuál es el listado de las economías en desarrollo potencialmente beneficiarias de la ayuda que brinda este mecanismo, o bien explicar los criterios que debe cumplir un país para acceder a él.*

**RESPONSE:** One priority in the NEI/NEXT initiative is to provide technical assistance to developing and developed economies to support transparent business climates and a level playing field. This effort prioritizes coordination among several U.S. agencies leading efforts to build trade capacity, including assuring intellectual property protections, addressing corruption and lack of transparency, and harmonizing regulations and standards. Countries can work with the appropriate U.S. agencies to apply for assistance with any of these issues under a number of existing technical assistance programs.

*Respuesta N° 74*

11. *Se solicita explicar en detalle qué diferencias existen entre una "empresa del estado" y una "empresa patrocinada por el Gobierno", así como también las razones por las cuales se establece una empresa "patrocinada", brindar un listado completo de estas empresas y explicar cuáles son los "privilegios" y la ayuda a la que acceden estas empresas.*

**RESPONSE:** The Secretariat's report addresses both government corporations and government-sponsored enterprises, not state enterprises. As stated in the initial response, government corporations are revenue-generating enterprises that are legally distinct but operated by the federal government, whereas government-sponsored enterprises are privately held corporations with public purposes created by the U.S. Congress.

Further information regarding these entities can be found at: <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/gov.pdf> and each entity's specific website.

Respuesta N° 112

12. Se solicita explicar de manera más clara a que atribuye el gobierno de los Estados Unidos la baja tasa de utilización de los contingentes arancelarios en el periodo bajo examen.

**RESPONSE:** Fill rates for tariff quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff quota to another and from year to year. With regard to period under review, most of the tariff rate quotas with very low fill rates are administered on a first come, first-served basis. For a more detailed indication of the allocation methods for U.S. tariff rate quotas, the United States would direct Argentina's attention to G/AG/N/USA/2/add.3, dated October 5, 2001.

**ASEAN*****Report by USA*****1) Pg. 10, Paragraph(s) 3.10 - 3.13**

*To ensure that United States trade policy and trade negotiating objectives reflect U.S. public and private sector interests, the U.S. has in place the Trade Advisory Committee System which has been arranged in three tiers. Under Tier III: The Technical and Sectoral Advisory Committee, representatives are jointly appointed by the USTR and the Secretaries of Agriculture and Commerce.*

*Seeing that not all private sector entities can be represented under the Committee, are there conferences or outreach activities, if any, that the U.S. has undertaken to ensure that all private sector interests have been sufficiently attended to?*

**RESPONSE: USTR welcomes all U.S. stakeholders to apply to the Trade Advisory Committee System. Committees are continuously evaluated to ensure balance and that a wide range of views are represented.**

**In addition, USTR engages with stakeholders outside the committee system, both in the private and public sectors. For example, alongside each of the T-TIP rounds, USTR and the EU have hosted stakeholder consultation sessions. During each of the rounds held in the U.S., negotiators met with and listened to over 50 presentations from representatives of a wide array of interests, including industry, small business, academia, labor unions, environmental groups, and consumer advocacy organizations. The stakeholder presentations and briefings consistently draw approximately 300 global stakeholders.**

---

## AUSTRALIA

*Report by the Secretariat - WT/TPR/S/307*

**2. TRADE AND INVESTMENT REGIME**

**2.3.2.2 Generalized System of Preferences (GSP)**

*Page 35, Paragraph 2.32*

Australia notes the GSP Program expired on 31 July 2013 and has not been renewed. The GSP plays an important role in supporting economic growth in developing countries. It provides preferential access to the U.S. for more than fifty developing countries, including all Pacific Island developing countries.

*Question 1: Does the USA intend to renew its GSP program? If so, when?*

**RESPONSE: The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.**

*Question 2: In the event it is renewed, is consideration being given to making the program permanent?*

**RESPONSE: The U.S. Congress sets the term length for GSP authorization and, over the last 20 years, has generally renewed the program for periods of one to five years. The most recent legislation to renew GSP, introduced in July 2013, would have extended the program through September 2015. Any prospective longer term or permanent renewal of GSP would have to take into account implications on the federal budget because U.S. law requires that foregone tariff revenue under GSP be offset by corresponding revenue increases or spending reductions.**

**2.3.1 Regional and Preferential Trade Agreements**

*Page 31, paragraph 2.24*

Australia welcomes the US' ongoing commitment to the transparency mechanism and factual presentation process in the CRTA.

*Question 3: When will the U.S. table its FTA with Colombia (the US's third largest FTA trading partner) for consideration in the CRTA?*

**RESPONSE: We are concluding our review of the U.S.-Colombia draft Factual Presentation and expect to provide comments to Colombia and the Secretariat soon. The United States looks forward to the transparency reviews of the U.S.-Colombia FTA, the Dominican Republic-Central America-United States FTA (CAFTA-DR) and the U.S.-Bahrain FTA as soon as mutually possible for our FTA partners in 2015.**

**2.4.2 Investment promotion**

*Page 39, paragraph 2.51*

*Question 4: Australia requests the United States provide more information on the Make it in America program 'to accelerate insourcing'. In particular, could the U.S. explain how it ensures the program is consistent with international trade obligations, including the WTO Agreements on Trade Related Investment Measures (TRIMs), Technical Barriers to Trade (TBT) and Subsidies and Countervailing Measures (SCM)?*

**RESPONSE: The Make it in America program was a one-time program, carried out in 2012, to identify innovative projects focused on increasing investment and employment. Further information is available at [www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge](http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge). The winning projects are described at <http://www.eda.gov/challenges/MakeItInAmerica/winners.htm>. Information about the SelectUSA program is available at <http://selectusa.commerce.gov>. The SelectUSA websites contains a searchable database of over 70 different federal incentive programs designed to encourage business investment across a range of sectors (<http://selectusa.commerce.gov/investment-incentives>).**

**2.4.3.3 Other investment laws or restrictions**

**Page 40, Table 2.4, Paragraph 4.87**

Australia notes the reference to the ongoing restriction on foreign investment for U.S. registered ships.

*Question 5: Can the United States outline whether any liberalisation or easing of restrictions might be considered in the future?*

**RESPONSE: No proposed legislation is currently pending before the U.S. Congress that would significantly revise measures governing foreign investment in US-registered ships.**

Australia also notes the reference to the ongoing restriction on foreign investment for U.S. registered aircraft.

*Question 6: Can the United States outline whether any liberalisation or easing of restrictions might be considered in the future?*

**RESPONSE: No proposed legislation is currently pending before the U.S. Congress that would significantly revise measures governing foreign investment in US-registered aircraft.**

**3 TRADE POLICIES AND PRACTICES BY MEASURE****3.1.1.1 Single window**

**Page 43, Paragraph 3.5**

We note the United States will be requiring all trade manifest data to be submitted through the Automated Commercial Environment (ACE) as of 1 May 2015.

*Question 7: Can the United States confirm that they will provide sufficient advice and advance notice to importers so as to allow a smooth transition to the new system and minimal disruption to the flow of trade?*

**RESPONSE: U.S. Customs and Border Protection (CBP) has been conducting outreach with local ports and trade communities since 2013 and will continue to do so through ongoing outreach activities such as on-site visits, association-specific conferences, and webinars, well in advance of the mandatory dates. This outreach will ensure that the trade community has sufficient advice and advance notice to allow for a smooth transition to the new system. More detailed information about ACE including scheduled updates, outreach calendars, technical specifications, training and reference guides, frequently asked questions, and other resources can be found at [www.cbp.gov/trade/ace](http://www.cbp.gov/trade/ace).**

**3.1.1.1.2 Border Interagency Executive Council (BIEC)**

**Page 43, Paragraph 3.8**

*Question 8: Can the United States provide an update on the BIEC's development of common risk-management principles and methods and the likely timeframe, as well as whether the results will be published?*

**RESPONSE: Much of the early work of the BIEC necessarily focused on establishing organizational frameworks and processes that allow the BIEC to accomplish its functions in an efficient and effective manner. These early efforts include establishing a BIEC Charter and forming three committees: Risk Management; Process Coordination; and External Engagement. These Committees are working towards accomplishing the seven goals of the BIEC as outlined by Executive Order 13659. Among other things, the BIEC is considering issues such as how agencies can further streamline data requirements, collaborate on risk management activities, and coordinate messages to filers.**

The BIEC is considering several metrics to assess the impact of improvements to supply chain processes and the identification of illicit and non-compliant shipments. Among other things, agencies will track changes in processing times for exports and imports, the accuracy and efficiency of their enforcement and compliance efforts, and the satisfaction of trade community users with the single window. Results of the BIEC risk

**management principles and methods have been completed, but a determination has not been made of whether they will be published for external distribution.**

**3.1.1.1.3 Advance rulings**

**Page 44, Paragraph 3.9**

*In relation to the US' Advanced Rulings scheme the report states that "At present, rulings related to valuation or carriers must be submitted by letter"*

*Question 9: Could the U.S. provide clarification as to why such rulings must be submitted by letter, and whether there are any plans to expand the eRulings template to encompass rulings related to valuation or carrier?*

**RESPONSE: U.S. regulations (19 CFR 177.2a) provide that a request for a ruling should be in the form of a letter. CBP is considering expanding the eRulings template for submission of the requests, but in the meantime, requests for rulings may be submitted electronically via email.**

**Page 44, Paragraph 3.10**

*The report states that "there appear to be no set deadlines with respect to issuing a ruling."*

*Question 10: Could the U.S. confirm what timeframe they work to in order to issue Advanced Rulings, noting the Agreement on Rules of Origin Article 3(f) requires rulings related to origin to be made within 150 days of application, and the Trade Facilitation Agreement will require rulings to be made in a "reasonable, time-bound manner"?*

**RESPONSE: CBP endeavors to issue rulings within 90 days of receipt of information necessary to issue a ruling and often issues classification rulings within 30 days of receipt.**

**3.1.1.1.5 Trusted Trader Programs**

**3.1.1.1.5.2 Importer Self-Assessment Program (ISA)**

**Page 45, Paragraph 3.16**

*The report notes that C-TPAT certified organisations are eligible to participate in the Import Self-Assessment (ISA) Program provided they are a resident importer of the United States or a Canadian importer.*

*Question 11: Will the United States be extending eligibility to the ISA to traders from other countries, including those with whom the United States has a C-TPAT Mutual Recognition Agreement?*

**RESPONSE: At this time, there are no plans for CBP to extend eligibility to the ISA to traders from other countries.**

**Page 46, Paragraph 3.18**

*Regarding the Trusted Trader Program Test, Australia notes that the test phase is expected to last 18 months and will be limited to fewer than ten participants.*

*Question 12: Why was the timeframe for the test decided to be 18 months?*

**RESPONSE: The test period will run for at least 18 months to adequately test the full process from beginning to end including application submission, vetting, validation and the annual review or notification process. Such a period is considered necessary in order to provide an evaluation assessment and apply experiences of the test period.**

*Question 13: Will participation be by specific invitation only or will a general invitation be offered for any party wishing to participate?*

**RESPONSE: A Federal Register Notice (reference 79 FR 34334) was posted to the public to solicit volunteer participants.**

*Question 14: Why has the Program been limited to ten participants?*

**RESPONSE: The Program is limited to less than ten participants due to the Paperwork Reduction Act which requires all government programs satisfy requirements that would**

**not mandate unnecessary or burdensome collection of information or data from trade entities.**

*Question 15: Can the United States provide information on when the Trusted Trader Program is anticipated to fully replace the ISA and C-TPAT programs?*

**RESPONSE: The Trusted Trader Program will replace ISA, but an exact date has not yet been determined for the replacement. The Trusted Trader will not replace the C-TPAT program as there are entities in C-TPAT that would continue to benefit from its Trade Compliance incentives. The Trusted Trade Program will however continue to require C-TPAT as a pre-requisite to Trusted Trader.**

**3.1.3.3 Country-of-origin marking**

*Page 49, Paragraph 3.29*

Australia notes that this paragraph suggests that goods imported in to the U.S. must be marked in one way in accordance with the Tariff Act, but may be required to be marked in a different way under other federal and state laws.

*Question 16: Can the U.S. confirm if this is the case? If so, please explain how such an arrangement is consistent with the GATT 1947 Article III National Treatment provisions, the WTO TBT Agreement, and with Part II of the WTO Agreement on Rules of Origin relating to non-preferential rules of origin disciplines during transition?*

**RESPONSE: United States marking requirements (19 USC 1304) require 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. Federal and state laws may have different labelling requirements for different purposes. Such requirements are not inconsistent with one another and are compliant with the United States' WTO obligations.**

**3.1.4 Tariffs**

**3.1.4.2 Applied rates**

*Page 51, Paragraph 3.39.*

The report notes that in 2010 the United States passed legislation providing temporary duty suspensions on several hundred products that would lower the manufacturing costs for many U.S. companies. These provisions expired on 31 December 2012.

*Question 17: Does the United States intend to re-enact these duty suspensions or undertake any other unilateral tariff reductions in the future?*

**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.**

*Page 51, Table 3.2*

Australia notes that almost 8% of all U.S. tariffs are defined as "nuisance tariffs", even though they are defined as those tariffs which are less than 2%. Other definitions of such tariffs apply a significantly higher threshold, and can be as high as 5%.

*Question 18: In the interests of simplifying the U.S.' tariff structure and administrative efficiency, has the U.S. considered eliminating such duties? Does the revenue collected on these duties cover the cost of their administration?*

**RESPONSE: The United States is not considering eliminating these duties at this time. The United States remains committed to multilateral trade liberalization and to considering the treatment of these duties in those negotiations.**

**3.1.5.1.3 Harbor Maintenance Tax**

*Page 53, Paragraph 3.47*

*Question 19: Can the U.S. confirm that the Harbor Maintenance Tax applies only to imported goods and cruise ship passengers, and is not applied to domestic goods arriving to port by ship, despite funds from the tax being applied to maintain navigation channels to the benefit of all port users.*

**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. 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.

Australia also notes that the Harbor Maintenance Trust Fund maintains significant surpluses, as only about half of the fees collected are appropriated for works. (The fee would appear to be above the approximate cost of the services rendered, as required under GATT Article VIII).

Question 20: Can the U.S. please explain how the fee is set, and why it remains unchanged when it is clearly raising more revenue than is required for its stated purpose?

**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). 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.

### *3.1.8 Technical Regulations and Standards*

*Pages 66-67, Paragraphs 3.75, 3.76, 3.77*

Australia notes that the United States is reviewing its TBT regulatory practices and proposed amendments to Federal legislation to promote a strong preference for the use of "voluntary consensus standards".

Question 21: To what degree does the principle of voluntary consensus standards include an assessment to comply with relevant international standards and conformity assessments?

**RESPONSE:** OMB Circular A-119 (1998) establishes policies on Federal use and development of voluntary consensus standards and on conformity assessment activities. Circular A-119 defines voluntary consensus standards as standards developed or adopted by voluntary consensus standards bodies, both domestic and international. In turn, the following attributes define bodies that develop voluntary consensus standards: openness, balance of interests, due process, an appeals process, and consensus. These attributes mirror the characteristics of standardizing bodies reflected in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards (G/TBT/1/Rev.10, 9 June 2011). The United States considers that any standard that is developed in accordance with the principles set out in the Committee Decision should be treated as an international standard.

Question 22: What proportion of U.S. standards are compatible with the relevant international standard?

**RESPONSE:** The WTO Agreement on Technical Barriers to Trade (TBT Agreement) does not define the term "international standard." Under the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards (G/TBT/1/Rev.10, 9 June 2011), however, any body that follows the principles of openness, transparency, impartiality, consensus, coherence, and the development dimension can develop international standards. The United States considers that any standard that is developed in accordance with the principles set out in the Committee Decision should be treated as an international standard.

U.S. law and policy directs federal agencies to rely on voluntary consensus standards and relevant international standards, where appropriate. Section 6.a of the OMB Circular A-119 (1998) states: "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." (See also the National Technology Transfer Advancement Act). Section 6.f of the Circular notes that U.S. agencies "must use voluntary consensus standards, both domestic and international, in its regulatory and procurement activities in lieu of government-unique standards, unless use of such standards would be inconsistent with applicable law or otherwise impractical." In addition, with respect to use by federal agencies, U.S. law requires

federal agencies to consider and where appropriate base standards on relevant international standards (see 19 U.S.C. 2532)

The National Institute of Standards and Technology (NIST) – which is part of the U.S. Department of Commerce – provides a free, Internet accessible database of the 9,000 references to standards that are incorporated by reference in the U.S. Code of Federal Regulations (CFR). The database is searchable by Federal agency, by CFR title, by SDO, or even by keyword. See: [http://standards.gov/sibr/query/index.cfm?fuseaction=rsibr.regulatory\\_sibr](http://standards.gov/sibr/query/index.cfm?fuseaction=rsibr.regulatory_sibr).

*Question 23: How do these proportions vary by industry segment?*

**RESPONSE: We do not have such information compiled. Please see response to previous question.**

***Page 67, paragraph 3.77***

*Australia supports revision of Circular A-119 to encourage Members to consider, as a matter of priority, private voluntary consensus-driven international standards and conformity assessment procedures instead of separate government imposed standards, and to review existing standards and conformity assessment procedures to ensure they are up to date and do not impose unwarranted regulatory burdens on business. This approach is consistent with the Australian Government's policy recently announced in the Industry Innovation and Competitiveness Agenda, as well as the WTO TBT Agreement.*

*Question 24: Is the U.S. interested in exchanging ideas in the WTO on efficient and effective mechanisms for reviewing standards referenced in legislation?*

**RESPONSE: The United States would appreciate a written submission that explained the proposal in greater detail.**

***Page 68, Paragraphs 3.82, 3.83***

*Australia notes that the American National Standards Institute (ANSI) accredits organizations whose standards meet ANSI requirements of due process and consensus.*

*Question 25: What are the specific criteria that ANSI utilises to assess accreditation for an organisation? What are the implications and responsibilities of an organization if it becomes an accredited organisation? How are accredited organisations encouraged to utilise international standards and conformity assessment activities?*

**RESPONSE: The American National Standards Institute (ANSI) is a membership-based private sector organization that represents many standards and conformity assessment interests of a range of public and private sector U.S.-based organizations. ANSI is the U.S. member body to the International Organization for Standardization (ISO) and 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. Additional details regarding the implications and responsibilities of accredited organizations and how those organizations utilize international standards can be found on the ANSI website ([www.ansi.org](http://www.ansi.org)).**

**For the criteria ANSI utilizes to assess accreditation for an organization, please see the document, "ANSI Essential Requirements: Due process requirements for American National Standards," which is available at [www.ansi.org/essentialrequirements](http://www.ansi.org/essentialrequirements).**

***3.1.9.3 Animal and Plant Health Inspection Service (APHIS)***

***Page 70, Paragraph 3.93***

*Question 26: How many BSE risk assessments has APHIS conducted (in addition to recognising the OIE classifications in line with US's WTO rights); how many have been finalised; how many are continuing; and for which countries?*

**RESPONSE: The BSE comprehensive rule went into effect in March 2014. This rule laid out the process by which either APHIS could concur with OIE designations of BSE risk**

**status or conduct a separate risk assessment if requested by a country. To date, no country has requested a separate risk assessment, therefore none have been completed. APHIS has concurred with all of the OIE designations as adopted during the May 2013 General Session, and is evaluating the OIE designations adopted during the May 2014 General Session.**

### **3.3.5 Government procurement**

*Page 85, Paragraph 3.167,*

*Australia notes that the United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for purchases of goods and services, with the regulatory changes to implement the law yet to be finalised.*

*Question 27: Australia requests the United States provide an update on the progress of regulatory changes to implement Public Law 111-347 and seeks further details on the definition of 'international procurement agreement'.*

**RESPONSE: The effective date of the statute 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.**

### **3.3.6 Intellectual property rights;**

#### **3.3.6.1 Trade context**

*Page 91, Paragraph 3.194*

*Australia notes the reported difficulty of measuring international digital trade, and industry and researchers desire for better information.*

*Question 28: Does the United States have any plans or strategies underway to address improvements in measuring data on digital transactions and their value in trade?*

**RESPONSE: The United States measures and evaluates trade data in a variety of ways, including with respect to digital transactions. As part of that process, the United States is continuously exploring possible improvements. One recent study that includes trade data on digital transactions was conducted by the United States International Trade Commission and presented on August 2014 in a report entitled Digital Trade in the U.S. and Global Economies, Part 2, which is available at: <http://www.usitc.gov/publications/332/pub4485.pdf>.**

#### **3.3.6.1 Trade context**

*Page 92, paragraph 3.196*

*Australia notes with interest the WIPO study report that highlights the fact on public sector patenting, U.S. universities accounted for 10 of the 11 highest users of the patent system.*

*Question 29: What would the United States describe as their most compelling incentives for U.S. universities to become such high users of the patent system? Could the history of such use be explained?*

**RESPONSE: The incentives for United States universities are the same as with any other person or institution. Since United States universities engage in cutting edge research and development, such institutions also seek protection for the innovations they create.**

#### **3.3.6.2 Participation in WTO and international initiatives,**

*Page 92, Paragraph 3.198*

*The report indicates significant efforts in TRIPS Agreement-related technical assistance in various areas including IP protection and management, border enforcement, pharmaceutical counterfeiting, and public education and consumer awareness.*

*Question 30: How does the United States evaluate the success of these activities? Are there any information gathering mechanisms or processes built into these activities to help determine their effectiveness, and if so, what quantitative or qualitative measures do these use? In evaluating the effectiveness of technical assistance on public education and consumer awareness, does the United States undertake any evaluation in cooperation with recipient parties?*

**RESPONSE: The USPTO Global Intellectual Property Academy uses a strategy of linking means to ends in order to bring foreign government officials to the United States to learn, discuss, and strategize about global IPR protection and enforcement. PTO developed a theory of change with a definite set of measurable steps (intermediate objectives) toward the end-outcome goals. The theory is that exposure to new ideas,**

---

**concepts, values, or information will result in enhanced knowledge, skills, and expertise about IP. With this enhanced knowledge, skills, and expertise in IP, program participants are likely to change their on-the-job behavior or take action with the knowledge gained. In turn, the participants will improve IP protection and enforcement in their countries.**

**The USPTO designed a database that registers the participants and allows them to answer an Alumni survey six months following their attendance at a capacity training program. The database collects all the data from each participant and organizes the capacity training program by date and program title. Once all the data is collected, the PTO uses an outside resource to evaluate and create a written report on the results. Other written surveys used at USPTO are used as a resource to analyze the speakers and their effectiveness. The USPTO also frequently receives oral feedback on its programs from both participants and the hosting organizations.**

### **3.3.6.3 The patent system**

#### **Page 94, Paragraph 3.200**

*Australia is interested in the Department of Commerce Strategic Plan for 2014-18 goals, particularly the role identified for the USPTO in helping build the capacity of U.S. regional economies to accelerate the production of value-added goods and services, strengthen the digital economy, and accelerate growth of innovation-intensive economic sectors.*

*Question 31: Are there any particular measures the United States, or the USPTO in particular, plans to take in achieving these goals?*

**RESPONSE: Per the 2014-2018 USPTO Strategic Plan, the USPTO's third strategic goal is to "Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection, and Enforcement Worldwide." In this regard, the USPTO aims to provide leadership and education on IP Policy and awareness. A set of initiatives to meet this goal are: A. Provide policy formulation and guidance on key IP issues in all fields of IP protection and enforcement; B. Engage other U.S. Government agencies and Congress on legislation that improves the IP system; C. Lead domestic and international copyright initiatives and policy development for the administration; D. Provide domestic education outreach at all levels, including through distance learning, knowledge enhancement, and capacity building; E. Leverage technology to increase domestic and international education, training and outreach at all levels; and F. Expand knowledge of the domestic and international IP landscape and public impacts. Furthermore, the USPTO was instrumental in the development of the DOC's green paper on copyright, Copyright Policy, Creativity, and Innovation in the Digital Economy.**

### **3.3.6.7 IP Enforcement,**

#### **Page 99, Paragraph 3.219**

*The figures on improved enforcement outcomes are interesting, for example the reported 71% increase in new cases, 308% increase in pending Federal Bureau of Investigation health and safety-focused investigations and a 53% increase in seizures of infringing imports.*

*Question 32: Has the United States done any analysis of these figures, and identified causes?*

**RESPONSE: Current and past figures on enforcement, including the numbers and types of open investigations, arrests, and prosecutions, are among the data reviewed by the U.S. Intellectual Property Enforcement Coordinator and other government components in developing the 2013 Joint Strategic Plan to which the question refers.**

**The substantial increases in enforcement outcomes from 2009 to 2013 are attributable, in part, to steady increases in the volumes of infringing imports and, in part, to concerted efforts to interdict as many shipments as possible of infringing imports across all shipping environments including Post and Express Carriers.**

*Question 33: If so, is this for example a function of better practices by enforcement agencies? Or does it indicate that IP infringement and/or trade in IP-infringing goods is increasing?*

**RESPONSE: It is difficult to ascertain the actual volume of infringing imports, but, based on information provided by rights holders, officials at the ports of entry, and foreign government officials, U.S. Customs and Border Protection (CBP) enforcement efforts**

have been increasingly effective. In recent years, producers and shippers of infringing imports have become increasingly sophisticated with regard to the quality of products they make and their techniques for avoiding detection. In addition, the internet and e-commerce have fueled explosive growth in the numbers of small packages of counterfeit and pirated goods shipped through international express carriers and international mail.

To counter these trends, CBP: 1) developed more advanced targeting methods, 2) increased the number and scope of IPR enforcement operations, 3) provided sophisticated authentication tools for identifying genuine and infringing products to front-line officers, 4) expanded and enhanced IPR training for enforcement personnel, and 5) worked closely with rights holders to improve awareness of IPR enforcement issues and increase the number of registered copyrights and trademarks that are recorded in our internal IPR enforcement system. CBP also successfully engaged with foreign counterparts both bilaterally and multilaterally. Such efforts included conducting joint IPR enforcement operations, sharing effective practices, and exchanging information on IPR violations for use in targeting and identifying new areas of risk and new techniques used by violators.

A number of factors contribute to changes in the numbers of open investigations, arrests, convictions, sentences, and other enforcement figures. Available data suggest that IP crimes of various types continued to increase during the period in question. However, the substantial increases in the enforcement figures cited are certainly attributable at least in part, to policy decisions, such as changes in enforcement priorities or resources devoted to particular types of IP crime, as well to improved efficiencies and better cooperation among law enforcement agencies working on IP, and increased awareness and reporting of IP crimes (Shorter term changes in enforcement figures may also simply reflect cyclical factors in the criminal enforcement process, e.g. a spike in convictions some months after a spike in arrests.).

#### **4. Trade Policies by Sector**

##### **4.1.1.1 Overview of Agricultural Act of 2014**

###### **Page 101, Paragraph 4.1**

**Question 34:** Can the United States provide details of domestic support measures provided by U.S. State or local governments, if any, that are additional to Federal support measures that are available through the 2014 Agricultural Act?

**RESPONSE:** State and local government expenditures related to agriculture include outlays in support of agricultural associations and fairs, agricultural boards and advisory commissions, provision of agricultural extension services, support of agricultural experiment stations and other research activities, regulatory and licensing activities (for livestock, dairy, crops, and other products), and conservation programs.

##### **4.1.1.1 Overview of Agricultural Act of 2014**

###### **Page 102, Paragraph 4.3**

**Question 35:** Can the United States provide an overview of the changes in domestic support policies for the corn industry since the 2012 Trade Policy Review, including changes in domestic support policies for corn ethanol production and distribution?

**RESPONSE:** The 2014 Farm Bill eliminated direct and counter-cyclical payments available for corn. For the 2014-18 crops, assistance available to corn producers is in the form of the Agriculture Risk Coverage program and the Price Loss Coverage program. In addition, the 2014 Farm Bill continues the marketing assistance loan program for corn, which provides assistance during times of low market prices. The 2014 Farm Bill did not change any policies on corn ethanol production and distribution.

##### **4.1.1.1 Overview of Agricultural Act of 2014**

###### **Page 104, Paragraph 4.9**

**Question 36:** Can the United States explain how the deficiency-payment type instruments established in the 2014 Agricultural Act do not constitute market price support, given that such government-guaranteed financial support ensures producers a guaranteed return irrespective of the actual market price?

**RESPONSE:** If Australia is referring to the Price Loss Coverage program established by the 2014 Farm Bill, payments under this program are linked to historical base acres. The payments do not ensure a guaranteed return on current production.

Question 37: Does the United States agree that, as in the case of market price support measures employed by some other countries, such guaranteed income and revenue support as provided under the 2014 Agricultural Act subverts the market price mechanism in farm decision-making, leading to over production?

**RESPONSE:** Policies under the 2014 Agricultural Act provide a measure of risk protection to producers facing volatility in agricultural markets. As was the case under the 2008 Farm Act, these programs are paid on historical base acres without reference to current production to remove the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.

#### **4.1.1.2.2 and 4.1.1.2.3 Price Loss Coverage and Agriculture Risk Coverage**

##### **Pages 105-107**

Australia notes the introduction in the 2014 Agricultural Act of Price Loss Coverage and Agriculture Risk Coverage.

Question 38: Can the United States confirm that payments under the Price Loss Coverage and Agriculture Risk Coverage programs are limited in total to US\$125,000 for each eligible farmer? Is the spouse, or other family partner, also eligible for a total payment of US\$125,000 maximum payment as well? If so, under what circumstances could a farm enterprise obtain such a double payment?

**RESPONSE:** The Price Loss Coverage and Agriculture Risk Coverage programs, along with marketing loan gains and loan deficiency payments, are limited to a total of US\$125,000 for each eligible farmer. If the spouse is an eligible producer and actively engaged, he/she is also eligible for a US\$125,000 payment limit.

Question 39: Can it indicate the maximum amount that incorporated farm enterprises, including partnerships and companies, are entitled to under the Price Loss Coverage and Agriculture Risk Coverage programs?

**RESPONSE:** The answer depends on the type of entity. Generally, with the exception of general partnerships and joint ventures, legal entities have a single US\$125,000 limit.

Question 40: Are the annual maximum limits for all potential recipients under the Price Loss Coverage and Agriculture Risk Coverage programs the same for the Stacked Income Protection and the Supplementary Coverage Option programs? If not, what payment limits, if any, apply to the latter?

**RESPONSE:** The Stacked Income Protection Plan and Supplementary Coverage Option are not subject to payment limitations.

#### **4.1.1.2.2 and 4.1.1.2.3 Price Loss Coverage and Agriculture Risk Coverage**

##### **Pages 105-107**

According to the ICTSD paper "The U.S. Agriculture Act 2014: Trade and production implications in a WTO context," Professor Vincent Smith concludes that, should corn prices decline in accordance with early forecasts by the USDA, the outcome would be U.S. corn producers receiving over US\$20 billion in Agricultural Risk Coverage subsidies over the four years 2014-17, averaging about US\$5 billion per year, which is more than twice as much as they received each year under the previous Direct Payments, Counter Cyclical Payments and Average Crop Revenue Election programs in the period 2003-13.

Question 41: Noting the risk highlighted above, does the United States have or plan a budget cap on expenditure under the Agriculture Risk Coverage or Price Loss Coverage (either annual or for the full term of the 2014 Farm Bill) should there be significant world market price falls for certain agricultural commodities?

**RESPONSE:** There are no specific limits on expenditures under the Agriculture Risk Coverage or Price Loss Coverage programs. However, the United States remains fully committed to abiding by its WTO commitments, and the 2014 Farm Bill like previous Farm Bills, contains a "circuit breaker" that gives the Secretary of Agriculture the authority to ensure that the United States does not exceed its commitments.

#### 4.1.1.2.5 Sugar

*Page 108, Paragraphs 4.23-4.25*

Australia is concerned by the potential impact on access to the U.S. sugar market of proposed antidumping/countervailing duty suspension agreements between the United States and Mexico in October 2014 relating to sugar. We would be concerned if the effect of these agreements was to substantially exclude other importers from fulfilling U.S. sugar needs.

*Question 42: How will the suspension agreements affect the United States' current formula used to calculate sugar imports?*

**RESPONSE:** This question is premature given that a suspension agreement is not currently in place.

*Question 43: What steps will the United States take to ensure that the arrangements do not disrupt the certainty and predictability of commercial sugar import arrangements?*

**RESPONSE:** This question is premature given that a suspension agreement is not currently in place.

*Question 44: Will the United States continue to offer quota allocations and additional allocations to countries other than Mexico to cover U.S. sugar needs?*

**RESPONSE:** The United States will continue to fill its WTO quotas for sugar. Regarding additional allocations, this question is premature given that a suspension agreement is not currently in place, and that U.S. needs are dependent on market conditions in any given year.

#### 4.1.1.2.6 Dairy

*Page 109, Paragraph 4.27*

Australia commends the United States for reforms in U.S. dairy protection undertaken as part of the 2014 Agricultural Act, including termination of the Milk Income Loss Contract Program and the repeal of the Dairy Export Incentive Program.

*Question 45: In view of the termination of the Dairy Export Incentive Program and the fact that the United States has not paid export subsidies since 2009, will the United States now consider making a commitment to exclude permanently export subsidies as a trade policy tool?*

**RESPONSE:** The United States remains committed to the multilateral elimination of agricultural export subsidies as part of a complete, comprehensive, and substantial multilateral agriculture agreement that will result in real market access gains for all WTO Members.

*Question 46: Given the United States has undertaken genuine and constructive reform, especially with regard to the removal of trade-distorting dairy export subsidies, will it now work with the National Producers Milk Federation to end the Cooperatives Working Together export assistance program, which reportedly subsidised the export of 2.573 billion pounds of milk on a milk-fat basis to 45 countries in the 12 months to November 2014 (see: <http://www.cwt.coop/cwt-assists-25-6-million-pounds-cheese-butter-whole-milk-powder-export-sales/>)?*

**RESPONSE:** The Cooperatives Working Together (CWT) program is a private sector-initiative with no government involvement at any level and is both voluntary and farmer-funded. The WTO-Agreements provide no reason for the United States to request discontinuation of this private-sector activity.

*Question 47: Does the United States agree that this program distorts trade? Does it agree that its trade-distorting effect is similar to that of an export subsidy program?*

**RESPONSE:** The CWT is a private sector-initiative with no government involvement at any level and is both voluntary and farmer-funded. Analysis of the CWT as if it were a government-run program would not be appropriate.

Question 48: According to official data, the amount of cheese and butter exports covered under the Export Assistance Program in the 12 months to November 2014 totalled 99.32 million pounds and 56.287 million pounds, respectively (see: <http://www.cwt.coop/cwt-assists-1-7-million-pounds-cheese-export-sales/>). Does the United States agree that, in terms of volume, this program exceeds the scheduled U.S. export subsidy reduction commitments for cheese and butter?

**RESPONSE:** The CWT is a private sector-initiative with no government involvement at any level and is both voluntary and farmer-funded. The United States does not keep official records with regards to the operation of the CWT. There is no basis under WTO rules to compare this private sector activity against U.S. export subsidy commitments.

Question 49: How does it reconcile this program with its commitment to further global trade liberalisation and its other recent dairy reforms?

**RESPONSE:** The CWT export assistance program is not a program operated by the U.S. Government but rather constitutes private sector activity.

#### 4.1.1.2.6 Dairy

##### Page 110, Paragraph 4.31

Question 50: The Dairy Product Donation Program provides food assistance to low income people. Is this food assistance restricted to individuals domiciled in the United States, or can this be used as in-kind foreign food aid?

**RESPONSE:** The intention of the program is to distribute products for consumption within the United States. One of the purposes of the Dairy Product Donation Program is to encourage domestic consumption of dairy products by people who otherwise would have limited access to dairy products.

#### 4.1.1.4.1 Food Aid

##### Page 112, Paragraph 4.42

The Secretariat notes that the United States remains the world's largest donor of food aid. As notified in G/AG/N/USA/98, the United States provided 1,624,290 tonnes of food aid between October 2011 and September 2012 to LDC and net-food importing developing countries.

Question 51: Can the United States provide the total value and volume of commodity-based monetised U.S. food aid, disaggregated by recipient country and commodity?

**RESPONSE:** Please find the requested information in the following tables:

**Table 4 USDA Food for Progress Program, FY2012**

COUNTRY	AWARDEE	COMMODITY	BENEFICIARIES (000s)	METRIC TONS	TOTAL COST (000s)
<b>Africa</b>					
Ethiopia	WCCU <sup>1</sup>	----	----	----	US\$821.2
Mali	IRD <sup>1</sup>	----	----	----	US\$4,800.0
	AKF <sup>1</sup>	----	----	----	US\$5,300.0
	AKF	Vegetable Oil, Wheat	571.1	15,000	US\$20,900.0
Mozambique	TS <sup>1</sup>	----	----	----	US\$7,100.0
	LOL	Crude Degummed Soybean Oil	941.9	11,070	US\$20,600.0
Senegal	SLI	Crude Degummed Soybean Oil	442.1	8,360	US\$14,600.0
	IRD	Soybean Meal	308.2	18,200	US\$17,300.0
Tanzania	CRS	Wheat	541.7	25,730	US\$20,200.0
	FINCA	Wheat	744.0	27,930	US\$19,500.0
<b>Sub-Total Africa</b>			<b>3,549.0</b>	<b>106,290</b>	<b>US\$131,121.2</b>
<b>Near East</b>					
Jordan	GOJ	Wheat	25.4	50,000	US\$22,500.0

COUNTRY	AWARDEE	COMMODITY	BENEFICIARIES (000s)	METRIC TONS	TOTAL COST (000s)
<i>Sub-Total Near East</i>			25.4	50,000	<b>US\$22,500.0</b>
<i>South and Central Asia</i>					
Afghanistan	ASA <sup>1</sup>	----	----	----	US\$5,750.0
Mongolia	MCI	Vegetable Oil	147.1	2,500	US\$7,100.0
<i>Sub-Total South and Central Asia</i>			<b>147.1</b>	<b>2,500</b>	<b>US\$12,850.0</b>
<i>Western Hemisphere</i>					
El Salvador	FINCA	Wheat	90.7	17,300	US\$12,400.0
Guatemala	CPI	Soybean Meal	34.0	12,000	US\$10,900.0
Honduras	TS	Soybean Meal	164.9	24,500	US\$20,400.0
Nicaragua	TS	Soybean Meal	135.1	18,000	US\$14,900.0
	CRS	Yellow Corn, Soybean Meal	1,381.1	34,000	US\$20,600.0
<i>Sub-Total Western Hemisphere</i>			<b>1,805.8</b>	<b>105,800</b>	<b>US\$79,200.0</b>
<b>WORLDWIDE TOTAL</b>			<b>5,527.3</b>	<b>264,590</b>	<b>US\$245,671.2</b>

1 Represents prior year agreements with costs incurred in FY2012. Beneficiaries and commodities are reported only in the year that the agreement was signed.

Note: USDA's Food for Progress tables report on both direct and indirect beneficiaries. USDA defines direct beneficiaries as those who come into direct contact with the set of interventions (goods, or services) provided by the program in each technical area or program activity. Individuals who receive training or benefit from program-supported technical assistance or service provision are considered direct beneficiaries, as are those who receive a ration or another type of good. Indirect beneficiaries are those who benefit indirectly from the goods and services provided to the direct beneficiaries (e.g., families of producers).

Source: USDA total costs include all FY2012 obligations for commodity, freight, distribution, and awardee's administrative expenses reported as of September 30, 2012. Commodity figures are reported in metric tons. Beneficiaries are reported according to the planned levels in grant agreements.

**Table 5 USDA, McGovern-Dole Food for Education Program, FY2012**

COUNTRY	AWARDEE	COMMODITY	BENEFICIARIES (000s)	METRIC TONS	TOTAL COST (000s)
<i>Africa</i>					
Cameroon	CPI	Veg Oil, Rice, Pinto Beans, Dehydrated Potato Granules	237.0	7,030	US\$16,700.0
Guinea-Bissau	IPHD	Micronutrient-rich Ready-to-use Supplementary Food	1.4	15	US\$1,200.0
Kenya	WFP CP	Bulgur, Corn-soy Blend, Veg Oil, Yellow Split Peas	650.0	8,250	US\$9,683.3
Liberia	WFP DEV	Bulgur, Yellow Split Peas, Veg Oil	338.0	4,120	US\$7,069.5
Malawi	WFP CP	Corn-soy Blend	340.0	5,590	US\$8,663.6
Mozambique	PAI WVI	Corn-soy Blend Corn-soy Blend	180.0 222.0	3,600 5,200	US\$21,400.0 US\$22,300.0
Niger	WFP <sup>1</sup> CP	----	----	----	US\$3,794.3
Sierra Leone	CRS	Veg Oil, Corn-soy Blend, Lentils, Bulgur	120.9	4,200	US\$11,000.0
Tanzania	KSU	Sorghum Cowpea Blend, Corn-soy Blend	1.4	205	US\$4,100.0
<i>Sub-Total Africa</i>			<b>2,090.7</b>	<b>38,210</b>	<b>US\$105,910.7</b>
<i>East Asia and Pacific</i>					
Cambodia	IRD	Veg Oil, Pink Salmon, Corn-soy Blend, Lentils Original Ultra-rice	83.2	2,210	US\$8,000.0
	PATH		4.0	4	US\$2,900.0

COUNTRY	AWARDEE	COMMODITY	BENEFICIARIES (000s)	METRIC TONS	TOTAL COST (000s)
Laos	CRS	Vegetable Oil, Rice, Green Split Peas, Lentils	117.0	4,200	US\$12,300.0
<i>Sub-Total East Asia and Pacific</i>			204.2	6,414	US\$23,200.0
<i>South and Central Asia</i>					
Afghanistan	WVI	Rice, Veg Oil, Yellow Peas	196.0	4,060	US\$18,310.0
Kyrgyz Republic	MCI	Veg Oil, Yellow Split Peas, Rice, Wheat Flour, MG Parboiled Rice	420.0	1,780	US\$11,300.0
Nepal	WFP CP	Corn-soy Blend	278.3	3,890	US\$6,000.0
<i>Sub-Total South and Central Asia</i>			894.3	9,730	US\$35,610
<i>Western Hemisphere</i>					
Guatemala	HFS	Poultry-spread (Spammy)	0.2	2	US\$131.0
Haiti	WFP DEV	Rice, Veg Oil	400.0	4,770	US\$8,000.0
	MFK	Ready-to-use Supplementary Food	1.6	18	US\$1,100.0
Honduras	CRS	Veg Oil, Milled Rice, Corn-soy Blend	161.6	7,080	US\$17,700.0
<i>Sub-Total Western Hemisphere</i>			563.4	11,870	US\$26,931.0
<b>WORLDWIDE TOTAL</b>			<b>3,752.6</b>	<b>66,224</b>	<b>US\$191,651.7</b>

1 Represents prior year agreements with costs incurred in FY2012. Beneficiaries and commodities are reported only in the year that the agreement was signed.

Note: USDA's McGovern-Dole tables report only on direct beneficiaries. USDA defines direct beneficiaries as those who receive food rations directly, including direct feeding at schools or take home rations through the life of the program.

Source: USDA total costs include all FY2012 obligations for commodity, freight, distribution, and awardee's administrative expenses reported as of September 30, 2012. Commodity figures are reported in metric tons. Beneficiaries are reported according to the planned levels in grant agreements.

**Table 6 USAID, Office of Food for Peace, FY2012**

Country	Awardee	Metric Tons	Total Cost
Bangladesh	ACDI	14,950	US\$5,853,100
	SCF	9,600	US\$3,725,900
	CARE	37,000	US\$14,343,600
Burkina Faso	ACDI	3,230	US\$3,161,500
	CRS	2,600	US\$2,989,100
	CRS PM21	3,780	US\$1,930,900
Chad	Africare	3,530	US\$3,914,000
DRC	ADRA	19,190	US\$9,855,000
	FHI	18,590	US\$9,547,000
	MCI	9,680	US\$4,971,000
Guatemala	MCI PM2A	5,500	US\$7,357,000
Liberia	ACDI	2,470	US\$2,559,000
	OICI	7,410	US\$6,760,000
Madagascar	CRS	12,350	US\$8,139,000
Malawi	CRS	19,240	US\$10,087,400

<b>Country</b>	<b>Awardee</b>	<b>Metric Tons</b>	<b>Total Cost</b>
<i>Mozambique</i>	<i>ADRA</i>	<i>9,650</i>	<i>US\$3,969,400</i>
	<i>FHI</i>	<i>6,930</i>	<i>US\$2,850,600</i>
	<i>SCF</i>	<i>14,920</i>	<i>US\$6,137,200</i>
	<i>WV</i>	<i>7,620</i>	<i>US\$3,134,400</i>
	<i>CPI</i>	<i>2,830</i>	<i>US\$2,908,700</i>
	<i>CRS</i>	<i>3,500</i>	<i>US\$3,100,200</i>
	<i>MCI</i>	<i>2,000</i>	<i>US\$2,069,500</i>
<i>Niger</i>	<i>SCF</i>	<i>1,000</i>	<i>US\$893,800</i>
<i>Sierra Leone</i>	<i>CARE</i>	<i>8,180</i>	<i>US\$5,114,600</i>
<i>Uganda</i>	<i>MCI</i>	<i>5,120</i>	<i>US\$2,786,800</i>
<b>Worldwide Total</b>		<b>230,870</b>	<b>US\$128,158,700</b>

#### **4.1.1.4.1 Food Aid**

##### **Page 112, Paragraph 4.44**

The 2014 Agricultural Act created an obligation upon USAID to provide Congress with a report that specifies: (1) the amount of funds (for administrative costs, indirect cost recovery, internal transportation storage and handling and associated distribution costs) provided to each eligible organization that receives assistance under the Food for Peace Act (the Act); (2) how funds were used by eligible organizations; (3) the actual rate of return for each commodity made available under the Act including determining factors, marketing and transport costs, and (4) for each instance in which the rate of return for a commodity sold or monetized in recipient countries was less than 70%.

*Question 52: Can the United States provide an update on this reporting requirement and a summary of findings?*

**RESPONSE:** USAID's Office of Food for Peace provides annual reporting to Congress on the amount of funds provided to each eligible organization that receives assistance under the Food for Peace Act, and how these funds were used by eligible organizations through the U.S. International Food Assistance Report, produced in conjunction with the U.S. Department of Agriculture and USAID/Farmer to Farmer program. As the 2014 Agricultural Act requires USAID to provide Congress with the actual rate of return for each commodity made available under the Food for Peace Act, USAID will report this information in 2015. The Office of Food for Peace utilized monetization only in Bangladesh in Fiscal Year 2014, and the rate of return for commodities monetized was not less than 70%.

**The United States Department of Agriculture (USDA) has also begun to implement this provision of the 2014 Agricultural Act. USDA will make this information available to Congress and the public when it is compiled.**

*Question 53: Does the United States, through USAID or other official agencies, undertake periodic assessments in relation to the extent that monetisation of United States food aid may be contributing to commercial displacement of locally produced and imported agricultural products in food-aid recipient countries?*

**RESPONSE:** The United States conducts market analysis before each monetization entitled the Market Analysis for Monetization (MAM). Each MAM analyzes the supply and demand in the recipient country for the commodity that will be monetized to ensure that donations from the United States do not displace locally produced or imported commodities.

#### **4.1.1.4.2 Export Credit Guarantees**

##### **Page 113, Paragraphs 4.46-4.47**

Australia requests more information in relation to the Commodity Credit Corporation (CCC) GSM-102 program. Australia also notes that the FY2015 allocations under GSM-102 have been issued. Can the United States:

*Question 54: Provide a breakdown in terms of volume and value, and by commodity and export destination, for exports financed under the GSM-102 program for the 2013 and 2014 fiscal years?*

---

**RESPONSE:** This information is available on the USDA website at: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.

Question 55: Indicate the proportion, if any, of credit guarantees issued under GSM-102 in 2013 and 2014 with tenor durations below 180 days?

**RESPONSE:** Please see the U.S. response with regard to tenor in WTO document G/AG/W/125, dated May 21, 2014, and related follow-up addenda.

Question 56: Indicate whether the United States has country-level allocations within the regional allocations, and if so, how they are these determined?

**RESPONSE:** The United States establishes country and bank limits for each bank eligible country internally based on an evaluation of country risk and a thorough financial review of all banks in the program.

Question 57: Indicate whether the United States has commodity-specific allocations at both the regional and country level, and if so, how are these determined?

**RESPONSE:** Yes, the GSM-102 Program has some commodity-specific allocations at the regional and country level. This information is available on the USDA website at: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.

Question 58: Explain the significant increase in allocation, between 2013 and 2015, to the South East Asia region (US\$132 million to US\$300 million)?

**RESPONSE:** In 2013, USDA allocated USD 550 million to Southeast Asia, rather than USD 132 million, as stated in the question. To date, USDA has announced US\$300 million to the Southeast Asia region for fiscal year 2015. Additional tranches in the fiscal year 2015 program will be made later in the year by announcement.

Question 59: Provide estimates for how the 2015 Southeast Asia regional allocation will be divided, in terms of supported commodities, and destination markets?

**RESPONSE:** The information is available on the USDA website at: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.

#### 4.1.1.4.2 Export Credit Guarantees

*Page 113, Paragraphs 4.46-4.47*

Australia notes that under the terms of the settlement between the United States and Brazil in relation to the WTO US-Brazil Cotton dispute, the United States reduced the cap on tenor durations under GSM-102 from 24 months down to 18 months. Also, under the terms of the settlement, the United States has undertaken to calculate and charge risk-based fees for GSM-102 that cover the program's long-term operating costs and losses (including on loan guarantees with tenors below 12 months).

Question 60: Does the United States expect the reduced tenor cap to positively or negatively affect market demand for GSM-102 credit guarantees, or otherwise impact the overall volume and market-share of those commodities covered by GSM-102?

**RESPONSE:** The United States cannot speculate on future market demand. Any impact of the tenor reduction will be assessed over time.

Question 61: Can the United States indicate what "long-term" means in this context, in terms of months?

**RESPONSE:** This term is not defined in the terms of the settlement.

#### 4.1.2 Agricultural tariffs and tariff-rate quotas

*Page 117, Paragraph 4.65*

Australia notes that according to the most recent notification (2012), tariff-quota fill rates varied significantly across product, but most were under-filled.

Question 62: Can the United States explain the reason for these under-fills?

**RESPONSE:** We assume under fill of these tariff-rate quotas was due to a lack of demand based on market conditions.

Question 63: What impediments exist to filling the tariff rate quotas?

**RESPONSE:** The fill rates for these tariff-rate quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff-rate quota to another and from year to year. With regards to the 2012 notification, most of the tariff-rate quotas with very low fill rates are administered on a first come, first-served basis.

Question 64: Will the United States take measures to improve the fill-rates?

**RESPONSE:** The fill rates for U.S. tariff-rate quotas are driven by market conditions. The United States, notes, in addition, that to further liberalize markets and bolster transparency, the United States is committed to and encourages the implementation of the Bali Ministerial Understanding on Tariff-Rate Quota Administration.

#### 4.1.3 Level of support

##### *Page 117, Paragraphs 4.67-4.68*

Question: Australia notes that the 2014 Agricultural Act provides for the repeal of several domestic support programs and the introduction of some new programs – the latter include the Price Loss Coverage, Agriculture Risk Coverage, Supplemental Coverage Option, Dairy Margin Protection and Stacked Income Protection programs, amongst others. In a presentation to the 73rd WTO Committee on Agriculture in March 2014, the United States stated that the Act would lead to an increase in Amber Box (trade distorting) measures. In particular, the Dairy Margin Protection, Supplemental Coverage and Stacked Income Protection programs would all be notified as amber, and the Price Loss Coverage and Agriculture Risk Coverage programs would probably be notified as amber, depending on final program rules. It further stated that even with this increased amber box spending, the United States was likely to remain within its amber box limit, subject to commodity price movements.

Question 65: Can the United States indicate when program rules for all of the programs mentioned above will be finalised and published?

**RESPONSE:** The regulations for most of the 2014 Farm Bill safety net programs were published in the Federal Register earlier this year. For example, the Agriculture Risk Coverage/ Price Loss Coverage regulation was published on September 26; the Dairy Margin Protection Program regulation was published on August 29; and the Supplemental Agricultural Disaster Assistance/Payment Limit/Payment Eligibility regulation was published on April 14. The United States refers Australia to the Farm Service Agency's regulation publication list and published regulations at: <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-ii>

Question 66: Can the United States indicate when the above programs will be notified?

**RESPONSE:** The United States plans to notify these programs as part of its regular, annual notification process.

Question 67: On what basis can the United States be confident that this increased amber box spending will remain within the United States' amber box limit, in light of the inherent and historical uncertainty surrounding commodity prices? At what point would it be prepared to cap such spending, and at what level?

**RESPONSE:** U.S. estimates indicate that the United States will be within its commitments. Further, the 2014 Farm Bill like previous Farm Bills, contains a "circuit breaker" that gives the Secretary of Agriculture the authority to ensure that the United States does not exceed its commitments.

Question 68: Irrespective of whether this new spending remains within the United States' amber box limit, how is this expected increase in amber box spending consistent with the U.S. commitment to reduce domestic support spending as part of the Doha Development Agenda

*negotiations? How does this spending impact on the United States' ability to make new reduction commitments as part of a meaningful outcome in agricultural negotiations in the Doha Round?*

**RESPONSE: As Australia knows, the United States initially proposed modalities that would liberalize U.S. agriculture policies as part of a broader reform in a Doha context. If and when WTO members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.**

#### **4.2.2 Telecommunications**

##### **Paragraph 4.87, p123**

*Australia notes that the US' leading telecommunications provider Verizon further increased its lead in the U.S. market through the 100 % acquisition of its wireless operation "Verizon Wireless" in February 2014.*

*Question 69: Is the United States able to provide further information on whether it expects this acquisition to have an effect on market participation for telecommunications providers who do not own their own wireless operation?*

**RESPONSE: Verizon acquired from its joint-venture partner, Vodafone, shares of Verizon Wireless. Accordingly, the transaction itself did not increase the market share of Verizon Wireless or have any obvious relevance to participation of other suppliers in the market, whether facilities-based or non-facilities based.**

##### **Paragraphs 4.95-6 pp 127-8**

*Australia notes the ongoing efforts by the FCC to address issues related to the management of traffic on broadband networks ('Open Internet'), including unreasonable discrimination in transmitting lawful network traffic.*

*Question 70: Is the United States able to provide an update on the FCC's proposed rules to protect the Open Internet, including on what the "alternative proposals" to rules on the Open Internet are likely to contain?*

**RESPONSE: We have not yet received a new draft proposal from the FCC with respect to the Open Internet proceeding. Comments and proposals from the public, however, are available at [fcc.gov/openinternet](http://fcc.gov/openinternet).**

#### **4.2.1 Financial services**

##### **Paragraph 4.76, p 121**

*Australia notes that there are "some accommodative exceptions" to the requirements that foreign banks meet the same capital, liquidity and other standards as U.S. bank holding companies of comparable size*

*Question 71: Can the U.S. provide further details regarding the nature of these exceptions?*

**RESPONSE: Details are available in the final rule, available at: "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations" Final Rule, Federal Reserve System, 12 CFR Part 252 [Regulation YY; Docket No. 1438], Federal Register, Vol. 79, No. 59 / Thursday, March 27, 2014 / Rules and Regulations. <http://www.gpo.gov/fdsys/pkg/FR-2014-03-27/html/2014-05699.htm>**

*Question 72: As foreign banks are not required to comply with these provisions until 1 July 2016, Australia additionally requests that the U.S. comment on whether the U.S. anticipates any amendments to these exceptions prior to 1 July 2016?*

**RESPONSE: This rule is final.**

#### **4.2.4 Health, medical and medical insurance services**

##### **Paragraphs 16 and 4.126, pp 16 and 139**

*Australia notes the recent regulatory reforms in the health services sector contained in the 2010 Patient Protection and Affordable Care.*

*Question 73: Does the United States expect the reforms to enable greater foreign participation in the private health services sector?*

**RESPONSE:** As noted in the Secretariat Report, a basic purpose of the recent reforms of the U.S. health care system was to ensure increased access to health care services by providing insurance coverage to previously uninsured individuals. The U.S. private health services sector is open to foreign participation. Improved insurance coverage for previously uninsured individuals will ensure that those people have better access to appropriate health care services.

*Report by the United States - WT/TPR/G/307*

*The United States in the Global Trading System*

*Paragraph 1.3, page 4*

Australia welcomes the U.S. call to work towards global free trade in environmental goods through Environmental Goods Agreement (EGA) negotiations. An outcome here will demonstrate how trade liberalisation can generate tangible and significant benefits for the environment and sustainable development.

Question 74: Can the U.S. describe its objectives for the EGA negotiations and how it sees the relationship between this negotiation and the broader multilateral trading system?

**RESPONSE:** The recently launched EGA negotiations present a unique opportunity to advance U.S. economic and environmental objectives, and to add impetus and energy to the multilateral trading system. The EGA is being negotiated by a group of WTO Members committed to liberalization in this sector, but the benefits will accrue to all WTO Members, as the participants plan to eliminate tariffs on agreed products on an MFN basis. By eliminating tariffs on a broad set of environmental technologies, including those already endorsed by APEC Leaders, WTO Members can improve access to these technologies globally, thus lowering the cost of environmental protection, while unlocking opportunity for our exporters and spurring innovation in green technologies.

*3.4 State and local government relations*

*Paragraph 3.18, page 11*

Question 75: Is the U.S. considering expanding its sub-central coverage under the Government Procurement Agreement?

**RESPONSE:** The revised GPA entered into force on April 6, 2014. Consistent with Article XXII.7 of the revised GPA, the United States is committed to undertaking further negotiations with a view to achieving the greatest possible extension of the Agreement coverage on the basis of mutual reciprocity.

*4.3.7 United States-Korea Free Trade Agreement*

*Paragraph 4.62, Page 20*

Question 76: What learning and practice from the implementation of KORUS with regard to origin verification can be translated to other preferential trade agreements?

**RESPONSE:** As a result of the implementation of the KORUS FTA, the United States and Korea have discussed differences in the verification practices between our two countries. The United States and Korea continue to have positive dialogues to discuss such practices with the aims of ensuring that both Parties' traders can take full advantage of the FTA. As some of the differences are specific to the United States and Korea, we cannot yet determine if or how any experiences could be translated to other preferential trade agreements.

*5. Trade related capacity building initiatives*

*Paragraphs 5.2 and 5.3, page 23*

Australia notes and supports that the United States provides trade capacity building (TCB) assistance to developing countries which includes coordinating initiatives with international institutions.

Question 77: Is the International Standards Organizations (ISO) one of the international institutions that the United States Government coordinates with to provide TCB?

**RESPONSE:** U.S. trade capacity building assistance is tailored to individual country needs. The U.S. Agency for International Development (USAID) and ANSI, as the U.S. member to ISO, have frequently worked with ISO to assist countries in achieving

**certifications with ISO standards. For example, the Kenya Dairy Sector Competitiveness Program facilitated training for a dairy cooperative to become certified in Food Safety Management from the ISO.**

**Paragraph 5.3, page 23**

*Australia notes and supports that the United States provides assistance to developing nations on a bilateral basis including working with the private sector and non-government organizations to assist them abide by their trade obligations.*

*Question 78: Is the development of standards and conformity measures in developing countries a specific category of assistance provided by the United States on a bilateral basis?*

**RESPONSE:** U.S. trade capacity building assistance is tailored to individual country needs. Although assistance related to standards and conformity assessment is not categorized separately within U.S. government agency budgets, specific data on U.S. assistance in these areas can be accessed through the Trade Capacity Building database (<http://eads.usaid.gov/tcb>).

In addition, the USAID-ANSI Standards Alliance assistance facility, launched in 2012, provides resources and expertise to enable developing countries to effectively implement the TBT Agreement. The focus of these efforts in developing countries includes efforts: to improve practices related to notification of technical regulations and conformity assessment procedures to the WTO; to strengthen domestic practices related to adopting relevant international standards; and to clarify and streamline regulatory processes for products. Under the Standards Alliance (<http://standardsalliance.ansi.org>), ANSI is working with ten partner countries/regions according to work plans tailored to individual country needs, some of which include activities focused on standards development.

*Question 79: Is the application of international standards and conformity measures encouraged by the United States under its bilateral assistance programs?*

**RESPONSE:** Please see previous answer.

*Question 80: How do U.S. authorities work with the ISO to encourage developing nations to develop standards in conformity with relevant international standards?*

**RESPONSE:** The American National Standards Institute (ANSI) is a private sector organization and the U.S. member body to ISO and IEC. USAID and ANSI have entered into a public-private partnership to administer the Standards Alliance facility. Under the Standards Alliance, ANSI and partner countries have engaged in cooperation related to participation in ISO technical committees and utilization of international standards. In addition, ANSI works with developing countries to encourage utilization of international standards developed by organizations other than ISO.

**Pages 25-26, Paragraphs 5.17, 5.18, 5.19**

*Australia notes and supports the development of the "Standards Alliance" between USAID and the American National Standards Institute (ANSI), with goals of building capacity among developing countries to implement the WTO TBT Agreement. We note that ANSI reviews applications to deliver training and technical exchange based on bilateral trade opportunities, available private sector expertise, commitment, readiness and development impact.*

*Question 81: In assisting developing countries develop international standards and best practices, does ANSI consult with the ISO?*

**RESPONSE:** ANSI's work with developing countries through the Standards Alliance focuses on increased understanding of WTO TBT principles, implementation of the Code of Good Practice for the Preparation, Adoption and Application of Standards, improved transparency in the development and/or modification of technical regulations, and more robust and transparent engagement with the private sector in standards development and use. The application of these principles strengthens best practices in standards development.

**ANSI is also a member of regional organizations, including the Pacific Area Standards Congress (PASC) and the Pan American Standards Commission (COPANT). These regional bodies provides standardizers with a forum to exchange information and views about international standardization activities and strengthen positions at the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). COPANT cites as a key activity assisting developing countries in the region in improving their capacity for and/or improving the quality of their standardization infrastructure.**

**The American National Standards Institute (ANSI) is a private sector organization and the U.S. representative to ISO. ANSI, as the U.S. member of ISO, is aware of ISO activities for the benefit of developing countries, and will consult with ISO if necessary to better understand how U.S. and ISO efforts may complement one another. In its existing capacity building projects with developing countries that are also members of ISO, ANSI has engaged in cooperative activities designed to enhance the countries' participation in ISO. ANSI has also discussed Standards Alliance activities with other ISO members at meetings, such as the ISO General Assembly.**

*Question 82: What criteria are used by the U.S. in assessing bilateral trade opportunities? How does this incorporate WTO TBT obligations and relevant international standards?*

**RESPONSE:** As the U.S. government report notes, "the United States launched a new U.S.-sponsored assistance facility called the 'Standards Alliance' with the goal of building capacity among developing countries to implement the WTO Agreement on Technical Barriers to Trade (TBT Agreement)... The focus of these efforts in developing countries includes efforts: to improve practices related to notification of technical regulations and conformity assessment procedures to the WTO; to strengthen domestic practices related to adopting relevant international standards; and to clarify and streamline regulatory processes for products."

**The U.S. government report also notes that the American National Standards Institute (ANSI) "reviewed the applications received based on consideration of bilateral trade opportunities, available private sector expertise that may be leveraged, demonstrated commitment and readiness for assistance, and potential development impact."**

*Question 83: Can statistics and examples be provided of how successful the program is in enabling developing countries implement international standards and conformity assessment procedures?*

**RESPONSE:** Paragraph 5.19 of the U.S. government report highlights some of the major achievements from 2013 through August 2014. Since the submission of the U.S. report, the Standards Alliance has conducted two additional workshops. In October 2014, the Standards Alliance organized a two-day conference on the use of regulatory impact analysis in Lima, Peru. In December 2014, the Standards Alliance staged a two-day conference on good regulatory practices in Mexico City. Additional information on the Standards Alliance can be found here: <http://standardsalliance.ansi.org/>.

**BRAZIL*****QUESTIONS REGARDING THE SECRETARIAT REPORT  
3 TRADE POLICIES AND PRACTICES BY MEASURE***

*Page 61 (Para 3.65)*

*In 2014, following the outcome of a court case, the Department of Commerce confirmed that it would not apply the previously withdrawn regulatory provisions governing targeted dumping.*

*Question 1. Could the United States inform which are the current regulatory provisions governing targeted dumping?*

**RESPONSE: In 2008, the U.S. Department of Commerce withdrew regulatory provisions regarding targeted dumping, explaining that the withdrawal of those provisions would provide the agency with an opportunity to analyze the concept of targeted dumping and develop a meaningful practice in this area as it gains experience in evaluating such allegations. As subsequently explained in an April 22, 2014 notice (79 Fed. Reg. 22371) and a May 9, 2014 notice (79 Fed. Reg. 26720), Commerce continues to examine this issue, and there are currently no regulatory provisions addressing the issue of targeted dumping.**

*Question 2. Could the United States explain the methodology it uses to implement its "targeted dumping" policy?*

**RESPONSE: In investigations and administrative reviews, the U.S. Department of Commerce will calculate margins of dumping by comparing the weighted average of the normal values (NV) with the weighted average of the export prices (EP) (or constructed export prices (CEP)) for comparable merchandise (i.e., the average-to-average method) unless Commerce determines another method is appropriate in a particular case. Commerce may compare NV to EP/CEP on a transaction-to-transaction basis only in unusual situations, such as when there are very few sales of the subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made. In addition, when Commerce finds a pattern of EPs (or CEPs) that differ significantly among purchasers, regions, or time periods, and it can explain why these differences cannot be taken into account appropriately by using the average-to-average method, it may calculate margins of dumping by comparing the weighted average of the NV to individual EP/CEP transactions (i.e., the average-to-transaction method).**

*Question 3. Could the United States inform what elements it takes into consideration in order to determine the use of the W-T comparison method instead of the W-W or T-T methodologies?*

**RESPONSE: Please see the response to question 2 above.**

*Question 4. Does the United States use the "targeted dumping" methodology in all types of anti-dumping proceedings (investigations and reviews)?*

**RESPONSE: Please see the response to question 2 above.**

*Page 68 (Para 3.81)*

*Since the last Review of the United States, five specific trade concerns have been raised in the TBT Committee against measures taken by the United States. Furthermore, three WTO dispute settlement proceedings taken against the United States under the TBT Agreement are pending (Table A2.1).*

*Question 5. Could the U.S. explain how the marketing of Menthol cigarettes is currently regulated following the U.S. Indonesia MAS in the U.S. – Clove Cigarettes case.*

**RESPONSE: The WTO dispute, United States — Measures Affecting the Production and Sale of Clove Cigarettes (DS 406), did not concern the marketing of menthol cigarettes**

(or any other types of cigarettes). The measure at issue in the dispute – a ban on cigarettes containing certain characterizing flavors – is contained in the Family Smoking Prevention and Tobacco Control Act, which can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2010-03-19/pdf/2010-6087.pdf>.

Question 6. The U.S. is invited to explain its current COOL labelling requirements in light of the dispute and implementation panel in the Cool case. Could the United States inform if modifications to the COOL labelling policy are been studied? If so, what are the envisioned changes?

**RESPONSE:** U.S. regulations related to Country of Origin Labeling (COOL) were modified on 24 May 2013. These regulations are available here: <http://www.gpo.gov>.

These regulations remain in force.

Question 7. The U.S. is invited to explain its Tuna labelling requirements after the decision by the Appellate Body.

**RESPONSE:** U.S. regulations related to the use of the Dolphin-safe label on tuna products were modified on 9 July 2013. These regulations are available here: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-09/pdf/2013-16508.pdf>.

These regulations remain in force.

#### **4 TRADE POLICIES BY SECTOR**

**Page 104 (Para 4.9)**

Overall, the new Farm Bill is a big change in agriculture policy for some products. Its impact will depend upon a number of choices producers must make (e.g., PLC versus ARC; ARC versus SCO; reallocation of base acreage, etc.). The new Farm Bill eliminates market price support and export subsidies for dairy products, and direct payments for historical crop production. However, the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions.

Question 8. Could the United States explain how the transition from direct payments to deficiency-payment type programs is being currently implemented? How does the United States evaluate this transition with regard to its impacts on international trade?

**RESPONSE:** Under the 2008 Farm Bill, the final direct payments to producers with program crop base acres were made in October 2013. With the 2014 Farm Bill, the new crop safety net programs are the Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC) programs. Key ARC/PLC action dates for landowner and producer decisions are as follows:

- Base Reallocation/Yield Updating—Landowners can update their yields and reallocate bases between September 29, 2014 and February 27, 2015.
- Program Election—Producers can choose among ARC-County, ARC-Individual, and PLC between November 17, 2014 and March 31, 2015. This is a one-time election that will be in effect through the 2018 crop.
- Program Enrollment—Producers must enroll annually. The first enrollment period (for 2014 and 2015 crops) is mid-April 2015 through the summer (no exact dates yet).

The Farm Service Agency's ARC/PLC web page provides more information at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=arpl&topic=landing>. In particular, see the ARC/PLC fact sheet at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplic.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplic.html).

The ARC/PLC regulation (as well as other Farm Service Agency regulations) is at: <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-fi>. Information on SCO (fact sheet, training, handbook, policy, etc.) is available on RMA's website at <http://www.rma.usda.gov/news/currentissues/farmbill/index.html>. The other crop policies available to producers may be found on RMA's website at <http://www.rma.usda.gov/policies/2014policy.html>.

**Although the new ARC and PLC programs make payments when prices or revenue decline, they are decoupled from actual farm production decisions. By basing payments on past cropping records and delinking payments from current planting decisions, Congress is attempting to minimize production-distorting incentives. The United States also notes that it has eliminated both market price support and export subsidies for dairy products.**

*Question 9. Could the United States provide information on current producers' choices and benefits (grants, for example) by each of the agricultural programs available under the 2014 Farm Bill, especially PLC, ARC, SCO, Marketing Loan Programme, and CIP?*

**RESPONSE:** *Information on the ARC and PLC programs is provided above. The marketing assistance loan program and commodity/producer eligibility and benefits are discussed in the Farm Service Agency fact sheet at: [http://www.fsa.usda.gov/FSA/news Releases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=d etail&item=pf\\_20140328\\_insup\\_en\\_nrcmal.html](http://www.fsa.usda.gov/FSA/news Releases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=d etail&item=pf_20140328_insup_en_nrcmal.html).*

*Question 10. Could the United States inform the total amount of disbursements for each of the above-mentioned programs in the current marketing year and how they would be notified to the WTO?*

**RESPONSE:** *Three of the programs mentioned—PLC, ARC, SCO—have not yet been fully implemented and there have been no payments or premium subsidies disbursed under these programs for the current marketing year (2014). Expenditures through 14 November 2014 for the current marketing year under the marketing loan program include US\$23.8 million for loan deficiency payments and US\$14.2 million in marketing loan gains. Expenditures through 1 December 2014 for premium subsidies under the crop insurance program in the current marketing year are US\$6.2 billion – over US\$1 billion less than the previous year.*

**The United States will officially notify the levels of support under these programs as part of its domestic support notification at the appropriate time.**

**Page 106 (Paras 4.14 to 4.16)**

4.14. The PLC is open for enrolment by farmers with eligible historical acreage (base acres) of "covered" commodities. Eligible commodities are the same as under the CCP programme (wheat, feed grains, rice, oilseeds, peanuts, and pulses), with the exception of upland cotton, for which a new insurance programme was established (Stacked Income Protection Plan). The voluntary enrolment for PLC is on a commodity-by-commodity basis and the farmer's decision cannot be changed during the lifetime of the new Farm Bill. PLC payments are linked to current prices, as under the CCP programme. The payment rate equals the difference between the reference price minus the higher of the national average market price during the marketing year or the loan rate. The reference prices are fixed for crop years 2014–18 (Table A4.2). Overall, the new reference prices are higher than under the CCP programme. According to U.S. Congressional Budget Office projections, PLC expenditures are forecast to be US\$5.1 billion over 2014–18. In the 2014 Farm Bill, some of the DP-related savings might be used indirectly in PLC payments (where those payments are actually triggered), where the "effective" price to be compared with the trigger price no longer includes DP rates.

4.15. Like the expired CCP programme, PLC payments are based on a percentage (85%) of base acres and historical yields, i.e. they are decoupled from current production. However, farmers have the one-time option of updating yields, and of allocating base acres among covered commodities based on the average planted acres in 2009–12. Acreage shifts among commodities in recent years, include an increase in corn and soybeans, and a decline in wheat, feed grains, and upland cotton (Table 4.3). A reallocation of base acres and yield updating could increase the link or correlation between base acres, and actual crop production and farmers' risks. [...]

4.16. The United States has notified the CCP programme in terms of non-product-specific AMS (*de minimis*), arguing that payments cannot be ascribed to a specific product.

*Question 11. Could the United States inform how it intends to notify the PLC to the WTO? If the PLC is to be notified as "non-product-specific AMS", as the CCP was, how would the United States make the concept of "non-product-specific AMS" compatible with the eligibility criteria for the PLC?*

**RESPONSE:** The United States has not made any official determination of the WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of this program as part of its official domestic support notification.

*Question 12. Could the United States provide current information on PLC disbursements' distribution under the "covered" commodities?*

**RESPONSE:** Data are not yet available; we are still in the election period.

*Question 13. What is the reason intended by the United States for allowing the reallocation of base acres and yield updating, taking into account that PLC payments are linked to current prices and that the new reference prices are higher than under the CCP programme? Would the programme now be more trade-distortive than the previous one (CCP)?*

**RESPONSE:** The 2014 Farm Bill language gives producers a one-time opportunity to reallocate their base acreage and update their yields to reflect more recent planting and yield history. Under the 2014 Farm Bill, producers may reallocate their farm's base acreage in proportion to the average of planted acreage of the covered commodities on the farm for crop years 2009-2012. The base acreage may not increase from the base acreage in effect on September 30, 2013. No new base acreage may be established for a farm. Regarding yields, land owners are provided a one-time opportunity to update program payment yields for each covered commodity for which they have base acres using 90% of the farm's 2008-2012 average yield per planted acre, excluding any year in which the covered commodity was not planted. See the ARC/PLC fact sheet for more information at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_in\\_sup\\_en\\_arcplic.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_in_sup_en_arcplic.html).

The PLC program is similar to the countercyclical program in that payments are based on fixed historical areas and yields and not current production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.

**Page 115 (Para 4.59)**

Approved private insurance companies have their operating and administrative costs partially reimbursed and their losses underwritten by the Federal Government. These costs have been notified by the United States in the General Services category of the Green Box.

*Question 14. Could the U.S. explain why it considers that this kind of spending falls under paragraph 2 (General Services) of Annex 2 of the Agreement on Agriculture?*

**RESPONSE:** Outlays under the category "administrative and operating reimbursements to insurers" meet the general criteria of Annex 2, paragraph 1 (support is provided through a publicly-funded government program and does not involve transfers from consumers, and there is no price support to producers; additionally, there are no trade-distorting effects or effects on production). In addition, the outlays meet the general criteria in paragraph 2 (expenditures (or revenue foregone) in relation to programs which provide services or benefits to agriculture or the rural community and are not direct payments to producers or processors).

**Page 115 (Paras 4.58 and 4.59)**

4.58. Crop insurance is administered by the USDA Risk Management Agency (RMA), which manages the Federal Crop Insurance Corporation. Insurance policies are currently available for about 130 crops, as well as livestock. In 2013, about 295 million acres (83% of the total acreage of major row crops) were insured by federal crop insurance. In general, crop insurance is based on the yield or revenue of the insured crop or whole farm revenue; most crop insurance plans are revenue based. The insurance guarantee is based on the expected/estimated market price of the current crop year (not statutory minimum prices). The coverage (indemnity) level is commonly at 70-75% (with a range from 50% to 85%) of the historical average yield or expected revenue. Catastrophic coverage (CAT) is the basic crop insurance, while buy-up coverage plans offer additional insurance coverage.

4.59. Premium rates are set by the Federal Crop Insurance Corporation and subsidized by the federal government. CAT premiums are 100% subsidized, although farmers pay a fee of US\$300 per insured crop, subject to a waiver. Premium rates for buy-up plans are also subsidized, ranging from 38-80%, depending on the insurance plan and coverage options selected. Overall, the premium subsidy rate for crop insurance averaged 62% in 2013. Subsidized crop insurance has become the United States' most expensive instrument of income support to farmers (followed by direct payments): US\$7.46 billion in FY2011, up from US\$4.7 billion in FY2010, notified in terms of non product-specific AMS (Table 4.2 and Chart 4.2). While coverage has not increased significantly in recent years, commodity prices have increased significantly, which translate into more expensive crop insurance and higher premium subsidies. Four crops (corn, soybeans, wheat, and cotton) accounted for most of the premium subsidies (84% of the total in crop year 2009). Insurance policies are sold by 18 approved private insurance companies, whose operating and administrative costs are partially reimbursed and losses underwritten by the Federal Government (as notified by the United States in the General Services category of the Green Box).

**Question 15.** Could the United States explain how the concept of "non-product-specific AMS" could be compatible with the eligibility criteria for the Crop Insurance?

**RESPONSE:** The United States has in the past notified its crop insurance program as non-product specific. However, the United States has notified crop insurance as a product-specific amber box program in its latest domestic support notification for 2012. The United States intends to submit revised 2008-2011 notifications reflecting our determination that our crop insurance program should be categorized as product-specific.

**Question 16.** Could the United States provide information on Crop Insurance disbursements for each of the 10 main commodities in the past 3 years?

**RESPONSE:** The top 10 crops, as measured by liability are listed in the table below. Data on all commodities covered by crop insurance is available online at RMA's website at <http://www3.rma.usda.gov/apps/sob/> (under the 'crops' tab). This information is updated weekly.

Crop	2014 Liability
CORN	US\$43,884,974,344
SOYBEANS	US\$27,429,336,110
WHEAT	US\$9,237,095,801
COTTON	US\$4,043,915,459
ALMONDS	US\$2,188,578,118
RICE	US\$1,781,550,384
NURSERY (FG&C)	US\$1,551,010,479
GRAPES	US\$1,455,504,152
ORANGE TREES	US\$1,311,280,051
POTATOES	US\$1,173,637,896
All Other Crops	US\$15,548,432,529
Total	US\$109,605,315,323

*Question 17. Could the United States indicate the trends for disbursements' distribution (by the 10 main commodities) on the Crop Insurance program for the current marketing year?*

**RESPONSE:** Trends in premium subsidies are mainly influenced by commodity prices – especially for the four largest crops – corn, soybeans, wheat, and cotton. Commodity prices were generally similar from crop years 2012 to 2013, but then decreased significantly from crop years 2013 to 2014. This is reflected in the total amount of premium subsidy for the crop insurance program: US\$7.0 billion in 2012, US\$7.3 billion in 2013, and US\$6.2 billion in 2013.

*Question 18. Could the United States give examples of the costs of individual policies for each level of CIP coverage, especially for corn, soybeans, wheat, and cotton?*

**RESPONSE:** The cost of individual policies may be calculated using one of RMA's on-line cost estimators, which can be found at <https://ewebapp.rma.usda.gov/apps/costestimator/>. Some examples of premium cost from the 2014 crop year are included below.

**Corn, Adair County, IA, non-irrigated, 170 bushels/acre APH, basic unit, 100 acres**

Coverage Level	85 %	80 %	75 %	70 %	65 %	60 %	55 %	50 %
Yield Protection	US\$2,178.00	US\$1,731.00	US\$1,395.00	US\$1,157.00	US\$944.00	\$755.00	US\$590.00	US\$448.00
Revenue Protection	US\$4,036.00	US\$3,047.00	US\$2,255.00	US\$1,687.00	US\$1,247.00	\$946.00	US\$714.00	US\$517.00
Revenue Prot with Harvest Price Exclusion	US\$2,351.00	US\$1,791.00	US\$1,342.00	US\$1,051.00	US\$812.00	\$647.00	US\$500.00	US\$395.00

**Soybeans, McLean County, IL, non-irrigated/not following another crop, 50 bushels/acre APH, basic unit, 100 acres**

Coverage Level	85 %	80 %	75 %	70 %	65 %	60 %	55 %	50 %
Yield Protection	US\$1,583.00	US\$1,178.00	US\$859.00	US\$611.00	US\$443.00	US\$317.00	US\$224.00	US\$157.00
Revenue Protection	US\$2,259.00	US\$1,663.00	US\$1,210.00	US\$844.00	US\$575.00	US\$388.00	US\$265.00	US\$183.00
Revenue Prot with Harvest Price Exclusion	US\$1,401.00	US\$1,025.00	US\$758.00	US\$526.00	US\$367.00	US\$260.00	US\$197.00	US\$141.00

**Wheat, Atchison County, KS, non-irrigated, 45 bushels/acre APH, basic unit, 100 acres**

Coverage Level	85 %	80 %	75 %	70 %	65 %	60 %	55 %	50 %
Yield Protection	US\$4,011.00	US\$3,182.00	US\$2,643.00	US\$2,186.00	US\$1,847.00	US\$1,538.00	US\$1,271.00	US\$1,029.00
Revenue Protection	US\$5,086.00	US\$4,093.00	US\$3,402.00	US\$2,823.00	US\$2,369.00	US\$1,950.00	US\$1,598.00	US\$1,288.00
Revenue Prot with Harvest Price Exclusion	US\$4,211.00	US\$3,324.00	US\$2,736.00	US\$2,255.00	US\$1,891.00	US\$1,570.00	US\$1,287.00	US\$1,036.00

**Cotton, Mitchell County, GA, irrigated, 1,100 pounds/acre APH, basic unit, 100 acres**

Coverage Level	85 %	80 %	75 %	70 %	65 %	60 %	55 %	50 %
Yield Protection	US\$4,178.00	US\$3,454.00	US\$2,827.00	US\$2,296.00	US\$1,870.00	US\$1,545.00	US\$1,284.00	US\$1,052.00
Revenue Protection	US\$6,184.00	US\$5,010.00	US\$3,982.00	US\$3,105.00	US\$2,449.00	US\$1,990.00	US\$1,627.00	US\$1,294.00
Revenue Prot with Harvest Price Exclusion	US\$4,883.00	US\$3,952.00	US\$3,142.00	US\$2,438.00	US\$1,955.00	US\$1,620.00	US\$1,365.00	US\$1,115.00

*Question 19. Could the United States provide information on current producers' choices on the CIP coverage for each of the 10 main commodities in the past 3 years?*

**RESPONSE: The coverage available for all crops may be found on the database mentioned in question 16.**

**Page 115 (Footnote 57)**

*Footnote 57. Congressional Research Service (2013a), notes (page 4) that "in some cases, RMA has not pursued policies for particular commodities because producers have expressed concerns that offering insurance could adversely affect the market (because an insurance policy reduces producer risk, farmers may plant more acreage, which could drive down prices and total crop revenue)."*

*Question 20. Could the United States provide more information on the particular commodities the RMA decided not to offer Crop Insurance policies?*

**RESPONSE: Over the years, RMA has either been requested to insure or to research the feasibility of providing insurance for various commodities. RMA insures approximately 114 different commodities. There are various reasons why Crop Insurance Policies are not offered for certain commodities including but not limited to:**

- 1) insufficient credible data to support the development of an actuarially sound insurance offer;
- 2) the commodity is grown in an environment where the individual grower does not have a financial risk of loss;
- 3) the commodity already has insurance that is generally available to it from the private sector;
- 4) growers of the commodity were not interested in having a federally reinsured policy for their commodity;
- 5) the Federal Crop Insurance Act does not authorize the United States to provide coverage for the risk on which insurance was sought;
- 6) it was determined there is no feasible way to offer coverage for the commodity and be able to document and verify natural causes of loss occurred.

**The Board will not approve an insurance product if the proposed product isn't actuarially appropriate, does not follow sound insurance principles, or is not authorized by the Federal Crop Insurance Act.**

*Question 21. Could the United States inform the reason why the RMA has not pursued CIP policies for these commodities?*

**RESPONSE: See response to Question 20.**

**Page 117 (Para 4.67)**

*Notifications by the United States to the WTO Committee on Agriculture cover domestic support through marketing year 2011. Total support to agriculture was US\$139.5 billion, an 8% increase over the 2010 marketing year, largely because of higher expenditures for domestic food aid (Table 4.2). The current total AMS remained well below the US\$19.1 billion limit (total bound AMS commitment level). In addition, the notification specifies US\$9.7 billion of Amber Box support below the de minimis limits, a large part of which is for subsidized crop insurance premiums. A number of the Amber Box measures are related to prices, production or both, including counter cyclical payments, marketing loan payments, and market price supports. Reflecting the continued high prices for commodities, budgetary expenditures for these programmes have declined considerably in recent years.*

*Question 22. When does the United States intend to notify the WTO on its most recent agricultural support programs?*

**RESPONSE:** The U.S. 2012 domestic support notification was posted on the WTO website on 8 December 2014. The United States is still in the process of collecting relevant data for 2013 and 2014 and will continue to notify its domestic support in a timely manner.

Question 23. Taking into account the most recent U.S. notifications to the WTO as well as the changes in the U.S. agricultural programs established by the 2014 Farm Bill, it seems the United States is shifting its agricultural support programs from Amber box (subject to commitments) to non-product-specific AMS "de minimis" (not required to be included in the Current Total AMS and thus not subject to commitments). Is this analysis correct? Could the United States provide current information on this aspect?

**RESPONSE:** The United States has eliminated a number of programs as part of the 2014 Farm Bill, including the direct payment, countercyclical payment, and ACRE programs. The United States has also eliminated both market price support and export subsidies for dairy products. The United States has also introduced certain new programs.

The United States has no current information with regards to the classification of these new programs, but will notify them as part of its official domestic support notification in a timely manner.

**Page 159 (Table A2.1)**

Table A2.1 lists the current disputes of which the U.S. is a Party, among them is DS 353 U.S.-Large Civil Aircraft (2nd Complaint).

Question 24. The U.S. is invited to describe the course and the implementation of the measures taken to comply with the AB ruling.

**RESPONSE:** The United States refers Brazil to the Notification of the Withdrawal of Subsidies and Removal of Adverse Effects in United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint) (23 September 2012) (WT/D353/15).

**2nd Set of Questions from Brazil**

**PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT**

**2 TRADE AND INVESTMENT REGIME**

Page 31, (Para 2.24)

"The United States has notified all of its reciprocal trade agreements to the WTO Committee on Regional Trade Agreements. However, three factual presentations involving the United States have not yet been considered under the Transparency Mechanism, due to a lack of comments from one or both of the parties concerned."

Question 2.1 - Could the U.S. provide further information on the presentations mentioned above?

**RESPONSE:** The United States looks forward to the transparency reviews of the U.S.-Colombia FTA, the Dominican Republic-Central America-United States FTA (CAFTA-DR) and the U.S.-Bahrain FTA as soon as mutually possible for our FTA partners in 2015.

Page 34, (Para 2.27)

"In 2013, the Administration launched a comprehensive review of the AGOA programme to assess its performance and its goals. The results include recommendations to: (a) expand AGOA's product coverage, (b) improve rules of origin, (c) renew AGOA and the third-country fabric provisions for a long term, and (d) update AGOA's eligibility criteria and review processes."

Question 2.2 - Could the U.S. provide further information on the review of AGOA?

**RESPONSE:** A major aspect of the review was a study published by the United States International Trade Commission available here: <http://www.usitc.gov/publications/332/pub4461.pdf>.

**The results of the review were also published in a White House Fact Sheet: <http://www.whitehouse.gov/the-press-office/2014/08/04/fact-sheet-investing-african-trade-our-common-future>.**

**The Administration is currently working with the United States Congress on renewal of the AGOA program and possible modifications identified as a result of the review that will improve its implementation and utilization.**

*Question 2.3 - What is the assessment method being used?*

**RESPONSE:** The review examined all aspects of the program, for example, rules of origin, product coverage, and eligibility criteria, and included consultations with AGOA stakeholders as well as studies requested of the United States International Trade Commission.

*Page 35, (Para 2.32)*

*"The United States' GSP, its main global programme for preferences for developing and least-developed countries, expired on 31 July 2013. Therefore, imports that benefited from GSP provisions are subject to MFN tariffs as of 1 August 2013."*

*Question 2.4 - Could you provide an update on prospects for the renewal of the US's GSP programme?*

**RESPONSE:** The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.

*Page 35, (Para 2.34)*

*"Since the suspension of the GSP programme in July 2013, a number of countries continue to be reviewed for worker rights, child labour, IPR or arbitral awards issues that could alter their beneficiary status. Product addition or removal petitions are also being reviewed."*

*Question 2.5 - Could the U.S. inform what products have received addition and removal petitions?*

**RESPONSE:** In view of the July 31, 2013 expiration of GSP's authorization, the 2013 Annual Review, launched shortly prior to GSP's expiration, was suspended. The only product petitions that remain under review are the few that are outstanding from the 2012 Annual Review: petitions from Ecuador and other parties seeking addition to GSP eligibility for cut roses, frozen broccoli, and certain preserved artichokes. No final decisions will be made on these outstanding product reviews while the GSP program is without authorization.

### **3 TRADE POLICIES AND PRACTICES BY MEASURE**

*Page 56, (Para 3.55)*

*"The U.S. CBP is responsible for enforcing hundreds of laws, on behalf of around 40 federal agencies, that may restrict or prohibit importation. The laws may prohibit the importation of a product or allow a product to be imported under certain conditions (e.g. licensing)."*

*Question 2.6 - Can the U.S. explain the procedure for verification and control of imports that must meet special requirements related to technical standards/regulations?*

**RESPONSE:** U.S. Customs and Border Protection (CBP) enforces requirements that are set forth in U.S. regulations, either for CBP itself or for other federal government agencies that do not have a presence at the U.S. border. Enforcement for each requirement is set forth in the specific regulation, but CBP's approach to enforcement of regulatory requirements includes utilizing risk management techniques to identify those shipments that may need additional action such as document review or a physical inspection.

*Question 2.7 - Can the U.S. explain the procedure for verification and control of products of convict or forced labour that are prohibited from importation?*

**RESPONSE:** The U.S. statute prohibiting the importation of forced labor including convict and child labor is 19 U.S.C. 1307. Further information about the procedures and CBP enforcement can be found at this link <http://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>.

*Page 56-57, Table 3.6*

Question 2.8 - Regarding the information provided in table 3.6 "Prohibitions, restrictions, or other special requirements", what is the legal framework for the prohibitions, restrictions and other special requirements listed in the indicated table?

**RESPONSE:** The applicable legal basis for the prohibitions, restrictions and other special requirements included in Table 3.6 varies according to the specific prohibition, restriction, or special requirement. The United States notes that the table itself includes, in many cases, a reference to a specific law or regulation.

Question 2.9 - With regard to household appliances special requirements, what is the relation, if any, between the "energy standards to be met" and the Energy Star programme (from EPA and DOE)?

**RESPONSE:** The Environmental Protection Agency's (EPA) ENERGY STAR is a voluntary program to identify, label and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards. EPA and the U.S. Department of Energy (DOE) work together to develop the test methods for measuring energy performance for the ENERGY STAR program.

In contrast, DOE manages the federal minimum efficiency standards for the United States. Regulated household appliances manufactured in the United States or that are imported must meet these standards. The U.S. Federal Trade Commission (FTC) requires manufacturers of certain appliances to disclose a product's annual energy cost or efficiency information, based on DOE test procedures, on EnergyGuide labels. Energy information must be reported to DOE and FTC, which can be accomplished through a single report to both agencies using DOE's online system.

Question 2.10 - Can the U.S. further explain the requirements of the Bioterrorism Preparedness and Response Act of 2002 for cosmetics?

**RESPONSE:** The two most important laws pertaining to cosmetics marketed in the United States are the Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Fair Packaging and Labeling Act (FPLA). FDA regulates cosmetics under the authority of these laws.

Imported cosmetics must comply with the same laws and regulations that apply to those produced domestically. Cosmetic products and ingredients are not subject to premarket approval by FDA, with the exception of color additives. However, they must be safe for consumers under labeled or customary conditions of use, and they must be properly labeled. Color additives must be approved for the intended use; some must be from batches certified by FDA. Firms and individuals who manufacture or market cosmetics are responsible for ensuring that their products are in compliance with U.S. law. Please see: <http://www.fda.gov/Cosmetics/InternationalActivities/Importers/default.htm>.

Question 2.11 - With regard to the "products of convict or forced labour" prohibition from importation, how does the U.S. Government determine that a particular product/merchandise was produced, mined or manufactured, wholly or in part by means of the use of convict labour or forced labour?

**RESPONSE:** The Commissioner of Customs may issue a withhold release order to detain merchandise when there is information available that reasonably but not conclusively indicates that merchandise in violation of section 307 of the Tariff Act of 1930 is being, or is likely to be imported into the United States. Thereafter, if the Commissioner determines there is probable cause to believe that merchandise is being imported in

**violation of 19 U.S.C. § 1307, a finding can be published in the Federal Register and such merchandise can be seized and forfeited. U.S. Customs and Border Protection coordinates closely with U.S. Immigration and Customs Enforcement, Homeland Security Investigations, to verify allegations of convict or forced labor and to develop further information to determine whether issuance of a withhold release order, or a finding, is warranted in a particular case.**

*Question 2.12 - Is this determination that a product/merchandise was produced, mined or manufactured, wholly or in part by means of the use of convict labour or forced labour a declaration related to a product in a particular operation or to the producer/manufacturer?*

**RESPONSE:** Previously issued detention orders and published findings are specific to both manufacturers (e.g., to include known addresses) and subject merchandise (e.g., to include physical descriptions, tariff codes, etc.).

*Page 66, (Paras 3.75-3.76)*

"According to the Secretariat Report, "regulatory practices are currently under review with respect to the participation of federal regulators in the development and use of standards, and in conformity assessment activities." Also, "The National Technology Transfer and Advancement Act of 1995 and Circular A-119 [...] of the U.S. Office of Management and Budget (OMB) direct federal agencies to use 'voluntary consensus standards' as a basis for technical regulations and government procurement bids", saying yet that " the Standards Incorporated by Reference Database (SIBR), maintained by the National Institute of Standards and Technology of the Department of Commerce, includes voluntary consensus standards, government unique standards, private industry standards, and international standards referenced in the Code of Federal Regulations (C.F.R.)."

*Question 2.13 - Why does the U.S. continue to promote the use of private standards instead of following the provision of Article 2.4 of the TBT Agreement for the use of international standards as a basis for national technical regulations?*

**RESPONSE:** Brazil's question appears to be based on a misunderstanding. First, international standards are not limited to standards developed by governmental bodies. To the contrary, although the WTO Agreement on Technical Barriers to Trade (TBT Agreement) does not define the term "international standard," under the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards (G/TBT/1/Rev.10, 9 June 2011), any body that follows the principles of openness, transparency, impartiality, consensus, coherence, and the development dimension can develop international standards. The United States therefore considers that any standard that is developed in accordance with the principles set out in the Committee Decision – whether for example by an intergovernmental body or private sector body – qualifies as an international standard.

**Second, OMB Circular A-119 (1998) – which establishes policies on Federal use and development of voluntary consensus standards and on conformity assessment activities – defines voluntary consensus standards as standards developed or adopted by voluntary consensus standards bodies. In turn, the Circular provides that the following attributes define bodies that develop voluntary consensus standards: openness, balance of interests, due process, an appeals process, and consensus. These attributes mirror the characteristics of standardizing bodies reflected in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards. Thus, there is no conflict between the Circular A-119 and implementation of U.S. obligations with respect to use of international standards. To the contrary, Circular A-119 along with statutory requirements for federal agencies to use relevant international standards where appropriate facilitate U.S. implementation of its TBT Agreement obligations.**

*Question 2.14 - Can the U.S. explain what is the role played by federal regulators in the development of voluntary standards?*

**RESPONSE:** OMB Circular A-119 (1998) establishes policies on Federal use and development of voluntary consensus standards and on conformity assessment activities.

**Section 7 of the Circular covers the "Policy For Federal Participation In Voluntary Consensus Standards Bodies." Please see:**  
[http://www.whitehouse.gov/omb/circulars\\_a119/](http://www.whitehouse.gov/omb/circulars_a119/)

.

*Page 67, (Para 3.78)*

*"Agencies must prepare a regulatory impact analysis (RIA) for each regulation that OIRA or the agency designates as 'economically significant' with an impact on the economy of over US\$100 million in at least one year."*

*Question 2.15 - What are the methods used by U.S. agencies in the preparation of RIAs?*

**RESPONSE: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has developed reference materials to assist U.S. government agencies in developing regulatory impact analyses. The primer can be found here:**  
<http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4/regulatory-impact-analysis-a-primer.pdf>.

**The Frequently Asked Questions can be found here:**  
<http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4/FAQ.pdf>.

**The Agency Checklist can be found here:**  
[http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA\\_Checklist.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA_Checklist.pdf).

*Page 68, (Para 3.80)*

*"The United States submitted 269 TBT notifications in 2013 (248 in 2012)69, including sub-federal measures notified under Article 3.2 of the TBT Agreement."*

*Question 2.16 - Could the U.S. specify the agencies responsible for developing mandatory technical, sanitary and phytosanitary regulations (on federal, state and local levels) as well as the matters regulated by each agency?*

**RESPONSE: The U.S. Congress enacts legislation that mandates or authorizes agencies to issue regulations, so the agency responsible for developing and issuing the regulation will usually be designated in the legislation itself. The United States does not maintain lists of specific regulatory responsibilities under the purview of each Federal agency, nor a list of regulatory bodies at the state and local levels. However, a list of and corresponding links to each Federal agency, where it describes its mandate, can be found here: <http://www.usa.gov/directory/federal/index.shtml>.**

*Page 68, (Para 3.83)*

*"Bodies fulfilling the criteria specified by the regulator, domestic or foreign-based, are accredited or otherwise recognized to perform conformity assessment activities."*

*Question 2.17 - Are there any further requirements for accrediting foreign-based conformity assessment bodies other than those required from the domestic ones?*

**RESPONSE: No. The United States applies the principle of national treatment with respect to the recognition of conformity assessment bodies, and in fact, has included commitments to this principle in its free trade agreements going back over a decade.**

*Page 68, (Para 3.85)*

*"The Secretariat Report mentions a few mutual recognition agreements (MRAs) that have been signed by the US."*

*Question 2.18 - Could the U.S. provide a full list of the MRAs signed by the U.S. as well as directions for accessing the full text of these agreements?*

**RESPONSE:** The National Institute of Standards and Technology maintains a complete inventory of the government-to-government EMC and Telecommunications MRAs to which the United States is a party. This inventory also includes the MRA between the United States and the EU that covers six sectors. Please see: <http://gsi.nist.gov/global/index.cfm/L1-4/L2-16>.

Page 76 (Para 3.116)

"The NEI's focus was on improving trade promotion and advocacy, improving access to finance, reducing trade barriers, and enforcing trade rules, with a particular emphasis on developing export programmes for SMEs. Certain agencies also developed their own targets as part of the NEI, [...] and the Department of Commerce's target to increase the number of new markets entered by client firms by 7%."

Question 2.19 - Can the U.S. provide information about concrete initiatives carried out to reduce trade barriers and enforce trade rules?

**RESPONSE:** Please see USTR's website (<http://www.ustr.gov/>) for details on our efforts to reduce trade barriers, particularly the President's Annual Trade Policy Agenda (<https://ustr.gov/sites/default/files/2014%20Trade%20Policy%20Agenda%20and%202013%20Annual%20Report.pdf>). Other websites of interest are USITC's (<http://www.usitc.gov/>) and the Department of Commerce's website (<http://trade.gov/enforcement/>).

Question 2.20 - How does a firm become a client of the Department of Commerce?

**RESPONSE:** Any company that believes it is export-ready or is already exporting can reach out to a U.S. Export Assistance Center. These centers are part of the Department of Commerce and are located throughout the United States.

Question 2.21 - Are there benefits extended to these firms?

**RESPONSE:** The main benefit is they will have the ability to receive counselling from our trade specialists, including information about export markets and potential export opportunities.

Page 76 (Para 3.118)

"In May 2014, the Administration launched NEI/NEXT as the successor of the NEI. [...] There are five main points: connect more U.S. business to global customers, streamline U.S. export services and processes, expand access to finance, promote exports and FDI, and help developing economies improve their business environment to open new markets."

Question 2.22 - What concrete measures have been undertaken to enhance the connection between U.S. business and global consumers and to promote exports?

**RESPONSE:** We seek to improve customer service, some of our efforts are focused on improving data collection on who exports (goods and services). We are also improving our understanding of customer needs, developing and disseminating best practices of state-level development agencies, and improving our ability to identify concrete market opportunities.

Page 85, (Para 3.167)

"The United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for purchases of goods and services. When the law goes into effect, a 2% tax is to be applied to foreign entities not party to an international procurement agreement."

Question 2.23 - What is the current share of contracts awarded to those participants?

**RESPONSE:** The effective date of the statute 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. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

Question 2.24 - *What is the main goal of the new legislation, considering that preference is already granted to American products in biddings set up under the "Buy American Act"?*

**RESPONSE:** **The legislation was passed by the U.S. Congress and the legislative history does not indicate the policy intent behind the 2% federal excise tax.**

*Page 85, (Para 3.168)*

"According to the Secretariat Report, the Trade Agreements Act gives the President the authority to waive Buy American Act requirements for certain procurements. The USTR, to whom this authority is delegated has waived Buy American Act for eligible products in procurements covered by the GPA and some relevant FTAs."

Question 2.25 - *Are there cases in which those requirements have not been waived? If yes, which?*

**RESPONSE:** **The Buy American Act requirements are waived under the Trade Agreements Act authority delegated to the U.S. Trade Representative for all procurements covered under the WTO Agreement on Government Procurement, U.S. Free Trade Agreements and for eligible products from least developed countries.**

*Pages 87-89, (Paras 3.183-3.188)*

Question 2.26 - *Does U.S. law differentiate between national and international procurements in terms of procedures and qualified participants?*

**RESPONSE:** **No. The United States does not maintain separate procedures or qualifications for covered procurements of goods, services and suppliers of other GPA Parties. Consistent with Article IV.1 of the revised GPA, the United States provides national treatment to the goods, services and suppliers of any other Party for procurements covered by the Agreement.**

Question 2.27 - *If so, which category of procurement is generally encompassed by the GPA and relevant FTAs signed by the US?*

**RESPONSE:** **Information on the United States coverage schedule under the revised GPA can be located on the WTO webpage ([http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_app\\_agree\\_e.htm#revisedGPA](http://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm#revisedGPA)). Information on the United States coverage schedule under Free Trade Agreements can be found on the webpage of the Office of the U.S. Trade Representative ([www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations](http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations)).**

#### **4 TRADE POLICIES BY SECTOR**

*Page 114, (Para 4.54)*

"Regarding the Renewable Fuel Standards Program (RFS), the U.S. Environmental Protection Agency (EPA) has announced two new rulings: first, the reduction of the statutory volume requirements for advanced biofuels and total renewable fuels; and second, new requirements on renewable fuel exporters shipping to U.S. markets, including the posting of a substantial bond, additional and costly reporting and verification, a prohibition on the commingling of product, and the cancelation of a company's registration if export activity lapses for a year."

Question 2.28 - *Do these measures have any distortive or restrictive impacts on trade?*

**RESPONSE:** **Neither of the described measures have been implemented by EPA. In November 2013, EPA announced proposed rules regarding the 2014 RFS requirements. In November 2014, EPA announced that it would not finalize 2014 RFS requirements in this calendar year, and that the Agency intends to take action on the 2014 standards rule in 2015. In June 2013, EPA announced proposed rules intended to improve the implementation of the renewable fuel standards program. In July 2014, EPA finalized certain provisions included in that proposal, but has not finalized the provisions**

**specifically referenced in the question. EPA continues to consider the comments received regarding the provisions proposed as operational improvements.**

*Question 2.29 - If the answer is yes, how are those measures consistent with the U.S. commitments relating to the multilateral trade system and the WTO?"*

**RESPONSE: Please see the response to question 2.28 above.**

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

### **4 TRADE POLICY DEVELOPMENTS SINCE 2012**

*Page 15, (Para 4.27)*

*"The revolutions and other changes that swept through the Middle East and North Africa (MENA) in 2011 prompted a comprehensive reevaluation of U.S. trade and investment policies toward this critical part of the world. In response to these events, USTR coordinated with other Federal agencies, outside experts, and stakeholders in both the United States and MENA partner countries to develop a trade and investment initiative to support jobs and enhance regional trade. To pursue this initiative, the United States initially focused on developing initiatives with respect to trade facilitation, investment, and the information and communications technology (ICT) sector, in addition to developing longer-term trade and investment objectives with trading partners in the region."*

*Question 2.30 - What are the main activities related to trade facilitation pursued under this initiative in MENA countries?*

**RESPONSE: The United States has pursued negotiation of bilateral trade facilitation agreements with several MENA countries since 2011, with an eye toward promoting greater U.S. trade with MENA countries and regional trade among those countries. The United States also looks forward to working together with the MENA countries to effectively implement the WTO Trade Facilitation Agreement.**

*Question 2.31 - Which U.S. agencies are engaged in trade facilitation initiatives?*

**RESPONSE: USTR has the lead responsibility for the negotiation of Trade Facilitation initiatives. However, many other federal agencies play a role in the negotiation and implementation of such initiatives, including the Department of Commerce, USAID, the Department of State, and the Department of Homeland Security and U.S. Customs and Border Protection.**

*Question 2.32 - What is the outcome so far?*

**RESPONSE: The United States negotiated a bilateral Trade Facilitation Agreement with Morocco, which expanded upon the commitments already contained in the U.S.-Morocco Free Trade Agreement. The bilateral U.S.-Morocco agreement entered into force in November 2013.**

*Page 20, (Para 4.66)*

*"The United States and Morocco signed a Trade Facilitation Agreement in November 2013 that builds on the FTA and includes provisions facilitating the movement of goods across borders, including transit, transparency with respect to penalties, Internet publication of rules and regulations governing trade, and other issues that will improve Morocco's efficiency in its goods trade."*

*Question 2.33 - Are there any other bilateral trade facilitation agreements being negotiated by the US?*

**RESPONSE: The United States has pursued negotiation of bilateral trade facilitation agreements with several MENA countries since 2011, with an eye toward promoting greater U.S. trade with MENA countries and regional trade among those countries. Negotiation of such agreements have been proposed to several countries in the region.**

**The United States also looks forward to close cooperation with WTO Members on implementation of the WTO TFA.**

*Question 2.34 - What are the main features of the agreement with Morocco?*

**RESPONSE:** Main features of the U.S.-Morocco Trade Facilitation Agreement include commitments on advance rulings, appeals, internet publication, transit, express shipments, disciplines on penalties, provisions for release of goods, prohibition on consular transactions, and disciplines on the requirements for uses of customs brokers and preshipment inspection.

***3rd Set of Questions from Brazil***

***PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT  
2 TRADE AND INVESTMENT REGIME***

*Page 39 (Para 2.52)*

"CFIUS continues to review "covered" foreign investment transactions to determine whether the transaction threatens national security. A covered foreign investment transaction is one where a merger, acquisition, or takeover results in foreign control of a person engaged in interstate commerce in the United States. CFIUS considers whether the foreign entity is controlled by a foreign government or if the investment would give control of critical infrastructure."

*Question 3.1. Could the United States please elaborate on the criteria used to determine whether a transaction threatens 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 <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

*Question 3.2. What constitutes "foreign control" under the rules and regulations of CFIUS?*

**RESPONSE:** 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).

Please refer to the following sections of the CFIUS regulations (<http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUS-Final-Regulations-new.pdf>):

- 800.212, which defines foreign entity;
- 800.213, which defines foreign government;
- 800.214, which defines foreign government-controlled transaction;
- 800.215, which defines foreign national;
- 800.216, which defines foreign person;
- 800.204, which defines control;

A note on the definition of control: control is not defined in terms of a specified percentage of shares or number of board seats. Although shareholding and board seats are relevant to a control analysis, neither factor on its own is necessarily determinative. Instead, all relevant factors are considered together in light of their potential impact on a foreign person's ability to determine, direct, or decide important matters affecting an entity.

**3 TRADE POLICIES AND PRACTICES BY MEASURE****Page 77 (Para 3.122)**

"The main focus of the Ex-Im Bank is to provide direct loans, guarantees, and insurance to help finance U.S. exports of goods and services. It fills a gap in the export financing sector where financing support is needed because of a perception of risk or political uncertainty, and helps create a level playing field for U.S. exporters who compete with others that have similar backing or financing from foreign governments. There were no significant changes in policy during the review period."

Question 3.3. Which is the benchmark used by the U.S. Government to determine whether there is a gap in the financing of U.S. exports that warrants the involvement of the Ex-Im Bank?

**RESPONSE: The Ex-Im Bank routinely meets with commercial banks to determine their capacity to offer export financing and the terms they are able to offer. This information informs the Ex-Im Bank's decisions during its case-by-case approval process.**

Question 3.4. Are there precautionary actions taken by the U.S. Government to prevent the Ex-Im Bank from conferring a benefit to U.S. exporters, as defined in WTO Agreement on Subsidies and Countervailing Measures?

**RESPONSE: The Ex-Im Bank works closely, and often consults with other departments and entities within the U.S. government that have WTO expertise as to the United States' WTO obligations.**

**Page 86 (Para 3.176)**

"Pursuant to Part 8 of the FAR, agencies are required to give consideration first to "required sources" for their supplies and services needs."

Question 3.5. On average, what is the share of the U.S. purchases that are supplied by "required sources"?

**RESPONSE: The United States does not collect such statistics or information.**

**Page 87 (Para 3.178)**

"All contracts over US\$650,000 (US\$1.5 million for construction) must include a small business subcontracting plan so that small businesses can obtain work under these large contracts."

Question 3.6. Is this rule also mandatory for acquisitions made under the WTO Government Procurement Agreement and Free Trade Agreements?

**RESPONSE: Yes. This requirement applies to acquisitions covered by the United States under the WTO Government Procurement Agreement and Free Trade Agreements**

**Page 87 (Para 3.184)**

"The Trade Agreements Act gives the President authority to waive Buy American Act requirements for certain procurements. (...) USTR has waived the Buy American Act for eligible products in acquisitions covered by the WTO Government Procurement Agreement, some relevant free trade agreements (FTA), as well as for least-developed countries."

Question 3.7. On average, what is the share of the eligible U.S. acquisitions that are a result of waiving the Buy American Act requirements?

**RESPONSE: As indicated in Paragraph 3.186, the United States is overhauling its database of procurements covered under international agreements.**

**PART II: QUESTIONS REGARDING THE U.S. GOVERNMENT REPORT****4 TRADE POLICY DEVELOPMENTS SINCE 2012****Page 18 (Para 4.51)**

1. "The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on 15 May 2012. Two-way goods trade totalled US\$40.0 billion in 2013. The CTPA's central oversight body is the United States-Colombia Free Trade Commission (FTC), comprised of the U.S. Trade Representative and the Colombia Minister of Foreign Trade and Tourism or their designees. In November 2012, the FTC held its inaugural meeting and concluded that the Agreement was functioning smoothly and was already benefiting both countries. In 2013 both Governments worked together to carry out initiatives launched at the November 2012 FTC, such as consideration

*of accelerating tariff elimination, additional elements of the dispute settlement mechanism, and updating the rules of origin."*

*Question 3.8. What kind of updates shall be made?*

**RESPONSE:** The CTPA (Article 2.3.4) provides that the Parties may agree to accelerate the elimination of duties under the Agreement. The United States and Colombia have not yet decided whether to accelerate the elimination of tariffs and, if such changes were made, what the scope or extent of such changes should be. With respect to rules of origin, the United States and Colombia are working to update the CTPA's rules of origin to reflect amendments to the Harmonized System. Finally, with regard to dispute settlement, the CTPA calls for the establishment of Model Rules of Procedure (Article 21.10); the establishment of a code of conduct for panelists (Article 21.8.1(d)); the establishment of the amount of remuneration that will be paid to panelists (Article 20.1.2(e)); and the establishment of rosters of panelists (Article 21.7).

The text of the CTPA is available at: <http://www.usit.gov/trade-agreements/free-trade-agreements/colombia-fta/final-text>.

*Page 20 (Para 4.62)*

"According to the Government Report, paragraph § 4.62 (KORUS FTA), the Joint Committee met in October 2013 to discuss substantial issues of interest to both countries, including the verification of origin."

*Question 3.9. How is the verification of origin held under the KORUS FTA?*

**RESPONSE:** Under the KORUS FTA, the importing Party (either Korea or the United States) may conduct a verification by means of written requests for information or questionnaires to the importer, exporter, or producer, or by visits to the premises of an exporter or producer in the other Party. There are separate verification procedures for a textile or apparel good. More information can be found in Articles 6.18 and 4.3 of the Agreement which is online at <http://www.usit.gov/trade-agreements/free-trade-agreements/korus-fta/final-text>.

## **5 TRADE-RELATED CAPACITY BUILDING INITIATIVES**

*Page 25 (Para 5.12)*

"These trade capacity building efforts complement other U.S. government initiatives to promote development and economic growth and address infrastructure needs in Africa. In June 2013, President Obama launched Power Africa, an initiative which aims to double the supply of electricity to Africa. In total, the Power Africa program has now mobilized more than US\$26 billion."

*Question 3.10. The U.S. Government states that Power Africa program "has now mobilized more than US\$26 billion". How much of that amount is related to the financing of the export of U.S. services and products?*

**RESPONSE:** The President's US\$26 billion announcement at the U.S.-Africa Leaders Summit refers to non-USG resources (US\$20 billion from the private sector and US\$6 billion from other donors) in support of Power Africa. The private sector's commitment represents a commitment to develop and invest in over US\$20 billion worth of power projects and energy services in Africa and is not tied to the purchase of U.S. goods and services, although the private partners are free to purchase U.S. goods and services needed for the projects.

*Question 3.11. Under which conditions has that financing been offered?*

**RESPONSE: This funding is not subject to specific terms at this time.**

## **8 SMALL AND MEDIUM-SIZED BUSINESS TRADE**

*Page 28 (Para 8.5)*

"According to the Government Report, paragraph § 8.5 (Small and Medium-Sized Business Trade), the U.S. continues to develop the FTA Tariff Tool, an online tool launched in 2011 to help small businesses to benefit from the tariff reductions and eliminations from the free trade agreements in

*which the U.S. participates. This tool was expanded in order to include information about textiles and garments, as well as the rules of origin in the U.S. FTAs."*

*Question 3.12. What kind of information does the online tool provide about rules of origin?*

*Question 3.13. Is this information available for the general public or is the access restricted? (Only information on tariffs seems to be available on the website).*

**RESPONSE:** The FTA Tariff Tool provides the product-specific rule of origin for all products covered by the Tool. The information is available to the general public. When users search for a particular product under one of the U.S. free trade agreements, the Tariff Tool displays the relevant tariff data as well as the product-specific rule of origin applicable to that product (at the bottom of the page).

#### PART III: OTHER QUESTIONS

The Bayh-Dole Act (US Public Law 96-517, December 12, 1980) and the Stevenson-Wydler Technology Innovation Act (US Public Law 96-480, October 21, 1980) require licensees of the results of U.S. government-sponsored research and development to "manufacture substantially" their products in the United States. In particular, Section 204 of the Bayh-Dole Act states the following: "Preference for United States industry"

*Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States."*

Moreover, subsection (b) of Section 209 of the Bayh-Dole Act states that:

*"(b) Manufacture in United States? A Federal agency shall normally grant a license under section 207 (a)(2) to use or sell any federally owned invention in the United States only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States."*

Section 12 - 4(B) of the Stevenson-Wydler Act states that the director of a federally-operated laboratory, in deciding what cooperative research and development agreements to enter into shall: "(b) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements."

Question 3.14. Please provide an indication of U.S. government disbursements in recent years for research and development activities covered by the Bayh-Dole and Stevenson-Wydler Acts.

**RESPONSE:** The Bayh-Dole and Stevenson-Wydler Acts apply to U.S. research and development (R&D) funding. Information and analysis of trends for U.S. government R&D expenditures for recent years is available at: <http://www.nsf.gov/statistics/2015/nsf15308/>. This table shows that R&D spending in actual funds in 2005 was US\$131 billion. The amount of spending peaked in 2009 at US\$164 billion but has trended back down, with 2014 at US\$136 billion.

Question 3.15. Please explain how the requirements foreseen in the two Acts are enforced by the Government of the United States.

**RESPONSE:** The Stevenson-Wydler Act requires the establishment of an Office of Research and Technology Applications. These offices generally work within each federal laboratory and agency to transfer technology, including licensing of intellectual property developed by the U.S. government at its laboratories. These statutes establish a policy objective stated in Title 15 United States Code Section 3702 and 35 United States Code Section 200 to ensure utilization of technology and inventions. These statutes establish

---

**a system to promote the development of research results and inventions, so that they are available in the economy rather than being just a concept.**

*Question 3.16. According to which criteria is the U.S. Government able to determine whether a "substantial manufacture" of products has taken place in the US?*

**RESPONSE:** The United States considers its trade obligations and the specific requirements of each technology to determine if the "substantial manufacture" requirement is met.

*Question 3.17. Does the Government of the United States supervise the manufacturing activities of the licensees of the results of R&D activities covered by the said legislation?*

**RESPONSE:** The United States does not supervise the manufacturing activities but does require periodic reporting by the licensee on the fulfillment of the license terms. The licensee is required to bring an invention to practical application to promote utilization by the public. The requirement is found in the United States Code Title 35 Section 209(b)(2) "requiring periodic reporting on utilization of the invention, and utilization efforts, by the licensee, but only to the extent necessary to enable the Federal agency to determine whether the terms of the license are being complied with." The statute does allow the government to terminate a license in event the licensee beaches any terms regarding U.S. manufacture as set forth in United States Coode Title 35 Section 209.

**For federally funded inventions that are not produced by a government laboratory, the United States requires reporting on utilization as set forth in the United States Code Title 35 Section 202(c)(5) that states "The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees."**

**FEDERAL AVIATION REGULATION**

**14CFR, PART 91 - GENERAL OPERATING AND FLIGHT RULES**

**§91.215 ATC transponder and altitude reporting equipment and use.**

*Requires the use of ATC transponder device during aircraft operations.*

**§91.221 Traffic alert and collision avoidance system equipment and use.**

*Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating. §91.706 Operations within airspace designed as Reduced Vertical Separation Minimum Airspace.*

*No person may operate a civil aircraft of U.S. registry in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:*

*[.] (2) The operator is authorized by the Administrator to conduct such operations.*

*Question:*

*Question 3.18. Could the United States please elaborate on its procedure to prosecute pilots and air transport service providers for violations of the aforementioned regulations?*

**RESPONSE: Under the FAA's statutes, the FAA Administrator has broad authority to take action considered necessary to carry out the FAA's statutory responsibilities and powers relating to safety in air commerce, including: conducting investigations; prescribing regulations, standards, and procedures; and issuing orders.**

Where there is a question of a potential violation of 14 C.F.R. § §91.215, 91.221, and 91.706, the FAA would generally start an investigation. Early in the process, the Flight Standards District Office (FSDO) Inspector would generally issue a letter of investigation (LOI) to the operator or pilot. Depending upon the circumstances, the matter could be handled with any the following enforcement procedures:

1. Informal Action, including counseling
2. Administrative actions- remedial training efforts, a warning notice or letter of correction;
3. Reexamination (in the case of pilots whose qualifications to hold a certificate are in question);
4. Certificate action, either (order of) suspension or revocation; or
5. A civil penalty (fine)

**CANADA**

*Secretariat Report – United States (S307)*

**Question 1.**

**Part II. Trade Policy Developments since 2012: (4.2) Regional Initiatives; (4.2.1) North American Free Trade Agreement: paragraph 4.14, page 13:**

*The report indicates that under the North American Agreement On Environmental Cooperation, the United States, Canada and Mexico are obligated to effectively enforce their environmental laws. With respect to enforcement of the United States' Lacey Act which makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant taken in violation of the laws of a U.S. State, or any relevant foreign law, Canada has the following questions:*

1. *How does the United States measure the effectiveness of the Lacey Act?*

**RESPONSE:** The Lacey Act is an important tool in U.S. efforts to combat trafficking in illegally taken wildlife, fish, and plant products, and the United States regularly applies and enforces the Act. Information regarding investigations and prosecutions under the Lacey Act is available on the websites of the Department of Justice (<http://www.justice.gov/enrd/News.html>) and the U.S. Fish and Wildlife Service (<http://www.fws.gov/news/>). In addition, the United States Department of Agriculture Animal and Plant Health Inspection Service submitted a report to Congress in May 2013 regarding the implementation of the 2008 amendments to the Lacey Act.

**FOLLOW-UP QUESTION:** Regarding measurement of the effectiveness of the Lacey Act, has implementation of the Lacey Act amendments had an effect on the number or frequency of illegal wood shipments arriving in the U.S.? If so, could you please describe these effects?

**FOLLOW-UP RESPONSE:** As with any type of illegal activity, it is difficult to quantify the level of illegal wood shipments. Nevertheless, based on anecdotal information, we believe that our efforts, along with those of other countries, are having an impact in reducing the levels of illegal wood shipments. The United States looks forward to continuing to work with Canada and other trading partners to combat illegal logging and associated trade.

2. *How does the United States identify an illegal shipment under the Lacey Act? What are the triggers?*

**RESPONSE:** The United States may obtain information from a variety of sources in determining whether a shipment of wood products may potentially be illegal under the Lacey Act and therefore meriting further investigation. Information may, for example, be provided by officials from the country of harvest, from law enforcement entities such as INTERPOL, from employees of the company exporting or importing the products in question, from other participants in the industry, or other sources. Illegality may also be determined based on an inspection of the documents and material in the shipment. This may include fraudulent documents, inconsistencies between documentation and the shipment contents, intentionally misidentifying or falsely declaring the contents, etc.

**FOLLOW-UP QUESTION:** With respect to identification of illegal shipments and determination of illegality based on an inspection of documents and material in a shipment of wood products, what is the most common means of identifying the tree species present in a shipment being imported into the U.S. in order to determine the relevant regulations or trade laws?

**FOLLOW-UP RESPONSE:** The Lacey Act stipulates that the importer identify and declare the species contained in a shipment to the U.S. Government. This is used as a starting point to identify the species of wood used in wood products that are imported. On-site verification of the species of wood specified can sometimes be accomplished through physical inspection by trained observers at the port of entry. For instances when the declared identification is in question, or needs more technical verification to determine

admissibility or illegality, we are exploring a number of wood identification technologies that are rapidly developing. These range from handheld tools that can be available at the port of entry, to sending samples to one of several laboratories including a criminal forensic laboratory. The several U.S. laboratories with varying capabilities are now collaborating with each other and with laboratories around the world in order to share and further develop these technologies and techniques.

3. Does the United States have a central location violations of the Lacey Act are posted?

**RESPONSE:** The United States does not have a central location where violations of the Lacey Act are posted. However, information regarding indictments and the resolution of many criminal enforcement actions, including those brought under the Lacey Act, are frequently the subject of press releases issued by the Department of Justice Environment and Natural Resources Division that are publicly available at <http://www.justice.gov/enrd/News.html> and the U.S. Fish and Wildlife Service at <http://www.fws.gov/news/>.

**FOLLOW-UP QUESTION:** Have the press releases and the other means noted for conveying information regarding criminal enforcement actions resulted in a noticeably better-informed trading community with respect to legality requirements for products entering the U.S.? If so, could you provide some examples of increased awareness among the trading community?

**RESPONSE:** Press releases issued by relevant agencies are just one part of U.S. Government efforts to ensure transparency and keep the trading community well-informed. U.S. Government agencies continue to host or attend various outreach and education sessions as a means of conveying information and increasing awareness about the Lacey Act. Representatives of the Animal and Plant Health Inspection Service (APHIS), the State Department, the Department of Justice, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Office of the U.S. Trade Representative, and other agencies have provided information about enforcement and implementation of the Lacey Act provisions relating to importation of plants and plant products at numerous meetings and conferences attended by domestic and foreign participants in the trade in these products. In addition, since 2009, APHIS has attracted approximately 150,000 visitors interested in the latest program information to its Lacey Act website ([http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planhealth?1dmv&urle=wm%3apath%3a%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_plant\\_health%2Fsa\\_import%2Fsa\\_lacey\\_act%2Fct\\_lacey\\_act](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planhealth?1dmv&urle=wm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_plant_health%2Fsa_import%2Fsa_lacey_act%2Fct_lacey_act)).

Additionally, APHIS launched a new web-based tool called the Lacey Act Web Governance System (LAWGS), designed to help importers save time and money by transmitting the Lacey Act import declaration information electronically. In response to interest from the trading community, the agency has delivered seven LAWGS webinars to over 325 participants representing more than 90 organizations to help prepare importers to file their Lacey Act declarations electronically instead of submitting them as paper forms. APHIS will continue to host additional webinars to introduce LAWGS to interested stakeholders.

**Question 2.**

**Part II. Trade and Investment Regime: (2) Trade Policy Objectives: paragraph 14, page 29:**

Regarding the priority of expanding "trade opportunities through regional economic integration" and in reflection of the North American Competitiveness Work Plan, a trilateral workplan to improve the competitiveness of North America including through a focus on the "Alignment of International Trade," (Pillar #6 - <http://www.international.gc.ca/media/comm/news-communiques/2014/11/03b.aspx?lang=eng>), we have the following questions:

1. What is the United States doing to align its international trade approach to benefit and strengthen the North American production platform as it continues to advance trade policy objectives?

**RESPONSE:** Trade is a key driver of the North American economy. In the North American Competitiveness work plan we state that we will "ensure that senior U.S., Mexican, and Canadian officials meet when appropriate as well as on the margins of existing multilateral discussions to discuss shared trade policy interests." The United States engages in multiple fora to develop approaches to benefit and strengthen the North America production platform. These fora include the U.S.-Canada Regulatory Cooperation Council; U.S.-Canada Beyond the Border Initiative; U.S.-Mexico High Level Economic Dialogue; and, U.S.-Mexico 21<sup>st</sup> Century Border Initiative.

2. *What is the United States doing to ensure that North American interests and, in particular, the North American integrated supply chains are kept in mind when developing trade related initiatives?*

**RESPONSE:** The Office of the U.S. Trade Representative is responsible for developing and coordinating U.S. trade policy. The North American Leaders Summit (NALS) language states that we will "establish a dialogue to explore shared interests and alignment of international objectives in trade negotiations with key markets, so that our integrated supply chains are deepened and strengthened." A key element in developing trade-related initiatives is outreach and communication to key stakeholders and the public in order to develop policy initiatives in an open and transparent manner.

**Question 3.**

**Part II. Trade and Investment Regime: Table 2.4 Foreign Investment Restrictions:** page 41

The report indicates that only U.S. citizens may make claims under the Desert Land Act, or acquire permits to graze on public lands.

1. *Could the United States explain how these restrictions comply with its National Treatment obligations under the NAFTA's Investment chapter (Article 1102)?*

**Response:** While the United States understands that the TPR process is not intended to address compliance with regional trade agreements, information about the statute cited in Table 2.4 of the Secretariat's Report can be found at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>.

**Question 4.**

**Part III. Trade Policies and Practices by Measure: (1) Measures Directly Affecting Imports; (v) Other Charges Affecting Imports:** paragraph 48, page 53:

Regarding the proposed APHIS fee increase, provided, and in regard to Canada's official submission to the U.S. Federal Register, we have the following questions:

1. *Has the proposed change to APHIS fees taken into consideration the magnitude of the overall impact to Canada-U.S. trade and specifically considered the disproportional economic impact on trade by truck versus imports from overseas?*

**RESPONSE:** The proposed change to our AQI user fees is intended to recover the costs we incur in providing AQI services and are set on that basis. These fees are based on the cost of services provided; using the activity based costing (ABC) methodology. Fees for various conveyances are calculated based on the projected number of conveyances subject to inspection within each transportation mode, using standard units such as a truck or airplane. Inspection costs are driven by a number of factors, including number of conveyances, risk targeting, and other criteria.

2. *How does the United States reconcile its APHIS fee proposal with United States' international trade obligations, including WTO, GATT Article I?*

**RESPONSE:** The United States takes its international commitments seriously and ensures that measures affecting traders, including fee increases, comply with our international trade obligations.

3. How does the United States approach to fees weigh the activity and projected economic impact on each conveyance mode?

**RESPONSE:** The FACT Act (21 U.S.C. 136a) and Federal guidance for calculating user fees state that, where possible, a user fee should recover the full cost of providing the service. APHIS used the activity based costing (ABC) methodology to determine the cost of AQI activities and their associated outputs and services and incorporated ABC methodologies to ensure that the full cost of providing AQI services can be appropriately assigned to AQI user fees. Once all costs were assigned to the appropriate fee services and modes, the fees were calculated based on the projected number of conveyances subject to inspection within each mode, using standard units such as a truck or airplane. The ABC methodology incorporates industry standards to ensure correctness, transparency, and repeatability in the assignment of costs from the APHIS and CBP financial systems to activities directly related to the delivery of AQI services.

4. Has the proposed APHIS fees taken into consideration the "beneficiary pays" principle, based on the fact that each proposed fee has no public contribution?

**RESPONSE:** The rationale for collecting user fees, as opposed to funding the AQI program through appropriations, is to have those who benefit from a service cover its costs. The fees are calculated using the ABC methodology described above.

5. How has the proposed fees taken into consideration Canada-U.S. bilateral initiatives that enhance U.S.-Canada cooperation, regional competitiveness and reflect our shared security interests?

**RESPONSE:** The United States values the extensive cooperation and bilateral initiatives with Canada, and examines all proposed rules to ensure they complement our joint work.

*Question 5.*

**Part III. Trade Policies and Practices by Measure: (1) Measures Directly Affecting Imports; (viii) Technical regulations and standards: paragraph 77, page 67:**

The report refers to proposed revisions to Circular A-11966 that would maintain a "strong preference" for the use of voluntary consensus standards in federal regulation and procurement:

1. Could the United States describe, in practical terms, the level of discretion that the "strong preference" referred to in the proposed revisions to Circular A-11966 will grant federal agencies? Could the United States provide an example of a past situation that prompted this proposed change?

**RESPONSE:** U.S. law and policy directs federal agencies to rely on voluntary consensus standards and relevant international standards, where appropriate. Paragraph 6 of Circular A-119 states that "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." (See also the National Technology Transfer Advancement Act). Paragraph 6.a.2 of Circular A-119 further specifies "impractical" as including "circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard." The text of Circular A-119 can be found here: [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).

The proposed revisions to Circular A-119 state that the proposed revisions continue the preference for voluntary consensus standards over government-unique standards and establish a further preference for voluntary consensus standards over other types of standards (including voluntary standards that are developed by voluntary non-consensus bodies). In doing so, the proposed revisions acknowledge that other types of standards, including those developed by voluntary non-consensus bodies, are in use in the marketplace and may be relevant in meeting agency missions and priorities and that under such circumstances agencies would be able to use such standards.

**Question 6.**

**Part III. Trade Policies and Practices by Measure: (1) Measures Directly Affecting Imports; (viii) Technical regulations and standards: paragraph 84, page 68:**

The report refers to Executive Order 13609 of 1 May 2012 that seeks to promote international cooperation to address unnecessary differences between the regulatory approaches of U.S. agencies and their foreign counterparts.

1. Will the United States be producing guidelines for departments and agencies to interpret this Executive Order?

**RESPONSE: Yes. The guidelines are currently being developed.**

**Question 7.**

**Part III – Trade Policies and Practices by Measure: 3.2 Measures directly affecting exports; 3.2.4 Export support and promotion; 3.2.4.2 National Export Initiative (NEI) and NEI/NEXT, paragraph 3.116, page 76**

The report notes that the National Export Initiative (NEI), and its successor program NEI/NEXT, is a government-wide programme to promote exports, with the goal of doubling the amount of exports over five years. In line with this goal, the Department of Agriculture had developed its own targets as part of the NEI, with the goal to expand agricultural exports to US\$150 billion by FY2013.

1. Could the United States clarify what programs and initiatives have been established within the 2014 Farm Bill by the Department of Agriculture to achieve this goal?

**RESPONSE: There were no new export promotion programs or initiatives established in the 2014 Farm Bill.**

**Question 8.**

**Part III. Trade Policies and Practices by Measure: (3) Measures Affecting Production and Trade; (2) Subsidies and other government assistance: paragraph 3.141, page 81:**

The report indicates that while some stimulus measures have been progressively phased out, some measures have been maintained. The report also mentions at paragraph 1.3 that "the U.S. economy has largely recovered from recession". In this regard Canada notes that "deal closing funds" – pools of capital set aside by at least 38 states to provide discretionary and targeted subsidies to new or relocating businesses – have become increasingly common in the United States, with many state governments increasing their existing funding levels. Some economic development and fiscal policy experts in the U.S criticize the very structure of deal closing funds, and state governments themselves sometimes question their effectiveness.

1. Could the United States comment on the continuing need and existence of these funds in an improving economic climate and whether the United States will exercise leadership in reducing these types of subsidy programs that distort investment decisions?

**RESPONSE: WTO Members are permitted to provide subsidies so long as they are not "prohibited" or cause "adverse effects" to the trade interests of other Members, as defined under the Agreement on Subsidies and Countervailing Measures. The United States has historically been at the forefront in advocating for tougher rules to discipline the provision of industrial and fisheries subsidies. This was evidenced in the context of the Doha Rules negotiations during which the United States proposed a dramatic expansion of the "prohibited" category of subsidies and a near total prohibition of fisheries subsidies. Unfortunately, these proposals did not receive the necessary support to move forward. (See, TN/RL/GEN/146, 5 June 2007; and, TN/RL/GEN/145, March 22, 2007.)**

**Question 9.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement: paragraphs 3.166-8, page 85:**

The Secretariat Report notes that for 2012, U.S. federal procurement contracts amounted to US\$517.9 billion, of which the Department of Defence accounted for 70%. The report also states that the Buy American Act requires the federal government to purchase domestic goods.

1. Could the United States explain what percentage of non-military federal procurement is subject to Buy American restrictions?

**RESPONSE:** 100% of goods procured by the Federal government is subject to the Buy American Act. The Buy American Act is waived for eligible products in acquisitions covered by the WTO Government Procurement Agreement and relevant free trade agreements (FTA).

2. What percentage do build-operate-transfer (BOT) contracts account for of the US\$517.9 billion?

**RESPONSE:** The United States does not have statistics on how frequently various contractual means, such as build-operate-transfer, are used in government procurements.

3. Could the United States provide statistics of the value of procurement contracts conducted by state and local governments?

**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.

4. Could the United States indicate the amount in dollars of federal grants provided to other levels of government (e.g. state, municipal levels) for infrastructure? What percentage of those funds have Buy American requirements attached to them?

**RESPONSE:** "Infrastructure" is a generic term, and the United States is not able to produce statistics on federal grants provided to other levels of government for "infrastructure." However, information on federal grants is available at <http://www.grants.gov>.

5. Canada understands that most grants from the Department of Transport (DOT) and the Environmental Protection Agency (EPA) have Buy American obligations attached to them such that recipient entities (e.g. state and municipal level governments) must buy American-made products. Could the United States explain:

- a. The amount in dollars the federal government has transferred in the last 2 years to sub-central levels of government for infrastructure development?
- b. What percentage of those funds had Buy American provisions attached to them?
- c. How attaching Buy American provisions to such programs contributes to the United States' stated aim in paragraph 1.1 of their report of creating momentum for market-opening measures in international trade?

**RESPONSE:** Information on grant programs can be found at <http://www.grants.gov>. Additional information on Department of Transportation grant programs can be found at <http://www.dot.gov/grants>; and additional information on Environmental Protection Agency grant programs can be found at <http://www2.epa.gov/home/grants-and-other-funding-opportunities>.

The United States has one of the most open and transparent procurement systems in the world. Like every other GPA member, the United States excludes certain procurements. The United States does not believe maintaining exclusions under the GPA hinders creating momentum for market-opening measures in international trade. The United States strongly supports additional WTO members joining the GPA and recognizes that flexibility on critical sensitivities is often the key to opening up other government procurement markets.

6. According to the Organization for International Investment, Buy American measures have been either introduced or adopted in 21 states (Arizona, Arkansas, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New York, New Jersey, Oklahoma, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin). Could the United States confirm whether each of these states has adopted such restrictive practices? Are there other states not on this list that have adopted such practices?

**RESPONSE:** The executive branch of the U.S. government does not oversee the legislative proposals introduced by members of the federal or state legislatures. The United States is committed to ensuring its covered procurements are conducted consistent with U.S. international obligations.

**Question 10.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement:** paragraph 3.167, page 85:

The report refers to an upcoming "federal excise tax on foreign entities receiving payment for purchases of goods and services." It adds that "2% tax is to be applied to foreign entities not party to an international procurement agreement."

1. Could the United States confirm that suppliers from GPA and NAFTA Parties will not be affected by this tax?

**RESPONSE:** The U.S Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

**Question 11.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement:** paragraph 3.177, page 86:

The report notes that part 13 of the FAR requires that a Federal government procurement of less than US\$150,000 in value must be reserved for competition by small businesses under the Simplified Acquisition Procedure.

1. What is the total value and percentage of contracts set aside for small business that fall into this category?

**RESPONSE:** SBA publishes a goaling report each fiscal year. The goaling report does not provide that level of detail. Detailed reports may be pulled from the Federal Procurement Data System (FPDS) ([https://www.fpds.gov/fpdssng\\_cms/](https://www.fpds.gov/fpdssng_cms/)), which is the government's official system for collecting, developing and disseminating procurement data. It is available at: [https://www.fpds.gov/fpdssng\\_cms/index.php/en/](https://www.fpds.gov/fpdssng_cms/index.php/en/).

2. Could the United States provide a definition of "small business"?

**RESPONSE:** The definition of "small business" can be found at 13 CFR part 121, available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=975f1ae5ff759d4a409c76fd7788750c&node=pt13.1.121&rqn=div5>. SBA also has a website with guides and other documents relating to small business size, which are available at: <https://www.sba.gov/category/navigation-structure/contracting/contracting-officials/small-business-size-standards>.

**FOLLOW-UP QUESTION:** Canada thanks the United States for pointing to the relevant section of the U.S. Small Business Administration (SBA) website. We note that in a majority of subsectors, "small businesses" are defined as businesses employing up to 500 employees. For some subsectors, "small businesses" can even employ up to 1,500 employees. What is the methodology for determining the specific definition of a small business (e.g. average annual receipts or number of employees) for particular subsectors?

**FOLLOW-UP RESPONSE:** The methodology SBA uses to establish its size standards can be found at 13 C.F.R. § 121.102, available at: [http://www.ecfr.gov/cgi-bin/text-idx?SID=8f977d1ff101b9d5954ab9c6c95a35d3&node=se13.1.121\\_1102&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=8f977d1ff101b9d5954ab9c6c95a35d3&node=se13.1.121_1102&rgn=div8).

SBA's webpage also contains a White Paper explaining the size standard methodology in further detail, available at <https://www.sba.gov/content/size-standards-methodology>.

Further, each time SBA amends a size standard, it explains its methodology in the proposed rule. Recent and proposed changes to size standards can be found at: <https://www.sba.gov/content/what%27s-new-with-size-standards>.

3. Could the United States confirm that contracts set aside for small businesses are reserved exclusively for U.S.-based small businesses? In other words, can foreign small businesses compete for such procurement contracts?

**RESPONSE:** SBA's regulations define the term "business concern" as follows:

(a)(1) a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

13 C.F.R. § 121.105, available at [http://www.ecfr.gov/cgi-bin/text-idx?SID=975f1ae5ff759d4a409c76fd7788750c&node=pt13.1.121&rgn=div5#se13.1.121\\_1105](http://www.ecfr.gov/cgi-bin/text-idx?SID=975f1ae5ff759d4a409c76fd7788750c&node=pt13.1.121&rgn=div5#se13.1.121_1105).

**FOLLOW-UP QUESTION:** Can the United States confirm that a small business from another WTO member that meets the applicable small business criteria for its subsector and otherwise meets the above definition of a "business concern" but for the fact that it primarily operates outside the United States, would not be eligible for procurements contracts that have been set aside for small businesses by the federal government.

**RESPONSE:** The regulation states that a small business is one that is organized for profit, has a place of business located in the United States and operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Whether a business qualifies as a small business is fact specific (i.e., based on the individual set of facts pertaining to that business). In addition, SBA's various socio-economic programs contain specific eligibility requirements in addition to the definition of small business concern set forth at 13 C.F.R. § 121.105.

**Question 12.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement: paragraph 3.177, page 86:**

The report notes that procurement below the US\$150,000 threshold will also be set-aside for small businesses where there is a "reasonable expectation" that at least two responsive small businesses are able to provide the product/service competitively in terms of market prices, quality and delivery.

1. How does the procuring entity determine what is a competitive market price? Is there guidance provided to procuring entities? If so, please provide a reference to such guidance.

**RESPONSE:** FAR subpart 19.5 addresses the criteria for setting aside procurements for small business. FAR section 19.502-2 provides that the procuring official must determine that the award will be made at fair market prices. Price reasonableness through various means, including adequate price competition, comparison to historical prices, comparison to the government estimate, and market research. See FAR sections 19.202-6, 15.404-1(b).

2. How much discretion is accorded to procuring entities to determine whether these criteria have been met?

**RESPONSE: The decision whether to set aside a procurement is a matter of business judgment within the contracting officer's discretion. The decision must be reasonable.**

**Question 13.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5 Government Procurement: paragraph 177, page 86:**

The United States has commitments in its bilateral and regional free trade agreements for thresholds for goods and services procurement below the Simplified Acquisition Procedure threshold (see table 3.22 of the Secretariat report). For example, the thresholds for goods and services are of US\$79,507 in the CAFTA and in FTAs with Australia, Chile, Colombia and Singapore. The thresholds for Canada, under the NAFTA, stand at US\$25,000.

1. Could the United States confirm that the effective threshold for foreign suppliers from FTA countries for procurement of goods and services is therefore at a minimum US\$150,000, given the Simplified Acquisition Procedure threshold of US\$150,000?

**RESPONSE: The United States applies thresholds consistent with its WTO GPA and FTA obligations.**

2. Could the United States confirm that, by operation of the small business set-aside and the Simplified Acquisition Procedure, the United States has effectively increased its procurement threshold for goods and services under these bilateral and regional FTAs to US\$150,000?

**RESPONSE: The United States applies thresholds consistent with its WTO GPA and FTA obligations.**

**FOLLOW-UP QUESTION:** In response to Canada's question number 11.2 (above), the United States indicated that, in order to be eligible to bid on contracts set aside for small businesses, the business must have "a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."

Canada understands that by operation of the small business set-aside and the Simplified Acquisition Procedure, only small businesses as defined by the SBA are eligible for government contracts valued at below US\$150,000.

Given this, is a foreign supplier, who operates primarily in a country with whom the United States has a bilateral free trade agreement, eligible to bid on federal procurement contracts that are valued below US\$150,000?

**RESPONSE: Foreign suppliers are eligible to bid on federal procurement contracts consistent with obligations specified under the specific free trade agreement.**

3. What assurances do WTO members, including GPA Parties, have that the Simplified Acquisition Procedure threshold of US\$150,000 will not be increased in the future?

**RESPONSE: The United States is committed to ensuring its covered government procurement is conducted consistent with its obligations under the WTO GPA and its FTAs.**

**Question 14.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement: paragraph 3.178, page 87:**

The report states that, under U.S. laws and rules, all contracts over US\$650,000 (US\$1.5 million for construction) must include a small business subcontracting plan so that small businesses can obtain work under these large contracts.

1. Are these sub-contracting plans voluntary or mandatory?

**RESPONSE: In accordance with 15 U.S.C. § 637(d), they are mandatory.**

2. Could the United States indicate whether the place of establishment or the place of taxation of the small business is a criterion in determining its eligibility as a subcontractor under the subcontracting plan?

**RESPONSE: To be considered a small business for purposes of either prime contracting or subcontracting, the entity must meet the definition of "small business." See the above response to Question 11-3.**

3. In relation to such contracts, are prime contractors encouraged to favour or prefer U.S. small businesses over foreign small businesses in the development and implementation of sub-contracting plans? Can foreign small businesses qualify as a "small business"?

**RESPONSE: See response above.**

4. Does the value of contracts reserved for small businesses (i.e. of the federal total percentage set aside for small businesses) include the value of sub-contracts awarded to small businesses under sub-contracting plans?

**RESPONSE: Awards made to small business subcontractors do not count toward an agency's prime contracting goals, with one statutory exception relating to specific Department of Energy contracts.**

5. Could the United States confirm whether its exclusion of set-asides on behalf of a small or minority-owned business in its GPA and bilateral FTAs market access schedules applies to prime contracts that are required to submit a sub-contracting plan?

**RESPONSE: The United States believes the language in its market access exclusions to the WTO GPA and its FTAs is sufficiently clear.**

**Question 15.**

**Part III. Trade Policies and Practices by Measure: 3.3. Measures Affecting Production and Trade; 3.3.5. Government Procurement: paragraph 3.188, page 89:**  
The report states that some 37 states participate in the GPA.

1. In 2008, Minnesota state legislature passed a statute requiring that it, in addition to the governor, give approval before the state may commit to any new international trade agreement's procurement provisions (Minnesota 2014 Chapter 116J.976, 2008 c 300 s.3). Could the United States confirm whether or not commitments entered into by the United States after this statute was enacted (2008) will be respected by Minnesota?

**RESPONSE: The United States is committed to ensuring its covered government procurement is conducted consistent with its obligations under the WTO Agreement on Government Procurement and its FTAs.**

2. Could the United States outline what steps the federal government takes to ensure compliance by state governments?

**RESPONSE: For those U.S. states subject to government procurement commitments under U.S. international obligations, the Office of the U.S. Trade Representative engages with appropriate State officials regarding specific issues raised by our trading partners.**

3. 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 executive branch of the U.S. federal government does not oversee the legislative proposals introduced by members of the federal or state legislatures. The United States is committed to ensuring its covered procurements are conducted consistent with U.S. international obligations.**

**Question 16.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.1) Trade Context: paragraph 3.194, page 91:

Reviewing IP-related trade concerns, the ITC reported that content industries (including software, music, movies, books, and video games) identified internet piracy as "the single most important barrier to digital trade for their industries"; and that internet intermediaries expressed concerns about "unclear legal frameworks and being held liable for the infringing or illegal conduct of users of their systems".

1. Could the United States elaborate on any concerns that internet intermediaries have raised regarding the current legal frameworks in the US?

**RESPONSE:** Internet intermediaries are best able to elaborate on their views themselves. Additionally, the views of Internet intermediaries are reported in the USITC report referenced in the question, as well as in a July 2013 greenpaper entitled "Copyright Policy, Creativity, and Innovation in the Digital Economy," authored by the U.S. Department of Commerce Internet Policy Task Force. On March 13, 2014, as part of the review of copyright law described below in response to Question 22, the House Subcommittee on Courts, Intellectual Property, and the Internet held a hearing on "Section 512 of Title 17" and heard testimony from online service providers, content owners, and academics. Video, transcript and written testimony from the hearing can be found at <http://judiciary.house.gov/index.cfm/hearings?ID=3A1D170D-D431-486F-AEFA-3724B0D95AE9>.

**Question 17.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.2) Participation in WTO and International initiatives: paragraph 3.197, page 92:

The Secretariat report notes that during the most recent review of U.S. trade policies, other Members raised questions on "methodologies for assessing the contribution of IP to the economy, as well as on many patent issues (patent quality and pendency, unity of invention, litigation by non-practicing or patent assertion entities, humanitarian and green-technology initiatives, disclosure standards, remedies, post grant review, grace periods)...".

1. Government Report – United States (G307): Part 8, Small and Medium-Sized Business Trade: paragraph 8.3, page 28:

The Government Report notes that "[s]everal aspects of U.S. trade policy have particular potential to help boost SME exports. These include enhancing trade facilitation work, strengthening and enforcing intellectual property rights, and targeting services barriers that are especially difficult for SMEs, such as requirements for staffing an office in each country to which companies wish to export."

Canada notes the rise of patent litigation, particularly by patent assertion entities, against innovative businesses in general, and specifically involving SMEs. Such litigation is often costly and slows the growth of the SMEs.

1. Could the United States provide information regarding the costs of patent litigation for SMEs and whether SMEs are able to recover these costs, including attorney fees, through U.S. courts?

**RESPONSE:** Congress required the Government Accountability Office (GAO) to study the consequences of patent litigation by non-practicing entities (NPEs) or patent assertion entities (PAEs) in consultation with the USPTO. This study included the volume of litigation in the 20 years before enactment of the AIA, the volume of cases which are found to be without merit after judicial review, the impact of litigation on the time to resolve patent claims, the costs with such litigation, its economic impact on the U.S. economy and job creation, and any benefits created by NPEs or PAEs. The report, which was released in August 2013, can be found here: [http://www.uspto.gov/aia\\_implementation/GAO-12-465\\_Final\\_Report\\_on\\_Patent\\_Litigation.pdf](http://www.uspto.gov/aia_implementation/GAO-12-465_Final_Report_on_Patent_Litigation.pdf).

**Question 18.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.3) The Patent System: paragraph 3.203, page 94-95:

Following enactment of the Leahy-Smith America Invents Act (AIA) in 2011<sup>168</sup>, significant regulatory and administrative reforms were required to give effect to what was described as "the most significant reforms to the U.S. patent law in 60 years".

1. Could the United States detail its experience with the new Post-Grant Review Mechanisms introduced as part of the AIA Reforms?

**RESPONSE:** For more information about the USPTO's experience with the Patent Trial and Appeal Board, please see: <http://www.uspto.gov/ip/boards/bpai/index.jsp>.

**Question 19.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.3) The Patent System: paragraph 3.204, page 95:

The report refers to a series of initiatives to build on the AIA reforms with a view to improving the patent system, foster innovation and to protect innovators from "frivolous litigation". These include: a proposed rule on transparency to ensure that records of patent ownership are accurate and up to date, and a crowdsourcing initiative to expand ways for identifying prior art relevant to determining the novelty of claimed inventions.

1. Could the United States clarify the status of the proposed rule on patent ownership transparency referenced in Paragraph 3.204?

**RESPONSE:** For more information about the status of attributable ownership, please see [http://www.uspto.gov/patents/init\\_events/attribution\\_ownership.jsp](http://www.uspto.gov/patents/init_events/attribution_ownership.jsp).

2. Could the United States clarify whether it is considering introducing other measures to protect businesses against "Frivolous [patent] Litigation", and if so, explain what they are?

**RESPONSE:** The United States is in support of protecting the legitimate rights of patent holders. There are not any other measures at this time, other than the ones that were mentioned in Part III.

3. Could the United States clarify and provide details on the type of crowdsourcing initiatives that have been implemented to strengthen patent quality?

**RESPONSE:** The USPTO held a roundtable on crowdsourcing on April 10, 2014 in Alexandria, VA and December 2, 2014 in New York City, NY to solicit public opinions regarding the use of crowdsourcing and third-party pre-issuance submissions to identify relevant prior art and enhance the quality of examination as well as the quality of issued patents. Members of the public were invited to participate. For more information about both events, please see [http://www.uspto.gov/patents/init\\_events/crowdsourcing\\_roundtable\\_04-2014.jsp](http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_04-2014.jsp) and [http://www.uspto.gov/patents/init\\_events/crowdsourcing\\_roundtable\\_20141202.jsp](http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_20141202.jsp). For more information about third party preissuance submissions, please see [http://www.uspto.gov/aia\\_implementation/faqs-preissuance-submissions.jsp](http://www.uspto.gov/aia_implementation/faqs-preissuance-submissions.jsp).

4. Paragraphs 3.204(a) and (b) list some of the initiatives the Administration announced to build on the AIA reforms. Could the United States provide a description of any additional measures or initiatives taken or contemplated to strengthen patent quality?

**RESPONSE:** For more information about patent quality initiatives, please see <http://www.uspto.gov/patents/law/pep-00014program.jsp>.

**Question 20.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.3) The Patent System: paragraph 3.206, page 95:

The report refers to several significant Supreme Court decisions involving the issue of patent-eligible subject matter, including Association for Molecular Pathology v. Myriad Genetics and Alice Corporation Pty. Ltd. v. CLS Bank International.

1. Could the United States clarify whether it anticipates there will be a government response to the changes to patentable subject matter eligibility made as a result of the two Supreme Court cases, and if so, please provide details on the response?

**RESPONSE:** The latest Patent Examination Guidelines released by the USPTO on Myriad can be found at: [http://www.uspto.gov/patents/law/exam/myriad\\_20130613.pdf](http://www.uspto.gov/patents/law/exam/myriad_20130613.pdf). The latest Patent Examination Guidelines on Alice can be found at: [http://www.uspto.gov/patents/announce/alice\\_pec\\_25jun2014.pdf](http://www.uspto.gov/patents/announce/alice_pec_25jun2014.pdf). More detailed Examination Guidelines will be released at a future date.

**Question 21.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.4) Trade Secret Protection: paragraph 3.207, page 95-96:

The report refers to the Strategy on Mitigating the Theft of U.S. Trade Secrets in 2013, which lays out a series of steps to curb the theft of trade secrets. While civil enforcement is principally addressed through state law, criminal enforcement is principally governed by Federal law, e.g., the Economic Espionage Act.

1. Could the United States provide information, including statistics, regarding the impact of enhanced domestic law enforcement and enhanced remedies for theft of trade secrets in the U.S., and how, if at all, enhanced enforcement and remedies has impacted theft of trade secrets involving non-US actors. If the U.S. does not have any information, can it describe how, if at all, it plans to measure the effectiveness of enhanced enforcement and remedies?

**RESPONSE:** The Department of Justice and the Federal Bureau of Investigation each issue an annual report to Congress pursuant to the PRO-IP Act, describing their IP enforcement efforts, including statistical information of various types and summaries of recent, significant IP prosecutions. The PRO-IP Act reports covering the past year should be completed and released in the near future.

**Question 22.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.5) Copyright: paragraph 3.210, page 97:

The report notes that the U.S. House of Representatives' Subcommittee on Courts, Intellectual Property and the Internet is currently undertaking a comprehensive review of U.S. copyright law to ensure that current law keeps pace with the digital environment.

1. Could the United States clarify the timeline for completing this review, and the expected outcomes of the review, including whether it may include proposed legislative reforms?

**RESPONSE:** Beginning in the spring of 2013, the House Subcommittee on Courts, Intellectual Property, and the Internet has held a series of hearings to review the current state of U.S. copyright laws. House Judiciary Committee Chairman Bob Goodlatte announced the hearings in response to Register of Copyrights and Director of the U.S. Copyright Office Maria A. Pallante's testimony in a March 20, 2013 hearing entitled "The Register's Call for Updates to the U.S. Copyright Act." There, the Register urged Congress to take a comprehensive and informed approach to copyright review over the next few years. As of December, 2014, there have been a total of eighteen copyright review hearings, including Register Pallante's initial hearing. The hearings have been on

a variety of issues related to the U.S. copyright system including the role of voluntary agreements, the scope of fair use, preservation and reuse of copyrighted works, music licensing, and resale royalties, among others. There is no specific timeline for completing the review, and future hearings have not yet been announced, but they are anticipated to resume in 2015. At this point, it is premature to predict specific outcomes, but some legislation is likely to be considered.

**Question 23.**

**Part III. Trade Policies and Practices by Measure:** (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.5) Copyright: paragraph 3.216, page 98:

The report refers to the Supreme Court's consideration of several significant copyright questions during the review period, including *Kirtsaeng v. John Wiley & Sons, Inc.*, on the application of the "first sale" doctrine to textbooks published abroad with the copyright holder's consent and then imported into the United States for sale.

1. Could the United States elaborate on the impact of the Supreme Court's treatment of parallel imports in the *Kirtsaeng* decision, particularly how stakeholders have reacted and whether a government response to the decision is anticipated, including possible legislative amendments, and if so, please provide details on the response?

**RESPONSE:** The Supreme Court's decision in *Kirtsaeng* applied the "first sale" doctrine to books that are legitimately purchased abroad and then imported and sold in the United States without the copyright holder's authorization. The Court acknowledged that its decision made it difficult for publishers and other copyright holders to divide foreign and domestic markets, but it viewed that issue as a policy concern for Congress to decide.<sup>2</sup>

As of this writing, there are no legislative proposals pending in Congress that address the treatment of parallel imports under U.S. law (either in response to the Supreme Court's decision in *Kirtsaeng* or otherwise). While noting that it is impossible to completely capture and/or accurately characterize the full range of stakeholder reactions to the *Kirtsaeng* decision, a representative sample of some stakeholder reactions can be found in the public comments received by the Department of Commerce's Internet Policy Task Force in response to its Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy. At least fourteen of the 111 comments received in response to the Green Paper directly address the *Kirtsaeng* decision. Those comments are gathered here: [http://www.uspto.gov/ip/global/copyrights/green\\_paper\\_public\\_comments.jsp](http://www.uspto.gov/ip/global/copyrights/green_paper_public_comments.jsp).

- Specific organizations commenting on the decision included: American Free Trade Association, Association of American Publishers, Computer and Communications Industry Association, Internet Association, National Music Publishers Association, Software and Information Industry Association, Copyright Alliance, Owners Rights Initiative, Intellectual Property Owners Association, ScreenPlay, Inc., Global Intellectual Property Center, Public Knowledge, Stanford Center for Internet and Society and Electronic Frontier Foundation.
- In addition, we can report that the House Subcommittee on Courts, Intellectual Property and the Internet held a hearing June 2, 2014 entitled "First Sale Under Title 17" at which the *Kirtsaeng* decision and a range of other issues were discussed. A video of that hearing can be accessed here: <http://judiciary.house.gov/index.cfm/hearings?ID=A3494657-04C2-4B9E-8027-B72783516C61>. A transcript of the hearing can be found here: <http://judiciary.house.gov/index.cfm/hearings?ID=A3494657-04C2-4B9E-8027-B72783516C61>.

---

<sup>2</sup> *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1370 (2013).

**Question 24.**

**Part III. Trade Policies and Practices by Measure: (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.7) IP Enforcement:** paragraph 3.219, page 99:

The report notes that coordination and effectiveness of mechanisms to enforce IP rights both domestically and in foreign markets remain a major policy concern for the United States and that the Intellectual Property Enforcement Coordinator (IPEC) issued the 2013 Joint Strategic Plan on Intellectual Property Enforcement, highlighting developments in enforcement since 2009, in particular increases in arrests, convictions, indictments, health and safety-focused investigations, and seizures.

1. To what does the U.S. attribute such drastic increases in enforcement for new cases, arrests, convictions, and indictments by ICE-HIS; for investigations and related arrests by the FBI; and seizures of infringing imports in the 4 years between 2013 and 2009?

**RESPONSE:** A number of factors contribute to changes in the numbers of open investigations, arrests, convictions, sentences, and other enforcement figures. Available data suggest that IP crimes of various types continued to increase during the period in question. However, the substantial increases in the enforcement figures cited are certainly attributable at least in part, to policy decisions, such as changes in enforcement priorities or resources devoted to particular types of IP crime, as well to improved efficiencies and better cooperation among law enforcement agencies working on IP, and increased awareness and reporting of IP crimes (Shorter term changes in enforcement figures may also simply reflect cyclical factors in the criminal enforcement process, e.g. a spike in convictions some months after a spike in arrests.).

The U.S. Department of Homeland Security (DHS) attributes the increase in enforcement efforts to the interagency collaboration and de-confliction through the National Intellectual Property Rights Coordination Center (National IPR Center). The National IPR Center was originally founded in 1999 by the former U.S. Customs Service and the Federal Bureau of Investigation (FBI). In 2008, the National IPR Center was restructured at a new state-of-the-art facility, with membership consisting of two components from DHS – U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) and U.S. Customs and Border Protection (CBP) – as well as the FBI, the U.S. Postal Inspections Service, the U.S. Food and Drug Administration, and the U.S. Department of Commerce. Following its reinvigoration, the membership of the National IPR Center has grown to incorporate U.S. federal agencies with IP enforcement and administration equities as well as foreign partners. Through these partnerships, the U.S. Government has become more effective in its investigation of intellectual property theft and trade fraud. By emphasizing collaboration and partnership, the National IPR Center has transformed how IP infringement is discovered and investigated.

An ICE HSI Director heads the National IPR Center, with Deputy Directors from HSI, the FBI and CBP. Currently, there are 23 partner agencies that collaborate under the auspice of the National IPR Center including INTERPOL, Europol, and the governments of Canada and Mexico. Under this task force setting, the National IPR Center efficiently leverages the resources, skills, and authorities of each participating agency to provide a comprehensive response to intellectual property theft, while stressing the importance of active participation, de-confliction and information sharing. National IPR Center personnel also frequently engage as IP infringement and trade fraud subject matter experts in capacity-building programs sponsored by the U.S. Department of State, U.S. Patent and Trademark Office (Global Intellectual Property Academy), U.S. Department of Justice, INTERPOL, and the World Customs Organization.

Importantly, the National IPR Center also works closely with right holders, domestic companies, and trade associations, who are deeply impacted by these types of crimes. The National IPR Center is the federal government's clearinghouse for investigations into violations of intellectual property rights, including counterfeiting and piracy. In addition to receiving leads from its partners and other law enforcement agencies, the National IPR Center solicits input from victims, witnesses, and public and

**private organizations and uses this information to analyze, process, and de-conflict referrals to ensure that the appropriate partner agency can examine and potentially investigate the complaint.**

2. Could the United States provide examples of "private sector 'best practice' initiatives" by each of financial service providers, on-line markets, Internet service providers and advertisers, and have these initiatives been effective, if so, how?

**RESPONSE:** On June 20, 2013 the United States issued a request for public comment on voluntary private sector initiatives regarding IPR protection and enforcement, and is currently in the process of evaluating those response. In light of this on-going review, the United States is not in a position to provide an evaluation of such initiatives at this time.

3. Could the United States clarify whether a connection exists between the voluntary private sector best practice initiatives and the increase in government enforcement, and if so, provide details on how these two are connected?

**RESPONSE: U.S. government IPR enforcement actions are distinct from voluntary private sector initiatives.**

**Question 25.**

**Part III. Trade Policies and Practices by Measure: (3.3) Measures Affecting Production and Trade; (3.3.6) Intellectual Property Rights; (3.3.6.7) IP Enforcement: paragraph 3.220, page 99:**

The report notes that alongside a range of domestic measures, the 2013 Joint Strategic Plan identified a series of action for enforcing U.S. rights abroad by means of foreign law enforcement cooperation.

1. Could the United States elaborate on specific measures taken to combat foreign websites that infringe U.S. IP rights, including how jurisdictional issues are addressed?

**RESPONSE:** The United States can pursue criminal copyright enforcement where infringing conduct is committed within U.S. jurisdiction, including the distribution of infringing copies of copyrighted materials into the United States. Therefore, operators of websites which distribute infringing content into the United States may be subject to criminal prosecution in the U.S. Obtaining personal jurisdiction over such defendants, as well as locating and obtaining evidence necessary for prosecution, can be especially difficult where a defendant is located abroad, which is among the reasons the United States law enforcement will generally seek to work with their counterparts in foreign law enforcement to share information and to encourage prosecution in the jurisdiction most appropriate to a particular case.

The United States has taken several specific measures to combat foreign websites that infringe upon U.S. IP rights. One measure is Operation Pangea, which is a joint global operation focused on targeting websites offering illicit and potentially dangerous substances to U.S. and foreign consumers. In 2012, the operation resulted in the shutdown of more than 18,000 illegal pharmacy websites.

The U.S. Trade Representative's Special 301 Out-of-Cycle Review of Notorious Markets also identifies specific markets, including online markets, around the world that are assessed as causing particular economic harm to U.S. businesses and workers through IP infringement. The 2013 review identified 23 online markets, and several markets on the list have taken action to address concerns. The 2014 review is currently underway.

U.S. law enforcement officials, including officials from U.S. Immigration and Customs Enforcement, Homeland Security Investigations, and the Federal Bureau of Investigation, are stationed overseas and facilitate cooperation with foreign law enforcement to target IP infringement within their jurisdictions. These efforts have resulted in foreign law enforcement taking investigative action and seizing servers that host illegal content in the countries in which they are located.

**International law enforcement cooperation is a critical element to achieving the overall goal of combating counterfeiting, piracy, and trade secret theft. The global nature of these crimes demands that U.S. law enforcement agencies develop relationships with international counterparts. As such, the National IPR Center has four international law enforcement partners which include the Royal Canadian Mounted Police, the Mexican Tax Administration Service, INTERPOL and Europol. Further, law enforcement officials from ICE-HSI and FBI are stationed overseas and facilitate cooperation with foreign law enforcement to target intellectual property infringement occurring within the jurisdiction of both the United States and that of the foreign partner. This cooperation has resulted in both U.S. and foreign law enforcement officials taking investigative action and seizing servers that host infringing content in the countries in which they are located, as well as more traditional law enforcement measures – such as seizing and forfeiting counterfeit merchandise and piratical works and assets derived from the proceeds of IP infringement.**

**In addition to these efforts, the U.S. Intellectual Property Enforcement Coordinator (IPEC) has supported voluntary initiatives by the private sector with the goal of reducing the ability of foreign and domestic websites from targeting U.S. consumers. IPEC has worked with internet service providers, advertisers, credit card companies, payment processors, search engines, domain name registrars, and registries to encourage voluntary initiatives to reduce infringement.**

**Question 26.**

**Part IV – Trade policies by Sector, 4.1 Agriculture, 4.1.1 Agricultural Act of 2014, 4.1.1.1 Overview, paragraph 4.3, page 102**

*The report indicates that three old programs (direct and countercyclical payments, and ACRE program) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC).*

1. *The 2014 Farm Bill introduces two new programs for producers to choose - the PLC and ARC. Could the United States provide information on the enrollment rates for each program?*

**RESPONSE: Enrollment data will not be available until mid- to late-2015. Key ARC/PLC action dates for landowner and producer decisions are as follows:**

- Base Reallocation/Yield Updating—Landowners can update their yields and reallocate bases between September 29, 2014 and February 27, 2015.
- Program Election—Producers can choose among ARC-County, ARC-Individual, and PLC between November 17, 2014 and March 31, 2015. This is a one-time election that will be in effect through the 2018 crop.
- Program Enrollment—Producers must enroll annually. The first enrollment period (for 2014 and 2015 crops) is mid-April 2015 through the summer (no exact dates yet).

**Question 27.**

**Part IV – Trade Policies by Sector: 4.1 Agriculture; 4.1.1 Agricultural Act of 2014; 4.1.1.1 Overview; paragraphs 4.8, page 103**

*The 2014 Farm Bill introduced the Dairy Product Donation Program, a CCC dairy product purchase programme for distribution to low-income people in times of low margins (US\$4/cwt or below).*

1. *Could the United States specify how the government purchase and distribution of dairy products will take place, and whether there will be a cap on total purchases made under this program?*

**RESPONSE: USDA will determine the types and quantities of products that will be purchased, in consultation with public or private nonprofit organizations and State and local agencies eligible to receive such products.**

**Dairy product market conditions, logistical considerations involved in the efficient and immediate distribution of the dairy products, the potential effect on markets and**

margins, and time constraints will be considered. Approved quantities for a month will not exceed the amount of product that may be effectively distributed without waste. Dairy Product Donation Program (DPDP) purchases cannot be stored by or for USDA, and USDA cannot incur storage costs on behalf of recipient agencies for the dairy products. The purchase price of products will be the prevailing market price for like dairy products for private buyers as determined by the normal procurement methods used to procure foods for USDA's Food and Nutrition Service domestic food assistance programs.

Regulations for the existing USDA Food and Nutrition Service (FNS) programs will govern how the products will be distributed. Public or private nonprofit organizations that receive DPDP products may transfer those products to other nonprofits only if the transferee will likewise distribute to domestic low-income recipients without cost or waste, consistent with existing FNS regulations. FNS regulations in 7 CFR 250.13(d)(1) provide that donated foods "be distributed only to recipient agencies and individual recipients eligible to receive them" under applicable program regulations. FNS regulations in 7 CFR 250.13(a)(1)(ii) provide that donated foods "not be sold, exchanged or otherwise disposed of without the approval of the Department."

**Question 28.**

**Part IV - Trade Policies by Sector: 4.1 Agriculture; 4.1.1 Agricultural Act of 2014; 4.1.1.1 Overview; paragraph 4.9, page 104**

The report suggests that, under new Farm Bill, the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions.

1. Could the United States please elaborate on this?

**RESPONSE:** The new programs make payments when prices or revenue decline, but they continue to be decoupled from actual farm production decisions. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.

**Question 29.**

**Part IV - Trade Policies by Sector: 4.1 Agriculture; 4.1.1 Agricultural Act of 2014; 4.1.2.2 Price Loss Coverage; paragraph 4.13, page 105**

The report indicates that deficiency payments are provided under the Price Loss Coverage (PLC) programme when commodity prices fall below a "reference price".

1. Could the United States please explain how these reference prices are calculated?

**RESPONSE:** The reference prices in the Price Loss Coverage (PLC) program were established by Congress and mandated in the 2014 Farm Bill.

**Question 30.**

**Part IV. Trade Policies by Sector; 4.2 Services; 4.2.5 Maritime Transport; 4.2.5.2 Institutional and Legal Framework: paragraph 4.141, page 143:**

The report indicates the United States reserves, through the Jones Act, cabotage to ships that meet the requirement that three-quarters of crew be U.S. citizens.

1. What is the limit on foreign ownership of coastwise qualified and non-coastwise qualified U.S. registered vessels?

**RESPONSE:** Foreign persons may own up to a 25% interest in a coastwise qualified vessel owner. There is no foreign equity limitation for non-coastwise qualified vessels, however, the chief executive and a majority of the board of directors must be U.S. citizens.

2. Which part(s) of the quarter of the crew of the vessel that does not have to be U.S. citizens are included – are they all seafarers or are some at the office/master level?

**RESPONSE:** Generally, only U.S. citizens may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a U.S.-documented vessel. Unlicensed seamen must be U.S. citizens, lawfully admitted permanent residents, or foreign nationals enrolled in the U.S. Merchant Marine Academy. Not more than 25% of the total number of unlicensed seamen on the vessel may be lawfully admitted permanent residents.

*Question 31.*

*Part IV. Trade Policies by Sector; 4.2 Services; 4.2.5 Maritime Transport; 4.2.5.2 Institutional and Legal Framework: paragraph 4.143, page 143:*

The report indicates that waivers of the provisions of the Jones Act may be requested.

1. What conditions must be met, or not exist, in order for MARAD to issue a waiver for small passenger vessels registered outside the US?

**RESPONSE:** A waiver of foreign build will be granted for an eligible vessel only if MARAD determines that the employment of the vessel in the coastwise trade will not unduly adversely affect U.S. vessel builders or the coast trade business of any person who employs vessels built in the United States in that business.

2. Are there crew or work permit requirements imposed on those vessels?

**RESPONSE:** Small passenger vessel waivers do not waive any documentation, vessel manning or vessel inspection requirements.

3. Are there safety and pollution prevention requirements or inspections required before a waiver is issued?

**RESPONSE:** The waiver is only of the U.S.-build requirement. A small passenger vessel is still subject to U.S. vessel inspection requirements.

*Question 32.*

*Part IV. Trade Policies by Sector; 4.2 Services; 4.2.5 Maritime Transport; 4.2.5.2 Institutional and Legal Framework: paragraph 4.145, page 144:*

The report indicates that the United States has bilateral maritime agreements in effect with Brazil, China, Russia, and Vietnam.

1. Is market access provided in these agreements, or do they simply affirm that services will be made available at ports?

**RESPONSE:** Provisions related to market access are found in each of the agreements, although the scope and nature of these provisions vary. The text of the agreements may be found at:  
[http://www.marad.dot.gov/about\\_us\\_landing\\_page/international\\_activities/international\\_agreements/International\\_Agreements.htm](http://www.marad.dot.gov/about_us_landing_page/international_activities/international_agreements/International_Agreements.htm).

**CHILE**

*Documentos: WT/TPR/S/307 y WT/TPR/G/307*

*WT/TPR/S/307*

**2 RÉGIMEN DE COMERCIO E INVERSIÓN****2.4 Corrientes y Regímenes de Inversión****2.4.2 Promoción de las Inversiones**

- Párrafo 2.49 indica que los EE.UU. siguen desarrollando y promoviendo su programa SelectUSA, que presta servicios directamente a las empresas que estén considerando la posibilidad de invertir en los EE.UU. y colabora con las ciudades y Estados a fin de apoyar sus iniciativas para atraer inversiones. A su vez, el Informe señala que el presidente Obama amplió y mejoró el programa inicial el año 2013.

**PREGUNTA 1:** Chile agradecería a los Estados Unidos indicar ¿qué servicios proporciona SelectUSA a las empresas que estén considerando la posibilidad de invertir en los Estados Unidos?, así como también ¿cómo este programa fue ampliado y mejorado el año 2013?

**RESPONSE:** SelectUSA provides a variety of services to help facilitate, accelerate, and retain business investment in the United States. These include a one-stop-shop resource for economic, regulatory, and other information relevant to investing in the United States; assistance identifying and utilizing available Federal programs and services; and connecting businesses to partners or resources at state and local levels. A full description of the services offered by SelectUSA is available at <http://selectusa.commerce.gov>. In 2013, President Obama expanded and enhanced the SelectUSA program, including by, among other things, enhancing coordination with regional, state, and local economic development organizations; expanding outreach to prospective investors from economies with the largest potential for investment into the United States; and creating a single point-of-contact for investors ready to invest in the United States.

**2.4.3 Reglamentaciones y Restricciones en Materia de Inversiones****2.4.3.1 Comité de Inversiones Extranjeras en los Estados Unidos (CFIUS)**

- Párrafo 2.52 indica que el Comité de Inversiones Extranjeras en los Estados Unidos sigue examinando las transacciones de inversión extranjera "abarcadas" para determinar si constituyen una amenaza para la seguridad nacional. Por su parte, señala que una transacción "abarcada" es aquella en que la fusión, adquisición o absorción de una empresa hace que una persona o entidad que realiza operaciones comerciales interestatales en los Estados Unidos quede sometida al control extranjero.

**PREGUNTA 2:** Chile agradecería a los Estados Unidos indicar los criterios utilizados para determinar si una determinada transacción abarcada constituye una amenaza para la seguridad nacional.

**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).

**2.4.3.2 Programa Nacional de Seguridad Industrial (NISP)**

- Párrafo 2.55 establece que el Programa Nacional de Seguridad Industrial se ejecuta a través de un reglamento conocido como Manual de Instrucciones del Programa antes mencionado, que obliga a los contratistas a impedir el uso indebido de la información confidencial. Señala que el Manual antes mencionado contiene disposiciones relativas a ciertas transacciones de inversión extranjera.

**PREGUNTA 3:** Chile agradecería a los Estados Unidos especificar ¿a qué transacciones de inversión extranjera se les aplica el Manual de Instrucciones del Programa Nacional de Seguridad Industrial?

**RESPONSE:** The National Security Program Operating Manual (NISPOM) pertains to foreign investment transactions when a U.S. company has contracts which require access to classified information. National security information (classified information)<sup>3</sup> to which the NISP applies:

- a. "Top Secret": applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.
- b. "Secret": applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.
- c. "Confidential": applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

### **3 POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS**

#### **3.1.7 Medidas antidumping, compensatorias y de salvaguardia**

##### **3.1.7.1 Medidas antidumping y compensatorias**

- Párrafo 3.63 dice que la definición y los requisitos de certificación de la información fáctica, relacionado con los procedimientos de investigación, han sido modificados.

**PREGUNTA 4:** ¿Podría Estados Unidos dar mayor información en cuanto a la nueva definición y los requerimientos de certificación de la información fáctica?

**RESPONSE:** As indicated in footnote 57 of the Secretariat's report, this rule was notified to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures in document G/ADP/N/1/USA/1/Suppl.14 - G/SCM/N/1/USA/1/Suppl.14 (dated July 29, 2013). Further information can be found there.

- Párrafo 3.68 establece que las investigaciones en el año 2013 fueron en su mayoría (33 de un total de 35) relacionadas con los productos de acero.

**PREGUNTAS 5:** ¿Este antecedente responde a un acontecimiento particular de ese año específico o reflejan una situación de carácter global? ¿Estas medidas guardan alguna relación entre sí?

**RESPONSE:** The United States administers its trade remedy laws in accordance with the applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.

##### **3.1.7.2 Exámenes por Extinción**

- Párrafo 3.72 señala que el número de órdenes revocadas en los últimos ocho años ha tendido a disminuir significativamente.

**PREGUNTAS 6:** ¿Existe alguna razón en particular de por qué se ha dado esta disminución? ¿Estados Unidos ha evaluado hacer un cambio a los procedimientos del Departamento de Comercio y la Comisión de Comercio Internacional de los Estados Unidos (USITC) para la determinación del mantenimiento o revocación de los derechos?

---

<sup>3</sup> Source: Executive Order 13526, "Classified National Security Information", December 29, 2009.

**RESPONSE:** In determining whether revocation of a countervailing duty order or an antidumping order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the U.S. International Trade Commission (USITC) considers the factors set out in U.S. law at 19 U.S.C. § 1675a(a). In determining whether revocation of a countervailing duty order or an antidumping duty order 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 U.S. Department of Commerce (Commerce) considers the factors set out in U.S. law at 19 U.S.C. §§ 1675a(b) and (c), respectively.

The determinations in each sunset review conducted by the USITC and Commerce are case-specific. The results for all sunset reviews can be found on the USITC's website (<http://pubapps2.usitc.gov/sunset/>). From this website Chile can obtain, on a case-by-case basis, information about the rationale for either the continuation or termination of a countervailing duty or an antidumping duty order.

### **3.3.6 Derechos de propiedad intelectual**

#### **3.3.6.1 Contexto comercial**

- Párrafo 3.194 cita información entregada por la Comisión de Comercio Internacional de los Estados Unidos (USITC), quien habría indicado que los intermediarios de Internet estaban preocupados por "la falta de claridad de los marcos jurídicos y por que (sic) se los consideraba responsables de las infracciones o conductas ilegales de los usuarios de sus sistemas".

**PREGUNTA 7:** ¿De qué manera Estados Unidos piensa hacer frente a este problema?

**RESPONSE:** The Digital Millennium Copyright Act (DMCA) and regulations promulgated under the DMCA provide legal frameworks governing potential liability for Internet Service Providers. Additional guidance is provided via court decisions, consistent with the U.S. system of common law jurisprudence. These questions were also the subject of a policy discussion that can be found in a July 2013 greenpaper entitled "Copyright Policy, Creativity, and Innovation in the Digital Economy," authored by the U.S. Department of Commerce Internet Policy Task Force.

#### **3.3.6.3 Sistema de Patentes**

- Este año, la Corte Suprema de Estados Unidos en *Alice Corp. v. CLS Bank International* resolvió una cuestión relacionada con la materia susceptible de ser patentada (patent eligibility) en materia de reivindicaciones relativas a programas de computador (software) en el área de los servicios financieros, determinando que las ideas abstractas no eran susceptibles de ser patentadas. Teniendo en cuenta la fuerte defensa que Estados Unidos siempre ha manifestado en orden a proteger el software por la vía de patentes.

**PREGUNTAS 8:** ¿Cuáles son los efectos de esta decisión de la Corte Suprema respecto de la política de EEUU de seguir protegiendo el software por medio de patentes? ¿Cuáles son los cambios que esta decisión ha introducido o va a introducir en los procedimientos de concesión de patentes en el USPTO? ¿Cuáles son las limitaciones que esta decisión de la Corte Suprema introduce respecto del patentamiento del software? ¿Cuál se prevé sería el efecto de esta decisión en la industria del software en EE.UU.?

**RESPONSE:** Preliminary Examination Guidelines in view of *Alice Corporation Pty. Ltd. V. CLS Bank International, et al.*, are provided on the USPTO website at the following: [http://www.uspto.gov/patents/announce/alice\\_pec\\_25jun2014.pdf](http://www.uspto.gov/patents/announce/alice_pec_25jun2014.pdf).

- De acuerdo al 35 U.S. Code § 285 - Attorney fees, en casos excepcionales los tribunales de distrito (district court) pueden resolver sobre el pago del honorario de abogados a la parte ganadora. Esta breve norma de la ley fue restringida a ciertas demandas presentadas de mala fe y sin fundamento (*Brooks Furniture Mfg. Inc., v Du taillier International Inc.*), lo que fue modificado por un concepto más amplio en *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*

**PREGUNTA 9:** ¿Por qué la ley y la jurisprudencia de Estados Unidos limita el derecho a demandar el pago de los honorarios de abogados de la parte perdedora en juicio por infracción de patentes, evitando que aquellos que han sido llevado a un juicio no puedan demandar el reembolso de los honorarios de abogados, lo que puede resultar muy oneroso para pequeñas y medianas empresas?

**RESPONSE:** 35 U.S.C. Section 285 provides that the court may award reasonable attorney fees to the prevailing party "in exceptional cases." In *Octane Fitness v. Icon Health & Fitness* (2014), the U.S. Supreme Court held that whether a case is "exceptional" for purposes of the statute was to be determined on a case-by-case basis, considering the totality of the circumstances.

**The United States just completed and implemented this year an important reform in its patent system, but informal sources have indicated that a new reform of the system is foreseen for 2015.**

- *Estados Unidos acaba de completar e implementar una importante reforma a su sistema de patentes este año, pero fuentes informales han indicado que se prepararía una nueva reforma al sistema para el año 2015.*

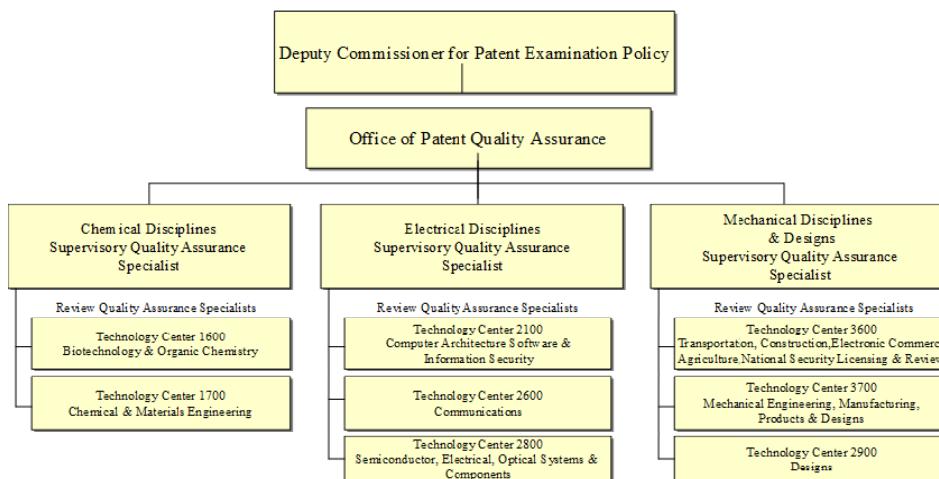
**PREGUNTAS 10:** ¿Qué tan cierto es que Estados Unidos prepara una nueva reforma al sistema de patentes para el 2015? De ser cierto, ¿cuáles serían los elementos principales de esa reforma?

**RESPONSE:** Given the prospective nature of this question, the United States is not in a position to provide detailed or definitive answer. The Administration is currently evaluating possible patent reforms. Legislation has been introduced in the current Congress, but has not yet been passed. A new session of Congress will begin in 2015, at which time Members of Congress may introduce patent reform legislation. It is too early to know the principal elements of any possible legislation.

- Párrafo 3.202.

**PREGUNTA 11:** Agradeceríamos mayor información relacionada con la Oficina de Garantía de la Calidad de las Patentes (OPQA), especialmente lo relacionado con sus atribuciones, organización interna y dependencia.

**RESPONSE:** The Office of Patent Quality Assurance reviews work product of examiners in all Technology Centers (TCs), assesses the level of quality for Office Actions across the corps, and provide upper management with a quality measure for all TCs. With respect to internal organization and reporting structure, we have provided the following diagram of Office of the Deputy Commissioner Patent Examination Quality.



- Párrafo 3.203 hace referencia a la promulgación de la Ley Leahy Smith sobre Invenciones (AIA).

**PREGUNTA 12:** Agradeceríamos mayor información sobre el proceso vinculado al examen posterior a la concesión de la patente, especialmente en torno a los fines de dicho examen.

**RESPONSE:** Procedures for reexamination of issued patents began on July 1, 1981, the date when the reexamination provisions of Public Law 96-517 came into effect. The reexamination statute and rules permit any person to file a request for

an ex parte reexamination containing certain elements and the fee required under 37 CFR 1.20(c)(1). The Office initially determines if "a substantial new question of patentability" (35 U.S.C. 303(a)) is presented. If such a new question has been presented, reexamination will be ordered. The reexamination proceedings which follow the order for reexamination are similar to regular examination procedures in patent applications; however, there are notable differences. For example, there are certain limitations as to the kind of rejections which may be made, special reexamination forms to be used, and time periods set to provide "special dispatch." When the prosecution of a reexamination proceeding is terminated, a reexamination certificate is issued which indicates the status of all claims following the reexamination. Unless prosecution is reopened by the Director, the reexamination proceeding is concluded by the issuance and publication of a reexamination certificate.

### **3.3.6.4 Protección del Secreto Comercial**

- Párrafo 3.207 se vincula con la protección del secreto comercial.

**PREGUNTA 13:** Agradeceríamos una clarificación respecto a si dichas iniciativas incluyen la protección de la información no divulgada según lo indicado en el párrafo 3 del artículo 39 del Acuerdo sobre los ADPIC?

**RESPONSE:** As a member of the World Trade Organization (WTO) and a party to the Agreement on Trade Related Aspects of Intellectual-Property Rights (TRIPS), the United States is obligated to provide trade secret protection. Article 39 paragraph 2 requires member nations to provide a means for protecting information that is secret. Natural and legal persons in member nations have the opportunity of protecting information, so long as the information is secret, has commercial value because it is secret, and has been reasonably safeguarded from public disclosure. The United States fulfills its obligation by offering trade secret protection under state laws. While state laws differ, there is similarity among the laws because almost all states have adopted some form of the Uniform Trade Secrets Act.

### **3.3.6.5 Derecho de Autor**

- Párrafo 3.210, dice relación con el examen que se encuentra siendo llevado a cabo por el Subcomité de Tribunales, Propiedad Intelectual e Internet de la Cámara de Representantes.

**PREGUNTA 14:** Agradeceríamos mayor información sobre el estado de este proceso y los resultados que se esperan de este proceso.

**RESPONSE:** Beginning in the spring of 2013, the House Subcommittee on Courts, Intellectual Property, and the Internet has held a series of hearings to review the current state of U.S. copyright laws. House Judiciary Committee Chairman Bob Goodlatte announced the hearings in response to Register of Copyrights and Director of the U.S. Copyright Office Maria A. Pallante's testimony in a March 20, 2013 hearing entitled "The Register's Call for Updates to the U.S. Copyright Act." There, the Register urged Congress to take a comprehensive and informed approach to copyright review over the next few years. As of December, 2014, there have been a total of eighteen copyright review hearings, including Register Pallante's initial hearing. The hearings have been on a variety of issues related to the U.S. copyright system including the role of voluntary agreements, the scope of fair use, preservation and reuse of copyrighted works, music licensing, and resale royalties, among others. There is no specific timeline for completing the review, and future hearings have not yet been announced, but they are anticipated to resume in 2015. At this point, it is premature to predict specific outcomes, but some legislation is likely.

## **4 POLÍTICAS COMERCIALES, POR SECTORES**

### **4.2 Servicios**

#### **4.2.2 Telecomunicaciones**

- Párrafo 4.90 indica que el Artículo 310 de la Ley de Comunicaciones restringe la concesión de licencias de telefonía móvil a gobiernos, ciudadanos o empresas extranjeros o a toda persona con más de 20% de capital extranjero. El mismo párrafo señala, sin embargo, que con arreglo a la facultad legal de dispensa (forbearance), la Comisión Federal de Comunicaciones (FCC) ha

*decidido no aplicar el límite de 20% a las empresas de telecomunicaciones que cumplan una serie de requisitos indicados en dicho párrafo.*

*Esta delegación entiende que esta facultad legal de dispensa se encuentra contemplada en la Sección 10 de la Ley de Comunicaciones. En virtud de esta facultad, la Comisión debe abstenerse de aplicar a una empresa de telecomunicaciones que cualquier disposición de la Ley de Comunicaciones si se cumplen ciertos criterios legales. En virtud del artículo 10(c), una empresa de telecomunicaciones o clase de operadores de telecomunicaciones pueden presentar una petición ante la Comisión solicitando que se ejerza esta facultad de indulgencia. Si la Comisión no actúa en una petición de indulgencia el plazo de un año (prorrogable por tres meses, si es necesario) la petición se "considerará concedida" por el solo ministerio de la ley.*

**PREGUNTA 15:** Chile agradecerá a los Estados Unidos explicar los criterios y procedimientos utilizados por la Comisión al aplicar esta facultad legal, con énfasis en una explicación de ¿cómo se asegura que las decisiones que el regulador adopta, en uso de esta facultad, no sean discriminatorias hacia las personas extranjeras?

**RESPONSE:** This "forbearance" authority is granted by the Communications Act of 1934, as amended in 1996, specifically Section 10, which can be found in 47 U.S.C 160, and applies to licenses for the provision of common carrier services. The 2012 Commission decision taking this action was designed to provide greater flexibility for foreign investment, by adopting the same open entry criteria and procedures for evaluating such investment through noncontrolling U.S.-organized entities that the Commission had established in 1997 for foreign investment through controlling U.S.-organized entities. Under this standard, the Commission has applied a rebuttable presumption that foreign investment from WTO Member countries does not pose competitive concerns in the U.S. market, and also considers any national security, law enforcement, foreign policy or trade policy concerns raised by the proposed foreign investment. (In 2013, the Commission further extended that open entry standard to foreign investment from non-WTO Member countries.) As noted above, using the Commission's "forbearance" authority to extend this open entry standard to foreign investment through noncontrolling U.S.-organized entities was designed to provide greater opportunities for foreign investment in common carrier licensees, using the same process adopted in the 1997 order – which has now been further streamlined in the 2013 order. Further details as to that process are provided in that order, which is published at 27 FCC Rcd 9832. It is unclear how the Commission's 2012 forbearance action could discriminate against a foreign supplier, since it now extends to any supplier, irrespective of nationality.

#### **4.2.2.3 Medidas de Política**

- Párrafo 4.93 indica que la Comisión Federal de Comunicaciones mantiene una "lista de empresas extranjeras que se supone poseen poder de mercado en los mercados de telecomunicaciones extranjeros" (List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets) la que sirve a los efectos de la aplicación de ciertas normas de la Comisión, en particular las relativas a las secciones:

- ✓ 1.767 (g) (5), que guarda relación con la prohibición a los titulares de ciertas licencias de cable para suscribir ciertos acuerdos;
- ✓ 743.51 (b), relativos a contratos de informes y concesiones;
- ✓ 63.14, que implica la prohibición de los operadores de telecomunicaciones que acuerdan aceptar concesiones especiales;
- ✓ 63.23 (d), que implica la prestación de servicios básicos a través de líneas comutadas privadas autorizadas y su reventa; y,
- ✓ 64.1002, que implica la política de asentamientos internacional, que la Comisión adoptó en el año 2004.

**PREGUNTAS 16:** Chile estará agradecido si los Estados Unidos pudiera explicar el contexto en que se aplica esta lista y ¿cómo se determina que una empresa cuenta con poder de mercado? Resultaría particularmente interesante conocer si ése toman en cuenta las conductas anticompetitivas que ejerzan las empresas estudiadas? o ¿sólo se toma en cuenta la estructura de mercado de un actor económico y su relación con otros actores en un mercado relevante de que se trate?

**RESPONSE:** The FCC looks at a number of factors to ascertain whether a supplier in a foreign market possesses market power, including market share in the relevant market, and control over telecommunications facilities. The finding is market-specific, meaning a supplier that is included on the referenced List is presumed, subject to rebuttal, to possess market power in the origination or termination of telecommunications traffic between its home market and the United States, but it is not considered to possess market power with respect to traffic on other U.S.-international routes.

The List is based on publicly available information, compiled from official sources, including the International Telecommunication Union. Parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and appropriate supporting documentation to the FCC demonstrating that a carrier included on the list lacks market power in the relevant foreign market or that a carrier not included on the list does not lack market power in a particular foreign market.

The List is no longer used for purposes of implementing the FCC's international settlements policy, which it has eliminated (with the exception of certain requirements on the U.S.-Cuba route). The List continues to apply for purposes of the "No Special Concessions" rules for U.S.-international telecommunications carriers and U.S. submarine cable landing licensees.

- Párrafos 4.95 y siguientes dan cuenta de la discusión regulatoria y judicial sobre neutralidad de Internet (Open Internet) en los Estados Unidos en el último tiempo, señalando que luego de un proceso de consulta pública, la Comisión prevé adoptar nuevas normas para finales de 2014.

**PREGUNTA 17:** Chile agradecería conocer el estado actual del proceso normativo de la neutralidad de Internet y los elementos que informan esta nueva política. En especial resultaría interesante conocer ¿cómo se procurará asegurar un ambiente de competencia adecuado para todos los proveedores de servicios, aplicaciones y contenidos que hagan uso de Internet?

**RESPONSE:** As this is an open proceeding, it would be premature to conclude what such circumstances might be; the purpose of the proceeding is to explore that question, among others.

- Párrafo 4.97 da cuenta del anuncio de los Estados Unidos en torno a su intención de negociar acuerdos de reconocimiento mutuo sobre telecomunicaciones con determinados países para facilitar las exportaciones de equipos de telecomunicaciones estadounidenses.

**PREGUNTA 18:** Chile agradecería mayor información sobre esta iniciativa, incluyendo información sobre ¿qué países estarían comprendidos y cuáles son los términos de dichos acuerdos?

**RESPONSE:** The APEC Tel MRA is already in place and the U.S. is willing to implement with any APEC Tel signatory. The terms of the arrangement can be found here: [http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Telecommunications-and-Information/APEC\\_TEL-MRA.aspx](http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Telecommunications-and-Information/APEC_TEL-MRA.aspx).

Once implemented with particular economy, the agreement provides for the mutual recognition of conformity assessment of telecommunications equipment. The value is that manufacturers of telecom equipment can have their products tested and approved with conformity assessment bodies located in their own country. This will help in the speed and cost of placing new telecom products on the market.

#### 4.2.3 Servicios Audiovisuales

##### 4.2.3.1 Reseña Estadística

- Párrafo 4.103 asevera que la transición hacia un modelo digital del subsector de servicios de distribución de grabaciones sonoras/música grabada ha sido difícil, señalando que "ha perdido ingresos debido a la piratería". Según la Asociación de Industria Discográfica de Estados Unidos, el subsector perdió el 47% de sus ventas entre 2004 y 2009, junto con 71.000 puestos de trabajo.

**PREGUNTA 19:** Chile agradecería una profundización en la metodología aplicada a los esfuerzos que han servido para cuantificar lo señalado en el citado párrafo. Además, Chile agradecerá saber ¿cómo se han tomado en cuenta los cambios producidos por el dinamismo propio del mercado, los cambios en los modelos de negocio y en las preferencias de los consumidores al efectuar dichos cálculos?

**RESPONSE:** The Secretariat did not provide a citation for the reference, so we refer you to the Secretariat for further information.

#### 4.2.3.2 Reglamentación de la Actividad Comercial

##### 4.2.3.2.3 Régimen Aplicado

- Párrafo 4.112 señala que en el mes de agosto de 2012, la FCC dispuso no aplicar más el límite a la participación extranjera del 20% establecido en el Artículo 310 b) de la Ley de Comunicaciones, y que haría uso de la facultad discrecional, que le otorga el Artículo 310 b) 4) del mismo cuerpo legal, para determinar casuísticamente si las propuestas de inversión extranjera en una empresa de servicios de telecomunicaciones que sea titular de una licencia son de interés público.

**PREGUNTA 20:** Chile estará agradecido si Estados Unidos pudiese aclarar ¿cuáles son los criterios que se aplican para la concesión de dichas licencias?

**RESPONSE:** The public interest standard for granting common carrier wireless licenses to companies with foreign ownership that would exceed the limits in the Communications Act has not changed for WTO investors. Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act.

#### Questions on the Government Report WT/TPR/G/307

### 4 EVOLUCIÓN DE LA POLÍTICA COMERCIAL DESDE 2012

#### 4.2 Iniciativas regionales

##### 4.2.6 Gestión y profundización del comercio entre Estados Unidos y la Unión Europea

- Estados Unidos señala que: "En 2013 se celebraron tres rondas de negociaciones, y ambas partes han convenido en mantener un ambicioso calendario de negociaciones en 2014".

**PREGUNTA 21:** ¿Estados Unidos, podría dar mayor información sobre los resultados de las negociaciones 2014 y el calendario y expectativas para el 2015?

**RESPONSE:** The United States and the European Union have had seven rounds of negotiations since the Transatlantic Trade and Investment Partnership was launched in July 2013. Both sides are committed to achieving significant progress in 2015.

#### 4.3 Acuerdos e iniciativas comerciales bilaterales

##### 4.3.4 Acuerdo de Promoción Comercial entre Estados Unidos y Colombia

- Estados Unidos señala que: "En 2013, ambos Gobiernos colaboraron para llevar a cabo las iniciativas iniciadas en la reunión de noviembre de 2012 de la Comisión, como un examen de la aceleración de la eliminación de los aranceles, elementos adicionales del mecanismo de solución de diferencias y la actualización de las normas de origen".

**PREGUNTA 22:** ¿qué significa el examen de la aceleración de la eliminación de los aranceles? y, por favor, informar el detalle de los bienes afectados (ítems arancelarios).

**RESPONSE:** The CTPA (Article 2.3.4) provides that the Parties may agree to accelerate the elimination of duties under the Agreement. The United States and Colombia have not yet decided whether to accelerate the elimination of tariffs and, if such changes were made, what the scope or extent of such changes should be. The text of the United States-Colombia Trade Promotion Agreement can be found

**at: <http://www.ustr.gov/trade-agreements/free-trade-agreements/colombia-fpa/final-text>.**

**8 COMERCIO DE LAS PEQUEÑAS Y MEDIANAS EMPRESAS**

*- Párrafo 8.5: Estados Unidos continúa perfeccionando la herramienta de los ALC sobre los aranceles, un instrumento en línea que las pequeñas empresas pueden utilizar en forma gratuita para aprovechar la reducción y eliminación de aranceles en virtud de los acuerdos comerciales de los Estados Unidos".*

**PREGUNTA 23:** *¿Estados Unidos, podría compartir el enlace hacia esa herramienta de importancia, y los instructivos correspondientes, en atención a la prioridad de nuestro gobierno en promover una mayor inserción internacional de las Pymes y, por ende, una mayor utilización de los acuerdos de libre comercio?*

**RESPONSE:** The FTA Tariff Tool is publicly accessible at:  
<http://export.gov/FTA/ftatarifftool/index.asp>.

**CHINA*****Part I. Questions based on Report by the Secretariat (WT/TPR/S/307)*****1. ECONOMIC ENVIRONMENT**

Page 14, Para 1.9

The report states that "Several factors contributed to that favourable economic context, and there has been some reporting of "in-sourcing", i.e. the homecoming of U.S. manufacturing.".

**Question 1:**

The U.S. has promulgated a series of measures to attract capital reflow according to the "homecoming of U.S. manufacturing" plan, which has effectively promoted the recovery of the U.S. economy. Please offer the U.S. opinions of the impacts of the capital reflow into its manufacturing sector on the global economy, especially on the emerging economies.

**RESPONSE: The United States is an attractive destination for investment. It has a highly competitive workforce, an innovative environment, strong and transparent rule of law, and a growing energy sector. U.S. manufacturing production has also benefited as companies look to make production closer to the customer.**

Page 15, Para 1.10

The report states that "In 2013, the U.S. current account deficit shrank to a four-year low, as a consequence of a boom in shale oil/gas production and reduced demand, leading to a sharp reduction in the oil trade deficit, which accounts for nearly half of the total deficit in trade in goods and services.".

**Question 2:**

The "Shale Oil/gas Revolution" and the fall of global oil price have made significant contributions to the reduction of the fiscal deficit of the U.S. What's the U.S. assessment of the impacts of this development on the global economic situation?

**RESPONSE: The current account balances of the United States and China have declined substantially as have the aggregate of imbalances relative to global GDP. Some of this adjustment for the United States reflects real changes in underlying fundamentals such as increased savings, stable domestic oil consumption, and greater domestic oil production. However, the adjustment process in the world has been inefficiently asymmetric with deficit economies contributing a far larger share to global adjustment through employment-constraining compressed domestic demand growth. The expected boost in demand growth by surplus economies need to offset weaker demand growth in deficit economies has yet to materialize. The net result has been a slower global adjustment process and a weaker and more fragile global economy than necessary or desired.**

Page 16, Para 1.12

The report states that "However, fiscal policy has turned contractionary during the last two years, as a result of deliberate deficit-reduction measures. ....".

**Question 3:**

While implementing a tight fiscal policy, the U.S. is also implementing highly easy monetary policy by ways such as the quantitative easing. Please describe how the seemingly contradictory fiscal and monetary policies affect the U.S macro economy.

**RESPONSE: The United States' central bank, the Federal Reserve, is an independent agency within the federal government tasked with the conduct of monetary policy. As such, the Federal Reserve's monetary policy choices are the sole responsibility of its own officials, i.e., are made by the Federal Reserve Board of Governors and by the Federal Open Market Committee. No influence from the executive, legislative, or judicial branches of the federal government can be exerted on those choices. The Administration therefore does not comment on the Fed's conduct of monetary policy in any context.**

**Question 4:**

*Although the U.S. has tightened its fiscal policy, the proportion of its public debts to GDP remains high and is ever growing. How does the U.S. view the impacts of such situation on the WTO members holding U.S. dollar debts, especially developing members?*

**RESPONSE: In the FY2015 Budget, the Administration projects that the federal debt-to-GDP ratio will peak in FY2015 at 74.6% of GDP and then decline steadily through the end of the 10-year forecast to 72.0% in FY2024.**

*Page 17, Para 1.17*

*The report states that "During the review period, a third round of quantitative easing (QE3) took place, in September 2012, in the context of high, although dropping, unemployment. In December 2013, the Fed announced that it would start scaling down its purchases."*

**Question 5:**

*How does the U.S. assess the impacts of "quantitative easing" adopted since the financial crisis on the global economy, especially the consequence of the unreasonably inflated asset prices of various WTO members? As a reserve currency country, does the U.S. take into account the spillover effect of its policies on other members when formulating these policies?*

**RESPONSE: The United States' central bank, the Federal Reserve, is an independent agency within the federal government tasked with the conduct of monetary policy. As such, the Federal Reserve's monetary policy choices are the sole responsibility of its own officials, i.e., are made by the Federal Reserve Board of Governors and by the Federal Open Market Committee. No influence from the executive, legislative, or judicial branches of the federal government can be exerted on those choices. The Administration therefore does not comment on the Fed's conduct of monetary policy in any context.**

**Question 6:**

*Some economists hold that "quantitative easing" led to an unreasonable boom of the stock market and the debt market of the U.S. and caused global asset bubble rather than contributing much to the recovery of real economy. What is the opinion of the U.S. in this regard?*

**RESPONSE: The United States' central bank, the Federal Reserve, is an independent agency within the federal government tasked with the conduct of monetary policy. As such, the Federal Reserve's monetary policy choices are the sole responsibility of its own officials, i.e., are made by the Federal Reserve Board of Governors and by the Federal Open Market Committee. No influence from the executive, legislative, or judicial branches of the federal government can be exerted on those choices. The Administration therefore does not comment on the Fed's conduct of monetary policy in any context.**

**Question 7:**

*On 29 October 2014, the U.S. announced that it would withdraw from QE3. Please describe the assessment by the U.S. on the impacts of such withdrawal on the global economy, especially emerging economies. Some comment that the withdrawal by the U.S. from QE will cause outflow of hot money and is most likely to incur the depreciation of the local currency of emerging economies and further damage substantive economy. Please describe the comments of the U.S. government.*

**RESPONSE: The United States' central bank, the Federal Reserve, is an independent agency within the federal government tasked with the conduct of monetary policy. As such, the Federal Reserve's monetary policy choices are the sole responsibility of its own officials, i.e., are made by the Federal Reserve Board of Governors and by the Federal Open Market Committee. No influence from the executive, legislative, or judicial branches of the federal government can be exerted on those choices. The Administration therefore does not comment on the Fed's conduct of monetary policy in any context.**

**Question 8:**

*Please describe the relationship between "QE" and plans such as "homecoming of U.S., manufacturing" and "export doubling". What impacts will the withdrawal from QE have on such plans?*

**RESPONSE: There is no relationship between "QE" and plans for U.S. manufacturing or the doubling of U.S. exports.**

**Question 9:**

*After withdrawal from QE, does the Fed plan to raise the interest rate in the near future? Please describe the considerations of the Fed on the timing approach and extent of interest rate raise.*

**RESPONSE: The Administration does not comment on the Federal Reserve's conduct of monetary policy. The Federal Reserve itself publishes the minutes of the Federal Open Market Committee meetings, at which a variety of issues are discussed. For the latest minutes,**

**see**  
<http://www.federalreserve.gov/newsevents/press/monetary/20141029a.htm> **and**  
<http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20141029.pdf>.

*Page 17, Para 1.18*

*The report states that "The Fed also resorted to Central Bank liquidity swaps in order to provide liquidity to private banks in foreign currencies. The swaps have been operational with ten Central Banks, including the Bank of Canada, the Bank of England, the European Central Bank, the Bank of Japan, and the Swiss National Bank."*

**Question 10:**

*China notes that the 10 economies conducting currency swaps with the Fed are mainly developed members. Please describe the standards adopted by the U.S. in selecting partners for currency swaps. Does the U.S. plan to conduct currency swaps with emerging economies in the future?*

**RESPONSE: The United States' central bank, the Federal Reserve, is an independent agency within the federal government tasked with the conduct of monetary policy. As such, the Federal Reserve's monetary policy choices are the sole responsibility of its own officials, i.e., are made by the Federal Reserve Board of Governors and by the Federal Open Market Committee. No influence from the executive, legislative, or judicial branches of the federal government can be exerted on those choices. The Administration therefore does not comment on the Fed's conduct of monetary policy in any context.**

*Page 17, Para 1.20*

*The report states that "After stabilizing and achieving positive growth rates during the last three years, the U.S. economy is poised for further economic growth...".*

**Question 11:**

*According to some comments, the U.S. has basically completed deleveraging, enterprise M&A has picked up and the U.S. has yielded some results in re-industrialization, but the pillar industry in the new round of economic cycle has not been formed. Please describe the measures to be adopted by the U.S. to speed up economic recovery and address economic unbalance.*

**RESPONSE: To return the economy to its full potential more quickly, the President is working on a range of measures including an Opportunity, Growth, and Security initiative, along with steps to pair business tax reform with a major effort to upgrade our Nation's infrastructure. For more information on this initiative, please see: <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/opportunity.pdf>.**

## **2. TRADE AND INVESTMENT REGIME**

*Page 25, Para 2.2*

*The report states that "It conducts its functions through a statutory inter-agency trade policy mechanism, composed of the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC)."*

**Question 12:**

*Please describe the respective functions of and the division of labor between the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC).*

**RESPONSE: The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee**

(TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first-line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than 80 subcommittees responsible for specialized issues. The TPSC regularly seeks advice from the public on its policy decisions and negotiations through Federal Register Notices and public hearings.

Through the interagency process, USTR requests input and analysis from members of the appropriate TPSC subcommittee or task force. The conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching interagency consensus. If agreement is not reached in the TPSC, or if particularly significant policy questions are being considered, issues are referred to the TPRG (Deputy USTR/Under Secretary level).

*Page 25, Para 2.6*

*The report states that "A proposal to reauthorize TPA was introduced in the Congress in 2014, but to date no legislation has been approved."*

**Question 13:**

*Please give an update of TPA reauthorization. Will the absence of TPA affect the ability of the U.S. to promote DDA and bilateral agreements under negotiation such as BIT?*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation. As the Administration works with Congress on TPA, we will continue to advance bilateral, plurilateral and multilateral negotiations.**

*Page 26, Para 2.7*

*The report states that "The United States has a long history of involving the private sector in trade policy advice. In 1974, a USTR-led trade advisory committee system was created, to enable public- and private-sector input in the formulation and implementation of U.S. trade policies. There are currently 28 trade advisory committees covering, *inter alia*, agricultural, intergovernmental, labour, environmental, and U.S.-Africa issues."*

**Question 14:**

*Please explain whether foreign investors, especially the highly representative and influential investors in the relevant sectors, are qualified to participate in the activities of these advisory committees. Please describe the actual participation of foreign-invested enterprises in recent years.*

**RESPONSE: Every applicant is evaluated based on the membership criteria for the committee to which they applied. However, USTR does not maintain data on which companies invest overseas.**

**Question 15:**

*Please describe the composition, functions, operation modality, policy objectives and roles in trade negotiations of TEPAC.*

**RESPONSE: Please view the TEPAC charter, found here: <https://ustr.gov/sites/default/files/1979%20TEPAC%20Charter%20for%202013.pdf>.**

*Page 26, Para 2.8*

*The report states that "In February 2014, USTR proposed a new trade advisory committee covering public interest issues. This proposal, including its scope and purpose, is currently under consideration pending review and evaluation of public comments."*

**Question 16:**

*Please describe the purpose and the expected composition of the advisory committee, as well as its possible impacts on trade and investment.*

**RESPONSE: The purpose, scope, composition and creation of a new advisory committee is still under review.**

**Question 17:**

What are "public interest issues"? 79 FR 10596 indicates "including but not limited to public medical care, international development and consumer protection". Please detail other sectors involved in public interest issues.

**RESPONSE: The purpose, scope, composition and creation of a new advisory committee is still under review.**

**Question 18:**

As required by USTA, the members of the committee must be nominated before 25 March 2014. Have these members been confirmed so far? Has the committee completed amendments and solicitation of opinions? If yes, when will the committee start operation officially? If no, is there any schedule in this regard?

**RESPONSE: The purpose, scope, composition and creation of a new advisory committee is still under review. The 25 March 2014 deadline was for submission of comments, not for nominations, which will be accepted at any time.**

*Page 28, Para 2.9*

*The report states that "In early 2012 the United States established 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 enforcement of U.S. trade rights."*

**Question 19:**

Please describe the concrete measures adopted by ITEC to strengthen the enforcement of U.S. trade rights. What are its current priority countries and topics?

**RESPONSE: Consistent with Executive Order 13601, ITEC has assembled staff from numerous government agencies with varied expertise. ITEC monitors trade developments and our trading partners' adherence to international trade obligations, investigates and develops issues for potential trade cases; supports enforcement-related negotiations and ongoing disputes; and evaluates post-dispute compliance actions.**

**A variety of factors are taken into account in establishing ITEC priorities, including the economic impact and systemic effect of the practice at issue and the United States' overall trade policies and goals. ITEC investigates a wide range of trade enforcement issues originating in a variety of regions across the globe, ranging from subsidies and localization measures to intellectual property and agriculture, among others.**

*Page 28, Para 2.10*

*The report states that "During its first year of operation, the ITEC was involved in a number of trade matters which resulted in the United States taking up at least four issues in the WTO DSB. ITEC was also involved in identifying priority projects for research and analysis regarding a number of countries and issues."*

**Question 20:**

Certain actions of the ITEC were frequently brought to the WTO DSB by Members. Are these disputes caused for excessive protective measures by the ITEC in "identifying and eliminating foreign trade barriers"? Please describe the operation mechanism of the ITEC. Will this mechanism be more open and transparent in the future?

**RESPONSE: As directed by the Executive Order, ITEC's mission is to strengthen and coordinate enforcement of U.S. trade rights under international trade agreements. ITEC seeks to help ensure that our trading partners play by WTO rules and abide by their obligations, including commitments to maintain open markets on a non-discriminatory basis and to follow rules-based procedures in a transparent way. ITEC leverages and mobilizes the federal government's resources and expertise to address unfair foreign trade practices and barriers. Personnel from contributing agencies form a designated team of experts who help to increase engagement with foreign trade partners at the WTO and in other international fora. ITEC seeks to expand interagency collaboration and the sharing of information and expertise as it relates to enforcement of international**

**trade agreements. USTR engagement in trade issues is quite open and transparent, especially in relation to some of our trading partners.**

*Page 29, Para 2.14*

*The report states that "A number of trade priorities identified for 2013-14 included initiatives at the national, multilateral, bilateral, and regional levels: to continue progress towards the National Export Initiative (NEI) goals; to advance and conclude the Trans-Pacific Partnership (TPP) agreement; launch and advance the Transatlantic Trade and Investment Partnership (T-TIP) agreement; lead creative and effective efforts at the WTO to open markets, enforce rules, and combat protectionism..."*

**Question 21:**

*China notes that in its official report, the USTR listed NEI and the promotion of TPP and T-TIP negotiations before "lead creative and effective efforts at the WTO to open markets, enforce rules, and combat protectionism". Please explain whether the sequence reflects the priority given by the U.S. among its various trade policy objectives.*

**RESPONSE: We note that paragraph 2.14 of the Secretariat report was drafted by the WTO Secretariat, not by U.S. authorities. Thus the sequencing reflects a drafting decision by the Secretariat, not a reflection of priorities within U.S. trade policy.**

**Question 22:**

*Please describe how did the U.S. achieve the "creativity" and "effectiveness" in its policy objectives in the participation of WTO activities.*

**RESPONSE: The significant successes witnessed by WTO Members over the last twelve months, including the historic outcome at Bali and the lifting of the impasse that will allow the TFA to come into effect, required creativity, not only on the part of the United States, but other WTO Members. Should we expect any success in 2015 on the post-Bali work program or other major issue areas, the United States expects that creativity will again be required.**

*Page 31, Para 2.21*

*The report states that "However, the United States is negotiating with the European Union on T-TIP, and with a group of countries in Asia, the Pacific, and the Americas, with TPP (see Section 2.2). At this time, neither has been concluded."*

**Question 23:**

*Please describe the latest progress of TPP and T-TIP negotiations. Are there any schedules for the completion of the negotiations?*

**RESPONSE: Following a TPP Ministerial meetings in October and November 2014, TPP leaders met in November 2014, noted the significant progress that ministers and negotiators had made in recent months in narrowing gaps on the TPP agreement, and stated that the end of the negotiation was coming into focus. Chief negotiators met in Washington in December 2014. The schedule of further meetings is still being developed. All TPP parties are working to conclude the negotiation as soon as possible, so that each country can start to enjoy the agreement's benefits.**

**The United States and the European Union have had seven rounds of negotiations since the Transatlantic Trade and Investment Partnership was launched in July 2013. Both sides are committed to achieving significant progress in 2015.**

**Question 24:**

*Please describe the opinions of the U.S. on the impacts of TPP and T-TIP on the multilateral trade system with WTO at its core.*

**RESPONSE: We believe that such efforts will reinforce and complement the multilateral trading system. They offer the opportunity to contribute to a more dynamic and open global trading system and the possibility of building on them to pursue future ambitious trade and investment liberalization within the WTO.**

Page 37, Para 2.48

The report states that "No new BITs were negotiated or entered into force during the review period. The United States does not have BITs with many of the emerging economies, which continue to be growing in importance as concerns investment flows."

**Question 25:**

Please clarify the reasons for not concluding BITs with "many of the emerging economies".

**RESPONSE:** The United States has BITs in force with 40 countries, including several emerging economies. The United States also has 11 free trade agreements with investment provisions in force with 17 countries, several of which are emerging economies. The United States is also in the process of negotiating, or exploring the negotiation, of BITs with a number of emerging economies, including China and India.

**Question 26:**

Would the U.S. please provide the number of its concluded BITs applying a negative list modality? Please clarify the difference between these negative lists.

**RESPONSE:** Although the specific text and format of the U.S. model BIT has evolved over the last 30 years, all U.S. BITs have been concluded on the basis of a negative list approach to national treatment.

Page 40, Para 2.50

The report states that "It does not offer direct incentives but provides a link to federal government programmes offering incentives to businesses."

**Question 27:**

Does the U.S. have other official platforms to publish in a unified way the investment incentive policies of different states and regions in addition to SelectUSA, on which the investment incentives at the federal level are made public.

**RESPONSE:** SelectUSA will in the near future make available on its website a consolidated database of state-level investment incentives. In the interim, and in keeping with its role as a single point of entry for information about investment in the United States, SelectUSA publishes a list of contact information for designated investment officials in U.S. states and territories, as well as links to the websites of state-level economic development agencies.

Page 39, Para 2.52

The report states that "CFIUS continues to review "covered" foreign investment transactions to determine whether the transaction threatens national security. A covered foreign investment transaction is one where a merger, acquisition, or takeover results in foreign control of a person engaged in interstate commerce in the United States."

**Question 28:**

Please clarify the standards to determine whether a foreign investment "threatens 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).

The Guidance makes clear that in conducting its analysis of whether the transaction poses national security risk, CFIUS assesses:

- whether there is a threat - whether a foreign person has the capability or intention to exploit or cause harm; and
- whether there is a vulnerability - whether the nature of the U.S. business

**over which the foreign party is acquiring control creates susceptibility to impairment of U.S. national security.**

**National security risk is a function of the interaction between threat and vulnerability, and the potential consequences of that interaction for U.S. national security.**

**Question 29:**

According to many Chinese enterprises, CFIUS has excessive discretion, complicated procedures and non-transparent processes. Moreover, CFIUS gives no causes for any rejected investment proposals. Does the U.S. plan to raise the transparency of relevant ruling and entitle foreign enterprises to appeal?

**RESPONSE: CFIUS procedures and processes are governed by a statute, executive order, and public regulation, all of which are available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).**

**The CFIUS regulation contains at least forty examples to assist U.S. and foreign companies. For example, CFIUS may review only mergers, acquisitions and takeovers that could result in foreign control of a U.S. business. So, wholly passive minority stakes, greenfield investments, and land sales are not subject to CFIUS review. This focused mandate reflects our belief in the importance of foreign investment as a source of national strength.**

**Any decisions by the U.S. President to prohibit a transaction are publicly disclosed. The vast majority of foreign investments do not raise national security concerns and are cleared by CFIUS without issue. When a transaction poses a national security risk, CFIUS works to resolve it as expeditiously as possible, including through targeted mitigation rather than prohibition whenever possible.**

*Page 39, Para 2.52*

*The report states that "CFIUS considers whether the foreign entity is controlled by a foreign government or if the investment would give control of critical infrastructure."*

**Question 30:**

According to the information obtained by the Chinese government, the definition of "critical infrastructure" regarding the national security of the U.S. in its Foreign Investment and National Security Act is too broad, leading to great uncertainty on whether Chinese enterprises could eventually approved to make investment in the U.S. infrastructure projects. Does the U.S. plan to further improve legislations to explicitly define "critical infrastructure"?

**RESPONSE: CFIUS considers all relevant national security factors in its reviews of transactions. This may include, in some transactions, the potential national security-related effects of the transaction on United States critical infrastructure. In every case, CFIUS looks at whether the particular transaction raises national security concerns, whether or not it involves critical infrastructure.**

**Please refer to Section 800.208 of the CFIUS regulations, which defines the scope of the term "critical infrastructure" for CFIUS purposes. The regulations are available at <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUS-Final-Regulations-new.pdf>.**

*Page 39, Para 2.53*

*The report states that "During 2010-12, there was a gradual increase in the number of notices of covered transactions submitted, from 93 to 114 in 2012. In particular, investment reviews from China grew from 6 notices in 2010 to 23 in 2012 (Table 2.3)."*

**Question 31:**

*How many investments among the 114 so-called "covered transactions" in 2012 are from developing members? Do relevant enterprises have opportunities to make appeals? Please describe the outcome of such appeals, if any.*

**RESPONSE: The number of filings per country in 2012 is available in CFIUS's 2012 Annual Report.**

<http://www.treasury.gov/resource-center/international/foreign-investment/Documents/2013%20CFIUS%20Annual%20Report%20PUBLIC.pdf>.

**Parties have the opportunity to engage CFIUS before filing, during the review, after CFIUS informs the parties of the action that CFIUS intends to take, and even after the CFIUS review process has concluded.**

**Question 32:**

*Please explain the reasons of the rapid increase in national security reviews on investments from Chinese enterprises.*

**RESPONSE: The United States has a strong open investment policy. We recognize that it is vital to economic growth, to job creation, and to productivity. The vast majority of CFIUS reviews, including those involving Chinese companies, are initiated by parties to a transaction voluntarily submitting their transaction for CFIUS review. Chinese FDI into the United States, in general, has increased significantly over the past several years.**

**The number of filings over time and per country in 2012 is available in CFIUS's 2012 Annual Report. <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/2013%20CFIUS%20Annual%20Report%20PUBLIC.pdf>.**

**Question 33:**

*While promoting a series of investment incentive measures, the U.S. is more proactive in applying the highly subjective "national security review" to restrict foreign investments, including those from China. How does the U.S. assess the effects of such policies? Does the U.S. plan to restrain the abuse of national security reviews for the sake of investment facilitation?*

**RESPONSE: The United States consistently ranks at the top of most major indicators for its attractive business and investment climate. The United States ranks: #1 in A.T. Kearney's Foreign Direct Investment Confidence Index; and #4 in the World Bank's "Ease of Doing Business" rankings. These rankings are reflected by investment statistics: from 2007 through 2013, the United States received more FDI than any other country. The FDI flow into the United States in 2013 – US\$187.5 billion – was 34% higher than the flow into any other country.**

**The vast majority of foreign investments from all countries, including China, do not raise national security concerns. And the vast majority of transactions that are submitted to CFIUS are cleared without any mitigation or conditions.**

*Page 40, Para 2.55*

*The report states that "The NISPOM contains provisions regarding certain foreign investment transactions under its broader mandate to require contractors to protect and safeguard classified information. The NISPOM section on Foreign Ownership, Control, or Influence (FOCI) contains the procedures to be followed for certain investment transactions that involve classified information. U.S. companies are subject to NISPOM reporting requirements when a foreign interest acquires control that may result in unauthorized access to classified information or adversely affect the performance of classified contracts."*

**Question 34:**

*Please clarify which information belongs to "classified information" deemed by NISP. To what extent have such NISPOM requirements increased the burdens on enterprises and affected normal investment. Has the U.S. made corresponding assessment?*

**RESPONSE: National security information (classified information)<sup>4</sup> to which the NISP applies:**

- a. "Top Secret": applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.
- b. "Secret": applied to information, the unauthorized disclosure of which reasonably

---

<sup>4</sup> Source: Executive Order 13526, "Classified National Security Information", December 29, 2009.

**could be expected to cause serious damage to the national security.**

**c. "Confidential": applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.**

**The U.S. has not assessed whether the NISPO M requirements increased the burdens on enterprises and affected normal investment.**

*Page 41, Table 2.4*

*The Table introduced existing foreign investment restrictions in the U.S., which includes reporting requirements for foreign ownership of U.S farmland in accordance with the Agriculture Foreign Investment Disclosure Act of 1978.*

**Question 35:**

*Please describe the main contents of the Agriculture Foreign Investment Disclosure Act of 1978. Were there corresponding threshold on the area of the agricultural land subject to reporting requirements?*

**RESPONSE:** The Agriculture Foreign Investment Disclosure Act of 1978 (AFIDA) was created to establish a nationwide system for the collection of information pertaining to foreign ownership of U.S. agricultural land. The regulations require foreign investors who acquire, transfer or hold an interest in U.S. agricultural land to report such holdings and transactions to the Secretary of Agriculture on an AFIDA Report Form FSA-153. Those foreign investors who are required to report must have more than 10 acres in aggregate (across all parcels in the U.S.) and the land must have been used for an agricultural purpose within the past five years. More details on AFIDA can be found in the AFIDA handbook at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk>. Exhibit 5 in the handbook contains the AFIDA regulation. An annual report is published containing extensive tables; they can be found at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=afa>.

**3. TRADE POLICIES AND PRACTICES BY MEASURE**

*Page 42, Para 3.1.1 Customs procedures and requirements*

**Question 36:**

*Does the U.S. customs authority scan all the goods imported and exported at ports? How many large container scanning equipments have been installed by the U.S. customs? Are these equipments subject to network scanning and image examination? Please describe the scanning and inspection rates of imported and exported goods.*

**RESPONSE:** CBP screens all cargo. High risk cargo is scanned using image analysis with Non-Intrusive Inspection (NII) Technology or manually. In addition, all containerized cargo is scanned for illicit radiological materials. As of December 5, 2014, over 300 large scale NII systems and over 1,300 large scale networked radiation portal monitors have been deployed. The ports determine on a risk basis the utilization rates for export cargoes.

*Page 43, Para 3.7*

*The report states that "By the same executive order, the President formally established the BIEC in 2014 to develop policies and processes to enhance coordination of customs, transportation security, health and safety, sanitary and phytosanitary, trade, and conservation agencies to improve supply chain processes and identification of illicit shipments."*

**Question 37:**

*China hopes that the U.S. may, by establishing the BIEC, coordinate the efforts of relevant trade authorities to promote trade facilitation. Is there any assessment of the actual effects of the BIEC since its establishment?*

**RESPONSE:** Results of the BIEC risk management principles and methods have been completed, but a determination has not been made of whether they will be published for external distribution.

*Page 44, Para 3.10*

*The report states that "Advance binding rulings are published through the Customs Rulings On-line Search System (CROSS) or the Customs Bulletin and Decisions within 90 days of issuing the decision and are binding on CBP. However, there appear to be no set deadlines with respect to issuing a ruling."*

**Question 38:**

*Does the U.S. plan to set a deadline for "advance binding rulings" for the sake of providing more convenience to enterprises in practice?*

**RESPONSE: The U.S. does not plan to set a deadline for advance rulings as the issuance of a ruling depends on the submission of information to CBP, which could come later than the initial ruling request. The U.S. endeavors to issue rulings within 90 days of receipt of information necessary to issue a ruling, and generally issues classification rulings within 30 days of receipt of a request.**

*Page 44, Para 3.13*

*The report states that "As of June 2014, there were more than 10,732 C-TPAT certified companies, resulting in over 25,160 total validations, and accounting for around 54.1% of total merchandise imports into the United States by value."*

**Question 39:**

*Have the effects of C-TPAT been assessed since its implementation? Have the preferential measures the U.S. committed to C-TPAT certified enterprises been fully implemented? Please provide and compare the inspection rate of goods exported to the U.S. by C-TPAT certified companies and the overall import inspection rate of the U.S. How to guarantee that foreign enterprises enjoy equal treatment as the American ones in C-TPAT rating?*

**RESPONSE: CBP has been engaging in preliminary discussions with C-TPAT and their automated targeting system group to measure the effects of C-TPAT including measurement of the inspection rate for C-TPAT and AEO mutual recognition cargo. C-TPAT and AEO mutual recognition arrangement (MRA) cargo both receive preferential treatment and among this cargo, there is no distinction between American and foreign enterprises.**

*Page 45, Para 3.14*

*The report states that "As of June 2014, seven C-TPAT MRAs were in place, with Canada, the EU, Japan, Jordan, the Republic of Korea, New Zealand, and Chinese Taipei. All are operational, with the exception of Jordan."*

**Question 40:**

*Does the U.S. plan to have more C-TPAT MRAs? Are there any new C-TPAT MRAs under negotiation? Will the U.S. be interested to cooperate with more emerging economies, including China?*

**RESPONSE: CBP has MRAs with Canada, the EU, Japan, Jordan, the Republic of Korea, New Zealand, Chinese Taipei, Israel, Mexico and Singapore. CBP intends to initiate MRA talks with countries in Central America, South America, the Caribbean, Africa, and Asia over the next few years. CBP is currently in MRA negotiations with China and Switzerland.**

*Page 45, Para 3.15*

*The report states that "As of June 2014, seven C-TPAT MRAs were in place, with Canada, the EU, Japan, Jordan, the Republic of Korea, New Zealand, and Chinese Taipei. All are operational, with the exception of Jordan."*

**Question 41:**

*Does the U.S. plan to further expand the scope of economies eligible for the ISA?*

**RESPONSE: At this time, there are no plans for CBP to extend eligibility to the ISA to traders from other countries.**

*Page 46, Para 3.19*

*The report states that "There have been no significant changes in the programme since the last Review of the United States; the CSI still operates in 58 ports world-wide and pre-screens approximately 80% of all maritime container cargo destined to the United States."*

**Question 42:**

*Does the U.S. plan to further expand the application scope of CSI?*

**RESPONSE: Yes, CSI continues to be engaged in a broad, strategic effort to expand the scope of its targeting and examinations with host country partners. This effort will proceed on a country-by-country basis to select mission areas of mutual interest.**

*Page 47, Para 3.22*

*The report states that "The United States has long-standing experience of using foreign trade zones (FTZs) to increase U.S. competitiveness through a variety of means, especially by reducing customs duties."*

**Question 43:**

*Please describe in detail the legislation and regulation, as well as the operation mechanism of FTZ, especially the difference between the current taxation policies in FTZ and those in other areas.*

**RESPONSE: U.S. Foreign-Trade Zones (FTZs) were authorized by Congress in 1934 (FTZ Act - 19 USC 81a-81u). The FTZ Act established the FTZ Board to manage and oversee the program – with individual FTZs proposed, sponsored and managed by agencies at the regional or local level – while U.S. Customs and Border Protection (CBP) maintains direct oversight of operations within FTZs. Both the FTZ Board and CBP have promulgated regulations to govern FTZ activity (15 CFR Part 400 and 19 CFR Part 146).**

**U.S. FTZs are designated locations where imported merchandise can be brought into the territory of the United States prior to filing a formal customs entry. If the merchandise is re-exported, no entry is ever filed and on shipments to the U.S. market entry can be deferred until the merchandise leaves the zone. The delayed filing of the customs entry allows companies to defer and possibly reduce duties. While use of U.S. FTZs affects the timing of the filing of a formal customs entry, the merchandise is located within the territory of the United States and all other federal, state and local laws apply.**

*Page 47, Para 3.23*

*The report states that "In 2012, the Foreign Trade Zone Board, which supervises and oversees the U.S. FTZ system, established new regulations for FTZs. While the regulations address a number of issues, they focus on streamlining the application process and reducing the time necessary to establish a zone or set up manufacturing within a zone."*

**Question 44:**

*Please describe the specific measures adopted in the new legislation to streamline application procedures. How does the U.S. assess the role of FTZs in the "homecoming of U.S. manufacturing" plan?*

**RESPONSE: The primary change in the 2012 regulations decreased the time required to review a company's request for production authority within a FTZ. In the prior regulations this type of application required a 12-month review, which has been reduced to a 120-day process for most requests. In addition, through both the regulations and previous changes adopted by the FTZ Board, the processing time needed for a company's site to receive FTZ designation has been significantly reduced from 10 months to as little as 30 days. The processing time reductions were accomplished through a full reassessment of the procedures needed and information required for each type of request, with previous requirements eliminated or reduced wherever possible. Essentially, the reductions in processing time for production within a FTZ resulted in a vastly simplified review for the majority of cases, while allowing for a more detailed review where warranted by the circumstances.**

**The FTZ Board's reassessment of its procedures in 2012 was intended in part to better meet the needs of business in the United States. Statistics from 2012 and 2013, with**

record numbers of cases reviewed by the FTZ Board, indicate that there was a demand from the business community for simplified access to the FTZ program. However, due to the range of factors that enter into companies' location decisions, it is not practicable to try to assess the degree to which access to FTZs contributes to individual companies' location decisions.

*Page 48, Para 3.26*

*The report states that "U.S. non-preferential rules of origin, used to determine origin for MFN trade, recognize first the concept of wholly obtained, if a product was grown or manufactured in one country."*

**Question 45:**

*Has the U.S. notified non-preferential rules of origin to the WTO? If yes, please provide the reference number.*

**RESPONSE: Yes. Reference numbers are G/RO/N/1 (including Add.1), G/RO/N/6, and G/RO/N/12.**

**Question 46:**

*Many Chinese enterprises reported that the rules to determine the origin of agricultural products imported by the U.S. are too complicated. Does the U.S. plan to further streamline relevant procedures and promote trade facilitation?*

**RESPONSE: It is not clear which rules of origin or procedures the question is referring to. The United States has no plans to changes to its non-preferential rules of origin.**

*Page 50, Para 3.38*

*The report states that "The United States' applied MFN rates are quite diverse, as a large number (37%) of tariff lines are free of duty, while there are a significant number (7%) of tariff peaks in sensitive sectors (tobacco, textiles, agriculture). Tariffs range from free to 510% (ad valorem equivalent) (Chart 3.3, Table A3.1)."*

**Question 47:**

*China notes that the U.S. applies zero tariff to 37% of its tariff lines, but is also concerned about its various tariff peaks in "sensitive sectors". Does the U.S. plan to use less tariff peaks in the future?*

**RESPONSE: As shown in the Table 3.2 of the Secretariat's Report, incidence of international tariff peaks (defined as any tariff rate at or above 15%) in the U.S. schedule has declined from 5.5% in 2004 to 5.1% in 2014. 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 50, Para 3.38*

*The report states that "Tariffs above 25% ad valorem are in the agriculture sector, in particular dairy, tobacco, and vegetable products; footwear; and textiles."*

**Question 48:**

*While granting huge subsidies to its agricultural products, the U.S. also set a lot of tariff peaks to hinder the import of foreign agricultural products. Does the U.S. plan to remove unnecessary tariff peaks in the agricultural sector in the future?*

**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% in 2002 to 5.0% 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 52, Para 3.42*

*The report states that "The United States maintains tariff-rate quotas on 200 tariff lines of agricultural products, (beef, dairy products, peanuts, sugar, chocolate & cocoa, olives, satsumas, animal feeds, tobacco, and cotton products). Approximately half are in the dairy sector, including*

milk, cream, butter, ice cream, and cheeses."

**Question 49:**

*Does the U.S. plan to reduce the types of the agricultural products subject to import quota to reduce excessive protection on its agricultural products?*

**RESPONSE: The United States has no current plans to unilaterally change its MFN tariffs or tariff quotas. To further liberalize markets and bolster transparency, the United States is committed to and encourages the implementation of the Bali Ministerial Understanding on Tariff-Rate Quota Administration. Moreover, the United States would make any required changes pursuant to an agreement under the Doha Development Agenda.**

*Page 53, Para 3.47*

*The report states that "In recent times, the HMTF has accrued significant surpluses as typically only about half of collections have been appropriated for works. The fee rate remains unchanged at 0.125% on the declared value of commercial cargo."*

**Question 50:**

*As the levies of the HMT are far more than the actual expenditures of ports and significant surpluses have been accrued, does the U.S. plan to properly reduce the HMTF rate based on the actual situation to relieve unnecessary burdens on enterprises?*

**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). 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.**

**Question 51:**

*It seems that HMT only applies to imported commodities. Although exported commodities use port facilities to the same extent as imported ones, they are not subject to the HMT obligations. Please describe the reasonability of such practice.*

**RESPONSE: The HMT applies to imports, admissions into foreign trade zones, domestic cargo shipped through a port, and passengers. Following a U.S. Supreme Court decision in 1998, the tax is no longer collected on exports.**

*Page 58, Para 3.58*

*The report states that "The United States has extended the provisions of the Steel Import Monitoring and Analysis System (due to expire in March 2013) to 21 March 2017".*

**Question 52:**

*Please describe the reasons for extending automatic import licensing for steel products.*

**RESPONSE: Prior to March 2013, a proposed rule was published in the Federal Register (77 FR 67593) asking for public comment about a proposal to modify the regulations for the Steel Import Monitoring and Analysis System (SIMA) that would extend the system until March 2017. During a public notice period, three submissions were received from the public, including one from a coalition of eight steel trade groups. Each was in favor of the extension given the volatility of world steel markets and the timely market and import information SIMA makes available to interested parties. Generally, the commenters view the system as an important and transparent tool to support rational decision-making by all interested parties. The final rule was published in the Federal Register (78 FR 11090). The comments received can be found on [www.enforcement.trade.gov/steel/license](http://www.enforcement.trade.gov/steel/license).**

*Page 61, Para 3.63-3.65*

*According to the Report, the Department of Commerce instituted some changes to its internal*

*regulations and practices relating to anti-dumping or countervailing investigations.*

**Questions 53:**

*What's the purpose for the Department of Commerce to make such changes to its policies and practices?*

**RESPONSE:** Each of the changes identified in the Secretariat's report were either notified to the respective WTO Committee (if a change in rule) or published in the *Federal Register* (if no rule change). The explanation as to why the United States made a particular change is set forth in the applicable document addressing the change.

**Questions 54:**

*Besides the changes mentioned in the report, are there any other changes to the Department of Commerce's policies or practices relating to anti-dumping or countervailing investigations?*

**RESPONSE:** Any changes in the U.S. Department of Commerce's policies or practices relating to antidumping or countervailing duty investigations have been published in the *Federal Register*, which can be accessed at <https://www.federalregister.gov/>.

**Questions 55:**

*How will these changes impact the respondents in countries deemed as non-market economy countries by the Department of Commerce?*

**RESPONSE:** Any impact based on rule, policy, or practice changes on countries involved in proceedings before the U.S. Department of Commerce will be case specific, based on the facts and circumstances involved, and will not depend solely on the change involved.

**Questions 56:**

*Has the Department of Commerce considered the opinion in the Chinese Government's written comments during the process of public comments relating to some of those changes?*

**RESPONSE:** With regards to any changes in rule, policy, or practice, the U.S. Department of Commerce takes into account all comments submitted in a particular proceeding or in any request for comments, as applicable to the particular change.

*Page 61, Para 3.66*

*The report states that "The United States had 294 anti-dumping and countervailing measures in place at the end of 2013, an increase of 18% since 2010. There was a general increase in the use of anti-dumping and countervailing duties on emerging markets during 2010-14, while remedies with respect to developed countries decreased."*

**Question 57:**

*During the post-crisis period, the U.S. significantly increased its trade remedies, especially those against emerging economies, which has severely interrupted relevant trade activities. Please explain whether the U.S. plans to restrain the abuse of trade remedies for the sake of trade liberalization in the future?*

**RESPONSE:** Antidumping and countervailing duty investigations are initiated in response to petitions filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as may be applicable.

**Question 58:**

*Trade in steel products accounts for a small proportion in the total trade value of the U.S., but takes a disproportionately high percentage in the number of trade remedy investigations launched by the U.S.. Is the U.S. government protecting its the steel sector too much?*

**RESPONSE:** The United States administers its trade remedy laws in strict accordance with WTO rules. Antidumping and countervailing duty investigations are initiated in response to petitions filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether that dumping has caused, or threatens to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether countervailable subsidization has caused, or threatens to cause, material injury to a domestic industry. Where dumping/subsidization, material injury, and a causal link between the two has been found, the United States will impose an antidumping or countervailing duty measure, as may be applicable.

*Page 61, Para 3.66*

*The report states that "China was the country mainly affected, accounting for over 40% of all orders in 2013. The Republic of Korea and Chinese Taipei were also slightly more impacted during the period, whereas EU countries, Japan, and Brazil all had slightly lower levels of remedies applied (Table 3.8)."*

**Question 59:**

*While implementing trade remedies against Chinese products, the U.S. has simultaneously imposed antidumping and countervailing duties many times. Please explain the consistency of such practice with the WTO rules.*

**RESPONSE: It is not inconsistent with the WTO Antidumping Agreement or the WTO Subsidies and Countervailing Measures Agreement for a Member to simultaneously impose antidumping and countervailing duties on the same imported product.**

**Question 60:**

*In the claims raised by China against the GPX Legislation of the U.S. (DS449), the Appellate Body and the Panel ruled that 25 remedy investigations launched by the U.S. against Chinese Products were inconsistent with the WTO rules. China hopes that the U.S. will implement the WTO rulings in good faith. Please describe the plans of the U.S. in this regard.*

**RESPONSE: In its communication to the DSB on August 21, 2014, and at the meeting of the DSB on August 29, 2014, the United States stated its intention to implement the DSB's recommendations and rulings in *United States – Countervailing and Anti-dumping Measures on Certain Products from China* (WT/DS449). The United States further stated that it would need a reasonable period of time (RPT) in which to do so. The United States and China have met several times to discuss the RPT. The United States is hopeful that an agreement can be reached on the RPT shortly.**

**Question 61:**

*The U.S. is still suspected to have violated WTO rules while implementing the WTO rulings on the claims raised by China against the GPX Legislation. In particular, the tax rates for certain products adopted upon the implementation were even higher than those before the implementation. Would the U.S. make some explanation in this regard?*

**RESPONSE: The question is unclear to the United States. If China's question is referring to DSB rulings in the DS449 dispute involving the "GPX legislation," the United States intends to implement the DSB's recommendations and rulings and needs a reasonable period of time in which to do so.**

**Question 62:**

*According to many Chinese enterprises, while conducting anti-dumping and countervailing investigations against Chinese products, the U.S. frequently abuses unreasonable "surrogate price", causing severe over-valuation on the margin of dumping and subsidization. Please explain whether the U.S. plans to make improvement in this regard.*

**RESPONSE: The United States disagrees with China's characterization of the use of the surrogate value methodology. The United States administers its trade remedy laws in accordance with WTO rules. Antidumping and countervailing duty determinations are based on the specific facts and circumstances that exist in a particular proceeding;**

**therefore, any impact from the application of a particular methodology used will depend on the specifics of a particular proceeding.**

**Question 63:**

*Article 15(a) of China's Accession Protocol to WTO will expire on December 11, 2016 and no WTO member should continue to treat China as a non-market economy country in anti-dumping proceedings. In this regard, what actions will the U.S take in order to fulfill its WTO obligation to recognize China's market economy status immediately after December 11, 2016?*

**RESPONSE: The United States will take such action as is necessary when the provisions of subparagraph 15(a)(ii) of China's Accession Protocol to WTO expire 15 years after the date of China's accession to the WTO.**

*Page 62, Para 3.67*

*The report states that "Some 39 investigations were initiated in 2013, compared to an average in the other 4 years of 2010-14 of 9 per year."*

**Question 64:**

*Please explain the reasons for the significant increase in the number of anti-dumping investigations initiated in 2013.*

**RESPONSE: Antidumping duty investigations are initiated in response to petitions filed by a U.S. industry. Any increase in the number of investigations initiated is as a result of an increase in petitions being filed that meet the specific requirements for initiation.**

*Page 64, Para 3.69*

*The report states that "The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated."*

**Question 65:**

*Please explain the reasons for the significant increase in the number of countervailing investigations initiated in 2013.*

**RESPONSE: Countervailing duty investigations are initiated in response to petitions filed by a U.S. industry. Any increase in the number of investigations initiated is as a result of an increase in petitions being filed that meet the specific requirements for initiation.**

*Page 65, Para 3.72*

*The report states that "While the number of reviews has varied over the last eight years, there has been a significant trend with fewer orders being revoked. In 2007-8, approximately half of all orders were revoked, whereas in 2013-14, about 90% of reviews resulted in the continuation of the remedy (Chart 3.8)."*

**Question 66:**

*Please provide reasons for the significant decrease in the number of the rulings of "terminating trade remedies" in sunset reviews. Additionally, in recent years, the U.S. has considerably increased the use of countervailing and anti-dumping measures, the timing of which coincides with that of "homecoming of U.S. manufacturing" strategy. Please clarify whether this is just a coincidence.*

**RESPONSE: The United States administers its trade remedy laws in accordance with WTO rules. Antidumping and countervailing duty investigations are initiated in response to petitions filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether those dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable. A decision whether to continue or revoke such a measure is based on**

**whether dumping/subsidization and material injury would be likely to continue or recur if the measure is removed. Any increase or decrease in determinations to revoke a specific measure depend on the specific facts and evidence on the administrative record of the sunset review. No other factors are taken into consideration before imposing, continuing, or revoking an antidumping/countervailing duty measure.**

*Page 76, Para 3.76*

*The report states that "The National Technology Transfer and Advancement Act of 1995 and Circular A-119 of the U.S. Office of Management and Budget (OMB) direct federal agencies to use 'voluntary consensus standards' as a basis for technical regulations and government procurement bids, except where inconsistent with law or otherwise impractical. Thus, where a federal regulatory agency determines that mandatory compliance with a standard is needed to address a particular policy objective, it is required to rely on voluntary consensus standards and avoid developing its own 'government unique standard'".*

**Question 67:**

*Please make further elaboration on the "Voluntary Consensus Standards". What's the difference between "Voluntary Consensus Standards" and "government unique standard"?*

**RESPONSE: The definition of the terms "voluntary consensus standard" and "government-unique standard" are included in section 4 of Circular A-119, which can be found here: [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).**

*Page 68, Para 3.81*

*The report states that "Since the last Review of the United States, five specific trade concerns have been raised in the TBT Committee against measures taken by the United States. Furthermore, three WTO dispute settlement proceedings taken against the United States under the TBT Agreement are pending (Table A2.1)."*

**Question 68:**

*Please introduce the relevant progress and the implementation of the DSB rulings by the U.S. in recent years.*

**RESPONSE: Table A2.1 (page 161) provides information related to disputes concerning the TBT Agreement for which the United States is a respondent: United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products; United States – Measures Affecting the Production and Sale of Clove Cigarettes; and United States – Certain Country of Origin Labelling (COOL) Requirements.**

*In United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, the United States made effective a final rule that amended certain dolphin-safe labelling requirements to bring those requirements into compliance with the DSB recommendations and rulings. In United States – Certain Country of Origin Labelling (COOL) Requirements, the United States issued a final rule that made certain changes to the COOL labelling requirements to bring those requirements into compliance with the DSB recommendations and rulings.*

**Additionally, on 3 October 2014, the United States and Indonesia notified the DSB that they had reached a mutually agreed solution.**

**Information regarding the status of the other two cases can be found on the WTO website: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm); [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds386\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm).**

*Page 70, Para 3.96*

*The report states that "CBP requires export data to be filed electronically via the Automated Export System (AES) prior to departure of the cargo. The timeframes for electronic submission vary according to mode of transportation; e.g. for air cargo, no later than 2 hours prior to scheduled departure; for vessels, 24 hours prior to loading; and for truck/train, no later than one/two hours prior to arrival at the border."*

**Question 69:**

Information available to China indicates that some enterprises are unsatisfied with the advance electronic filing requirement of the U.S., viewing such practice as imposing unnecessary burdens on them. Would the U.S. please make some comment in this regard? Does the U.S. plan to improve such practice?

**RESPONSE:** Advance export information is required for security purposes and to assess risk prior to export. Automation is intended to facilitate legitimate trade and target high risk shipments prior to departure from the U.S.

The minimum time frames vary according to method of transportation for pre-departure filing. Electronic Export Information (EEI) is submitted through the Automated Export System, the gathering and processing system developed through the cooperative efforts of the CBP, U.S. Census and other federal agencies. EEI is the electronic version of the Shippers Export Declaration (SED), which is no longer accepted in paper form.

CBP is currently in the process of automating the export manifest in a phased approach by mode of transportation, and eventually will be required prior to departure. As CBP continues to automate, exporters should see increased efficiencies.

*Page 72, Para 3.104*

The report states that "The United States imposes restrictions, licensing requirements, additional controls and prohibitions on a variety of exports for national security and foreign policy reasons."

**Question 70:**

The U.S. permits export of liquefied natural gas to its FTA partners, but imposes various restrictions on LNG export to other WTO members, which constitutes obviously a discrimination against the latter. Does the U.S. plan to relax export restrictions on LNG?

**RESPONSE:** The LNG projects that have been approved to date will enable the export of up to 5.7 billion cubic feet per day (bcf/d) of LNG to FTA and non-FTA partners. In addition, the U.S. Department of Energy has given conditional approval for another 4.9 bcf/d, for a total of 10.6 bcf/d. As a practical matter, the first project to export U.S. LNG is not expected to be operational until late 2015.

**Question 71:**

The U.S. has, by the excuse of "national security", always restricted the export of hi-tech products, especially the export to China of hi-tech products evidently for civil purposes. This has caused significant imbalance in Sino-U.S. trade. Does the U.S. plan to relax its export control on civil hi-tech products?

**RESPONSE:** With respect to the "significant imbalance" in the U.S.-China trade relationship, the United States notes that its goods trade deficit with China totaled US\$318 billion in 2013. In that year, China exported US\$440 billion of goods to the United States, while the United States exported only US\$122 billion of goods to China. The United States notes further that only a small amount of U.S. exports is affected by U.S. "dual-use" export controls. Of the US\$122 billion in U.S. exports to China in 2013, only 0.4% (i.e., less than one half of one percent) was exported under a license required by the U.S. Department of Commerce. The United States remains committed to facilitating trade for commercial items destined for civilian end uses and civilian end users in China.

*Page 73, Para 3.106*

The report states that "Enforcement of U.S. export controls is shared among the Department of Homeland Security, Department of Justice, and the Department of Commerce."

**Question 72:**

Please introduce the respective functions of the different authorities in export control.

**RESPONSE:** The Export Administration Act of 1979, as amended, authorizes the Department of Commerce, Bureau of Industry and Security (BIS), in consultation with other appropriate agencies, to regulate the export or reexport of U.S.-origin dual-use

**goods, software, and technology. BIS implements this authority through the Export Administration Regulations (EAR). BIS enforcement efforts encourage compliance, prevent and deter violations, and disrupt illicit activities. BIS achieves these important objectives through a comprehensive law enforcement program.**

**The Arms Export Control Act (AECA) is the cornerstone of U.S. munitions export control law. The Department of State implements this statute by the International Traffic in Arms Regulations (ITAR). All persons or entities that engage in the manufacture, export, or brokering of defense articles and services must be registered with the U.S. Government. The ITAR sets out the requirements for licenses or other authorizations for specific exports of defense articles and services. The Department of Homeland Security (DHS) enforces the ITAR through a comprehensive border protection program and criminal investigations.**

**BOTH BIS and DHS are directly supported by the U.S. Department of Justice in prosecuting export crimes. Most of the support for this is driven out of the National Security Division, Counterespionage Section (CES).**

*Page 74, Para 3.109*

*The report states that "The goal of the ECR is not to eliminate or reduce export controls but to reprioritize controls to better use government resources and enhance controls where they are needed on more sensitive items. The ECR plans to ease export requirements on a select group of less sensitive items, such as parts and components to a specified group of 36 countries, while enhancing national security and foreign policy interests with respect to certain items and markets. For example, it plans to tighten controls by adding items that were not previously subject to U.S. or UN arms embargoes."*

**Question 73:**

*China hopes that the U.S. effort in its export control reform will effectively reduce unnecessary restrictions on the trade of the civil products irrelevant to national security. Please detail the changes to the categories of the hi-tech commodities subject to export restrictions after the reform.*

**RESPONSE: Export control reform is a long-term effort whose centerpiece is changes in the U.S. Munitions List. However, the transferred items still will generally be military items even where they are moved to the Commerce Control List. At the same time, the United States remains committed to facilitating trade for commercial items destined for civilian end uses and civilian end users.**

*Page 74, Para 3.110*

*The report states that "in July 2013, the State Department transferred its licensing database and IT platform to that of the Department of Defense, and a similar effort is being made by the Department of Commerce to link the three main Departments' IT infrastructures."*

**Question 74:**

*The State Department transferred its licensing database and IT platform to the Department of Defense. Does this mean that the Department of Defense will be responsible for the export examination and approval of military products? The Department of Commerce is also linking the IT infrastructures of three key departments. How will this affect the status of DOC as the authority responsible for examining and approving the export licensing of "dual-use items"?*

**RESPONSE: The departments will be using the same IT system to process and refer license applications. The process of reviewing license applications will remain the same. The State Department will continue to process license applications for military items subject to its jurisdiction, with the Defense Department participating in the review. The Commerce Department will continue to process license applications for dual-use and certain military items subject to its jurisdiction, with other agencies, including State and Defense, participating in the review.**

*Page 74, Para 3.111*

*The report states that "In October 2013, the first major regulatory changes were introduced migrating a number of USML items related to aircraft, gas turbine engines, classified defense, and*

*miscellaneous articles to the CCL".*

**Question 75:**

*Does this mean that the U.S. will expand the scope of "dual-use items" subject to export control in its export control reform?*

**RESPONSE: Generally, the Export Control Reform initiative will not expand the scope of dual-use items as the movement of items from the jurisdiction of the State Department to the Commerce Department primarily concerns military items. However, commercial satellites and related items, which were previously subject to the jurisdiction of the State Department, are now controlled as dual-use items under the jurisdiction of the Commerce Department as of November 10, 2014.**

*Page 76, Para 3.116*

*The report states that "As part of the initiatives to spur the economy after the 2009 economic downturn, President Obama announced the NEI as a government-wide programme to promote exports, with the goal of doubling the amount of exports over five years."*

**Question 76:**

*Does the U.S. have any assessment of the effects of the NEI in recent years? What role does the NEI play in influencing the U.S. exports? Has the NEI achieved its expected objectives?*

**RESPONSE: Feedback from customer surveys on the NEI and focus groups across the country – reaching more than 6,000 clients and partners – showed that U.S. companies are well-positioned to capitalize on growing opportunities around the world and offered suggestions on how to improve upon the NEI. NEI/NEXT is a new customer service-driven strategy with improved information resources that will help American businesses capitalize on existing and new opportunities to sell Made-in-America goods and services abroad. NEI/NEXT is focused on improving data of use to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help.**

**Question 77:**

*Please describe the measures adopted by the U.S. to ensure that the export-oriented "export doubling plan" will not constitute export subsidies and remain consistent with the WTO rules.*

**RESPONSE: NEI was developed by several agencies within the U.S. government. Final approval of the initiative was also subject to interagency review. In the course of the development and final approval of the initiative, those agencies with WTO expertise were able to raise and address any concerns related to WTO rules. On-going implementation and review of the program is also a matter of interagency coordination which ensures continued consistency with WTO rules.**

**Question 78:**

*Is the U.S. concerned that the plan may incur a new round of export competition among various WTO members and impede the global economic recovery?*

**RESPONSE: No, the United States is not concerned that WTO members' efforts will "impede the global economic recovery."**

*Page 76, Para 3.118*

*The report states that "In May 2014, the Administration launched NEI/NEXT as the successor of the NEI. It builds on the principles of the NEI and lessons learned from NEI customer surveys, and provides a strategic framework to continue export growth."*

**Question 79:**

*Please compare NEI/NEXT with NEI in terms of specific measures. what are the major changes? Is there a definite implementation period for NEI/NEXT? Is there any assessment of the effects of the NEI/NEXT since its implementation about half a year ago?*

**RESPONSE: See response to Question 76.**

*Page 76, Para 3.119*

*The report states that "Several government agencies or departments have specific programmes to support or otherwise encourage exports (Table 3.12)."*

**Question 80:**

*Please clarify whether the export incentives adopted by these agencies, especially some measures taken by the Department of Agriculture, involve export subsidies prohibited by the WTO.*

**RESPONSE: All of the referenced programs are consistent with the United States WTO obligations.**

*Page 77, Para 3.120*

*The report states that "USTDA provides grant funding for early project planning activities such as feasibility studies, pilot projects, and technical assistance to introduce foreign grantees to U.S. technologies. "*

**Question 81:**

*Please describe the scale of such funding in recent years. Does the funding constitute a subsidy granted based on export performance?*

**RESPONSE: USTDA provides grants directly to overseas sponsors who, in turn, select U.S. companies to perform agency-funded project development activities. An overseas sponsor is a local entity, public or private, with the decision-making authority and ability to implement a project. While USTDA projects span a variety of sectors, many focus on clean energy and energy efficiency, transportation, information and communications technology, and the environment. The total budgetary resources for fiscal year 2013 were: US\$65,145,017. Funding is not contingent upon export performance.**

*Page 77, Para 3.121*

*The report states that "The Ex-Im Bank is an independent government agency, and serves as the official export credit agency of the United States. It is self-financed in the sense that its fees and services charged,"*

**Question 82:**

*Please explain whether the Ex-Im Bank, as a self-financed U.S. governmental agency, is entitled to other special supporting measures or policy preferences.*

**RESPONSE: As a government agency, the Ex-Im Bank borrows funds from the U.S Treasury in order to fund direct loan commitments. Ex-Im Bank transactions carry the full faith and credit of the U.S. Government but as a self-sustaining agency Ex-Im Bank does not receive annual appropriations from the U.S. Treasury to cover expenses. Ex-Im Bank is required to pay interest, based on current rates and terms, on the funds borrowed from the U.S. Treasury. The Bank is not entitled to other special supporting measures or policy preferences. For further information, see: <http://www.exim.gov/about/library/reports/annualreports/2014/upload/Management-Discussion-Analysis-09-30-14-as-of-11-14-14-FINAL.pdf>.**

*Page 77, Para 3.121*

*The report states that "In its last reauthorization in 2012, Congress set its lending authority limit to US\$100 billion, rising to US\$140 billion in FY2014.".*

**Question 83:**

*Please explain why the lending authority limit of the Ex-Im Bank was significantly increased in FY2014.*

**RESPONSE: The lending authority is established by Congress. The increase of the lending authority limit to US\$140 billion was a result of the Export-Import Bank Reauthorization Act of 2012. Of the increase in the lending authority, the report from the House of Representatives said this:**

**"Section 3 would allow the bank to continue providing new loans, guarantees, and insurance through 2015. Section 4 would increase Ex-Im's maximum**

**allowable financial exposure to US\$120 billion in 2012, US\$140 billion in 2013, and US\$160 billion each year thereafter. CBO estimates that such an increase would allow Ex-Im to continue expanding at its recent rate of about 15% a year."**

**See:** <https://www.congress.gov/congressional-report/112th-congress/house-report/201/1>.

*Page 77, Para 3.122*

*The report states that "The main focus of the Ex-Im Bank is to provide direct loans, guarantees, and insurance to help finance U.S. exports of goods and services.".*

**Question 84:**

*Please list the private financial institutions in the U.S. providing export loans, guarantees and insurance besides the Ex-Im Bank as a governmental agency. Please describe the differences between the Ex-Im Bank and the private institutions in terms of the application scope and fee rates of relevant financial services.*

**RESPONSE:** Numerous private sector financial institutions provide loans, guarantees, and insurance products for exporters. For example, the Ex-Im Bank has financed projects alongside JP Morgan and Citibank. Ex-Im Bank financing tends to be of a larger size, longer term, and of a different risk nature.

*Page 78, Para 3.123*

*The report states that "The Ex-Im Bank has grown in recent years, especially 2012, in part fuelled by the NEI initiative."*

**Question 85:**

*Please describe How the NEI promoted the growth of the export financing services of the Ex-Im Bank.*

**RESPONSE:** The "whole-of-government" approach under the NEI, and continued under NEI/NEXT, helped connect the Export-Import Bank to more customers and transactions. The NEI set a goal of doubling U.S. exports between 2009 and 2014, and has devoted resources to improve the conditions that directly affect the private sector's ability to export. (See, <http://www.commerce.gov/news/fact-sheets/2013/05/24/fact-sheet-national-export-initiative>.)

Ex-Im Bank's services have been prominently featured on the homepage of the NEI (<http://trade.gov/nei/>), and in the U.S. Department of Commerce's Trade Finance Guide:

([http://www.export.gov/static/TradeFinanceGuide\\_All\\_Latest\\_eg\\_main\\_043219.pdf](http://www.export.gov/static/TradeFinanceGuide_All_Latest_eg_main_043219.pdf)).

*Page 78, Para 3.123*

*The report states that "In FY2013, it authorized total financing of US\$27.3 billion to support US\$37.4 billion in exports, a slight decrease compared to the record levels in FY2012 (Table 3.13)."*

**Question 86:**

*Please describe the respective proportion taken by the high-income OECD countries, the medium-and-low-income countries and the low-income countries released by the World Bank in the export financing worth US\$27.3 billion. Please list the main export products enjoying financing support.*

**RESPONSE:** A complete list of the Ex-Im Bank's authorizations by market for fiscal year 2013 can be found at the following link: <http://www.exim.gov/about/library/reports/annualreports/2013/FY2013-auth-by-market.pdf>.

For high-income OECD countries, the Ex-Im Bank's authorizations in fiscal year 2013 totalled US\$9.96 billion. For lower-middle-income economies, authorizations totalled US\$4.63 billion. For low-income economies, authorizations totalled US\$127 million.

The main export products financed through the Ex-Im Bank include aircraft manufacturing, industrial machinery and equipment, engineering services, and semiconductor machinery manufacturing.

**Question 87:**

Please describe the risk exposures of the Ex-Im Bank in China in FY2013. Please introduce the ranking of the above exposure in the main trade partners of the U.S. and the proportion taken by loans, guarantees and insurance in the exposure.

**RESPONSE: Ex-Im Bank's exposure in China as of March 31, 2014 was US\$3.0 billion (USD), ranking 12<sup>th</sup> among our trade partners.**

**Question 88:**

Please describe the main reasons for the gradual decrease of business volume of the Ex-Im Bank in recent years. Has the U.S. made corresponding assessment?

**RESPONSE:** A resurging economy and an increasingly liquid lending environment resulted in more private lenders funding export finance during the year. As a result, the Ex-Im Bank has seen its authorizations decrease from the recent highs brought about in the wake of the 2008 financial crisis. The Ex-Im Bank's role is to match competition from other exports credit agencies and fill in the gaps when private lenders are unable or unwilling to provide support. As such, the Ex-Im Bank's authorizations are, to a certain extent, contra-cyclical liquidity. See: <http://www.exim.gov/about/library/reports/annualreports/2014/upload/Management-Discussion-Analysis-09-30-14-as-of-11-14-14-FINAL.pdf>.

Page 78, Para 3.124

The report states that "In terms of destinations, the Ex-Im Bank authorizations and activities are very diverse, with activities in over 150 countries. In terms of exposure, Mexico, India, the Kingdom of Saudi Arabia, the United Arab Emirates, Australia, Ireland, and Turkey are the dominant destinations."

**Question 89:**

Please clarify the reasons why certain export markets enjoy more export financial services provided by the Ex-Im Bank. While providing services, does the Ex-Im Bank, as a governmental agency, grant policy preferences to commodities of certain types or with certain export destinations?

**RESPONSE:** The Ex-Im Bank is a demand-driven export credit agency; therefore, the sectors it supports are those whose companies come to it for financing. The only sectors on which the Ex-Im Bank is directed to focus are small business (which is more a cross section of many industries), and renewable energy technology/products. The Ex-Im Bank also has a Congressional mandate to promote the expansion of its financial commitments in sub-Saharan Africa.

Page 78, Table 3.13 Ex-Im Bank authorizations, 2011-13

**Question 90:**

Are the loans, guarantees and insurance provided by the Ex-Im Bank in compliance with the Gentleman's Agreement of the OECD? If not, please specify the reasons.

**RESPONSE:** Yes, all of the official medium- and long-term loans guarantees and insurance provided by the Ex-Im Bank are in compliance with the OECD Arrangement on Officially Supported Export Credits.

**Question 91:**

Please define the working capital (including term, beneficiaries and scope of support) indicated in the table.

**RESPONSE:** The Ex-Im Bank's Working Capital Guarantee Program (WCGP) provides a 90% guarantee on loans made by commercial lenders to creditworthy U.S. businesses that export. The loans are secured by export-related accounts receivable and export-related inventory collateral. The WCGP is an asset based lending product where the amount the exporter can borrow is determined by the available collateral securing the loan based on formula advance rates. The WCGP is a short term product. The term

**of the loan facilities are generally 12 months but can go up to 36 months.**

**Ex-Im Bank's Global Credit Express program is specially designed to deliver short-term working capital loans directly to creditworthy small business exporters. Through this new program, small business exporters may be eligible for a 6- or 12-month revolving line of credit of up to US\$500,000. Global Credit Express adds liquidity to the U.S. small business export market by financing the business of exporting rather than specific export transactions. This is a pilot program currently offered through a select number of originators nationwide.**

**Question 92:**

*Are the working capital loans granted by the Ex-Im Bank different from the working capital loans provided by other commercial banks in terms of beneficiaries, term and scope of support?*

**RESPONSE: The structure of the WCGP is similar to the asset-based lending programs offered by commercial lenders. Most commercial lenders however, prefer to lend only on domestic accounts receivable and inventory, and are not willing to lend on export-related accounts receivable and inventory without a guarantee. Ex-Im Bank's WCGP allows U.S. businesses to expand their borrowing capacity and liquidity to facilitate more exports.**

**The Global Credit Express program was created to help small businesses obtain loans of US\$500,000 or less. Very few commercial lenders are interested in making loans of US\$500,000 or less to exporters. The Ex-Im Bank stepped in to fill this financing gap.**

*Page 78, Para 3.125*

*The report states that "As of June 2014, the Ex-Im bank faced an uncertain future as Congress debated its reauthorization; its current mandate and authorization are scheduled to expire at the end of September 2014."*

**Question 93:**

*Please introduce the latest progress of the reauthorization to the Ex-Im Bank.*

**RESPONSE: The Ex-Im Bank's charter was reauthorized by Congress in September 2014. The new date of expiration is June 30, 2015.**

*Page 78, Para 3.126*

*The report states that "OPIC is the government's development finance institution. It facilitates U.S. investment in developing countries by providing investors with financing, guarantees, political-risk insurance, and support for private equity investment funds. Like the Ex-Im Bank, OPIC is a self-financed, independent government corporation."*

**Question 94:**

*Please introduce the main private financial institutions in the U.S. providing the above-mentioned financial services for outbound investments in addition to the OPIC. Please describe the difference between the OPIC and such private institutions in terms of the application scope and fee rate of the relevant financial services.*

**RESPONSE: OPIC's financial services are not intended to replace private financing of investment. One of the principle considerations in deciding whether OPIC involvement is warranted is whether long-term private financing is otherwise unavailable. Fees for OPIC's financial products are based on the underlying cost of capital, adjusted to reflect commercial and political risks involved, and are otherwise consistent with commercial practices.**

**Question 95:**

*Compared with the Ex-Im Bank, is OPIC subject to certain restrictions in its political risk insurance business, e.g. are there any countries or sectors not to be covered? If yes, please specify.*

**RESPONSE: OPIC is able to operate in more than 150 developing and post-conflict countries; hence OPIC is able to offer political risk insurance for operations in all of**

these countries. A full list of countries where OPIC operates is available at <http://www.opic.gov/doing-business-us/OPIC-policies/where-we-operate>. Although OPIC activities, including insurance policies, are generally not limited to particular sectors, OPIC is categorically prohibited from supporting certain types of projects. Those prohibitions are listed at: <http://www.opic.gov/doing-business-us/applicant-screener/insurance-eligibility-checklist#1>.

*Page 79, Para 3.131*

*The report states that "The American Taxpayer Relief Act of 2012 signed into law in January 2013 further extended the 50% first-year bonus depreciation for qualified property acquired and placed in service from 1 January 2013 through 31 December 2013. It also provided one-year extensions for several tax credits, including: credit for alternative-fuel vehicle refuelling property; alternative fuels excise tax credits; extension and modification of cellulosic biofuel producer credit; incentives for biodiesel and renewable diesel; and special allowance for cellulosic biofuel plant property."*

**Question 96:**

*Please describe the specific measures under the American Taxpayer Relief Act of 2012 regarding preferential tax policies and subsidies granted to enterprises.*

**RESPONSE:** The American Taxpayer Relief Act of 2012 was estimated to cost US\$3,916 billion between 2011 and 2022. Most of this cost was for individual taxpayer relief in terms of lower tax rates and permanently adjusting the individual alternative minimum tax such that it would not apply to as many people. Business tax incentives accounted for roughly US\$60 billion of the total. Extension and modification of credits for renewable energy were estimated to cost approximately US\$13 billion between 2011 and 2022. Specific provisions that were temporarily extended through the end of calendar year 2013 include: the New Markets Tax Credit costing US\$1,794 million over 2011 to 2022; the credit for production of cellulosic biofuel with a maximum credit of US\$1.01 per gallon costing US\$49 million over 2011 to 2022; extension of credits for biodiesel and renewable diesel costing US\$2,181 million over 2011 to 2022; and, the credit for energy-efficient appliances costing US\$659 million over 2011 to 2022. Where appropriate, these programs were included and are described in detail in the most recent U.S. subsidy notification (see, G/SCM/N/253/USA). For further detail, please see: <https://www.jct.gov/publications.html?func=startdown&id=4509>.

*Page 80, Para 3.133-3.134*

*The report states that "The United States is also committed to enhancing the national business framework by promoting innovation in the private sector. To this end, the Innovative Technologies Investment Incentive Act of 2013 provides credit for equity investments to high technology or biotechnology businesses that employ less than 500 employees."*

*"State-level legislatures have also focused on providing investment incentives to businesses through grants, tax credits, loans, and corporate income tax abatement with the aim of promoting, inter alia, job creation (New Jersey, Oregon), clean technology (New Mexico, Wyoming), and development activities (Colorado)."*

**Question 98:**

*Please elaborate on the taxation policies promulgated by the U.S. government in recent years to encourage investments in innovative technologies, especially the preference granting modes and effects of enterprise income tax policies.*

**RESPONSE:** The Innovative Technologies Investment Incentive Act of 2013 did not become law. The President in his fiscal year 2015 Budget (<http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2015.pdf>) proposed some incentives for investment and production of innovative technologies. These include a tax credit for investment in property used in advanced energy manufacturing, a tax credit for the production of advanced technology vehicles, a tax credit for medium- and heavy-duty alternative-fuel commercial vehicles, a tax credit for cellulosic biofuels, and a tax credit for construction of energy-efficient new homes. Combined these proposals were estimated to cost approximately US\$11 billion between 2015 and 2024. However, none of these proposals have become law. Other relevant tax incentive programs can be found in the U.S. subsidy notification, which includes programs at the central and sub-central levels of government (see,

**G/SCM/N/253/USA).**

**Question 99:**

*Please describe the aggregate amount of support in the program.*

**RESPONSE: Support levels can be found in the U.S. subsidy notification, which includes programs at the central and sub-central levels of government (refer to G/SCM/N/253/USA).**

*Page 80, Para 3.135*

*The report states that "Discussions on a tax reform to simplify the corporate tax code and lower its top rate are ongoing."*

**Question 100:**

*Please describe the latest progress of the tax relief program.*

**RESPONSE: Business tax reform in particular continues to be discussed though none of the proposals has been adopted into law. Representative Dave Camp has held many hearings and produced a comprehensive tax reform plan that has been released to the public in parts. (<http://waysandmeans.house.gov/taxreform/>) Similarly, Senator Max Baucus released a series of discussion documents detailing a tax reform proposal. (<http://www.finance.senate.gov/issue/?id=7D222262-D589-4D5E-A2AB-1504273E2E61>) While neither proposal was adopted into law, discussions in Congress and with the President are ongoing.**

*Page 80, Para 3.137*

*The report states that "The U.S. Small Business Administration (SBA) provides counselling and financial assistance to small businesses through, inter alia, loan guarantees and federal procurement opportunities. Within this framework, the SBA has 32 permanent programmes, and approved 101,066 loans over the fiscal year 2013."*

**Question 101:**

*Please describe the difference between the SBA and private financial institutions in terms of the application scope and fee rate of loan guarantees.*

**RESPONSE: SBA only provides a guaranty on a loan when the lender certifies that it would not make the loan without a guaranty due to the perceived greater risk of the credit (i.e., the borrower). Because of the perceived greater risk, the business seeking a loan is often left with the choice of not getting a business loan or obtaining a loan with an SBA guaranty. SBA charges to take that risk (guaranteed shares vary from 50% to 90% of the loan amount, depending on the loan size and program), which passes through to the borrower. The guaranty fee that SBA charges on the guaranteed portion of the loan is tiered: 2% on loans up to US\$150,000, 3% on loans from 500,001 to 700,000, 3.5% on loans 700,001 to US\$1 million, and 3.75% on the guaranteed portion over US\$1 million. As a result, the borrower typically pays a higher total cost than it would if it were able to obtain financing without SBA participation.**

*Page 80, Para 3.140*

*The report states that "In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients."*

**Question 102:**

*Please update the changes made to the energy subsidy policies of the U.S. during the period under review.*

**RESPONSE: The most recent information can be found in our last subsidy notification (refer to G/SCM/N/253/USA). The next subsidy notification is due June 30, 2015. See also the response to question 96.**

**Question 103:**

*Please provide the assessment of the U.S. on the roles of energy subsidies in the economic recovery.*

**RESPONSE:** Recovery tax incentives and spending were focused on countering the steep decline in GDP and employment. Incentives for energy, primarily clean energy, were a relatively minor part of the legislation. Key targets included energy efficiency, renewable generation, and grid moderation. For further information on recovery spending, please see the response to question 105.

**Question 104:**

*Please provide the proportion of the annual tax exemption (including federal, state and local tax exemption) in the aggregate annual tax income in recent years. Please describe the main tax exemption and other preferential programs and their legal basis. Please introduce how these programs are administrated and operated (e.g. regulating authorities, application qualifications and conditions, and the examination and approval procedures).*

**RESPONSE:** While the nature of the information requested in this question is not entirely clear, information with respect to preferential tax programs, at both the federal and state levels, can be found in our most recent subsidy notification (see, G/SCM/N/253/USA).

*Page 81, Para 3.142*

The report states that "As of September 2013, outlays under the American Recovery and Re-investment Act (ARRA) of 2009 have included tax cuts (US\$212 billion), mandatory spending on programmes such as Medicaid and unemployment benefits (US\$296 billion), and discretionary spending (US\$279 billion) for individuals and investments in infrastructure, energy, education, and health care. The most recent CBO estimates show that the fiscal support from the Recovery Act will total US\$832 billion through 2019."

**Question 105:**

*Will the fiscal support of US\$832 billion under the American Recovery and Re-investment Act cause unnecessary distortion to the domestic market and foreign trade of the U.S.? Has the U.S. make any assessment in this regard?*

**RESPONSE:** Most of the ARRA programs provided relief to individuals or to subnational governments. When analyzed for the 2009 through 2013 period, recovery spending can be broken down into seven broad categories. (See Council of Economic Advisers, The Economic Impact of the American Recovery and Investment Act Five Years Later, February 2014, [http://www.whitehouse.gov/sites/default/files/docs/cea\\_arra\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_arra_report.pdf)).

As shown below, most of the fiscal support was for individuals (45%) and subnational governments and public outlays (51%), with business tax incentives accounting for the rest. The focus of the bill was on helping families through a difficult economic period by encouraging job creation. Approximately half of public investment focused infrastructure, such as roads and bridges, while the rest supported technology, such as scientific research and clean energy. The spending under the ARRA was intended to prevent the U.S. economy, and the world economy, from falling into further decline. Such stimulus spending was common among all governments that had the financial resources.

	Functional Category	2009 through 2013
1.	Individual Tax Cuts	181.7
2.	Individual Alternative Minimum Tax Relief	69.0
3.	Aid to Directly Impacted Individuals	111.5
4.	State Fiscal Relief	143.0
5.	Public Investment Outlays	270.5
6.	Business Tax Incentives	28.8
7.	Total	804.6

*Page 82, Para 3.149*

*The report states that "By contrast, determining whether other restrictions to competition are illegal depends on applying U.S. courts' "rule of reason", which is a court's assessment of actual or likely anticompetitive effect in a particular case."*

**Question 106:**

*Please describe the main factors to be considered by the U.S. courts while applying the "rule of reason".*

**RESPONSE:** According to the United States Supreme Court, "the inquiry mandated by the Rule of Reason is whether the challenged agreement is one that promotes competition or one that suppresses competition." *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 691 (1978). Accordingly, courts must determine whether a restraint is likely to have an anticompetitive effect and, if so, whether the restraint has sufficiently "countervailing procompetitive virtue[s]." *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 459 (1986).

The "criterion to be used in judging the validity of a restraint on trade is its impact on competition." *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 104 (1984). Factors that may be relevant to a rule-of-reason analysis include the market power of the parties imposing the restraint, the scope of the restraint, and the restraint's source. *Leegin Creative Leather Prods, Inc. v. PSKS, Inc.*, 551 U.S. 877, 897-98 (2007); *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 725-27 (1988). Courts also consider whether the restraint has caused "actual detrimental effects, such as a reduction of output." *Indiana Federation of Dentists*, 476 U.S. at 460-61 (internal quotation marks omitted).

*Page 85, Para 3.167*

*The report states that "The United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for purchases of goods and services. When the law goes into effect, a 2% tax is to be applied to foreign entities not party to an international procurement agreement."*

**Question 107:**

*This measure has obviously caused adverse impact on free trade and fair competition, and increased the goods and service purchasing cost of the U.S. government, thus increasing its fiscal burden. Does the U.S. plan to annul this tax in future?*

**RESPONSE:** The effective date of the statute was the date of its enactment, January 2, 2011. Under the Constitution of the United States, only the U.S. Congress can repeal statutes such as the tax, and the United States cannot speculate on any future action that the U.S. Congress may take with respect to the tax.

*Page 85, Para 3.169*

*The report states that "In addition, the Federal Acquisition Regulation (FAR), issued pursuant to the Office of Federal Procurement Policy Act of 1974, remains the primary regulatory tool for acquisition and contracting procedures in the federal government."*

**Question 108:**

*Please describe whether Public-Private-Partnership (PPP) project is subject to the laws related to governmental procurement? Will the requirements regarding governmental procurement still apply to project operators when they make procurement in the post-establishment operation of PPP projects?*

**RESPONSE:** Public-private partnerships (PPPs) is a generic term used to describe many different types of relationships between a government and the private sector. Those types of relationships include, but are not limited to, government procurements. PPPs that are government procurements would be subject to all relevant procurement laws and, where applicable, international trade commitments, including the WTO Agreement on Government Procurement.

*Page 92, Para 3.197*

*The report states that "In its Trade Policy Review and at the DSB, the United States also reported on legislative activities linked to implementation of DSB recommendations concerning IP-related case."*

**Question 109:**

*In the 2012 trade policy review, the U.S. introduced in its replies that the FTC and the DOJ had conducted public seminars to discuss the impacts of the PAEs on innovation, competition and anti-monopoly policies and enforcement. According to some reports, on 9 December 2013, the U.S. House of Representatives passed the Innovation Act proposed by Congressman Bob Goodlatte and Chairman of the Intellectual Property, Competition and the Internet Subcommittee in the House of Representatives. Please describe the latest progress of the Act. Please detail measures restricting Patent Troll behaviors under the Act.*

**RESPONSE: The Innovation Act was passed by the U.S. House of Representatives on December 5, 2013. The bill was referred to the U.S. Senate Committee on the Judiciary on December 9, 2013. The United States is not in a position to characterize a draft bill that has not been adopted by the Congress or entered into force as law.**

*Page 94, Para 3.202*

*The report states that "Patent timeliness, measured in terms of total pendency (time from filing date to final disposition), improved from 33.9 months in October 2012 to 27.8 months in June 2014, progressing towards the goal of 20 months by 2019."*

**Question 110:**

*What measures has the USPTO taken to shorten the U.S. patent pendency from 33.9 months in 2012 to 27.8 months in 2014? Are there any restrictions on the timing or number of the notices to be issued by examiners? Is accelerated review included in the calculation of pendency? Please describe further measures to be adopted by the USPTO in order to shorten the pendency from 27.8 months to 20 months in 2019.*

**RESPONSE: The USPTO is reducing the backlog and pendency of unexamined patent applications while improving quality thanks to expanded training, improved technology, and the dedication of our highly capable employees. As a result, total patent pendency has fallen to approximately 27.4 months.**

**The USPTO is realizing benefits from the success of various initiatives, pilots, and operational improvements. The agency has moved from a one-track patent examination process to a multitrack process by adopting procedures and initiatives that incentivize abandoning applications that are not important to applicants, accelerating critical technologies, permitting an applicant to accelerate applications, and exploring other incentive and accelerated examination options. Specific initiatives include Quick Path Information Disclosure Statement pilot program, the After Final Consideration Pilot 2.0, and Track One Prioritized Examination program.**

**The USPTO continues to increase its examination capacity by employing new recruitment and development models to hire, train, and retain a highly skilled and diverse workforce. For example, the USPTO's satellite offices support the agency's mission to foster the growing contribution that IP makes to the growing economy.**

**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 training and refresher training program that encompasses over 20 modules designed to enhance examiners' knowledge and skills in procedural and legal topics pertaining to patent examination. In addition, as part of Executive Action No. 6, the USPTO expanded its 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 excellent 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.****Question 111:**

*Has USPTO established the track three system? If yes, who may submit the application and what are the conditions of applying for delayed examinations?*

**RESPONSE:** The agency has established a multitrack process. Further information regarding track one applications and qualifications can be found at the following website: [http://www.uspto.gov/patents/init\\_events/Track\\_One.jsp](http://www.uspto.gov/patents/init_events/Track_One.jsp).

**Question 112:**

*In addition to communicating with the USPTO regarding specific patent applications, is there any channel for the applicants to communicate with the USPTO about general affairs, e.g. application quality, establishment of rights and requirements and examination efficiency?*

**RESPONSE:** Several mechanisms exist for the USPTO to consider user feedback on various subject matter and issues. The USPTO regularly holds roundtables, open houses, and town hall meetings to receive user inputs. Additionally, the USPTO regularly will publish Federal Register notices requesting written comments from the public on specific topics and initiatives. Further, the Patent Public Advisory Committee (PPAC) provides public input to the USPTO at regular intervals. See <http://www.uspto.gov/about-us/organizational-offices/public-advisory-committees/patent-public-advisory-committee-ppac>.

**Question 113:**

*According to the U.S. patent law, patent application must be submitted in the name of the inventor. In case of an invention for hire, the inventor will transfer the patent application to his/her company in accordance with the employment contract. The company may only obtain patent as a patent transferee. As laws of other WTO members permit companies to directly submit patent applications in their own names, will the USPTO consider permitting foreign applicants to apply for patents directly in the name of companies to streamline procedures and reduce unnecessary burdens on applicants?*

**RESPONSE:** The assignee can be the applicant. However, the inventor must still execute an oath/declaration. The assignee may only execute a substitute statement in lieu of an oath/declaration where the inventor refuses to execute an oath/ declaration, cannot be found or reached after diligent effort, is deceased, or is legally incapacitated.

**Question 114:**

*If the patent period is extended, especially due to FDA examination, it is difficult for the public to directly enquire about the actual expiry date of the patent and the public must rely on professionals to search for the actual expiry date. Will the U.S. introduce more convenient ways of searching the legal status of U.S. patents for easier access of the public to the actual protection period of extended patents?*

**RESPONSE:** The United States Patent and Trademark Office does not calculate expiration dates for patents. In response to patent owner and public inquiry, the USPTO is providing a downloadable patent term calculator (beta version) as a resource to help the public estimate the expiration date of a patent. The calculator can be used to estimate the expiration dates of utility, plant, or design patents. The calculator contains prompts to enter specific information related to the patent in order to help in estimating expiration dates. This information can be obtained from USPTO's online systems, links to which are provided below.

**Question 115:**

*According to the IDS, the patent applicant is obligated to disclose to the USPTO information related to the patent eligibility under the patent application. This obligation remains in effect as long as there is any claim under examination. If the applicant intentionally violates the obligation of information disclosure, the patent application may be revoked or the future right to patent may not be implemented. At present, applicants usually submit patent applications to several countries for one invention, in this case, they will be obliged to disclose to the USPTO relevant examination information of the patent application in each country. This imposes extra burdens on applicants.*

*Will the U.S. consider adopting measures to relieve the applicant's disclosure obligation or legal liabilities?*

**RESPONSE:** The duty of disclosure under U.S. law helps to ensure that effective examination of patent application is performed by requiring known relevant prior art be submitted and thereby placed before the examiner that is making a determination as to whether the application should be allowed to issue as a patent. Further, this requirement also ensures that inventors and those otherwise involved in prosecution do not "hide" relevant prior art that may be material to the patentability of the application.

*Page 95, Para 3.204*

*The report states that "...a crowdsourcing initiative, making use of crowdsourcing techniques and resources, so as to expand ways for identifying prior art relevant to determining the novelty of claimed inventions."*

**Question 116:**

*Please introduce in detail the technologies and resources for crowdsourcing. Has this approach been used in examination practice? Please describe how it is operated.*

**RESPONSE:** The USPTO held a roundtable on crowdsourcing on April 10, 2014 in Alexandria, VA and December 2, 2014 in New York City, NY to solicit public opinions regarding the use of crowdsourcing and third-party preissuance submissions to identify relevant prior art and enhance the quality of examination as well as the quality of issued patents. Members of the public were invited to participate. For more information about both events, please see [http://www.uspto.gov/patents/init\\_events/crowdsourcing\\_roundtable\\_04-2014.jsp](http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_04-2014.jsp) and [http://www.uspto.gov/patents/init\\_events/crowdsourcing\\_roundtable\\_20141202.jsp](http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_20141202.jsp). For more information about third party preissuance submissions, please see <http://www.uspto.gov/patent/laws-and-regulations/americainvents-act-aia/americainvents-act-aia-frequently-asked>.

*Page 95, Para 3.206*

*The report states that "During the review period, the United States Supreme Court issued several significant decisions involving the issue of patent-eligible subject matter. Cases included Association for Molecular Pathology v. Myriad Genetics (concerning the patent-eligibility of a naturally occurring DNA segment, in which it found that it is "a product of nature and not patent eligible merely because it has been isolated," in contrast with complementary DNA (cDNA), which is "not naturally occurring"); and Alice Corporation Pty. Ltd. v. CLS Bank International, in which it held that mere computer implementation of an "abstract idea" in the form of the established commercial practice of intermediated settlement, was insufficient to form a patent- eligible invention."*

**Question 117:**

*Are these new and stricter rules promulgated by the United States Supreme Court applicable to patents already granted by the USPTO? Will the previous patent right be denied under the new rules?*

**RESPONSE: Patents that are challenged in court will be subject to precedential decisions of the Supreme Court.**

**Question 118:**

*Please describe the other changes to the issue of patent-eligible subject matter in addition to the patent-eligibility in terms of commercial methods and genes.*

**RESPONSE: Preliminary Examination Guidelines in view of Alice Corporation Pty. Ltd. V. CLS Bank International, et al., are provided on the USPTO website at the following:** [http://www.uspto.gov/patents/announce/alice\\_pec\\_25jun2014.pdf](http://www.uspto.gov/patents/announce/alice_pec_25jun2014.pdf).

**Question 119:**

*Will the USPTO impose stricter authorization conditions on such patent applications according to the decisions of the United States Supreme Court? If yes, please describe the progress in detail.*

**RESPONSE:** Preliminary Examination guidelines relating to subject matter eligibility etc., may be found at the following: [http://www.uspto.gov/patents/law/exam/myriad-mayo\\_guidance.pdf](http://www.uspto.gov/patents/law/exam/myriad-mayo_guidance.pdf).

*Page 99, Para 3.219*

*The report states that "The Intellectual Property Enforcement Coordinator (IPEC) issued the 2013 Joint Strategic Plan on Intellectual Property Enforcement, which highlighted developments in enforcement since 2009."*

**Question 120:**

*Please provide more detailed data regarding the intellectual property enforcement in 2013, e.g. the total number of trademark infringement cases handled, the number of civil cases in the breakdown, the total amount involved in such cases and the total amount of the civil indemnities so judged.*

**RESPONSE:** Statistics on the number of criminal trademark counterfeiting cases initiated (and some related information such as the number of arrests and convictions) are published in annual reports issued by the Department of Justice. Through 2012 these statistics were included in appendices to the Attorney General's Performance and Accountability Report, but are now released as part of the United States Attorneys' Annual Statistical Report. The most recent Annual Statistical Report, for fiscal 2013, is available at the following URL: <http://www.justice.gov/sites/default/files/usa/legacy/2014/09/22/13statrpt.pdf>. Statistics regarding trademark crimes can be found on pages 118-119.

**The Department of Justice does not maintain statistics on the number or characteristics of private civil trademark lawsuits or other actions.**

**Statistics regarding annual IPR seizures in the United States are available at the following: <http://www.cbp.gov/trade/priority-issues/ipr/statistics>.**

**Question 121:**

*According to some Chinese companies encountering Section 337 investigations in the U. S., most Section 337 investigations are initiated by patent operation companies. These companies seek to initiate litigations in federal and local courts and at the ITC concurrently, so that they may threaten relevant enterprises with more rapid procedures and severe consequences, forcing them to pay unreasonable royalties. This has deviated from the initial purpose of Section 337 and imposed enormous burdens on enterprises. Please explain how the U.S. will ensure the compliance of Section 337 investigations with the National Treatment principle enshrined in Article 3 of TRIPS.*

**RESPONSE:** Without commenting on the accuracy of the factual assertion contained in the question, Section 337 is consistent with TRIPS Agreement Article 3 because it accords to the nationals of other members' treatment no less favorable than that it accords to U.S. nationals with regard to the protection of intellectual property.

*Page 99, Para 3.221*

*The report states that "There has been extensive discussion in the United States about the concept of "standard essential patents" that are encumbered by voluntary commitments to licence on fair reasonable and non-discriminatory terms in high-tech industry sectors."*

**Question 122:**

*Standard organizations in the U.S. are now formulating their own policies regarding standard essential patents without a uniform rule. This increases the uncertainty and cost of the whole procedure. Does the U.S. have any consideration on the balance of interests of patent owners, standard enforcement organizations and the public? Will the U.S. consider promulgating a uniformed federal rule regarding standard essential patents?*

**RESPONSE:** In some countries, governments themselves are involved in selecting technologies to be incorporated into voluntary, collaborative standards, and in determining acceptable royalty and other licensing terms. Such government involvement has the potential to undermine incentives to innovate and to participate in the standard-setting process. Broadly speaking, experimentation and competition among standard setting organizations (SSOs) regarding the breadth and depth of member licensing

**commitment obligations or options should help SSOs and their members determine which methods ultimately provide the best platforms for collaborative standard setting.**

**Question 123:**

*Owners of standard essential patents may eliminate competitions or seek for unreasonable patent royalties by abusing their market dominant position granted by SEP, hence causing de facto market monopoly. Does the U.S. plan to introduce necessary legal constraints in this regard, e.g. strictly examining whether the owners have complied with the principle of "Fair, Reasonable and Non-Discriminatory" (FRAND) in SEP patent litigations or Section 337 investigations?*

**RESPONSE: U.S. courts, the USITC, and U.S. antitrust enforcement agencies examine and rule on assertions regarding FRAND encumbrances on standard essential patents. See, for example, Apple Inc. v. Motorola, Inc., 757 F.3d 1286 (Fed. Cir. 2014).**

**4. TRADE POLICIES BY SECTOR**

*Page 101, Para 4.2*

*The report states that "The 2014 Farm Bill was prepared during a period (2012-13) of exacerbating budgetary pressures. Government expenditures are estimated at US\$489 billion for the life of the new Farm Bill, with savings of about US\$5 billion (Chart 4.1)."*

*China welcomes the U.S. efforts in reducing agricultural subsidies and decreasing the agricultural market distortion, but China also noted that the government expenditures during the period of the new Farm Bill still reached US\$489 billion, i.e. nearly US\$100 billion each year on average, reduced by only approximately 1%.*

**Question 124:**

*Please clarify whether the estimated expenditure of US\$489 billion that of the federal government only or covers the spending of the federal, state and local governments. Please describe the proportion of the fiscal budget and expenditure directly used for agricultural production under the Bill. Is the proportion higher or lower compared with that under the 2008 Farm Bill?*

**RESPONSE: The US\$489 billion projected expenditure is for Federal programs enacted by the 2014 Farm Bill. The projected spending in support of agricultural production includes programs under the commodity, conservation, and crop insurance titles. Expenditures under these titles make up 19% of the total: commodity programs account for 5%, conservation programs for 6%, and crop insurance for 8 percent. Expenditures on programs under the nutrition title (domestic food assistance) account for 80% of projected spending, and programs under the remaining titles account for 1%. These shares are the same as those projected for the period 2014-18 had the 2008 Farm Bill programs continued unchanged.**

**Question 125:**

*Please describe the opinions of the U.S. on the distortion of agricultural production and trade by unduly high agricultural subsidies. Does the U.S. plan to further reduce the amount of its agricultural subsidies?*

**RESPONSE: The United States believes all WTO members should fully abide by their WTO commitments, which limit production- and trade-distorting forms of support. Further, the United States believes full transparency of production- and trade-distorting domestic support, as well as all other policies, is essential 1) to mitigating uncertainty/distortions in trade and 2) a well-functioning multilateral system. The United States calls upon all Members to bring their notifications up to date and provide information regularly.**

**The United States initially proposed that it would liberalize its agricultural policies as part of a broader reform in a Doha context. This ambition was not evident in proposals from other Members, in particular those which focused on creating loop-holes to protect their sensitivities even as they requested concessions from their trading partners. If and when WTO Members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.**

*Page 101, Para 4.2*

*The report states that "The 2014 Farm Bill continues a long-term policy shift from the traditional*

commodity, conservation, and disaster payments towards subsidized crop insurance (Chart 4.2)."

**Question 126:**

Please introduce the main reasons for this policy adjustment. Will the changes in the ways of granting agricultural support under the new Farm Bill influence the position of the U.S. in the agricultural negotiations of the Doha Development Agenda?

**RESPONSE: The 2014 Farm Bill provides an updated farm safety net for producers, emphasizing farmers' participation in crop insurance programs. Payments under the new programs continue to be decoupled from actual farm production decisions. The 2014 Farm Bill does not change the U.S. position in the agricultural negotiation of the Doha Development Agenda. The United States is prepared to negotiate seriously about meaningful reforms, in particular market access opening, and will be prepared to do its part.**

*Page 102, Para 4.3*

The report states that "These three measures (DP, CCP, and ACRE) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC)."

**Question 127:**

According to some experts, the only substantive difference between the new measures and the old ones is that farmers may obtain subsidies more conveniently and with higher amount under the new measure due to changed price setup and base period. Does the U.S. agree with this comment?

**RESPONSE: Under the 2014 Farm Bill, fixed annual payments came to an end with the repeal of the DP program. Commodity program payments under the PLC and ARC programs over the 2014-2018 period covered by the new Farm Bill will depend entirely on market and weather events. While payments under these two new programs will likely be more variable than the combination of fixed and variable payments under the 2008 Farm Bill, payments under these programs were projected by the Congressional Budget Office to be lower than projected payments over the same period had the 2008 Farm Bill programs continued unchanged.**

*Page 102, Para 4.4*

The report states that "In the PLC programme, deficiency payments are provided when commodity prices fall below the statutory "reference prices".

**Question 128:**

Please describe how is the "reference prices" of the PLC programme determined. Will American farmers obtain subsidies more easily due to the higher reference price under the new Farm Bill?

**RESPONSE: The reference prices in the Price Loss Coverage (PLC) program were mandated in the 2014 Farm Bill. The prices reflect a significant shift in market dynamics seen over the past several years. Under previous law, farmers received payments regardless of market situations. The new programs make payments when prices decline, but they continue to be decoupled from actual farm production decisions.**

*Page 102, Para 4.4*

The report states that "The PLC payments are coupled to current prices, but decoupled from actual production, to the extent that payments are based on historical yields and a percentage of historical planted acres (base acres). Farmers have a one-time opportunity under the new Farm Bill to update their historical payment yields and re-allocate base acreage, which may more closely align base acres with recent planting, thereby linking payments to a more recent base period."

**Question 129:**

According to some comments, farmers are permitted under the new Bill to change their base period output level in programs such as the PLC and ARC, which will usually be higher than the output under the base period of the 2008 Farm Bill. This will enable farmers to obtain more subsidies. Would the U.S. please make some comments on this?

**RESPONSE: Landowners can reallocate (but not increase) their base acres and update**

(increase) their program yields. More specifically, between September 29, 2014 and February 27, 2015, owners of farms have a one-time opportunity to: (1) maintain the farm's 2013 base acres of covered commodities through 2018; or (2) reallocate base acres among those covered commodities planted on the farm at any time during the 2009-12 crop years (excluding upland cotton bases). Land owners are provided a one-time opportunity to update program payment yields for each covered commodity for which they have base acres using 90% of the farm's 2008-12 average yield per planted acre, excluding any year in which the covered commodity was not planted. Program payment yields are used to determine payment amounts for the PLC program; however, all farm owners have the option of updating yields regardless of program participation. The ability to update yields and reallocate base will increase payments. More information on base reallocation and yield updating can be found at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insp\\_en\\_arcplic.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insp_en_arcplic.html).

**Question 130:**

*How does the level of the reference price in the PLC program compare with that under the 2008 Farm Bill? If the reference price is set at a higher level, will relevant subsidy programs be triggered more easily under the new Bill?*

**RESPONSE: See response to question 128.**

*Page 102, Para 4.3, 4.7 and 4.8*

*The report states that "These three measures (DP, CCP, and ACRE) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC)... " and "Two long-standing pillars of dairy market support – price supports and export subsidies – have been removed. The dairy deficiency payment programme (Milk Income Loss Contract (MILC) Program) has also been eliminated. Two new policy instruments are introduced in the 2014 Farm Bill. "*

**Question 131:**

*The 2014 Farm Bill introduces some new supporting policies, e.g. PLC, ARC, SCO, STAX, DMPP and DDP. How will these new policy measures be classified according to the definition under WTO rules? Are they relevant to market price or output? Will they distort production and trade?*

**RESPONSE: The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.**

**PLC, ARC, and the dairy programs are based on current market prices, but are decoupled from current production. Insurance-related programs are based on both current prices and production.**

**Question 132:**

*The coverage of such policies as crop insurance is expanded and includes fruits, vegetables among other horticultural crops in addition to traditional varieties like wheat, maize, soybean, cotton and peanut. Please explain in detail the difference between the cotton insurance programme and the previous cotton subsidy policy, and introduce the specific content of the horticultural crop insurance programme.*

**RESPONSE: Under the 2008 Farm Bill, upland cotton was included among covered commodities under the DP, CCP, and ACRE programs. Both the DP and CCP programs made payments on historical cotton area and yield, or base, and did not require continued production of cotton in order to receive payments. ACRE payments were based on current revenue, triggered by differences from benchmark revenues at both the state and farm levels. Payments were limited to a percentage of the revenue difference and by the farm's total historical base. Upland cotton producers were also eligible to participate in the marketing assistance loan and loan deficiency payment program. They could also purchase traditional crop yield or revenue insurance policies.**

**Under the 2014 Farm Bill, upland cotton is not covered under the PLC or ARC programs. Upland cotton producers continue to be eligible to participate in the marketing**

assistance loan and loan deficiency payment program, although at a potentially lower loan rate. Traditional crop yield and revenue insurance policies also continue to be available for upland cotton.

The new Stacked Income Protection Plan (STAX) provides an additional insurance option for upland cotton producers only. Beginning with crop year 2015, upland cotton producers are eligible to purchase policies under STAX that cover a portion of the expected revenue in a producer's area, usually a single county. STAX policies can supplement other insurance coverage available through the Federal crop insurance program or be purchased as a stand-alone policy. STAX offers coverage for up to 20% of the expected area revenue and can be purchased in increments of 5, 10, 15 or 20%. Loss payments begin when area revenue falls below 90% of its expected level, unless a producer chooses a lower loss trigger, and reach their maximum when area revenue falls to 70% of expected levels, or to the level covered by a producer's underlying policy.

In crop year 2014, during the transition to the new program, holders of cotton base acres under previous commodity programs are eligible to receive payments under the Cotton Transition Assistance Program (CTAP). CTAP payments will be made on 60% of the cotton base acres on a farm as of September 30, 2013. In counties where STAX policies are not yet available in crop year 2015, an additional year of payments on 36.5% of the same base acres will be available. No production is required on the base acres and if producers choose to plant, there are no restrictions on what may be grown (including fruits and vegetables, and wild rice).

Producers of horticultural crops in commercial nurseries have been eligible to purchase insurance coverage under the Nursery Crop policy. USDA's Risk Management Agency also offers coverage for a variety of fruit and vegetable crops through the Actual Production History, Actual Revenue History, Whole Farm and Dollar plans of insurance. The 2014 Farm Bill does not directly increase the availability of crop insurance for horticultural commodities, but it does provide for purchase of higher levels of coverage under for the Noninsured Crop Assistance Program (NAP). For horticultural and other crops for which traditional crop insurance policies are not available, producers have been eligible to enroll in NAP for protection against yield losses above 50%. The 2014 Farm Bill authorizes producers of all NAP eligible crops (except those used for grazing) to elect higher coverage levels up to 65%.

*Page 102, Para 4.7*

*The report states that "The 2014 Farm Bill introduces a new subsidized insurance programme (Supplemental Coverage Option) that allows eligible farmers to top up their crop insurance, in order to cover a portion of the deductible of the insurance."*

**Question 133:**

*Please introduce the expected fiscal expenditures for premium subsidies during the implementation period of the new Farm Bill.*

**RESPONSE: The Congressional Budget Office estimated in January 2014 that the total cost of the Supplemental Coverage Option under the 2014 Farm Act would be US\$544million over the period FY2014-2018.**

*Page 103, Para 4.8*

*The report states that "Some of the biggest reforms will be introduced in the dairy regime. Two long-standing pillars of dairy market support – price supports and export subsidies - have been removed. The dairy deficiency payment programme (Milk Income Loss Contract (MILC) Program) has also been eliminated. Two new policy instruments are introduced in the 2014 Farm Bill."*

**Question 134:**

*Diary products have always been a key receiver of the U.S. agricultural subsidies. Will the subsidy reforms regarding diary products in the new Farm Bill help reduce the scale of subsidies in the area?*

**RESPONSE: Projections indicate that the new dairy programs in the Farm Bill will have outlays over the next five years less than half as large as prior program outlays over the past five years.**

*Page 104, Para 4.9*

*The report states that "However, the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions."*

**Question 135:**

*Will the move from direct payments to deficiency-payment in respect of agricultural subsidies intensify distortions in agricultural production and trade? Does the U.S. have any plan to properly mitigate such distortion?*

**RESPONSE: See response to question 126.**

*Page 104, Para 4.10*

*The report states that "The export credit guarantee programme (GSM-102) is maintained, though the maximum loan tenor has been reduced to 24 months, and the U.S. Secretary of Agriculture is granted flexibility to adjust the programme on terms agreed with Brazil in the WTO cotton dispute."*

**Question 136:**

*Is there any difference between the export credit guarantee program led by the U.S. Department of Agriculture and the guarantee provided by private financial institutions in terms of scope of application and rates?*

**RESPONSE: A response to this question would require speculation, as we know of no other organization, public or private, that provides the degree of transparency on available coverage and fees that are provided by the United States under this program.**

*Page 106, Para 4.14*

*The report states that "The PLC is open for enrolment by farmers with eligible historical acreage (base acres) of "covered" commodities."*

**Question 137:**

*Please elaborate on such historical acreage, including the requirements of historical acreage for the types of crops to be planted and corresponding reasons. How is "eligible" defined? What's the proportion of such acreage in the total acreages of relevant crops? What are the requirements and procedures for new farmers to enter and current farmers to withdraw from such historical acreage?*

**RESPONSE: Historical acreage refers to the base acreage for the covered commodity (wheat, corn, grain sorghum, barley, oats, soybeans, peanuts, rice, other oilseeds, and pulse crops) in effect on September 30, 2013 and was used to make direct and counter-cyclical payments and limit Average Crop Revenue (ACRE) payments under the 2008 Farm Bill. The base acreage in effect on September 30, 2013, was first established under the 1996 Farm Bill by average plantings for crop years 1991-95 for wheat, corn, grain sorghum, barley, oats, upland cotton, and rice (note that upland cotton is not a covered commodity under the 2014 Farm Bill). Base acreage was added for other oilseeds and peanuts under the 2002 Farm Bill based on average plantings for crop years 1998-2001 and for pulse crops under the 2008 Farm Bill based on average plantings for crop years 1998-2001. Under the 2014 Farm Bill, producers may reallocate their farm's base acreage in proportion to the average of planted acreage of the covered commodities on the farm for crop years 2009-12. The base acreage may not increase from the base acreage in effect on September 30, 2013. The intent was to give producers an opportunity to reallocate their base acreage to reflect more recent planting history. No new base acreage may be established for a farm. Any producer, new or current, may receive payments as long as the farm has base acreage.**

*Page 106, Para 4.16*

*The report states that "The United States has notified the CCP programme in terms of non-product-specific AMS (de minimis), arguing that payments cannot be ascribed to a specific product."*

**Question 138:**

*According to the information acquired by China, different products are subject to different target prices and subsidy rates under CCP. In such circumstances, what is the basis for the U.S. to list CCP as non-product-specific AMS in its notifications?*

**RESPONSE:** CCP payments were based on fixed historical area and yields (i.e. production) and not current production. Recipients were not required to produce any product to receive payments. Any eligible crop could be grown on the base acres. The 2014 Farm Bill eliminated CCPs.

Page 107, Para 4.17

The report states that "The ACRE programme, which also required acceptance of a reduced DP and lower marketing assistance loan rate, was much less popular among farmers than the CCP scheme."

**Question 139:**

Please explain why the ACRE program is far less popular than the CCP scheme.

**RESPONSE:** By participating in ACRE, a producer forewent counter-cyclical payments and was subject to a 20% reduction in direct payments and a 30% reduction in marketing loan rates for the remaining life of the 2008 farm bill. The program contained a two-level trigger (both state and individual), and many perceived it as complicated. In addition to projecting potential ACRE vs. "traditional program" payments when deciding whether or not to participate, producers had to consider two less quantifiable costs: (1) the learning costs associated with the new revenue-based program, and (2) the negotiation costs due to the requirement that all producers/landowners in the farm operation must agree to participate.

Page 108, Para 4.1.1.2.5-4.1.1.2.6

**Question 140:**

In the notifications of the U.S., only sugar and dairy products are subject to MPS. Such measures as marketing loan gains and loan deficiency payments that apply to ordinary commodities are notified as non exempt payment. Please explain the difference between the price support for sugar and dairy products and such measures as marketing loan gains and loan deficiency payments.

**RESPONSE:** The marketing assistance loan program does not set minimum market prices. Conversely, the sugar and dairy product programs establish a minimum market price. The marketing assistance loan program operates by providing producers with short-term financing until producers sell their crop. The loan is made on a "per-unit" loan rate. When market prices are at or above the loan rate, producers repay the loan principal (having sold their crop at the higher market price). When the market prices received by producers are below the loan rate, producers repay the loan at the lower market price and keep the difference.

Page 113, Para 4.46

The report states that "The Export Credit Guarantee Program (GSM-102) is administered by USDA, which is required by statute to make US\$5.5 billion of loan guarantees available each fiscal year, to encourage U.S. private-sector financing of commercial exports of U.S. agricultural products, particularly to developing countries.....the statutory requirement that fees cover the operating costs and losses of the programme over the long term."

**Question 141:**

What are the conditions to be satisfied by enterprises to enjoy the export credit guarantee program?

**RESPONSE:** Qualification criteria can be found at the following website: <https://www.federalregister.gov/articles/2014/11/18/2014-27129/ccc-export-credit-quarantee-gsm-102-program-and-facility-quarantee-program-fgp#h-4>.

**Question 142:**

Is "over to long term" subject to any specific timeframe? Are the relevant legal requirements in compliance with the "Self-financing" provisions in Appendix J 3 (b) of the 2008 Modalities Text (TN/AG/W/4/Rev. 4)? Will this affect the position of the U.S. in the DDA agricultural negotiations? Will this affect the U.S. in implementing the Ministerial Declaration on Export competition in the Bali Package?

**RESPONSE:** The definition of long term is contained in the authorizing statute for the

**Export Credit Guarantee program. Currently the statute defines long term as meaning a period of 10 years or more. Appendix J 3 (b) of the 2008 Modalities Text TN/AG/W/4/Rev. 4 is merely draft text at this time.**

*Page 113, Para 4.48*

*The report states that "The Foreign Agricultural Service of the USDA administers four export promotion programmes, which were reauthorized until FY2018 without changes in funding."*

**Question 143:**

*Please introduce the expected total expenditure for export promotion during the implementation period of the new Farm Bill and the changes compared with before.*

**RESPONSE:** The Farm Bill authorizes annual levels of US\$200 million for the Market Access Program (MAP), US\$34.5 million for the Foreign Market Development program (FMD), US\$10 million for the Emerging Markets Program (EMP), and US\$9 million for the Technical Assistance for Specialty Crops program (TASC). However, these funds are sequestered, and the sequestration level has been different for each of the three sequestered years so far. In 2013 it was 5.1%, in 2014 it was 7.2%, in 2015 it is 7.3%.

**Table Total Expected Expenditure Levels for Agriculture Export Promotion Programs**

FY	Authorized Level (in millions)	Sequestration Rate	Expected Expenditure
2006	US\$246.5	0.0%	US\$246.5
2007	US\$246.5	0.0%	US\$246.5
2008	US\$248.5	0.0%	US\$248.5
2009	US\$251.5	0.0%	US\$251.5
2010	US\$252.5	0.0%	US\$252.5
2011	US\$253.5	0.0%	US\$253.5
2012	US\$253.5	0.0%	US\$253.5
2013	US\$253.5	5.1%	US\$240.57
2014	US\$253.5	7.2%	US\$235.25
2015	US\$253.5	7.3%	US\$234.99
2016	US\$253.5	tbd	tbd
2017	US\$253.5	tbd	tbd
2018	US\$253.5	tbd	tbd

Note: sequestration levels have not yet been determined for 2016, 2017, and 2018.

*Page 113, Para 4.50*

*The report states that "The agency provides short-term and long-term loans at preferential interest rates, and guarantees up to 95% of private loans. Emergency loans are subject to an official disaster declaration of a county. In FY2014, US\$5.5 billion are available for farm loan programmes."*

**Question 144:**

*Please introduce the expected total expenditure of agricultural credit subsidy during the implementation period of the new Farm Bill and the changes compared with before.*

**RESPONSE:** The new Farm Bill makes relatively minor changes to credit programs. Provisions which expand loan eligibility will increase program demand, but the number of farmers affected is expected to be relatively small.

*Page 115, Para 4.57*

*The report states that "The new Farm Bill retains the federal crop insurance programme, albeit with a number of amendments and increased spending for subsidized crop insurance".*

**Question 145:**

*Please introduce the expected total expenditure of crop insurance subsidy during the implementation period of the new Farm Bill and the increase margin compared with before.*

**RESPONSE:** According to the Congressional Budget Office, direct spending outlays for the crop insurance program are projected to be around US\$41.4 billion for FY2014-18. This includes a US\$1.8 billion increase due to the Farm Bill. In the past, premium

**subsidies have represented approximately two-thirds of total program cost.**

*Page 116, Para 4.64*

*The report states that "The average tariff on imports of agricultural products (WTO definition) into the United States in 2014 was 9.0%, slightly higher than in 2012 due to lower commodity prices, which led to higher ad valorem equivalents for tariff lines with specific or compound duties (Table 3.2)".*

**Question 146:**

*The U.S. tariff on agricultural products is remarkably higher than its average tariff and a considerable number of commodities are subject to tariff peaks. While the U.S. has already supported its domestic industry by providing large amount of agricultural subsidies, is it necessary to continue to maintain high tariff barriers to agricultural products?*

**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. The U.S. applied tariff for agricultural products is below the Chinese applied tariff rate of 14.8%.**

*Page 117, Para 4.67*

*The report states that "Notifications by the United States to the WTO Committee on Agriculture cover domestic support through marketing year 2011. Total support to agriculture was US\$139.5 billion, an 8% increase over the 2010 marketing year, largely because of higher expenditures for domestic food aid (Table 4.2)."*

**Question 147:**

*What changes does the U.S. expect to the total scale of agricultural support during the whole implementation period of the new Farm Bill?*

**RESPONSE: According to the Congressional Budget Office, expenditures under the 2014 Farm Bill, which covers a wide variety of types of support, are expected to be reduced as compared to projected expenditures under the previous farm bill for the same period.**

*Page 117, Para 4.68*

*The report states that "The OECD's Single Commodity Transfer (SCT) figures show that for commodities receiving commodity-specific support, sugar received the most support in 2010-12 through price support and other measures, followed by sheep-meat and milk."*

**Question 148:**

*Please describe the standards adopted by the U.S. in determining the scope of the agricultural products covered by agricultural support and respective supporting amount for each product. Please describe the main factors considered by the U.S. in providing higher subsidies to sugar, sheep-meat and milk.*

**RESPONSE: Eligibility and payment levels for U.S. agricultural programs were specified in the 2008 Farm Bill and in implementing rules.**

*Page 119, Para 4.75*

*The report states that "On 21 July 2010, the "Dodd-Frank Act" was signed into law, instituting the most sweeping set of reforms to the financial regulatory system since the Great Depression."*

**Question 149:**

*Has the U.S. assessed the effects and deficiency of the Dodd-Frank Act since its implementation?*

**RESPONSE: Please see the "Financial Stability Oversight Council 2014 Annual Report"; (<http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf>)**

**Question 150:**

*According to some analysis, the Act has not addressed the problem of erroneous pricing of government guarantee prevalent in the U.S. financial institutions. And the distortion of the*

*U.S. financial market caused by this problem still exist What's the U.S. comment on this? Does the U.S. plan to further improve relevant legislations?*

**RESPONSE:** The Dodd-Frank Act is still being implemented. Further details on the U.S. response to the financial crisis are available in the Economic Report of the President, available at: [http://www.whitehouse.gov/sites/default/files/docs/full\\_2014\\_economic\\_report\\_of\\_the\\_president.pdf](http://www.whitehouse.gov/sites/default/files/docs/full_2014_economic_report_of_the_president.pdf).

**Question 151:**

*Please describe the main contents and policy objectives of the Volcker Rules and its impacts on the global financial market.*

**RESPONSE:** The Volcker Rule became effective in April 2014. It generally prohibits banks and their affiliates from engaging in proprietary trading and sponsoring or investing hedge funds or private equity funds. Details are available at: <http://www.gpo.gov/fdsys/granule/FR-2014-01-31/2013-31476>.

*Page 119, Para 4.75*

*The report states that "(a) the Financial Stability Oversight Council (FSOC) was created to identify risks to financial stability emanating from both large, interconnected banks and nonbank financial companies, promote market discipline by eliminating expectations of government bailouts, and respond to emerging threats to financial stability."*

**Question 152:**

*What policy tools can FSOC apply within its authority to "respond to emerging threats to financial stability"?*

**RESPONSE:** FSOC highlights its recent efforts to respond to emerging threats to the stability of the U.S. financial system in its 2014 Annual Report, available at: <http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf>.

*Page 119, Para 4.78*

*The report states that "The U.S. banking agencies have adopted most of the Basel III capital requirements by issuing a final rule in July 2013. They are currently engaged in rulemaking, or are planning to commence rulemaking, to adopt other Basel III capital and liquidity standards."*

**Question 153:**

*China welcomes the U.S. efforts to strengthen the prudential supervision of its banking sector. Does the U.S. have a definite timetable for the comprehensive implementation of Basel III?*

**RESPONSE:** U.S. banking agencies have now adopted the final rules implementing Basel III standards. Those rules are now effective. Full implementation is January 1 2019. Details are available in the final rule, available at: "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule"; Final Rule, Federal Reserve System, 12 CFR Parts 208, 217, and 225, Federal Register, Vol. 78, No. 198/ October 11, 2013 <http://www.gpo.gov/fdsys/pkg/FR-2013-10-11/pdf/2013-21653.pdf>.

*Page 122, Para 4.81*

*The report states that "However, more progress is needed in some areas, notably in terms of "shadow banking", i.e. given the size and prominence of money market mutual funds in short-term funding markets, their regulation should be reinforced to further enhance financial stability".*

**Question 154:**

*Has the U.S. assessed the current scale of "shadow banking" in the U.S.?*

**RESPONSE:** Details are available in the Office of Financial Research's 2012 Annual Report, Page 14, available at: [http://www.treasury.gov/initiatives/wsr/ofr/Documents/OFR\\_Annual\\_Report\\_071912\\_Final.pdf](http://www.treasury.gov/initiatives/wsr/ofr/Documents/OFR_Annual_Report_071912_Final.pdf).

**Question 155:**

*China hopes that the U.S. may share its experience in regulating "shadow banking". What measures has the U.S. adopted to control the financial risks caused by "shadow banking" and what further steps are expected?*

**RESPONSE:** The United States has made significant progress in addressing potential systemic risks to financial stability emanating from the shadow banking system. The Dodd-Frank Act has led to a stronger, better regulated, and more resilient financial system. The Dodd-Frank Act also gave the Financial Stability Oversight Council ("the Council") the ability to expand the regulatory perimeter to subject certain nonbank financial companies that could pose a threat to U.S. financial stability to Federal Reserve supervision and enhanced prudential standards.

New policy measures are also in place or being developed to address the risks posed by shadow banking activities, including money market funds (MMFs), the tri-party repo market, and hedge funds. In July 2014, the SEC approved final rules to reform MMFs. The final rules, combined with initiatives undertaken in 2010, are intended to reduce MMFs' vulnerability to investor runs, particularly in times of stress, as well as increase transparency to investors. U.S. banks have reduced their reliance on short-term funding and have largely shifted to secured funding transactions with higher quality collateral. The U.S. has made substantial progress in reducing intraday credit exposure and reforming collateral practices in the tri-party repo market. The United States has taken steps to enhance oversight of hedge funds. Most hedge fund advisers are now required to register and to file comprehensive portfolio risk information with U.S. regulators, making it among the most stringent reporting regimes in the G-20.

*Page 122, Para 4.81*

*The report states that "Moreover, the IMF has warned that "too big to fail" banks are still major sources of systemic risks and has called for tighter supervision. The implicit subsidy for "too big to fail" banks in the United States is estimated at about US\$70 billion."*

**Question 156:**

*Please describe the legal basis and ways for providing such implicit subsidy.*

**RESPONSE:** See the 2011 FSOC Study & Recommendations Regarding Concentration Limits on Large Financial Companies, which notes that Dodd-Frank "establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's consolidated liabilities would exceed 10% of the aggregate consolidated liabilities of all financial companies...The financial sector's concentration limit should help reduce the prospects for any increase in implicit subsidy for the nation's largest financial firms." Additional details are available at: <http://www.treasury.gov/initiatives/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf?n=24624>.

**Question 157:**

*China understands the concerns of the U.S. with maintaining financial stability, but China is concerned about the significant implicit subsidy that the U.S. provided for the "too big to fail" banks to function. Although there are no prohibitive provisions in the WTO agreements on service subsidies, such high amount subsidies granted to the banking sector is transmissible and will severely distort the downstream real economy and markets. Please offer the U.S. opinions of this issue.*

**RESPONSE:** Please see answer to question 156.

**Question 158:**

*As the U.S. financial market gradually stabilizes, does the U.S. plan to gradually reduce the scale of such implicit subsidies?*

**RESPONSE: Please see answer to question 156.**

*Page 123, Para 4.82*

*The report states that "The telecommunications market in the United States is the largest in the world by revenue (US\$526 billion in 2011, up from US\$400 billion in 2007), and ICT spending at US\$1.2 trillion in 2013, i.e. about a quarter of worldwide spending."*

**Question 159:**

*The U.S. telecommunications service has been growing rapidly in recent years. Please introduce the specific sub-sectors which have been the main growth points in the industry.*

**RESPONSE: The greatest growth in the U.S in the telecommunications market, as in other countries, has been in the wireless sector, which now surpasses the wireline market both by subscribers (over 300 million, as compared with 110 million wireline subscribers) and revenue (over US\$200 billion). Driving this is the prevalence of smartphone, now accounting over 90 % of new devices sold, and the consequent explosion of mobile data, which increased over 80% in 2013, and now accounts for almost half of mobile service revenue (CTIA).**

*Page 124, Para 4.89*

*The report states that "The principal legislation covering telecommunications remains the Communications Act of 1934 and its amendments, and the Telecommunications Act of 1996. The Federal Communications Commission (FCC) is responsible for "regulating interstate and international communications by radio, television, wire, satellite, and cable. The National Telecommunications and Information Administration (NTIA) of the Department of Commerce is the principal advisor to the President on telecommunications and information policy issues. The International Communication and Information Policy (CIP) Office in the Department of State, along with the FCC and NTIA, represent the United States in bilateral and multilateral affairs concerning telecommunications, the Internet, and information technology. The United States Trade Representative (USTR) is responsible for developing and coordinating trade policy, including the negotiation and enforcement of specific provisions relating to telecommunications in the trade agreements to which the United States is a party."*

**Question 160:**

*Please describe the positions and roles of FCC, NTIA, CIP and USTR in the policy-making regarding foreign-invested telecommunications services. Is there any other legal basis besides the Telecommunications Act of 1996?*

**RESPONSE: The WTO report quoted above is accurate. In addition to the Communications Act of 1934, amended in 1996, there are various laws that address specific policy issues relevant to telecommunications policy, such as the Open-market Reorganization for the Betterment of International Telecommunications Act ORBIT Act (relating to satellite services); the Digital Millennium Copyright Act (DMCA—which includes provisions relating to ISP liability) and the Children's Online Privacy Protection Act (COPPA).**

*Page 124, Para 4.90*

*The report states that "Section 310 of the Communications Act, restricts granting of a common carrier wireless licence to foreign governments, as well as to any non-U.S. citizens or corporations, or any corporation with more than 20% foreign ownership. However, under its statutory "forbearance" authority, the FCC has determined that it will not apply the 20% limit to the class of common carrier wireless licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the FCC determines, upon the filing of a petition for declaratory ruling by the licensee, that the particular foreign investment is consistent with the public interest. In addition, where a common carrier wireless licensee is controlled by a U.S.-organized parent company, Section 310 allows foreign individuals, corporations, or governments to own and vote 25% of the U.S. parent's capital stock. In all cases, whether an applicant is domestic or foreign, the FCC is authorized to attach conditions to a licence, or to deny a licence, if it finds it is in the public interest to do so."*

**Question 161:**

We note that in 2014 the FCC conducted internal voting for such issues as 310 license issuance and examination, and thereafter the FCC has actually expanded its review authority and discretionary power over the qualification of 310 license applicants, which are realized mainly through employing the so-called "public interest". Please describe the definition of "public interest" by the FCC. Is there any legal basis for "public interests"? How is "inconsistent with public interest" determined? Is such determination based on qualitative or quantitative analysis? Are there any criteria of measurement?

**RESPONSE:** We do not understand the statement that "the FCC has actually expanded its review authority and discretionary power over the qualification of 310 license applicants, which are realized mainly through employing the so-called 'public interest.'" This statement appears to be based on a misunderstanding of the Commission's forbearance decision referred to in the excerpt from Page 124, Para 4.90. In fact, the FCC's forbearance decision specifically implemented a means for common carrier wireless licensees to exceed the 20% foreign ownership limit in the Communications Act under the same "public interest" standard that it has used in exercising its discretionary authority to allow common carrier wireless licensees' U.S. parent companies to exceed the 25% foreign ownership limit.

The public interest standard for granting common carrier wireless licenses to companies with foreign ownership that would exceed the limits in the Communications Act has not changed for WTO investors. Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act.

*Page 124, Para 4.91*

The report states that "The FCC seeks the advice of other government agencies on matters concerning national security, law enforcement, foreign policy and trade policy concerns when it considers an application from an entity with foreign ownership interests to provide international telecoms services or to acquire control of, or the regulated telecom assets of, an existing provider of domestic or international telecoms services."

**Question 162:**

Please provide details of the advice-seeking mechanism, including the involved governmental departments, the procedure and schedule of seeking advice, how to address disagreement among relevant departments, how will the advice impact the FCC decision, and the remedies available to applicants whose applications are rejected.

**RESPONSE:** Executive Branch agencies have the opportunity indicate their interest in reviewing any application to the FCC within three weeks of the FCC publication of such application. Such review is an opportunity for the Executive Branch to offer advice to the FCC regarding any foreign applicant seeking a license to operate in the United States or to provide international services from the United States. Such agencies communicate their advice to the FCC, and any resulting conditions imposed on a licensee by final FCC action become part of a public record. To date, the FCC has not denied an application based on foreign ownership.

**Question 163:**

Please clarify the relationship between the advice-seeking mechanism in the context and the "telecommunications team", as well as CFIUS.

**RESPONSE:** Executive Branch advice relating to new telecommunications licenses and transfers of control of licenses is conducted directly with the FCC, under licensing procedures governed by FCC regulations. CFIUS decisions only relate to acquisitions, as opposed to new licenses. Such deliberations may involve the same Executive Branch agencies, but the process is governed by a separate statute, and the process is chaired

**by the Department of the Treasury.**

**Question 164:**

*Please list the departments whose advice may be solicited. The application for 214 license submitted by China Mobile is still pending and has exceeded the time limit of policy review. Is this related to the advice-seeking process? Which department disagreed to issue the license?*

**RESPONSE: Executive Branch agencies that typically provide advice with respect to license applications include the Department of State, Department of Commerce, and Office of the United States Trade Representative, the Department of Defense, the Department of Homeland Security, and the Department of Justice. China Mobile's application is being reviewed for law enforcement and national security concerns, the expertise for which reside in the last three agencies noted above.**

*Page 125, Para 4.92*

*The report states that "The United States' commitments on basic telecommunications attached to the Fourth Protocol of the GATS cover most services."*

**Question 165:**

*Please describe the status quo of foreign investments in the U.S. telecommunications market, including the number, business scope and home countries of foreign-invested enterprises.*

**RESPONSE: There are hundreds of foreign telecommunications suppliers operating in the U.S. market, and most global operators, including those from China, have a presence in the U.S. market. The third largest mobile operator (Sprint), and fourth largest mobile operator (T-Mobile) are both foreign-owned. Although China Mobile's license application for common carrier services is still pending, it has operated in the United States since 2013, offering a variety of unlicensed services, such as Internet Protocol transit service.**

**Question 166:**

*For foreign telecom companies applying for telecommunication business licenses, which kind of license application should be filed to the U.S. federal government's approval and which kind to the state government? Please describe the application procedures and main legal basis respectively.*

**RESPONSE: The main licensing processes applicable to foreign operators are those relating to international common carrier services, and submarine cable landing station licenses. Companies seeking to offer wireless services also need a radio license. Companies seeking to operate satellite services need a special license for satellite services. All of these licenses are administered by the FCC, pursuant to regulations governed by the 1934 Communications Act. The same licenses are required for domestic operators.**

**Companies offering intra-state common carrier services (e.g. local voice services, or intra-state long distance service) generally also need a state authorization, the application procedures for which vary state by state. The same licenses are required for domestic operators.**

**Question 167:**

*China notices the open attitude claimed by the U.S. in the area of telecommunications, but also notes that in practice, the national security review for the telecommunication sector is overly strict and in bad need of transparency. As a result, many foreign companies including Chinese ones can not enjoy the market opening committed by the U.S.*

**RESPONSE: No response required because there is no question.**

**Question 168:**

*Does the U.S. plan to correct the abuse of the national security review in the telecom sector?*

**RESPONSE: The United States does not agree with the premise of this question.**

*Page 125, Para 4.93*

*The report states that "In November 2012, the FCC adopted the Report and Order (FCC-12-145)*

and eliminated the International Settlements Policy (ISP) in order to modernize its international telephony rules, further lower the price for international calls, and increase competition. At the same time, the FCC adopted safeguards to protect against anticompetitive conduct in specific cases. Nonetheless, the FCC maintains a "List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets". This list of carriers is used for the purposes of implementing certain FCC rules on switched services over private lines and U.S. international common carriers and cable landing licensees."

**Question 169:**

*Please list the respective contributions made by the FCC and telecommunications operators in the Connect America Fund (CAF) and the CAF Mobility Fund. Are there any internet companies that make investment in the construction of mobile broadband infrastructures?*

**RESPONSE: In 2011, the FCC set a budget of US\$4.5 billion for the Connect America Fund, which included US\$500 million for the Mobility Fund. The Connect America Fund provides support to telecommunications operators to extend infrastructure that delivers voice and Internet services in areas that are uneconomic to serve without a subsidy. Internet companies, depending on how defined, do invest in such infrastructure. For example, AT&T and Verizon, which are telecommunications carriers and Internet service providers, both have deployed expansive 4G LTE networks that together cover a large percentage of the country's population. AT&T currently receives Connect America support for its mobile operations in some areas; Verizon does not receive any such support for its mobile operations. Intel, a company which is not a telecommunications carrier nor a Connect America Fund support recipient, was an investor in WiMax projects.**

**Question 170:**

*What is the relationship between CAF and USF specified in the Telecommunications Act of 1996. Do the "VoIP providers" under USF refer to telecommunications service providers or internet service providers?*

**RESPONSE: CAF is one program under the USF. To receive support from the Connect America Fund, a VoIP provider must first be designated as an "eligible telecommunications carrier" by the state where the provider is offering service or by the FCC if the relevant state does not have jurisdiction over the VoIP provider. As an eligible telecommunications carrier, a VoIP provider would be required to offer VoIP on a common carrier basis.**

*Page 127, Para 4.95*

*The report states that "In December 2010, the FCC issued a Report and Order (FCC 10-201) to adopt open internet rules. The FCC prohibited fixed broadband providers from unreasonably discriminating in transmitting lawful network traffic and from blocking lawful content, applications, and services. The FCC also imposed more limited anti-blocking rules on mobile broadband providers, and required both fixed and mobile broadband providers to disclose their network management practices. In September 2011, Verizon appealed the FCC's Open Internet Order. In January 2014, the U.S. Court of Appeals for the District of Columbia Circuit overturned the FCC's blocking and discriminations rules for the internet, but also upheld the FCC's authority to adopt open Internet rules under section 706 of the Telecommunications Act."*

**Question 171:**

*The open internet (internet neutrality) rules adopted by FCC are mentioned in this paragraph. Please describe the authority and power that FCC enjoys over the internet under section 706 of the Telecommunications Act.*

**RESPONSE: Both the U.S. Court of Appeals for the District of Columbia Circuit and the 10<sup>th</sup> Circuit have upheld the FCC finding that, if the FCC determines that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion, Section 706 provides the FCC with the authority to take immediate action to ensure that advanced telecommunications capabilities are available to consumers in the United States, by addressing any barriers to infrastructure investment and promoting competition in the telecommunications market.**

**Question : 172**

The FCC formulates or make adjustment to the rules on "open internet". Does this mean that the FCC has become the (main) regulatory authority of the internet in the U.S.? Or the FCC only exercises its power within the scope of "use of the internet" under section 706?

**RESPONSE:** Most Internet-related services in the United States are unregulated, and it would be inaccurate to characterize the FCC as the "main regulatory authority of the Internet." Efforts to ensure that consumers and businesses continue to have access to an open Internet largely focus on the narrow issue of access by the end-user customers, for which there are a range of statutory authorities available, including but not limited to section 706.

Page 128, Para 4.96

The report states that "In response to the Court's decision, on 15 May 2014 the FCC proposed new Open Internet rules, so as to enhance the existing transparency requirement, reinstate the no-blocking rule with certain clarifications, and require fixed (and potentially mobile) broadband providers to ensure that their practices are commercially reasonable. The FCC also sought comment on whether it should adopt legal presumptions that certain practices by broadband providers are commercially unreasonable, including with respect to prioritization of traffic from affiliated services. The FCC sought public comment on these proposed rules and on alternative proposals to protect the open Internet, including those that would regulate broadband providers as common carriers under certain circumstances. The deadline for submitting initial comments was 15 July 2014, and replies to those comments were due on 15 September 2014. New Open Internet rules are expected to be adopted by the end of 2014."

**Question 173:**

As mentioned in this paragraph, the FCC reinstated the neutrality policies in response to the Court's decision. FCC intends to promulgate policies permitting prioritization of traffic from affiliated services of broadband providers, which is a policy of preferential treatment for oneselfs and indirect discrimination against others. Please clarify the considerations of FCC. FCC intends to treat "broadband providers" as "common carriers" under certain circumstances, what scenarios do "certain circumstances" refer to?

**RESPONSE:** As this is an open proceeding, it would be premature to conclude what such circumstances might be; the purpose of the proceeding is to explore that question, among others.

Page 128, Para 4.97

The report states that "On 4 March 2014, the United States announced its intention to negotiate Telecommunications Mutual Recognition Agreements (MRAs) with selected countries "to facilitate U.S. exports of telecommunications equipment." The United States has negotiated MRAs with a number of multilateral organizations and economies, including in the context of APEC."

**Question 174:**

We note that the U.S. is negotiating MARs for the U.S. export of the telecommunications equipment with several countries/regions, including Chinese Taipei. Does the U.S. have any plan to negotiate an agreement with mainland China in the future?

**RESPONSE:** The United States has requested on numerous occasions over the past decade that China engage with the United States to conclude a bilateral Mutual Recognition Agreement (MRA) for conformity assessment of telecommunications equipment, consistent with China's stated commitment at APEC-TEL in 1998. The United States is pleased with China's renewed interest in this matter, and remains ready and willing to proceed with such a negotiation.

**Question 175:**

Please explain the standards of selecting negotiating partners of MARs, i.e. requirements to be met by an economy for the launch of negotiation. If any such agreement is concluded, what preferential treatment is given to the telecommunication products exported by the agreement signatory to the U.S.?

*Page 139, Para 4.120*

*The report states that "The main recent regulatory development concerning the U.S. health system is the 2010 Patient Protection and Affordable Care Act (PPACA) (see main provisions, Table A4.3) The PPACA represents a significant reform of the U.S. health care system. An important objective of the Act is to increase access to care by providing insurance coverage to previously uninsured individuals as of 2014."*

**Response:** The APEC Tel MRA is already in place and the United States is prepared to implement it with any APEC Tel signatory, including China. Once implemented with particular economy, the agreement provides for the mutual recognition of conformity assessment of telecommunications equipment. The value is that manufacturers of telecommunications equipment can have their products tested and approved with conformity assessment bodies located in their own country. This will help in the speed and cost of placing new telecom products on the market. Further detail on U.S. implementation can be found here: <http://transition.fcc.gov/oet/ea/mra/implementation.html>.

**Question 176:**

*China pays great attention to PPACA, one of the most important economic reform measures adopted by the U.S. in recent years. Please provide the data of increased fiscal expenditures of the federal, state and local governments for implementing the Act. How is the current scale of expenditure expected to change in the future?*

**RESPONSE:** The Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) have projected that the overall effect of the Affordable Care Act would be to reduce federal deficits.<sup>5</sup> In their most recent estimates, CBO and JCT estimate that the coverage provisions alone will result in a net Federal cost of US\$36 billion for 2014 and US\$1,383 billion for 2015-2024, which is US\$104 billion less than previous projections.<sup>6</sup> We are not aware of a comprehensive analysis of the costs to state and local government related to the Affordable Care Act, but note that the costs to states for the expansion of Medicaid<sup>7</sup> coverage is expected to be approximately US\$63 billion between 2013 and 2022.<sup>8</sup> We also note that the costs for states to implement the Health Insurance Marketplaces as well as the costs to subsidize consumers' costs for coverage in the Marketplaces are paid by the Federal government. States must generate the financing for the ongoing operational costs of Marketplaces they run, either through user fees or other general revenues available to the state.

**Question 177:**

*As the U.S. concluded its asset purchase program and adopts stringent fiscal policies to control deficits, how will the significant governmental expenditures incurred by medical reform affect the fiscal positions of the U.S.? Will this affect the realization of the fiscal policy objectives of the U.S.?*

**RESPONSE:** A recent analysis of national health spending found that in 2013, the rate of health care spending decreased by 0.5 percentage points compared to the previous year, and that the share of gross domestic product devoted to health care spending has remained at 17.4% since 2009.<sup>9</sup> Key provisions of the Affordable Care Act, such as adjustments to Medicare<sup>10</sup> payments, increased Medicaid prescription drug rebates<sup>11</sup>,

---

<sup>5</sup> <http://www.cbo.gov/publication/43471>.

<sup>6</sup> [http://www.cbo.gov/sites/default/files/45231-ACA\\_Estimates.pdf](http://www.cbo.gov/sites/default/files/45231-ACA_Estimates.pdf).

<sup>7</sup> Medicaid is a joint federal and state program that helps with medical costs for some people with low incomes and limited resources. Medicaid programs vary from state to state, but most health care costs are covered if you qualify for both Medicare and Medicaid. <https://www.cms.gov/apps/glossary/search.asp?Term=medicaid&Language=English&SubmitTermSrch=Search#Terms>.

<sup>8</sup> <http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Actuarial-Report-on-Financial-Outlook-for-Medicaid.html>, 2013 Report.

<sup>9</sup> <http://content.healthaffairs.org/content/early/2014/11/25/hlthaff.2014.1107.full.pdf+html>.

<sup>10</sup> Medicare is the federal health insurance program for: people 65 years of age or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure with dialysis or a transplant, sometimes called ESRD). <https://www.cms.gov/apps/glossary/search.asp?Term=medicare&Language=English&SubmitTermSrch=Search>.

<sup>11</sup> The Medicaid Drug Rebate Program is a program that includes CMS, State Medicaid Agencies, and participating drug manufacturers that helps to offset the Federal and State costs of most outpatient

and the medical loss ratio<sup>12</sup> for private insurers, has had the impact of exerting downward pressure on health care cost growth.<sup>13</sup> However, many of the major coverage provisions of the Affordable Care Act first took effect in 2014 and have not yet been fully accounted for. The National Health Expenditure Projections for 2013-23 indicate that the expansion of insurance coverage under the Affordable Care Act, as well as improving economic conditions, and the aging of the population is expected to drive faster growth in health spending in 2014 (5.6%) and beyond (6.0% for 2015 through 2023), and that health spending will make up 19.3% of GDP by 2023.<sup>14</sup>

**Question 178:**

*To what extent will the expansion of the medial insurance coverage further promote the development of health care and medicine service market? Has the U.S. made corresponding assessment?*

**RESPONSE:** As noted in the Secretariat Report, a basic purpose of the recent reforms of the U.S. health care system was to ensure increased access to health care services by providing insurance coverage to previously uninsured individuals. The National Health Expenditure Projections for 2013 through 2023<sup>15</sup> provides information on estimated growth in certain health care sectors related to the Affordable Care Act. Specifically, increased health insurance coverage is expected to lead to increased growth in hospital, physician and clinical services, and prescription drug use. The report found at this link provides additional analysis on this issue: <http://content.healthaffairs.org/content/33/10/1841.abstract>.

*Page 140, Para 4.129*

*The report states that "Regarding health insurance services, the limitations listed in the U.S. schedule, for insurance, notably numerous sub-federal level limitations, apply also to health insurance services. These restrictions have been described in some detail in previous TPR reports."*

**Question 179:**

*Foreign enterprises encounter significant difficulties in providing medical insurance services in the U.S. due to the sub-federal level restrictions and legislative inconsistency among the states. Does the U.S. plan to properly unify the relevant legislative provisions and reduce the corresponding limitations, so as to facilitate the business operation of foreign investors?*

**RESPONSE:** The market for health insurance services in the United States is regulated at the sub-Federal level. There are no plans to change that structure. We are not aware of significant difficulties provided by this system. Indeed, as noted in the Secretariat report at paragraph 4.135, "[t]he health insurance market of the United States is largely open and proportionally bigger than other developed countries' markets where public social security systems are dominant, thus making it an attractive destination for the establishment of foreign-based health insurers."

*Page 143, Para 4.141*

*The report states that "Cabotage of goods and passengers continues to be restricted by Section 27 of the Merchant Marine Act of 1920 (Jones Act) and the Passenger Vessel Services Act of 1886. Under the Jones Act, cabotage is reserved for ships registered, built, and maintained in the United States, owned by a domestic individual, including corporations, and three-quarters of the crew must be U.S. citizens."*

---

prescription drugs dispensed to Medicaid patients. <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/prescription-drugs/medicaid-drug-rebate-program.html>.

<sup>12</sup> Under the health care law, insurance companies must spend at least 80% of premium dollars on medical care. Insurers that don't meet this requirement must provide rebates to policyholders -- usually an employer that provides a group health plan. Employers who get these premium rebates must determine if the rebates constitute plan assets, and if so, allocate the rebate properly. <https://www.healthcare.gov/small-businesses/other-aca-information-for-business/>.

<sup>13</sup> <http://content.healthaffairs.org/content/early/2014/11/25/hlthaff.2014.1107.full.pdf+html>.

<sup>14</sup> <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>.

<sup>15</sup> <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>.

**Question 180:**

*Please describe the considerations of the U.S. in continuing to implement this market access restriction imposed 96 years ago, in today's world of ever deepened economic globalization. Does the U.S. plan to further open its cabotage market in future?*

**RESPONSE: Restrictions on domestic cabotage remain common among WTO members. U.S. objectives underlying the cabotage regime include ensuring the availability of experienced seafarers and maintaining domestic shipbuilding capability, which are important national security objectives.**

*Page 143, Para 4.144*

*The report states that "The United States has not made any commitment on maritime transport under the GATS and did not table an offer with respect to maritime transport in its services offer in the Doha Development Agenda."*

**Question 181:**

*Please clarify why the U.S. has long refused to make an offer with respect to maritime transport.*

**RESPONSE: The TPR is not a negotiating forum. Requests made in the context of the DDA services negotiations should be taken up in that forum.**

**Part II. Questions based on Policy Statement by the United States (WT/TPR/G/307)**

**1. THE UNITED STATES IN THE GLOBAL TRADING SYSTEM**

**Question 182:**

*Could the United States explain its consideration behind the change of wording from "Multilateral Trading System" in the heading of Part 1 of the 2012 Statement to "Global Trading System" in this Statement?*

**RESPONSE: China is reading too much into this wording. The words "multilateral" and "global" can be used interchangeably.**

**Question 183:**

*Paragraph 5 in Part 1 of the 2012 Statement stated that "The fundamental features of U.S. trade policy – maintenance of open, competitive markets, compliance with WTO obligations, and leadership in the multilateral trading system-remain unchanged....." However, neither such expression nor a description of the features of U.S. trade policy can be found in this Statement. Even the word "multilateral" is not mentioned throughout Part 1. Does it mean that the United States openly admits attaching less importance to the multilateral system compared with before?*

**RESPONSE: The United States places significant importance on the multilateral trading system, as witnessed just in the past twelve months by our significant contributions at Bali and in seeking to lift the impasse related to the TFA, the first multilateral agreement in the history of the WTO.**

*Page 4, Para 1.4*

*The Statement states that "More broadly, the United States will appropriately utilize every available policy tool – and will continue to develop new tools – to pursue the most efficient and productive pathways to expand trade and foster economic growth, consistent with WTO rules...", while in the 2012 Report, the counterpart statement was that "As part of its broader efforts to liberalize trade within the scope of WTO rules, the U.S. pursues a number of broad domestic, bilateral and regional initiatives that complement multilateral approaches.".*

*Moreover, the 2012 Statement stated that "US continues to adhere strongly to the percept that trade liberalization at the multilateral level holds the highest potential for securing wide-ranging market-opening outcomes.", but similar statement was not found in the Statement this year.*

**Question 184:**

*Does this mean that the United States has expressly diverted its focus on the international*

*economic and trade rule-making from the multilateral front to bilateral, regional and plurilateral arrangements?*

**RESPONSE:** The United States places significant importance on the multilateral trading system, as witnessed just in the past twelve months by our significant contributions at Bali and in seeking to lift the impasse related to the TFA, the first multilateral agreement in the history of the WTO. However, rule-making at the multilateral level is not something the United States alone can deliver. We look forward in 2015 to intensive discussions, including on a post-Bali work program, which will lead, we hope, to additional multilateral agreements.

*Page 4, Para 1.3*

The Statement states that "The United States will also utilize the WTO's network of committees to consider emerging challenges, such as state-owned enterprises, electronic commerce, food security, and regulatory trade barriers.", while in the 2012 Statement, the U.S. showed more concern on "regional trade agreements, export restrictions, food security and government involvement in commercial activities".

**Question 185:**

*Except for food security, the primary concerns of the United States have changed significantly compared to those in 2012. Please explain the reasons for such change.*

**RESPONSE:** Regional trade agreements, export restrictions, food security and government involvement in commercial activities remain of concern to us and we continue to pursue specific issues or problems in the relevant Committees. However, as the updated sentence notes, we view state-owned enterprises, electronic commerce and regulatory trade barriers - along with food security - as emerging challenges that require new or additional attention in Committees.

*Page 4, Para 1.6*

*Compared the 2012 Statement, new expressions such as "...innovation is promoted... and high environmental and labor standards are respected..." were added in the 2014 Statement.*

**Question 186:**

*What's the opinion of the United States on the role of these new factors in the system of global trade rules?*

**RESPONSE:** The United States places a high value on the protection of innovation and intellectual property rights, labor rights, and the environment. International trade agreements and initiatives are valuable tools to raise the bar for the protection of innovation, worker rights, and the environment, and we seek to ensure that our international trade policies support and reinforce these objectives and values, so that the benefits of trade are shared broadly by workers, businesses, and consumers throughout the global trading system.

**Question 187:**

*Please list the departments and authorities responsible for performing the U.S. obligations under environment provisions or chapter under its free trade agreements. What environmental clauses will be covered in the FTA negotiations of the U.S.? How will the United States enforce such environmental agenda after signing it into FTAs? For instance, which departments will participate in such enforcement and what are their respective role and duty?*

**RESPONSE:** While the precise terms of obligations may vary by FTA, the Environment Chapters of our FTAs generally require Parties to:

- Maintain high levels of environmental protection;
- Not fail to effectively enforce domestic environmental law in a manner affecting trade or investment;
- Not waive or derogate from domestic environmental law to attract trade or investment;
- Provide opportunities for public participation; and
- Ensure that interested persons can request competent authorities to

**investigate alleged violations of environmental laws.**

**Some of our FTAs require the Parties to implement certain multilateral environmental agreements. In FTAs under negotiation, we are seeking commitments to address pressing environmental challenges, such as wildlife trafficking, illegal logging, and marine conservation and protection.**

**The Office of the United States Trade Representative coordinates the implementation and enforcement of the environment provisions of U.S. FTAs. Other agencies that play substantial roles in these matters include the Department of State, the Environmental Protection Agency, the Department of the Interior, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Department of Justice.**

**Question 188:**

*How does the United States view the role of the environmental dispute settlement mechanism in a free trade agreement? Apart from NAFTA, does the United States have other practical experience in resolving environmental disputes under an FTA? Please give examples. What benefits were delivered by including an environment chapter in an FTA involving the U.S., in particular, for the improvement of environment?*

**RESPONSE:** The environmental commitments in our FTAs along with related technical assistance and capacity building have resulted in significant improvements in environmental protection in FTA partner countries, including by strengthening environmental protection and oversight institutions, supporting conservation efforts, and enhancing public participation in environmental decision-making. Monitoring and enforcing the implementation of the environment provisions of our FTAs is a priority for the United States. We seek to monitor and enforce these provisions in the same manner as commercial obligations. We have resolved issues related to the environment provisions of our FTAs through a range of mechanisms, including through FTA institutional bodies, governmental dialogues, and environmental cooperation. To date, none of these matters has led to formal, government-to-government dispute settlement proceedings. Information regarding our agreements and initiatives is available on the website of the Office of the United States Trade Representative (<http://www.ustr.gov/>).

## **2. THE UNITED STATES ECONOMIC AND TRADE ENVIRONMENT**

**Page 5, Para 2.1**

*"the United States is committed to opening foreign markets through negotiating trade agreements, whether multilateral, regional, bilateral, or plurilateral, as well as maintaining the integrity of existing trade agreements and enforcing U.S. rights under those agreements."*

**Question 189:**

*"Plurilateral" is a newly-added negotiation approach to market access in the U.S. toolkit. Please outline the U.S. overall considerations for plurilateral negotiations and their relationship with the multilateral negotiations under the WTO framework.*

**RESPONSE:** Plurilateral approaches are not new, neither for the United States nor the WTO. On the rules side, for example, the Subsidies and TBT Agreements started as plurilateral codes. The GPA is also plurilateral. On the market access side, the ITA Agreement is a plurilateral agreement, even though its benefits extend to all WTO Members. In those areas where some WTO Members are unable or unwilling to move forward, the United States considers plurilateral agreements to be valuable ways to liberalize trade among those in a position to do so.

**Page 5, Para 2.3**

*"In 2013, U.S. goods and services exports supported an estimated 11.3 million jobs in the United States alone.....Over half of U.S. imports in 2013 were intermediate inputs."*

**Question 190:**

*Compared to 2011, U.S. goods and services exports created 1.6 million more new jobs in 2013. What is the main reason for such growth? Over half of U.S. imports in 2013 were intermediate inputs. How does this figure compare with previous years and why is there such a development?*

**RESPONSE:** Jobs supported by goods and services exports have increased by 1.6 million between 2009 and 2013 (from 9.7 million in 2009 to 11.3 million in 2013). This increase in jobs supported by exports is largely due to the growth in U.S. exports over the same time period. During this global economic recovery, U.S. exports grew by nearly 50 percent. For a discussion of jobs supported by exports and its methodology, see [http://www.trade.gov/mas/ian/build/groups/public/@tg\\_ian/documents/webcontent/tg\\_ian\\_005313.pdf](http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_005313.pdf).

**In 2013, an estimated 52% of U.S. imports were intermediate goods. This compares with 55% in 2004, 53% in 2007, and 54% in 2012.**

*Page 5, Para 2.4*

*"The United States maintains one of the world's most open trade regimes.....and U.S. regulatory processes are transparent and accessible to the public."*

**Question 191:**

*The United States claims that its regulatory processes are transparent and accessible to the public. However, under its Foreign Investment and National Security Act, the requirements for national security review are too general, CFIUS is endowed with too much discretion, the procedures are complicated and opaque, and no reasons are provided for rejected transactions. Please explain why. Does the United States have any plan for making improvements in this respect?*

**RESPONSE: The CFIUS process is fully described in the CFIUS statute, executive order, and regulation, all of which are available 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>). Furthermore, the statute, executive order, regulations, and guidance setting forth the CFIUS process are fully and publicly disclosed on the CFIUS website.**

*Page 6, Para 2.6*

*"Both U.S. real exports and imports of goods and services increased between 2011 and 2013, with exports up 6.4% and imports up 3.5%. Over the past 20 quarters of recovery (through 2<sup>nd</sup> quarter of 2014), real exports of goods and services have contributed 0.7 percentage point to U.S. GDP growth, roughly one-third of the growth in U.S. GDP."*

**Question 192:**

*What is the main reason for a significant decline in the growth rates of both U.S. real exports and imports of goods and services between 2011 and 2013 compared to those between 2009 and 2011? Why of two sides of the trade coin, export, for the period of 2011-2013, replaced import, for the period of 2009-11, as a contributor to the GDP growth. Why? Has it to do with the National Export Initiative launched by the U.S. government?*

**RESPONSE: Both export and import real growth rates have declined between 2009-11 and 2011-13. The real growth rate for exports declined from nearly 20% to over 6%, while the real import growth rate declined from 19% to 3.5%. Among other factors, the large increase in the growth rate in the earlier period was a function of the economic recovery from the Great Recession – real exports declined by nearly 9% in 2008 and real imports declined by nearly 14%.**

**In the more recent period, the slowdown in trade, a global phenomenon, may be a consequence of weak global economic growth, most notably in Europe, but also in many emerging market economies, relative to the pre-crisis rates of growth. Over the same period, import growth has slowed, mainly due to a decline in both the volume and price of oil imports.**

**The National Export Initiative has contributed to U.S. export growth by promoting exports (through trade advocacy and increasing market access through market opening trade negotiations), and enforcing U.S. rights under trade agreements.**

*Page 6, Para 2.7*

"The budget deficit dropped from US\$1.3 trillion (8.4% of GDP) in fiscal year 2011 to US\$1.1 trillion (6.8% of GDP) in fiscal year 2012, and to US\$680 billion (4.1% of GDP) in fiscal year 2013.....The primary deficit (non-interest outlays less receipts) is projected to become a primary surplus in FY2021 and grow through the end of the forecast horizon.....The progress in reducing the deficit as a share of GDP reflects both the stronger U.S. economy and the deficit reduction plan put into place by the United States."

**Question 193:**

The Statement states that the budget deficit in 2011 was US\$1.3 trillion (8.4% of GDP), which is different from the data disclosed in the 2012 Statement (US\$1.19 trillion and 7.9% of GDP respectively). Please explain the reasons for such discrepancy.

**RESPONSE:** According to official U.S. accounts, the Federal Government posted a deficit of US\$1,299.6 billion at the end of FY2011 (October 2010 – September 2011). The final deficit differs slightly from the initial estimate of US\$1,298.6 billion, published in October 2011, due to additional reporting and revisions to data following the release of the Final Monthly Treasury Statement for FY2011. At the end of the last fiscal year (FY2014), the Federal Government posted a deficit US\$483.4 billion (2.8% of GDP), the lowest deficit since FY2008. The Federal deficit has fallen by about US\$929.3 billion since the peak of US\$1,412.7 billion, reached in FY2009.

**Question 194:**

The Statement states that the decline of the deficit as a share of GDP is attributable to both the stronger U.S. economy and the deficit reduction plan. Please give more details of this plan. Does it refer to the Budget Control Act passed in August 2011, committing the U.S. to US\$2.1 trillion in deficit reduction over the next ten years? Has the United States made any assessment of the enforcement of this Act and its implication for the economic recovery of the United States?

**RESPONSE:** Legislative actions (e.g. cuts to discretionary spending and mandatory sequestration included in the Budget Control Act and the restoration of tax rates on the highest earners to 1990s levels in the American Taxpayer Relief Act) have lowered the deficit by almost US\$4.0 trillion in the past few years. More recently, the United States passed the Bipartisan Budget Act in December 2013, which reaffirmed its commitment to deficit reduction. The legislation included US\$85 billion in total savings, achieved through a combination of lower outlays and new revenue, and replaced some of the automatic budget cuts set to occur over FYs2014 and 2015 for an additional US\$22 billion in deficit reduction through FY2023.

**Question 195:**

"The primary deficit (non-interest outlays less receipts) is projected to become a primary surplus in FY2021 and grow through the end of the forecast horizon." Could the United States introduce the specific methodology and basis for making this projection, in particular, how does the influence of such non-economic factors as general election be assessed?

**RESPONSE:** Many – if not most – of the government's programs are affected by the state of the economy, including variables such as the rate of inflation, the unemployment rate, and changing demographics. Likewise, revenues reflect the size of the economy and tax rates. The federal budget must be negotiated and agreed upon by both Congress and the President, and general election results can influence fiscal policy.

*Page 6, Para 2.8*

"The increase in gross saving of US\$598 billion between 2011 and 2013 was primarily due to an increase in government saving of US\$613 billion."

**Question 196:**

Compared with the period between 2009 and 2011, the increase in U.S. gross saving between 2011 and 2013 was primarily due to an increase in government saving rather than that in commercial savings. Why was there such a change?

**RESPONSE:** Between these two periods, the U.S. government enacted policies that

**reduced the budget deficit and restrained the accumulation of national debt.**

*Page 6, Para 2.9*

*"U.S. gross investment increased by US\$367 billion between 2011 and 2013, 60% the increase in U.S. gross saving. With levels of U.S. saving growing faster than domestic investment, a decline in net inflows of capital occurred, from US\$461 billion in 2011 to US\$454 billion in 2012, and US\$401 billion in 2013."*

**Question 197:**

*A decline in net inflows of capital occurred in the United States between 2011 and 2013. Is there any other reason for such decline in addition to that saving outgrew domestic investment?*

**RESPONSE:** A major source of the increased saving was the reduction in the Federal government budget deficit. In addition, the moderate, but sustained, growth of the economy held down the need for additional investment since the rate of capacity utilization remained below its long-term average. Another reason for increased U.S. saving is the continued deleveraging by U.S. households since 2008, which has increased private savings.

*Page 6, Para 2.11*

*"Most measures of labor compensation have also been rising slowly – another indication of the significant slack which remains in the U.S. labor market."*

*Paragraph 2.11 states that labor compensation has been rising slowly, and the significant slack remains in the U.S. labor market.*

**Question 198:**

*Could the United States explain why the labor market remains slack and what challenge this will have on its further economic recovery?*

**RESPONSE:** While the unemployment rate, at 5.8%, is very close to what many consider to be its structural value of 5.4%, and the short term unemployment rate is below its pre-recession average, other indicators such as those working part time for economic reasons, and those marginally attached to the labor force, remain elevated and point to slack in the economy.

The long-term unemployed are another group that may indicate slack in the economy, and recovery for this group has markedly accelerated in 2014. Steps to strengthen the economy and encourage best practices for hiring the long-term unemployed, both of which the Administration has long-championed, are critical for continuing the rapid pace of recovery seen in 2014. For further detail on these plans see the following reports on the labor force participation:

[http://www.whitehouse.gov/sites/default/files/docs/labor\\_force\\_participation\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/labor_force_participation_report.pdf) and the Opportunity, Growth, and Security initiative <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/opportunity.pdf>. Also for steps on the long-term unemployed: <http://www.whitehouse.gov/the-press-office/2014/01/31/fact-sheet-opportunity-all-president-s-call-action-give-long-term-unempl>.

*Page 7, Para 2.12*

*"Labor productivity, as measured by output per hour worked, grew by nearly 2% between 2011 and 2013 (up 1% in 2012 and up 0.9% in 2013). Manufacturing productivity grew nearly 60% faster, up 3.0% between 2011 and 2013 (up 1.0% in 2012 and up 2.0% in 2013)."*

**Question 199:**

*Please describe the main reasons for the growth in labor productivity and manufacturing productivity of the United States.*

**RESPONSE:** Over the last decade, increases in productivity have mostly reflected technological change as well as the scale of markets and organization of production processes. The relatively slower pace of productivity growth in the recent period likely reflects, in part, the sustained weakness in capital investment over the recession and recovery period. Moreover, the cyclical element to the growth in labor productivity with

**it being strong at the beginning of the business cycle, then slowing as the cycle progresses as more employment accelerates is also a factor in the slower pace in the recent period.**

*Page 7, Para 2.14*

*"The United States was the recipient of 16.9% of goods and services exports from the rest of the world (excluding intra-EU exports) in 2013. The United States supplied 14.3% of goods and services imports to the rest of the world (excluding intra-EU imports)."*

**Question 200:**

*As the largest economy and consumer worldwide, U.S. and its demand is critical for boosting the global economic recovery. Does the United States plan to further trade facilitation to promote imports and undertake its responsibility as the largest economy in the global economic recovery?*

**RESPONSE: The U.S. is the largest importer in the world, with imports of goods and services totaling US\$2.8 trillion in 2013. Since 2009 and the end of the Great Recession, imports have increased by 40%. The U.S. has agreed to implement the Trade Facilitation Agreement, which when other parties implement as well is estimated to increase global GDP by hundreds of billions.**

### **3. OPENNESS AND ACCOUNTABILITY: BUILDING SUPPORT FOR TRADE**

*Page 9, Para 3.8*

*"Throughout 2013 and 2014, USTR has issued Federal Register Notices to solicit public comment and has held public hearings at USTR regarding a wide array of trade policy initiatives. Public comments received in response to Federal Register Notices are available for inspection online at <http://www.regulations.gov>. Some examples of trade policy initiatives for which USTR has sought public comment include those related to the Trade in Services Agreement (TiSA), the Environmental Goods Agreement, in addition to those related to the ongoing negotiations of the Transatlantic Trade and Investment Partnership Agreement (T-TIP) and the Trans-Pacific Partnership (TPP)."*

**Question 201:**

*After login on the website [www.regualtions.gov](http://www.regualtions.gov), we found that it seems only to publish brief and simple notices, without making available substantial information regarding the said negotiations or initiatives. For instance, under "Request for Public Comments Regarding the Interim Environment Review of the TPP Agreement" with the Docket ID "USTR-2013-0028", Angela Clapp, a website visitor commented on Sep. 26, 2013: "We must have details before we can comment. Where do I go to read more??" It seems that the American people share the concern of the international community about transparency of the negotiations of mega-FTAs, such as TPP. Could the United States please explain what measures it will take to ensure transparency?*

**RESPONSE: U.S. negotiators meet with stakeholders on a regular basis, including before, during, and after each negotiating round. In addition, U.S. negotiators brief stakeholders and the press following each negotiating round.**

**For example, alongside each of the T-TIP rounds, USTR and the EU have hosted stakeholder consultation sessions. During each of the rounds held in the U.S., negotiators met with and listened to over 50 presentations from representatives of a wide array of interests, including industry, small business, academia, labor unions, environmental groups, and consumer advocacy organizations. The stakeholder presentations and briefings consistently draw approximately 300 global stakeholders.**

**In addition, before the launch of the T-TIP negotiations, USTR published a Federal Register Notice to seek public comment on the objectives for a U.S.-EU free trade agreement and held a public hearing. USTR received over 365 comments from a diverse array of stakeholders and 62 stakeholders participated in the hearing. These comments continue to guide our participation in the negotiations.**

*Page 10, Para 3.10*

*"The United States continues to rely on its trade advisory committee system as an integral part of its efforts to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests. The trade advisory committee system consists of 28 advisory*

committees, with a total membership of over 500 advisors. It includes committees representing sectors of industry, small business, and agriculture; labor, environment, consumer, and health organizations; as well as state and local interests. The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); five policy advisory committees dealing with environment, labor, agriculture, Africa, and state and local issues; and 22 technical advisory committees in the areas of industry and agriculture."

**Question 202:**

The total number of advisors disclosed in the 2012 Statement was nearly 700, while it is over 500 in this Statement. Apart from the maximum number of 45 advisors in the President's Advisory Committee for Trade Policy and Negotiations, are there any ceiling for the number of members in other 27 advisory committees?

**RESPONSE: The Agricultural Policy Advisory Committee and Agricultural Technical Advisory Committees do not have membership caps. The Industry Trade Advisory Committees may have up to 50 members. The Intergovernmental Policy Advisory Committee may have up to 35 members. The Labor Advisory Committee for Trade Negotiations and Trade Policy may have up to 30 members. The Trade Advisory Committee on Africa may have up to 30 members. The Trade and Environment Policy Advisory Committee may have up to 35 members.**

*Page 10, Para 3.15*

"For day-to-day communications, pursuant to the NAFTA and Uruguay Round implementing legislation and Statements of Administrative Action, USTR created a State Single Point of Contact (SPOC) system. The Governor's office in each state designates a single contact point to disseminate information received from USTR to relevant state and local offices and assist in relaying specific information and advice from the states to USTR on trade-related matters. The SPOC network ensures that state governments are promptly informed of Administration trade initiatives so their companies and workers may take full advantage of increased foreign market access and reduced trade barriers. It also enables USTR to consult with states and localities directly on trade matters which may affect them."

**Question 203:**

Please describe the U.S. working mechanism for subsidy notification, including and the coordination between the federal and local governments. Are SPOCs in the states responsible for collecting information on local subsidies?

**RESPONSE: The SPOCs are not responsible for collecting local subsidies information.**

**4. TRADE POLICY DEVELOPMENTS SINCE 2012**

**Question 204:**

China has noticed that the regional and bilateral preferential trade arrangements signed by the United States include both Free Trade Agreement (FTA) and Trade Promotion Agreement (TPA). Please describe the difference between FTA and TPA.

**RESPONSE: There is no substantive difference between U.S. FTAs and TPAs.**

*Page 16, Para 4.35*

"In August 2014, the AGOA Forum was held in conjunction with the first ever U.S.-Africa Leaders Summit in Washington DC. The U.S. Trade Representative and other U.S. participants met with numerous African heads of state, trade ministers, leaders of African regional economic organizations, and representatives of the African and American private sectors and civil society to discuss issues and strategies for advancing trade, investment, and economic development in Africa as well as ways to increase two-way U.S.-African trade."

**Question 205:**

Please introduce the main deliverables of the first U.S.-Africa Leaders Summit.

**RESPONSE: A broad spectrum of new initiatives and announcements were made at the Summit, focusing on a range of areas, including: shared investment in youth; U.S.-African cooperation on global health, on food security, and on advancing gender**

equality; combatting wildlife trafficking; support for peacekeeping and partnering to counter terrorism. In addition, President Obama announced US\$7 billion in new financing to promote U.S. exports to and investments in Africa under the Doing Business in Africa Campaign. U.S. companies announced new deals in clean energy, aviation, banking, and construction worth more than US\$14 billion. Also, US\$12 billion in new commitments under the President's Power Africa initiative were announced. A Presidential Advisory Council on doing business in Africa was created to promote broad-based economic growth in the United States and Africa by encouraging U.S. companies to trade with and invest in Africa. The President also announced establishment of a USG steering committee to develop a comprehensive approach for expanding sub-Saharan Africa's capacity for trade and investment. On the margins of the Summit, a symposium hosted by the First Lady Michelle Obama announced more than US\$200 million to support programs fostering improved education, health, and economic opportunity for more than 1 million Africans across the continent. A full list and description of the deliverables are available on the Summit's website (<http://www.whitehouse.gov/us-africa-leaders-summit>).

##### **5. TRADE-RELATED CAPACITY BUILDING INITIATIVES**

Page 23, Para 5.2

"In April 2014, USTR and the U.S. Agency for International Development (USAID) hosted a meeting with Ministers and heads of development banks to discuss donor efforts to help developing countries implement the WTO Trade Facilitation Agreement (TFA), and to ensure coordination among donor entities. The meeting provided an opportunity for donor institutions to share best practices and updates on the broad range of trade capacity building projects that are already in place."

**Question 206:**

In April 2014, USTR and USAID hosted a meeting with development banks. Which development banks participated in the meeting and what achievements were made at the meeting?

**RESPONSE:** Those development banks who attended included the African Development Bank, Inter-American Development Bank, the International Monetary Fund, and the World Bank. Additional information on the meeting can be found online at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/April/Readout-Meeting-USTR-Froman-USAID-Shah-Support-WTO-Trade-Facilitation-Agreement>.

Page 25, Para 5.11-5.13

**Question 207:**

Please describe the respective objectives, progress and achievements of such programs as Trade Africa, Power Africa and Feed the Future, the timing consideration for launching these programs and the source of funding and the institutional arrangement for the utilization of funds.

**RESPONSE:** Both Power Africa and Trade Africa were launched during President Obama's visit to Africa in 2013. Both initiatives are interagency efforts within the U.S. government and include partnerships with the private sector and other donors. Funding for the initiatives is from both Development Assistance and Economic Support Fund accounts and it is implemented through a range of mechanisms, including multi-donor funded projects, and other contracting mechanisms. For the objectives for both programs, please see the following links to the White House factsheets that accompanied the launch of the programs: <http://www.whitehouse.gov/the-press-office/2013/06/30/fact-sheet-power-africa>; <http://www.whitehouse.gov/the-press-office/2013/07/01/fact-sheet-trade-africa>. For information on Feed the Future, refer to the following report: [http://www.feedthefuture.gov/sites/default/files/ftf\\_progressreport\\_2014.pdf](http://www.feedthefuture.gov/sites/default/files/ftf_progressreport_2014.pdf)

Page 25, Para 5.17

"In November 2012, the United States launched a new U.S.-sponsored assistance facility called the "Standards Alliance" with the goal of building capacity among developing countries to implement the WTO Agreement on Technical Barriers to Trade (TBT Agreement). The Standards Alliance

*provides resources and expertise to enable developing countries to effectively implement the TBT Agreement. The focus of these efforts in developing countries includes efforts: to improve practices related to notification of technical regulations and conformity assessment procedures to the WTO; to strengthen domestic practices related to adopting relevant international standards; and to clarify and streamline regulatory processes for products."*

**Question 208:**

*Which governmental department is the lead agency for the work of "Standards Alliance"? Which departments are involved?*

**RESPONSE: In May 2013, the U.S. Agency for International Development (USAID) and the American National Standards Institute (ANSI) entered into a public-private partnership that will coordinate private-sector subject matter experts from ANSI member organizations in the delivery of training and other technical exchange with interested Standards Alliance countries on international standards and best practices. USAID and ANSI consult closely with the Office of the U.S. Trade Representative (USTR) and the Trade Policy Staff Committee (TPSC).**

**6. TRADE AND THE ENVIRONMENT**

*Page 26, Para 6.3*

*"In July 2013, the President issued an Executive Order on Combating Wildlife Trafficking in order to enhance U.S. Government efforts to combat wildlife trafficking. The Executive Order established a Presidential Task Force to develop and implement a National Strategy for combating wildlife trafficking. ....In June 2014, the President issued a Presidential Memorandum on Combating Illegal Fishing and Seafood Fraud. The memorandum established a Presidential Task Force and directed it to develop a comprehensive framework to combat illegal, unreported, and unregulated fishing and seafood fraud."*

**Question 209:**

*Which departments are represented respectively in the Presidential Task Forces for combating wildlife trafficking and illegal fishing and seafood fraud respectively?*

**RESPONSE: The Secretary of State, the Secretary of the Interior, and the Attorney General co-chair the Task Force on Wildlife Trafficking. The Task Force includes representatives from a broad range of U.S. Government agencies. See Executive Order 13648, Combating Wildlife Trafficking (July 1, 2013). The Secretary of State and the Secretary of Commerce co-chair the Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud. This Task Force likewise is comprised of a broad range of U.S. agencies. See Presidential Memorandum – Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (June 17, 2014).**

**7. TRADE AND LABOR**

*Page 27, Para 7.3*

*"As an essential component of the Administration's trade agenda, President Obama signed into law renewal of the Trade Adjustment Assistance (TAA) programs to assist workers, firms and farmers adversely affected by global competition. On 21 October 2011, President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (TAAEA). The renewal of TAA preserves the key goals of the 2009 TAA program reforms, such as covering service workers and workers whose jobs shift overseas. It helps ensure that American workers affected by global competition are given the best opportunity to acquire skills and credentials to get good jobs. 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 FY2013, US\$756,353,000 was available to carry out the program."*

**Question 210:**

*Compared with the 2009 version, what supporting measures were added to the Trade Adjustment Assistance Extension Act of 2011 signed by President Obama? Are there any other changes?*

**RESPONSE:** The 2011 amendments mainly restored the provisions of the 2009 amendments, however, the differences between the 2009 and 2011 amendments include:

**The elimination of group eligibility for public agencies (no public agency petitions were received under 2009 amendments)**

**Changes to Trade Readjustment Allowances (TRA) to include Completion TRA, which resulted in the following changes:**

- Availability of Completion TRA – to provide up to 13 weeks additional TRA payments for a worker who has exhausted the maximum weeks of Additional TRA and requires additional income support to complete an approved training program that results in a degree or an industry certified credential. Workers who qualify must also meet training benchmarks, which are also new under the 2011 amendments (described below).
- The reduction of the maximum number of weeks of income support (TRA) from 156 under 2009 amendments to 130 under 2011 amendments.
- Reduction of Additional TRA from a maximum of 78 weeks of payments, payable over a period of 91 weeks under 2009 amendments to 65 weeks of payments, payable over a period of 78 weeks under 2011 amendments.
- The elimination of Remedial TRA (Remedial training is still allowable).
- Reduction in the number of criteria for waivers of the training requirement for Basic TRA from six criteria to three.
- Establishment of a Federal Good Cause provision that allows a waiver for good cause of deadlines relating to time limitations on filing an application for TRA or enrolling in training.

Establishment of training benchmarks at the beginning of the worker's training program where the approved training program will extend beyond the duration of available Basic and Additional TRA in order to establish eligibility for Completion TRA (referred to above).

Establishment of a single funding source (training cap) for job search allowances, relocation allowances, case management and employment services, training, and state administration of benefits, which allows for increased flexibility of funds.

**Changes to the minimum and maximum levels of case management and employment services and state administration funds percentages.**

Job Search and Relocation Allowances became optional for states to administer under the 2011 amendments. Only one state (IL) opted not to offer job search and relocation allowances.

The 2011 amendments included changes to the sunset provisions and termination provisions to the TAA program.

These changes are fully described in the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) TEGL No. 10-11 located at: [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9853](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9853)

Please note that the Health Coverage Tax Credit was extended under the 2011 amendments, but expired on December 31, 2013.

You may also find this side by side benefit and services comparison helpful, as it includes the 2009 and 2011 amendments, along with the 2002 amendments and Reversion 2014 (sunset provision to the 2011 amendments): <http://www.doleta.gov/tradeact/pdf/side-by-side.pdf>.

## **8. SMALL AND MEDIUM-SIZED BUSINESS TRADE**

*Page 28, Para 8.1*

*"In October 2009, USTR announced a Small Business initiative aimed at ensuring that the specific export challenges and priorities of Small and Medium Enterprises (SMEs) and their workers are reflected in our trade policy and enforcement activities. This effort also supports the goals of the Administration's National Export Initiative (NEI) to double U.S. exports by the end of 2014 to*

support millions of American jobs. The NEI highlights priority attention to expanding SME exports."

**Question 211:**

According to its progress assessment, will the goals of NEI to double U.S. exports by the end of 2014 be realized as scheduled?

**RESPONSE: We did not reach the President's goal of doubling exports under the NEI – in part because of unexpectedly strong global economic headwinds and macroeconomic factors outside our control.**

**Feedback from customer surveys on the NEI and focus groups across the country – reaching more than 6,000 clients and partners – showed that U.S. companies are well-positioned to capitalize on growing opportunities around the world and offered suggestions on how to improve upon the NEI. NEI/NEXT is a new customer service-driven strategy with improved information resources that will help American businesses capitalize on existing and new opportunities to sell Made-in-America goods and services abroad. NEI/NEXT is focused on improving data useful to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help.**

**Part III. Other Questions**

**TRADE AND INVESTMENT REGIME**

**Investment flows and regimes**

**Question 212:**

The two-way investment data published by the Bureau of Economic Analysis (BEA) under the U.S. Department of Commerce has been revised from time to time, and occasionally is adjusted substantially. Please describe the statistical method and correction mechanism of two-way investment data.

**RESPONSE: U.S. Direct Investment statistics are based on quarterly and annual sample surveys as well as 5 year benchmark surveys. The data are revised on a regular schedule to incorporate new and revised source data and periodically incorporate changes in definitions, classifications, and estimation methods. A comprehensive methodology is available on BEA's Web site at [http://www.bea.gov/international/concepts\\_estimation\\_methods.htm](http://www.bea.gov/international/concepts_estimation_methods.htm) as well as a detailed analysis of revisions <http://www.bea.gov/scb/pdf/2012/11%20November/1112MNCs.pdf>**

This past summer, as part of the comprehensive restructuring of the international economic accounts, the direct investment statistics were revised to be presented on a gross basis according to whether the financial flow or position is derived from an asset or a liability rather than on a directional basis. On the gross (asset/liability) basis, direct investment assets cover U.S. assets for both outward (U.S. parents) and inward (U.S. affiliates) direct investment. Direct investment liabilities cover U.S. liabilities for both inward (U.S. affiliates) and outward (U.S. parents) direct investment. In the previous presentation, direct investment was shown on a directional basis. On the directional basis, direct investment assets (liabilities) covered only outward (inward) investment; U.S. parents' assets were netted against U.S. parents' liabilities, and U.S. affiliates' liabilities were netted U.S. affiliates' assets. Detailed information about these changes are available on BEA's website [http://www.bea.gov/scb/pdf/2014/07%20July/0714\\_annual\\_international\\_transactions\\_accounts.pdf](http://www.bea.gov/scb/pdf/2014/07%20July/0714_annual_international_transactions_accounts.pdf)

**Question 213:**

Under the U.S. International Investment and Trade in Services Survey Act, foreign companies are required to submit a form entitled "Benchmark Survey of Foreign Direct Investment in the United States" (Form BE-12) every five years. According to the analysis of BEA, it takes 96 hours

to complete this form on average.

*Has the United States assessed the effect of this regime?*

*The highly complicated information filing process constitutes a heavy burden for foreign-invested enterprises, particularly small- and medium-sized ones. Does the United States have any plan for streamlining the filing procedure?*

**RESPONSE:** Surveys conducted pursuant to the International Investment and Trade in Services Survey Act are critical to the Bureau of Economic Analysis's (BEA) ability to produce statistics on foreign direct investment in the United States. These statistics help policymakers and the general public understand the impact of foreign investment on the U.S. economy, and are used widely within and beyond the United States for a variety of purposes (including by the World Trade Organization, for example in Section 1.6 of the Secretariat's Report). BEA has developed a number of resources to assist survey respondents completing the Benchmark survey report. These resources include a series of online video tutorials that walk respondents through each step in the survey process; published answers to frequently asked questions about the surveys; guides to completing the surveys; links to e-filing platforms and instruction materials; and direct contact information (via both telephone and email) for BEA survey experts available for additional assistance. In addition, to reduce the burden on smaller companies, BEA has developed more streamlined forms which request less data: Form BE-12C, which is available for filing companies with assets, sales, or income (or loss) of US\$60 million or less; and Form BE12-B, for companies with assets, sales, or income between US\$60 million and US\$300 million.

**Question 214:**

*Many Chinese enterprises with investment in the United States reported difficulties in getting visas for their managers, engineers and technicians seconded to the United States, which has affected the normal business operation of some enterprises. Does the United States have any plan for providing necessary facilitation and guarantee in the visa application of Chinese-funded companies in the U.S.?*

**RESPONSE:** The United States is committed to facilitating legitimate travel for qualified foreign officials, business persons, tourists, and students, including from China. Appointment wait times for applicants at U.S. consular posts in China remain under five days for all applicants, and these posts currently operate several facilitation programs specifically for business travelers, as well as offering expedited services for those with urgent travel needs. The overwhelming majority of state-owned enterprise management personnel may renew their visas without interview if they apply to renew their visas within 12 months of the expiration of their previous visa, and they possess a valid petition. The United States is continually looking for ways to simplify the visa application process for senior management personnel from enterprises with offices in the United States, within the bounds of applicable laws and regulations.

**TRADE POLICIES AND PRACTICES BY MEASURE**

**Customs procedures and requirements**

**Question 215:**

*What preferential policies are granted to bonded warehouses in the United States? Are they permitted to store imported goods and exported goods simultaneously? What conditions must be satisfied and what formalities need to be completed for a bonded warehouse to be established? Does the U.S. customs authority charge any fees? How does the U.S. customs authority supervise and regulate bonded warehouses? Has any specific information management system been put into place? What steps will the customs take if goods in a bonded warehouse are lost or damaged or in the event of any wear and tear during storage?*

**RESPONSE:** Authority for establishing bonded warehouses is set forth in 19 U. S. Code, section 1555 and the regulations can be found at 19 CFR Part 19. There is no fee for establishing or operating a warehouse. An application is submitted to the port director who has final approval of the establishment of the facility. In the application, the operator needs to provide the following before the port director will provide approval: the exact physical location of the facility; the class of warehouse desired; an estimate of

**the maximum value of the merchandise being stored in the facility; a blueprint showing measurements, openings, etc., of the building or space to be bonded; evidence of fire insurance, and a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility.**

**While duties and taxes are paid upon the formal entry of cargo into the United States commerce, placing cargo into a bonded warehouse allows the importer to defer the payment of these duties and taxes for a period of up to 5 years. After 5 years in the warehouse from the date of importation, the cargo must (1) enter the commerce of the United States; (2) be exported from the United States; (3) be destroyed; or (4) sold at public auction.**

**While bonded warehouses are permitted to store imported and exported good simultaneously, they must be kept separate using security measures approved by the local Port Director. Liability for the safekeeping of the cargo while in the facility falls under the warehouse operator.**

**While the warehouse operator has the responsibility for day-to-day oversight of the safekeeping of the merchandise, CBP has the authority to enter any facility to determine the status of any cargo being maintained in the facility. Accordingly, each bonded facility is required to maintain a custodial bond under which the cargo maintained in the facility are covered in case the items are missing or cannot be accounted for.**

#### *Technical regulations and standards*

##### **Question 216:**

*Regulatory discrepancy between the federal, state and local laws in the U.S. has hindered the effective market access for trade and investment. For instance, the chemical testing standards for toys in Washington State are stricter than the federal standards. Companies which fail the testing of Washington State can not sell their products there even if they have passed the federal testing. What plans do the United States have in unifying its testing standards across the country?*

**RESPONSE: We are not aware of problems caused in terms of differing state and federal level requirements with respect to chemical testing, though we welcome additional information Members may wish to share in this regard. We have a constitutional system that ensures that any conflicting state level laws can be pre-empted by federal law.**

#### *Sanitary and phytosanitary requirements*

##### **Question 217:**

*According to some Chinese enterprises, the United States has transferred the power to regulate *leiocassis longirostris* imports from FDA to USDA, while other aquatic products remain regulated by FDA. Please clarify the reasons for having special regulatory measures for the import of *leiocassis longirostris*. Will this cause unnecessary burden or restrictions on exports of *leiocassis longirostris* by other WTO members?*

**RESPONSE: The species *Leiocassis longirostris* is of the family Bagridae, within the order Siluriformes. In the 2014 Farm Bill of the United States, the regulatory food safety oversight of all Siluriformes fish was mandated by Congress to be moved from the Food and Drug Administration (FDA) to the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS). The 2014 Farm Bill amended the provisions of the 2008 Farm Bill in which Congress first mandated the transfer of the inspection of catfish from the FDA to FSIS. FSIS published a proposed rule on catfish inspection on February 24, 2011. The rule was notified to the WTO SPS Committee on March 1, 2011.**

**The United States intends to notify the final rule to the WTO SPS Committee. FSIS will work closely with foreign countries interested in exporting Siluriformes to the United States.**

##### **Question 218:**

*In 2004, in the absence of any necessary basis for risk assessment, U.S. banned the import of*

*Chinese cooked poultry has been prohibited from being imported to the United States. It was not until November 5, 2014 that the Food Safety and Inspection Service (FSIS) of USDA announced the eligibility of four Chinese poultry processors to export processed poultry products to the United States, on the condition of using raw materials from countries recognized by the U.S. to make their poultry products. Could the United States clarify the basis for imposing such restrictions on Chinese cooked poultry products?*

**RESPONSE:** **Section 381.195 of Title 9 of the Code of Federal Regulations sets out the procedures by which foreign countries may become eligible to export poultry and poultry products to the United States. China's application with respect to poultry slaughtered in China is currently under review. FSIS is awaiting clearance by AQSIQ for visas for its inspectors to conduct the necessary audits to continue the U.S. review process.**

**Question 219:**

*As far as we know, USDA recognizes the veterinary certificate issued by the government of an exporting country for its animals, plants and their products, while the sanitary and phytosanitary certificates so issued by the government of an exporting country are recognized by FDA. Please explain why two government agencies in the same country of U.S. adopt such distinct approaches.*

**RESPONSE:** **FDA is a food safety regulator, while AHPIS has the mission of protecting animal and plant life and health. They each have different requirements that reflect their different missions.**

**Intellectual property rights**

**Question 220:**

*In the case of preliminary injunction, if litigation is delayed longer than expected, can the defendant request the court to increase the amount of the security provided by the plaintiff?*

**RESPONSE:** **Often, a plaintiff will be required to put up a bond as security in the event the court finds there was no infringement or the PI was in error. A defendant who feels that the bond is insufficient can ask the district court to increase it (or can even petition the court of appeals to increase it).**

**Question 221:**

*If an application for patent is filed in the United States alone, USPTO may allow such application to be disclosed after authorization. In some case, relevant technology might have been applied widely before the patent information is published. As a result, the public is unable to know such application in time, therefore fails to avoid using the same technology in their own design. An adverse impact is imposed on the entire industry. How will the United States strike a balance between information publication and patent protection? Will the United States consider making changes to this regime?*

**RESPONSE:** **The United States patent system strikes an appropriate balance between providing public notice and providing effective intellectual property protection.**

**Question 222:**

*To the knowledge of the Chinese government, the United States protects geographical indications (GI) in the form of collective trademarks and certification trademarks, and provides "common law protection" to GIs which have not been registered as collective or certification trademarks. Please detail the definition of "common law protection". What is the difference between "common law protection" and legal protection provided by collective or certification trademarks?*

**RESPONSE:** **Under U.S. law, a GI rights holder can prevent others from registering and/or using its GI, even without registration in the USPTO, if it can be shown that purchasers in the United States primarily understand that it refers to the product originating only in the region named in the GI.**

**There are additional benefits gained from registration, however. For example, the registration is prima facie evidence of the validity of the mark, and the owner's ownership of the mark for those products; the registration confers a right of priority,**

**nationwide in effect, against any other subsequent party; the registration facilitates filing suit in U.S. courts; and, for U.S. owners, the registration can be used as the basis for registration in a foreign country.**

**Question 223:**

*What requirements need to be met during USPTO's review of the certification trademark of a GI? Is it a pre-condition for a geographic origin being recognized that it be widely known to consumers?*

**RESPONSE:** The applicant for a regional certification mark must be able to show why it is entitled to control use of the geographical term. Along with providing information about what the mark certifies, the applicant must also provide a copy of its standards for a product's qualification for certification. The standards would include such things as the demarcations of the territory where the product is grown; the desirable characteristics; the climate and topography that produce those characteristics; and testing qualifications.

**TRADE POLICIES BY SECTOR**  
**Health and medical services**

**Question 224:**

*Does the United States have any plan or intention to further open its market to the traditional Chinese medical service and medicine, and to establish specific procedures for their examination and approval, and certification?*

**RESPONSE:** The U.S. market is open to traditional Chinese medical services and medicine, provided they are offered in a manner consistent with generally applicable federal, state, and local laws designed to protect health of patients, and to prevent misleading claims.

**Financial Service**

**Question 225:**

*Are the stock exchanges and commodities exchanges in the U.S. open to foreign investment? Please describe the legal framework and competent authorities for the regulation of the sector.*

**RESPONSE:** The commitments of the United States with respect to financial services sectors and subsectors are undertaken in accordance with the Understanding on Commitments in Financial Services subject to the limitations and conditions set forth in the United States' headnotes and schedule. There are no limitations and conditions so inscribed with respect to mode 3 of subsector (xiv) of the definitions of financial services from the GATS Annex on financial services i.e., "settlement and clearing services for financial assets..." Information about regulation of "national securities exchange" or other exchanges registered with the SEC under Section 6 (<http://www.sec.gov/about/laws/sea34.pdf#page=67I>) of the Securities Exchange Act of 1934 can be found at: <http://www.sec.gov/divisions/marketreg/mrexchanges.shtml>. Certain exchanges are self-regulatory organizations. Information regarding SRO rulemaking can be found at: <http://www.sec.gov/rules/sro.shtml>.

**Advertising Service**

**Question 226:**

*Have any changes occurred to the legal system applicable to the advertising service in the United States during the review period? Are foreign investors accorded national treatment in establishing advertising companies in the United States?*

**RESPONSE:** As it did as well before the review period, the United States accords foreign investors national treatment in establishing advertising companies in the United States.

**Legal Service**

**Question 227:**

*Please explain why 35 states in the United States do not allow representative offices of foreign law*

firms to be opened. Does the United States plan to relax this restriction to further open its legal service sector?

**RESPONSE: The basis of the question is incorrect. No state disallows the opening of offices of foreign law firms.**

**Energy**

**Question 228:**

*In the NAFTA Annex I (USA), a term "Naval Petroleum Reserves" (10U.S.C.§7435) is mentioned under the Mining Sector. Please provide its definition.*

**RESPONSE: The definition of "Naval Petroleum Reserve" is contained in 10 U.S.C.§7420: <http://www.law.cornell.edu/uscode/text/10/7420>. A description of the current status of the Naval Petroleum Reserves can be found here: <http://energy.gov/fe/services/petroleum-reserves/naval-petroleum-reserves>.**

**Question 229:**

*China is very concerned about subsidies offered by the United States to its PV enterprises. Please describe the programs under which its PV enterprises receive subsidies. How much has the United States spent in subsidizing the industry in the past four years?*

**RESPONSE: Please see the latest U.S. subsidy notification to the WTO (G/SCM/N/253/USA).**

**Question 230:**

*China learns that the U.S. Department of Energy has recently announced a US\$4 billion loan guarantee program for the solar energy industry, and The U.S. Department of Energy has provided many such guarantee for the solar and other renewable energy industries before. Why did the United States provide huge subsidies to its domestic enterprises, while initiating anti-dumping and countervailing investigations into Chinese PV enterprises in the name of "maintaining fair competition"?*

**RESPONSE: Under the Agreement on Subsidies and Countervailing Measures, Members are permitted to provide subsidies if they are not "prohibited" and do not cause "adverse effects," as defined by the Agreement. Antidumping and countervailing duty investigations are initiated in response to petitions filed by the U.S. industry. The decision to impose an antidumping/countervailing duty measure is based purely on a factual determination of whether dumping/subsidization exists and whether that dumping/subsidization has caused material injury to a domestic industry. Where dumping/subsidization, injury, and a causal link between the two have been found, the United States will impose an antidumping/countervailing duty measure.**

**Environmental products and services**

**Question 231:**

*Could the United States please provide the output value of its environmental products and services of each year between 2008 and 2013?*

**RESPONSE: The United States does not collect domestic output data on environmental goods and services. However, there are private organizations that collect and publish such data, such as Environmental Business International ([www.ebiresearch.com](http://www.ebiresearch.com)).**

**Question 232:**

*What actions has the United States taken to promote environmental goods negotiations under the multi-lateral framework, and at regional and bilateral level?*

**RESPONSE: The United States has taken a leadership role in promoting trade liberalization in environmental goods at the multilateral, regional, and bilateral level. At the multilateral level, the United States has been a proponent for increased liberalization of environmental goods and services trade in the WTO for over a decade, and is a founding member of the coalition of 14 WTO Members that launched the Environmental Goods Agreement (EGA) negotiations earlier this year, an initiative aimed at achieving global free trade in environmental goods. At the regional level, the**

**United States leveraged its leadership in the Asia Pacific Economic Cooperation (APEC) in 2011, to shepherd an agreement among APEC Leaders to reduce applied tariffs on environmental goods to 5% or less by the end of 2015. Finally, at the bilateral and regional level, the United States has pressed for and achieved ambitious trade liberalization commitments for environmental goods and services in its free trade agreements, and continues to prioritize market access for environmental goods and services in its ongoing FTA negotiations, such as TPP and T-TIP.**

**Question 233:**

*Please describe the regulatory regime and main legal and policy framework for the environmental products and services in the United States?*

**RESPONSE:** The United States maintains an environmental policy and regulatory framework that supports a competitive and innovative environmental goods and services sector. Regulations issued under laws like the Clean Air Act and Clean Water Act have helped to drive demand and innovation in air pollution control and water treatment technologies. Proposed actions to limit carbon dioxide emissions from power plants are expected to further increase demand for clean and renewable energy technologies, as well as pollution control and abatement technologies. Further information on relevant U.S. environmental regulations and the broader U.S. environmental policy framework can be found at [www.epa.gov](http://www.epa.gov).

**Question 234:**

*Please enumerate the bilateral or regional environmental cooperation agreements signed by the United States. How many of these agreements are under FTAs? Which agreements are still under negotiations?*

**RESPONSE:** The United States has trade-related environmental cooperation mechanisms and programs related to U.S. FTAs with Australia, Bahrain, Chile, Colombia, Jordan, Morocco, Oman, Panama, Peru, Singapore, and South Korea. The United States also carries out an active environmental cooperation program with Central America and the Dominican Republic under the United States – Dominican Republic – Central America Free Trade Agreement (CAFTA-DR), and with Canada and Mexico under the North American Agreement on Environmental Cooperation. The United States is also pursuing environmental cooperation mechanisms or programs in connection with the Trans-Pacific Partnership agreement and the Transatlantic Trade and Investment Partnership agreement, which currently are under negotiation.

***Electronic products***

**Question 235:**

*Manufacturers or retailers are required to pay recycling fees for the electronic products they sell by many states in the U.S. The legislative discrepancy among various states and legal complexity in certain states has become a burden for some Chinese enterprises newly accessing the American market. Does the United States plan to promulgate a streamlined and uniform federal legislation in this respect?*

**RESPONSE:** In the United States, there is no federal (national) law mandating electronics collection and recycling. Twenty-five states have enacted electronics waste recycling laws. At this time, there are no plans for the United States to enact a national law that covers nationwide electronics collection and recycling.

**Question 236:**

*Currently, the states collect recycling fees for electronic products mainly based on the volume or value of sales regardless of the actual environmental impact caused by these products, which is unfair for the manufacturers who select environment-friendly materials and processes at the stage of production. Does the United States plan to make necessary adjustment to such policy?*

**RESPONSE:** In the United States, there is no federal (national) law mandating electronics collection and recycling. Twenty-five states have enacted electronics waste recycling laws. At this time, there are no plans for the United States to enact a national law that covers nationwide electronics collection and recycling.

**ADDITIONAL QUESTIONS FROM CHINA****Part I. Questions based on Report by the Secretariat (WT/TPR/S/307)**

*Page 15, Para 1.9*

*The report states that "Other factors, such as increasing labour costs in some developing countries, the depreciating U.S. dollar, and the highly competitive workforce in the United States, have also played a crucial role in the recent recovery in manufacturing."*

**Question 1:**

*How does the U.S. assess the role of the depreciation of the U.S. dollar in its manufacturing recovery and export expansion? Is there any assessment on how the depreciation of the U.S. dollar affected the global economy and trade?*

**RESPONSE: Conditions in the U.S. manufacturing sector have improved considerably since the bottom of the "Great Recession," with production rising back to approximately pre-recession levels. While the value of the U.S. dollar is one factor in the competitiveness of U.S. goods and services, other factors likely played more influential roles in the improved condition of the manufacturing sector.**

*Page 15, Para 1.10*

*The report states that "In 2013, the U.S. current account deficit shrank to a four-year low, as a consequence of a boom in shale oil/gas production and reduced demand, leading to a sharp reduction in the oil trade deficit, which accounts for nearly half of the total deficit in trade in goods and services."*

**Question 2:**

*How is the ratio of the current account deficit to GDP expected to change with the gradual recovery of the U.S. economy? What are the main factors behind such a change?*

**RESPONSE: According to unofficial estimates from the U.S. Treasury, Office of International Affairs, the current account deficit as a percentage of GDP is expected to be 2.3% in 2014 and reach 2.9% by 2018. The main factors behind this potential increase between 2014 and 2018 include projections of stronger U.S. demand and appreciation of the U.S. dollar, partially offset by a projected reduction in oil imports.**

*Page 38, Para 2.43*

*The report states that "The United States is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), a plurilateral agreement negotiated among 11 trading partners. The ACTA aims to combat infringement of intellectual property rights, in particular piracy and counterfeiting. It provides for enhanced international cooperation, promotion of enforcement practices, and a legal framework for IPR enforcement. Although the agreement was finalized in 2011, it has not yet entered into force. The agreement reportedly does not require any statutory changes to U.S. law."*

**Question 3:**

*Please introduce whether the U.S. trade procedures will be affected after the Anti-Counterfeiting Trade Agreement (ACTA) takes effect? In particular, will the period of customs clearance be prolonged? Will there be any additional requirements on declaration documents?*

**RESPONSE: ACTA, which has not yet entered into force, is fully consistent with U.S. law, and will neither alter customs clearance periods nor provide for additional requirements for declaration documents.**

*Page 52, Para 3.39*

*The report states that "In 2010 the United States passed legislation providing temporary duty suspensions on several hundred products that would lower the manufacturing costs for many U.S. companies. While there were initiatives to extend these provisions in Congress, they expired on 31 December 2012, and no new legislation has been passed to date."*

**Question 4:**

*Please introduce the latest progress of the legislation providing temporary duty suspensions. Does the U.S. plan to expand the scope of tax credits granted to certain 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.**

Page 44, Para 3.9

*The report states that "In late 2011, CBP announced the Simplified Entry Pilot project for expedited treatment of imports arriving by air transport. The purpose of Simplified Entry is to reduce transactions costs, expedite cargo release, and enhance security."*

**Question 5:**

*Please introduce the development of the U.S. air cargo transportation sector during the review period.*

**RESPONSE: The Simplified Entry pilot (now known as ACE Cargo Release) has been expanded and now supports Cargo Release processing in the air, truck, ocean and rail modes at select ports. As of December 2014, over 850,000 ACE Cargo Release Entries (formerly known as Simplified Entries) have been filed for over 1000 importers of record. CBP is continuing to build upon the ACE Cargo Release pilot to reach the ACE mandatory filing date of November 1, 2015 for all electronic cargo release and entry summary filings. For additional information on Simplified Entry/Cargo Release, including the Frequently Asked Questions, please continue to check the CBP website at <http://www.cbp.gov/trade/automated>.**

**Question 6:**

*Does the U.S. grant other policy support to the air cargo transportation sector in addition to the Simplified Entry Pilot? If any, please describe the supporting measures, sources of funds, application requirements and relevant legal basis.*

**RESPONSE: No, the U.S. does not grant other support to the air cargo transportation sector.**

Page 54, Para 3.50

*The report states that "U.S. excise taxes are assessed at the federal level on a variety of goods and services. Some excise taxes are allocated to trust funds for specific purposes, while others are generally available for expenditure (general fund) (Table 3.5)."*

**Question 7:**

*Please introduce the rate, target and levying method of the excise tax on air transportation indicated in Table 3.5. If the federal excise tax is levied on travelers, will it be listed separately from the air ticket price?*

**RESPONSE: For further information, refer to the following online sites: <http://www.irs.gov/pub/irs-prior/p510--2012.pdf>;**  
**[http://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf](http://www.faa.gov/about/office_org/headquarters_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf).**

**Question 8:**

*Please describe the usages of the Airport and Airway Trust Fund generated by the excise tax on air transportation. Is there any corresponding law and regulation? In addition to the federal government, do state governments also levy this excise tax? If the state governments also levy this excise tax, is there any difference between the federal excise tax and the state excise tax in terms of charging stage, methods and rates?*

**RESPONSE: For further information on the Airport and Airway Trust Fund, please refer to the following site: [www.faa.gov/about/office\\_org/headquarters\\_offices/apl/aatf/](http://www.faa.gov/about/office_org/headquarters_offices/apl/aatf/).**

**For further information on excise taxes pertaining to air transportation, refer to the following online sites:** <http://www.irs.gov/pub/irs-prior/p510--2012.pdf>; [http://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf](http://www.faa.gov/about/office_org/headquarters_offices/apl/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf).

**Question 9:**

*Please describe the difference between the general "hydrocarbon oil excise tax" and the excise tax on aviation fuels in terms of rates, levying methods and tax exemptions.*

**RESPONSE: The U.S. Internal Revenue Service levies federal excise taxes on a variety of fuels, including oil, petroleum products and aviation fuels. Excise taxes fund specific trusts such as the Highway Trust Fund, the Airport and Airway Trust Fund, and the Oil Spill Trust Fund. Information about rates, taxable events, requirements and exemptions is published in IRS Publication 510, available at <http://www.irs.gov/publications/p510>.**

*Page 66, Para 3.69*

*The report states that "The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated. Asian countries, in particular China, were the most affected with countervailing duty investigations (Chart 3.6)."*

**Question 10:**

*After the DS379 case, the U.S. Department of Commerce amended its standards on "public bodies" in countervailing investigations. However, according to the amended standards, whether the state has controlling stakes in an enterprise is still regarded as the essential criterion for recognizing a "public body." Based on such standards, the U.S. Department of Commerce has improperly recognized Chinese state holding industrial and commercial enterprises and state owned commercial banks as the "public bodies" that may provide subsidies, making countervailing investigations against Chinese downstream enterprises much more likely to be initiated. Please explain this practice which has obviously violated the WTO rules and the rulings of the WTO DSB.*

**RESPONSE: As China acknowledges in its question, the U.S. Department of Commerce (Commerce) amended its "public bodies" analysis, consistent with the findings of the Appellate Body in DS379. The factual basis and rationale for all of Commerce's preliminary and final countervailing duty determinations , including those involving Commerce's revised public bodies analysis, are detailed in various decision memoranda for each countervailing duty proceeding, which are publicly available at: <http://enforcement.trade.gov/frn/index.html>.**

*Page 66, Para 3.76*

*The report states that "The Institute has identified 10,590 citations of standards incorporated by reference in regulatory documents (as of June 2014)."*

**Question 11:**

*Please describe the types of these standards as well as channels for their enquiry.*

**RESPONSE: The United States does not maintain statistics on the type of standards incorporated by reference in U.S. regulations. The Standards Incorporated by Reference database does have a list of the standards along with the Standards Developing Organizations (SDO) whose standards have been incorporated. It also provides selective statistics for the number of standards incorporated by the top SDOs. Please see:**

<https://standards.gov/sibr/query/index.cfm?fuseaction=home.main>; [https://standards.gov/sibr/query/index.cfm?fuseaction=rsibr.complete\\_regulatory\\_sibr](https://standards.gov/sibr/query/index.cfm?fuseaction=rsibr.complete_regulatory_sibr).

**The U.S. WTO TBT Inquiry Point notifies to the WTO technical regulations and conformity assessment procedures, including those incorporated by reference or any other method.**

*Page 75, Para 3.108*

*The report states that "In 2009, President Obama launched the ECR Initiative to review and reform the U.S. export control system (e.g. licences, prohibitions, monitoring, controls). This review*

determined the current system was overly complicated, and fragmented and needed updating to address the changing economic and technological landscape. The review also determined that fundamental reform of the U.S. export system was required and recommended the creation of a new export control system based on comprehensive reform in four key areas..."

**Question 12:**

*Has the U.S. made any assessment on the implementation and effects of its current export control policies and their impacts on the economy, industry, employment and international trade of the U.S.?*

**RESPONSE:** It would be premature to assess such questions because most of the categories only recently became effective. Indeed, the rules pertaining to the second largest category - military electronics - only became effective on December 30, 2014. Moreover, the categories each have a two-year grandfathering provision that allows exporters to continue to use their previously issued authorizations for up to two years. Thus, the full economic impact of the changes will not be known for several years.

**Question 13:**

*Please describe the reform of the U.S. export control system, especially the latest development of "a single export control agency" and the "unified control list".*

**RESPONSE:** The United States has published revisions to 15 of the 21 munitions list categories. Most of the remaining categories will be published in 2015. Additional proposals to harmonize the regulations will also be published in 2015. The creation of a single agency and a single list will require legislation.

**Question 14:**

*Information available to China indicates that the Bureau of Industry and Security of the U.S. Department of Commerce has set up an Office of Strategic Industries and Economic Security to take charge of the export control of relevant commodities. Is there any specific definition of the "strategic industries" and "economic security"? Please elaborate on the specific control policies and their legal basis.*

**RESPONSE:** The new division created within the Office of Strategic Industries and Economic Security is responsible for regulating the export of military items that were formerly subject to the jurisdiction of the State Department. Thus, its scope of responsibility is exclusively limited to items that are munitions items on the Wassenaar Arrangement's Munitions List.

*Page 81, Para 3.141*

*The report states that "While the United States has been progressively phasing out its fiscal stimulus measures, some programmes have been maintained. These were set up in the aftermath of the global crisis of 2008-12, when the government took unprecedented action to restore demand, stabilize financial markets, and put people back to work."*

**Question 15:**

*Please describe the subsidizing methods and amounts for foreign trade enterprises by the Department of Commerce of the U.S. Federal Government, the U.S. Trade Representative's Office, the Small Business Administration and other relevant authorities, with a view to promoting economy and employment since the financial crisis in 2008. Please specify the stimulus measures still in force.*

**RESPONSE:** As noted previously, most of the stimulus measures provided relief to individuals or to subnational governments. When analyzed for the 2009 through 2013 period, recovery spending can be broken down into seven broad categories. (See Council of Economic Advisers, The Economic Impact of the American Recovery and Investment Act Five Years Later, February 2014, [http://www.whitehouse.gov/sites/default/files/docs/cea\\_arra\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_arra_report.pdf)). Most of the fiscal support was for individuals (45%) and subnational governments and public outlays (51%), with business tax incentives accounting for the rest. The focus of the stimulus generally was on helping families through a difficult economic period by encouraging job

**creation. Approximately half of public investment focused on infrastructure, such as roads and bridges, while the rest supported technology, such as scientific research and clean energy. The stimulus spending was intended to prevent the U.S. economy, and the world economy, from falling into further decline. Such stimulus spending was common among all governments that had the financial resources. For further details on specific programs, please see the United States' subsidy notification (G/SCM/N/253/USA).**

*Page 91, Para 3.195*

*The report states that "One music industry report estimated digital revenues at 60% of the domestic music market, following 3.4% growth in 2013."*

**Question 16:**

*The U.S. digital copyright industry has become increasingly important in its domestic market. Please describe the U.S. authorization and license mechanism to ensure efficient, transparent and convenient granting of digital copyrights. What preventive measures has the U.S. adopted to prevent infringements of digital copyrights?*

**RESPONSE:** We would like to clarify that "authorization and licens[ing]" is distinct from the "granting of digital copyrights." Indeed, "digital copyrights" are not "granted" under United States law; they are secured automatically upon fixation, as are any other copyrights. With respect to description of the authorization and licensing mechanisms under U.S. law for works fixed in digital form, U.S. law supports a variety of licensing systems. These mechanisms present numerous options, i.e. several possibilities depending on the kind of work and the right at issue.

With respect to the second question regarding measures to prevent infringement, U.S. law affords civil and criminal measures against copyright infringement. The Digital Millennium Copyright Act, passed in 1998, addresses online issues in the civil context. For example, Section 512 affords a limitation on civil remedies for copyright infringement in certain online situations for online service providers who accept certain obligations (including the obligation to "take down" material upon receiving notification or otherwise obtaining knowledge that the material is infringing). Chapter 12 of Title 17 of the U.S. Code provides both civil and criminal measures to protect against the circumvention and trafficking in technological protection measures and protects rights management information. Furthermore, Title 18 of the U.S. Code includes provisions regarding criminal copyright infringement, and the U.S. Department of Justice's Prosecuting Intellectual Property Crimes Manual outlines the various causes of actions available in particular fact situations (see: [http://www.justice.gov/criminal/cybercrime/docs/prosecuting\\_ip\\_crimes\\_manual\\_2013.pdf](http://www.justice.gov/criminal/cybercrime/docs/prosecuting_ip_crimes_manual_2013.pdf)).

Investigative actions taken by the National Intellectual Property Rights Coordination Center have resulted in the removal of thousands of domain names allegedly involved in the unauthorized distribution of piratical and counterfeit materials (see: <http://www.iprcenter.gov/ip-theft>). In addition, the Administration supports voluntary initiatives by the private sector to address online infringement in both the copyright and the trademark spheres.

*Page 120, Para 4.75 (c)*

*The report states that "the Office of Credit Rating (OCR), within the Securities and Exchange Commission (SEC), was established to administer the SEC's rules regarding credit rating agencies, registered as nationally-recognized statistical rating organizations (NRSROs) and to conduct annual examinations of NRSROs. Concerns over credit rating agencies also led the U.S. Congress to mandate that the SEC adopt additional rules intended to increase transparency and improve the integrity credit ratings within a year as part of the Dodd-Frank Act. The SEC proposed new draft rules by May 2011 but so far no final rules have been adopted. Congress also mandated that U.S. Government agencies remove certain references to credit ratings from their rules and regulations".*

**Question 17:**

*Why were the new draft rules proposed by the SEC not adopted by the U.S. Congress? Please describe the main contents of the draft of the new credit rating rules proposed by the SEC, the reasons for its failed adoption and the expected time of its promulgation.*

**RESPONSE:** SEC adopted a final rule governing Nationally Recognized Statistical Rating Organizations (NRSRO) on August 27, 2014. This rule was effective November 14, 2014, except for certain amendments which are effective June 15, 2015. The final rule can be found at: <http://www.sec.gov/rules/final/2014/34-72936.pdf>.

**Question 18:**

*Please list the "certain references to credit ratings" removed by the U.S. Government as authorized by the U.S. Congress. Please describe the main reasons for removing these references.*

**RESPONSE:** Title IX, Subtitle C of the Dodd-Frank Act mandates that the Commission prescribe rules to improve regulation of Nationally Recognized Statistical Rating Organizations (NRSROs). Section 931 of the Dodd-Frank Act, "Findings," introduces Title IX, Subtitle C of the Dodd-Frank Act and provides context to what motivated Congress to enact these provisions with respect to NRSROs. Pursuant to the Dodd-Frank Act, the SEC adopted a final rule governing NRSRO on August 27, 2014. This rule was effective November 14, 2014, except for certain amendments which are effective June 15, 2015. The final rule can be found at: <http://www.sec.gov/rules/final/2014/34-72936.pdf>.

**Question 19:**

*According to the annual report issued by the OCR regarding NRSROs, NRSROs include the statistical and rating agencies outside the U.S. These agencies are also obliged for providing the SEC with the credit rating information of the country where they are located. Can Chinese rating agencies apply to become NRSROs? Please describe the qualification for such applications. Will the SEC consult CSRC on this? How to settle the conflict between the requirement of SEC, i.e. the obligation for an overseas NRSRO to provide credit rating information, and the laws where the NRSRO is located?*

**RESPONSE:** Please review the SEC's website on NRSROs at: <http://www.sec.gov/ocr/ratingagency.html#nrsroorders>.

*Page 121, Para 4.75 (h)*

*The report states that "Title VII of the Act addressed the gap in U.S. financial regulation of derivatives, by providing a comprehensive framework for the regulation of over-the-counter (OTC) swap markets. Standardized OTC derivative instruments will generally have to be cleared through central counterparties, traded on exchanges or electronic trading platforms, where appropriate, and reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital and margin requirements."*

**Question 20:**

*What are the definitions of the "standardized OTC derivative" and "non-standardized OTC derivative"? Please describe the definition of "generally" having to be cleared through central counterparties. Are there any exceptions? Please describe the definition of "where appropriate".*

**RESPONSE:** The Dodd-Frank Act is still being implemented. Further details on Title VII's implementation are available at: <http://www.cftc.gov/lawregulation/doddfrankact/index.htm> and <http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml>.

**Question 21:**

*Is there any corresponding notification arrangement if a swap involves several countries? How to settle the possible conflicts between the notification requirements and local laws (e.g. national security law and privacy protection law)?*

**RESPONSE:** The Dodd-Frank Act is still being implemented. Further details on Title VII's implementation are available at: <http://www.cftc.gov/lawregulation/doddfrankact/index.htm> and <http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml>.

**Question 22:**

*Are there specific definitions of the "standardized OTC derivative" and "appropriate exchanges or electronic trading platforms" under the U.S. laws? If any, please introduce relevant stipulations; and if not, please describe how the U.S. authorities make relevant recognition in practice.*

**RESPONSE:** The Dodd-Frank Act is still being implemented. Further details on Title VII's implementation are available at: <http://www.cftc.gov/lawregulation/doddfrankact/index.htm> and <http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml>.

**Question 23:**

*Please introduce in detail the "higher capital and margin requirements" raised by the U.S. authorities on non-centrally cleared OTC derivative contracts.*

**RESPONSE:** The Dodd-Frank Act is still being implemented. Further details on Title VII's implementation are available at: <http://www.cftc.gov/lawregulation/doddfrankact/index.htm> and <http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml>; <http://www.qpo.gov/fdsys/pkg/FR-2014-09-24/pdf/2014-22001.pdf>.

*Page 121, Para 4.77*

*The report states that "The implementation of Title VII of the Dodd-Frank Act on OTC derivatives has been entrusted by the Act to the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). To resolve regulatory differences regarding the regulation of cross-border swap activities, most of which are conducted within or between the European Union and the United States, the CFTC and the European Union recently agreed that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulation and enforcement regimes."*

**Question 24:**

*Please describe the main difference between the U.S. and the EU in terms of regulation and enforcement. What is the possible solution?*

**RESPONSE:** The United States cannot comment on EU regulation and enforcement. The Dodd-Frank Act is still being implemented. Further details on Title VII's implementation are available at: <http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml>. Final guidance from the CFTC regarding cross-border application of Title VII is available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf>, and the final rule from the SEC regarding cross-border application of Title VII is available at: <http://www.sec.gov/rules/final/2014/34-72472.pdf>.

**Question 25:**

*What are the main contents of the cooperation memorandum between the CFTC and Japan?*

**RESPONSE:** Details on the Memorandum of Cooperation between the CFTC and the Financial Services Agency of Japan are available at: [http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/cftc\\_ifsamoc031014.pdf](http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/cftc_ifsamoc031014.pdf).

**Question 26:**

*Please describe the respective roles of the SEC and the CFTC in financial regulation. The SEC seems to be less active than the CFTC in international regulatory cooperation. Why?*

**RESPONSE:** The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The mission of the Commodity Futures Trading Commission (CFTC) is to protect market participants and the public from fraud, manipulation, abusive practices and systemic risk related to derivatives – both futures and swaps – and to foster transparent, open, competitive and financially sound markets. More information is available at: <http://www.sec.gov/index.htm> and <http://www.cftc.gov/index.htm>.

**Question 27:**

*Please define "jurisdictions and regulators should be able to defer to each other". For example, does "deferring to" mean that, when one country is going to conduct investigations in and take evidence from the other country for a certain case, the jurisdictions and regulators of the other country will be entrusted to render assistance, or the regulator of one country will directly conduct*

*the investigations and take evidence upon approval of the competent authorities of the other country?*

**RESPONSE:** Consistent with the G-20 guidance, the United States supports the use of deference when it is justified by the quality of the respective regulatory and enforcement regime, is based on similar outcomes, is non-discriminatory, and pays due respect to home country regulation regimes. Of note, CFTC staff has provided extensive regulatory relief—principally through the issuance of no-action letters—to global market participants operating in foreign jurisdictions that do not yet have comparable rules in place.

**Question 28:**

*In case China and the U.S. will cooperate in the regulation of cross-border OTC derivative market in the future, which cooperation modality will the U.S. prefer?*

**RESPONSE:** The United States cannot comment on potential future regulations at this time.

*Page 30, Para 2.19*

*The report states that "The United States maintains a strong record of notifications, however, three notifications on agriculture are overdue or require updating (on export subsidies, domestic support, and tariff quota utilization)."*

**Question 29:**

*Please explain why the three agricultural notifications have not been updated. When does the U.S. plan to submit relevant new notifications?*

**RESPONSE:** The United States submits annual notifications to the Committee on Agriculture regularly. The United States recently submitted its domestic support notification for agriculture, G/AG/N/USA/100, dated December 8, 2014. Please see G/AG/N/USA/99, dated November 5, 2014, for the latest U.S. notification on export subsidies. On tariff quotas, please see G/AG/N/USA/94, dated February 5, 2014 for the latest MA:2 notification on quota fill.

*Page 38, Para 2.49*

*The report states that "The specific points in the new and expanded program include: ...Creating for the first time single points of contact for investors looking to locate in the U.S."*

**Question 30:**

*Please list the institution(s) that home the "single points of contact" under the SelectUSA Program.*

**RESPONSE:** The SelectUSA office is the single point of contact. SelectUSA is housed in the U.S. Department of Commerce.

*Page 39, Para 2.50*

*The report states that "It does not offer direct incentives but provides a link to federal government programmes offering incentives to businesses."*

**Question 31:**

*Please list the federal government programmes offering incentives. Please describe the methods adopted by such programmes to offer incentives.*

**RESPONSE:** A list of federal government programs offering incentives available to any investor in the US, whether that investor is foreign or US-headquartered, including a description of criteria and incentives offered and links to further information can be found at <http://selectusa.commerce.gov/investment-incentives>.

*Page 41, Table 2.4*

**Question 32:**

*Are China and other WTO members subject to the same restrictions in the 8 sectors with foreign investment restrictions listed in the table (i.e. maritime transportation, aircraft, mining, energy,*

*lands, communications, banking and investment company regulations)? In the Sino-U.S. BIT negotiation, will the U.S. relax the restrictions on Chinese investment in the above 8 sectors? Which sectors are most likely to be open to Chinese investment through the BIT talks?*

**RESPONSE:** The longstanding policy of the United States is to be open to foreign investment. Foreign investors benefit from an open, transparent, and, with very few exceptions, non-discriminatory system. Most of the small number of existing restrictions are narrow, do not significantly constrain investment in the relevant sector, and are applied consistent with the most-favored-nation principle. We cannot comment on an ongoing negotiation.

*Page 75, Para 3.113*

*The report states that "However, no report has been issued since the 2012 report, which focused on the National Export Initiative (NEI) and on reducing trade barriers for U.S. exports."*

**Question 33:**

*Please describe the reasons why the TPCC has issued no annual National Export Strategy report since 2012.*

**RESPONSE:** In November 2013, Commerce Secretary Penny Pritzker announced that federal agencies would take a fresh look at the National Export Initiative (NEI) and propose a new strategy to help broaden and deepen the base of U.S. exporters. In May 2014, Secretary Pritzker announced that the Administration would build on progress made through the NEI with a successor initiative, NEI/NEXT. The TPCC Secretariat published the NEI/NEXT strategic framework (available at <http://www.trade.gov/neinext/neinext-strategic-framework.pdf>) in May 2014. The TPCC Secretariat anticipates reporting out on past year's efforts and upcoming priorities under NEI/NEXT in a National Export Strategy during the first half of 2015.

*Page 79, Table 3.14*

**Question 34:**

*The number of the countries where the OPIC has active business was reduced by 4 in 2012 and 1 in 2013 respectively. Please list these 5 countries and describe the reasons why OPIC business becomes less active in these countries.*

**RESPONSE:** OPIC is largely a demand-driven institution, and supports investments that private investors bring to OPIC for insurance and/or financing. Therefore, at any given time, OPIC may not have active projects in all of the countries where the Agency is authorized to operate. For example, in 2012 OPIC was authorized to operate in 162 countries. However, as noted in Table 3.14, in 2012 OPIC had active investments in 103 of those 162 authorized countries. In 2013, OPIC's investment projects in Gabon, Saint Kitts & Nevis, and Venezuela concluded, leaving OPIC without active portfolios in those countries. During the same year, OPIC committed new projects in Malaysia and Uruguay, countries where OPIC did not have active portfolio in 2012. As a result, in 2013 OPIC had active projects in 102 countries, a net decrease of one country from 2012.

*Page121, Para 4.75 (g)*

*The report states that "Although the Volcker Rule came into effect on 1 April 2014, the Federal Reserve has extended the period for covered banking organizations to bring their activities and investment into conformity with the rule until 21 July 2015."*

**Question 35:**

*Please describe the main reasons for the Federal Reserve to extend the deadline for the compliance by banking organizations until 21 July 2015, while the Volcker Rule came into effect on 1 April 2014.*

**RESPONSE:** Details on the extension are available at <http://www.federalreserve.gov/newssevents/press/bcreg/bcreg20131210b1.pdf>. See also <http://www.federalreserve.gov/newssevents/press/bcreg/bcreg20141218a1.pdf>.

*Page 135, Para 4.114& Table 4.10*

**Question 36:**

*Please describe the U.S. information collection mechanism regarding the local support schemes for the film and television program production. Please describe the reason why the table only lists certain state-level support schemes. Is there any channel for the U.S. to obtain the complete information of state-level support schemes?*

**RESPONSE:** Not every state maintains a support program for local production. As indicated in the original answer, the United States and any other interested party can find the most current and accurate information on such programs through the websites of each state's film promotion board. Certain organizations such as MPAA also periodically compile state-level information.

*Page 139, Para 4.124*

*The report states that "Several states actually did have restrictions on medical underwriting, but most did not."*

**Question 37:**

*Which states impose restrictions on medical underwriting? What are the restrictions specifically?*

**RESPONSE:** Medical underwriting is a process used by insurance companies to try to figure out a person's health status when he or she is applying for health insurance coverage to determine whether to offer coverage, at what price, and with what exclusions or limits. For example, prior to 2014, many health insurance plans could charge people more because they had what was known as a pre-existing condition, a health problem that existed before the date that the coverage started. Because of the Affordable Care Act, beginning on January 1, 2014, all individual and group health plans must guarantee issue health policies/plans to all applicants, regardless of health status, and can only vary premiums based on age, tobacco use, family size, geographic location and plan category: <https://www.healthcare.gov/lower-costs/how-plans-set-your-premiums/>.

*Page 141, Para 4.132*

*The report states that "health industry is largely open to foreign investment.....it can be challenging for foreign firms to enter the U.S. market due to state level regulations and licensing requirement".*

**Question 38:**

*How is the U.S. going to settle the contradiction between the statement that "health industry is largely open to foreign investment" and the statement that "it can be challenging for foreign firms to enter the U.S. market". Does the U.S. plan to unify the regulations and licensing requirements of various states?*

**RESPONSE:** As the Secretariat noted, the United States welcomes foreign investment in the health care sector, just as it does in all other sectors. The market for investment in health care is largely open. We are unaware of plans to change any regulations for this purpose.

## **Part II. Questions based on Policy Statement by the United States (WT/TPR/G/307)**

*Page 23, Para 5.1*

*"Through "aid for trade," the United States focuses on giving countries, particularly the least trade-active, the training and technical assistance needed to: make decisions about the benefits of trade arrangements and reforms; implement their obligations to bring certainty to their trade regimes; and enhance these countries' ability to take advantage of the opportunities of the multilateral trading system and to compete in a global economy."*

**Question 39:**

*Is there any assessment on the current progress and achievements of the "aid for trade" program?*

**RESPONSE:** Through "Aid for Trade," the United States has focused on giving developing countries the training and technical assistance needed to (1) make decisions about the benefits of trade arrangements and reforms; (2) implement their obligations to bring certainty to their trade regimes; and (3) enhance these countries' ability to take advantage of the opportunities of the multilateral trading system and compete in a global economy. As of 2013, the U.S. Government had obligated more than US\$15 billion for TCB to developing countries since 2001. For further information on the outcomes of particular programs, please refer to USTR's annual reports (<https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications>) and USAID's website, at [www.usaid.gov](http://www.usaid.gov).

### **Part III. Other Questions**

#### **Question 40:**

*Which U.S. authority is in charge of the WTO Trade Policy Review and related matters, What's the corresponding working mechanism and procedure?*

**RESPONSE:** The Office of the U.S. Trade Representative (USTR) is responsible for WTO Trade Policy Review matters. USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These groups, administered and chaired by USTR, are composed of 19 Federal agencies and offices.

*In recent years, China has made significant progress in banking regulation. China has joined main international financial organizations formulating the new international regulatory standards. Chinese commercial banks have adopted Comprehensive Consolidated Supervision (CCS) and been performing well since the crisis in 2008. However, the Federal Reserve still refuses to recognize the conformity of Chinese banks with the Comprehensive Consolidated Supervision standards so that the Chinese banks having commercial existence in the U.S. have been subject to many unnecessary restrictions under the Foreign Bank Supervision Enhancement Act of 1991, including extremely long periods of examination and approval (even aslong as 10 years in certain cases) and a large number of obstructions in such aspects as setting up subsidiaries, conducting M&A and retail banking business and participating in deposit insurance of the FDIC.*

#### **Question 41:**

*Please describe the reason why the U.S. refused to officially recognize the conformity of Chinese banking regulation with the Comprehensive Consolidated Supervision standards. Does the U.S. plan to review this decision in the near future?*

**RESPONSE:** The Federal Reserve determined that several Chinese banks were subject to comprehensive consolidated supervision ("CCS") in approving the establishment of U.S. branches and a U.S. bank subsidiary. See <http://www.federalreserve.gov/newsevents/press/orders/20120509c.htm>, <http://www.federalreserve.gov/newsevents/press/orders/20120509b.htm>, and <http://www.federalreserve.gov/newsevents/press/orders/20120509a.htm>. CCS standards under U.S. law apply with respect to specific banks rather than with respect to a country's bank supervision generally. Moreover, the Federal Reserve must review CCS standards each time a foreign bank submits an application to the Federal Reserve.

#### **Question 42:**

*Please describe the working mechanism, main measures and achievements of the U.S. poverty reduction policies in recent years.*

**RESPONSE:** The United States employs numerous and extensive mechanisms and measures in an effort to reduce poverty both in the United States and around the world. It would not be possible, or within the bounds of this trade policy review, for us to attempt to outline them all.

#### **Question 43:**

*Has the U.S. imposed any restriction on foreign investments in civil airports? If any, please give a detailed introduction.*

**RESPONSE:** The United States Government does not restrict foreign investment in civil airports. Most airports are owned, operated, and financed by public municipalities. These municipalities can and do offer many varied opportunities for foreign investment ranging from service contracts to profit sharing partnerships in development, finance, and operations management. Further, the FAA also operates the Airport Privatization Pilot Program (APP), designed to explore the potential for airport privatization in the United States and minimize legal and financial barriers. The APP facilitates the long-term lease or sale (general aviation airports only) of participating airports resulting in the transfer of operating certificates to a private sector entity, including foreign investors.

## COLOMBIA

**Part II: Questions on the Government Report (WT/TPR/G/307):**

**1 LOS ESTADOS UNIDOS EN EL SISTEMA MUNDIAL DE COMERCIO**

El párrafo 1.6 del informe de Gobierno señala que... "Los Estados Unidos seguirán vigilando las actividades en la OMC para hacer cumplir las normas comerciales, y al mismo tiempo vigilarán y harán cumplir los compromisos asumidos en los acuerdos comerciales bilaterales, plurilaterales y regionales que ha suscrito, a fin de mantener la igualdad de condiciones y defender el estado de derecho. Los Estados Unidos siguen comprometidos a colaborar con sus interlocutores comerciales para crear un sistema mundial de comercio en el que se proteja la propiedad intelectual, se promueva la innovación, los reglamentos agrícolas e industriales se basen en principios científicos, se apliquen normas y reglamentos transparentes sin discriminación y se respeten normas ambientales y laborales estrictas."

Question 1. ¿Qué mecanismos consideran necesario implementar para crear un sistema mundial de comercio en el que se proteja la propiedad intelectual y se promueva la innovación? Lo anterior, teniendo en cuenta los diferentes niveles de avance de los países en relación con la observancia de la PI y la promoción de la innovación al interior de sus territorios.

**RESPONSE:** The United States promotes adequate and effective IPR protection and enforcement worldwide. IPR infringement, including trademark counterfeiting and copyright piracy, causes significant financial losses for rights holders and legitimate businesses globally. It undermines innovation and creativity, to the detriment of businesses and workers. In its most pernicious forms, IPR infringement endangers the public. Some counterfeit products, such as semiconductors, automobile parts, and medicines, pose significant risks to consumer health and safety. In addition, trade in counterfeit and pirated products often fuels cross-border organized criminal networks and hinders the sustainable economic development of many countries. Promoting intellectual property protection fosters innovation and creativity, which are in turn essential to prosperity, economic growth, and competitiveness.

The United States conducts a balanced assessment of U.S. trading partners' IPR protection and enforcement, as well as related market access issues. This assessment is necessarily conducted on a case-by-case basis, taking into account diverse factors such as a trading partner's level of development, its international obligations and commitments, the concerns of rights holders and other interested parties, and the trade and investment policies of the United States. Each assessment is based upon the specific facts and circumstances that shape IPR protection and enforcement regimes in a particular trading partner.

**4.3.3 Tratado de Libre Comercio entre los Estados Unidos y Chile**

El párrafo 4.48 del Informe de Gobierno indica que... "El TLC entre los Estados Unidos y Chile entró en vigor el 1º de enero de 2004. Este acuerdo elimina los aranceles y abre los mercados, reduce los obstáculos al comercio de servicios, protege la propiedad intelectual, asegura la transparencia de la reglamentación, garantiza la no discriminación en el comercio de productos digitales, obliga a las Partes a mantener leyes de competencia que prohíban prácticas empresariales contrarias a la competencia y exige el cumplimiento efectivo de las disposiciones laborales y ambientales. En 2013, las exportaciones estadounidenses de mercancías a Chile alcanzaron un valor de 17.500 millones de dólares EE.UU. y las importaciones estadounidenses de mercancías procedentes de Chile tuvieron un valor de 10.400 millones de dólares EE.UU."

Question 2. ¿Bajo qué mecanismos se protege la propiedad intelectual en el marco de la implementación del APC entre EE.UU. y Chile?

**RESPONSE:** The U.S.-Chile FTA provides strong protection and enforcement of IPR, including, copyrights, patents, trademarks, trade secrets. The text of the agreement can be found here: <http://www.usit.gov/trade-agreements/free-trade-agreements/chile-fa/final-text>.

#### **4.3.9 Acuerdo de Libre Comercio entre los Estados Unidos y Omán**

El párrafo 4.70 del informe de Gobierno indica que... "El Acuerdo de Libre Comercio entre los Estados Unidos y Omán, que entró en vigor el 1º de enero de 2009, complementa los otros ALC concertados para promover la reforma económica y la apertura en la región. El cumplimiento de las obligaciones previstas en el amplio acuerdo generará oportunidades de exportación para los proveedores de mercancías y servicios de los Estados Unidos, consolidará los esfuerzos de Omán por liberalizar el comercio y la inversión y fortalecerá la protección y la observancia de los derechos de propiedad intelectual."

*Question 3. ¿Cómo el cumplimiento de las amplias obligaciones previstas en ALC entre EE.UU y Omán fortalecerá la protección y la observancia de los derechos de propiedad intelectual?*

**RESPONSE:** The U.S.-Oman FTA provides strong protection and enforcement of IPR, including, copyrights, patents, trademarks, trade secrets. Compliance with these provisions will promote the protection and enforcement of IPR. The text of the agreement can be found here: <http://www.usit.gov/trade-agreements/free-trade-agreements/oman-ftha/final-text>.

#### **8 COMERCIO DE LAS PEQUEÑAS Y MEDIANAS EMPRESAS**

El párrafo 8.3 del informe de Gobierno menciona que... "Algunas de las características del programa de política comercial del USTR son particularmente adecuadas para ayudar a aumentar las exportaciones de las pymes. Entre ellas cabe citar la mejora de las actividades de facilitación del comercio, el fortalecimiento y observancia de los derechos de propiedad intelectual y la identificación de los obstáculos que afectan a los servicios y que perjudican especialmente a las pymes, como la obligación de establecer una oficina con personal en cada uno de los países a los que las empresas quieren exportar. Los obstáculos arancelarios, los onerosos procedimientos aduaneros, las normas discriminatorias o arbitrarias y la falta de transparencia de la reglamentación pertinente en los mercados extranjeros son algunas de las dificultades a las que se enfrentan las pymes que venden en el extranjero. Con carácter interinstitucional, el Grupo de Trabajo sobre la Pequeña Empresa del Comité de Coordinación para el Fomento del Comercio (TPCC) reúne a varios organismos gubernamentales estadounidenses para promover las exportaciones de las pequeñas empresas y poner a disposición de las pymes información comercial y recursos para ayudarlas a comenzar a exportar, o a incrementar sus exportaciones, y a sacar provecho de los acuerdos comerciales vigentes."

*Question 4. Agradeceríamos conocer con mayor especificidad, el rol que juega la propiedad intelectual dentro de la Iniciativa para las pequeñas empresas.*

**RESPONSE:** SMEs play a critical role in the economy. In the United States, entrepreneurship plays an essential role in generating innovation and stimulating economic growth. New firms account for most net job growth, and small businesses employ 30% of high-tech workers. Beyond these economic gains, it is critical to keep the social gains of SME innovation in mind as well. The social gains from innovation typically greatly exceed the private return. The United States has a variety of policies and programs in place to promote innovation by SMEs. A core principle incorporated in all of these policies is the need to maintain a stable and predictable environment for SMEs to develop and benefit from innovation, including by rewarding the risks inherent to the creative process.

**Part I: Questions on the Secretaría (WT/TPR/S/307):**

#### **RESUMEN**

El párrafo 12 del informe de la Secretaría señala que... "Los Estados Unidos han mantenido su posición destacada en el comercio relacionado con los derechos de propiedad intelectual. Así lo demuestran sus ingresos en concepto de cánones y derechos de licencia, que en 2012 representaron el 43% del total mundial. Aunque el sector de la propiedad intelectual de los Estados Unidos es uno de los más desarrollados y más firmemente establecidos del mundo, hubo varias novedades durante el período objeto de examen, dado el carácter dinámico del sector en la economía estadounidense. Entre ellos cabe citar 21 modificaciones legislativas, reformas

*reglamentarias en materia de patentes y la formulación de una Estrategia para reducir el robo de secretos comerciales de los Estados Unidos y del Plan estratégico conjunto de observancia de los derechos de propiedad intelectual de 2013."*

*Question 5. Nos gustaría conocer de forma más específica ¿cómo las 21 modificaciones legislativas, las reformas reglamentarias en materia de patentes, la formulación de una Estrategia para reducir el robo de secretos comerciales de los Estados Unidos y el Plan estratégico conjunto de observancia de los derechos de propiedad intelectual de 2013 han influido en el desarrollo del sector de la propiedad intelectual en los EE.UU.?*

**RESPONSE: These legislative and regulatory changes as well as these strategies and plans form an important part of the landscape of IPR protection and enforcement in the United States. They all reflect the importance of IPR protection and enforcement to the U.S. economy, including with respect to its trade policy. These initiatives promote innovation and creativity, and in turn support U.S. business and workers in IPR-intensive industries.**

## **2 RÉGIMEN DE COMERCIO E INVERSIÓN**

### **2.1.1 Mandato de promover el comercio**

*Los párrafo 2.4. a 2.6 del Informe de la Secretaría mencionan que... "2.4. Un mecanismo fundamental de procedimiento, que atestigua el singular equilibrio establecido entre los poderes ejecutivo y legislativo en materia de política comercial, es el mandato para promover el comercio (TPA), que permite delegar y compartir determinadas facultades y disposiciones relacionadas con la negociación de asuntos comerciales. La Constitución asigna determinadas atribuciones al Congreso, como la reglamentación del comercio exterior, incluida la facultad de imponer y recaudar derechos, y al Presidente, como la facultad de negociar tratados. Esta separación de poderes, combinada con las características singulares de los acuerdos comerciales, ha conducido al establecimiento, mediante leyes vigentes durante varios años, de procedimientos de examen, negociación y aprobación de acuerdos comerciales, así como de la forma en que el poder ejecutivo debe consultar al Congreso. Desde que se estableció formalmente mediante la Ley de Comercio de 1974, los principales elementos del mandato de promover el comercio son la tramitación acelerada de los acuerdos en el Congreso y las disposiciones sobre notificación y consulta entre el Presidente y el Congreso.*

*En ulteriores renovaciones de ese mandato se incluyeron disposiciones sobre objetivos de negociación, por ejemplo, disposiciones sobre las condiciones de trabajo y el medio ambiente. Históricamente, este mandato, cuando ha sido aprobado, ha recibido el respaldo de los dos partidos.*

*2.5. Los procedimientos establecidos en la Ley de Comercio de 1974 y su antecesora se han empleado en las consultas y la aprobación de la mayoría de los acuerdos comerciales multilaterales y recíprocos concertados por los Estados Unidos en los últimos años. Desde su establecimiento, el mandato de promover el comercio se ha renovado periódicamente, excepto en el período 1995-2002, y más recientemente, desde que quedó sin efecto en 2007 (gráfico 2.1).*

*2.6. Hace poco, en 2013 y 2014, el Presidente destacó la importancia del mandato de promover el comercio en vista de las dos principales negociaciones regionales que los Estados Unidos tienen la intención de concluir o en las que quieren realizar progresos significativos. En 2014 se presentó en el Congreso la propuesta de renovar el mandato, pero hasta la fecha no se ha aprobado ninguna ley."*

*Question 6. ¿Podría los Estados Unidos brindar mayor información sobre la perspectiva de aprobación de las facultades del TPA, así como los posibles cambios en el alcance y profundidad de dichas facultades al Ejecutivo?*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.**

### **2.1.2 Función del sector privado y otras partes interesadas**

*El párrafo 2.7 del informe de la Secretaría señala que... "En los Estados Unidos, el sector privado participa desde hace mucho tiempo en la labor de asesoramiento en asuntos de política comercial. En 1974 se creó un sistema de comités consultivos en cuestiones comerciales, dirigido por el*

*Representante de los Estados Unidos para las Cuestiones Comerciales Internacionales (USTR), para que los sectores público y privado pudieran contribuir a la formulación y aplicación de las políticas comerciales. Actualmente hay 28 de esos comités, que se ocupan, entre otras, de cuestiones agropecuarias, intergubernamentales, laborales y ambientales, así como de las relaciones entre los Estados Unidos y África. También existe un sistema de comités consultivos sobre distintas ramas de producción, que comprende 16 comités consultivos en cuestiones comerciales (ITAC), 13 comités especializados en ramas de producción y tres comités funcionales encargados de la propiedad intelectual, los asuntos aduaneros y las normas y los obstáculos técnicos, y un Comité de Presidentes de los ITAC (cuadro 2.1)."*

*Question 7. ¿De qué manera participa el sector privado en el Comité Especializado de propiedad intelectual?*

**RESPONSE: Representatives from the private sector serve as members of the Industry Trade Advisory Committee (ITAC) on Intellectual Property Rights. Committee members are welcome to participate in any committee business. Typical ITAC committee business includes regular meetings, briefings, drafting letters and reviewing U.S. proposals.**

### **2.3 Acuerdos y arreglos comerciales**

#### **2.3.1 Participación en la OMC**

*Los párrafos 2.15 y 2.17 del Informe de la Secretaría señala que... "2.15. Los Estados Unidos participan activamente en la OMC y, con arreglo a su programa de política comercial, prevén seguir desempeñando un papel destacado en el fortalecimiento del sistema multilateral de comercio. Han determinado una serie de esferas prioritarias en el marco de las actividades o iniciativas de la OMC, como la conclusión de las negociaciones sobre la ampliación de los productos abarcados por el Acuerdo sobre Tecnología de la Información (ATI), la iniciación de negociaciones acerca de un acuerdo sobre bienes ambientales, el apoyo a la aplicación del Acuerdo sobre Facilitación del Comercio (AFC) y el apoyo a las negociaciones de adhesión, en particular las de Kazajstán. Firmes defensores de la transparencia, los Estados Unidos están decididos a fomentar y fortalecer las funciones básicas de la OMC. Por lo que se refiere al Programa de Doha para el Desarrollo (PDD), los Estados Unidos han declarado que se proponen tomar la iniciativa tras la Conferencia Ministerial de Bali, marcar un nuevo rumbo y buscar nuevas formas de encarar otros aspectos de la Ronda.*

*2.17. En la Ronda de Doha, los Estados Unidos desempeñaron un activo papel en las negociaciones sobre facilitación del comercio, durante las cuales presentaron 31 propuestas nuevas o revisadas. Fueron un firme defensor del Acuerdo sobre Facilitación del Comercio, al que se han adherido, y contribuyeron a la consecución de un resultado positivo en la Conferencia de Bali. Siguen prestando apoyo a los países en desarrollo y los PMA mediante actividades de asistencia técnica. Durante el período examinado, los Estados Unidos no presentaron propuestas a ningún otro órgano de negociación."*

*Question 8. ¿Podría los Estados Unidos profundizar en su visión como líder en la implementación del Acuerdo de Facilitación del Comercio de la OMC, tanto en el escenario multilateral como al interior del país?*

**RESPONSE: We have supported trade facilitation reforms throughout the negotiations, and will continue to do so to promote effective implementation of the agreement. The United States is committed to helping support developing countries' ability to implement the TFA. Bilaterally, we have worked with over 27 countries in conducting WTO Trade Facilitation needs assessments, and nineteen countries have received U.S. assistance under the continuing Partnership for Trade Facilitation. While we explore additional bilateral cooperation, we are also providing support in other ways, such as our contribution to the World Bank Group's Trade Facilitation Support Program. Throughout our efforts, we continue to reach out to capital based donors to coordinate and share information about all of our efforts. We welcomed the effort by the Director General to establish a new WTO "Facility" to help developing countries and LDCs implement the TFA and have begun discussions with the WTO Secretariat to determine how those programs can inform and work with the new WTO mechanism.**

**3 POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS****3.1 Medidas que afectan directamente a las importaciones****3.3.6.7 Observancia de los derechos de propiedad intelectual**

*El párrafo 3.194 del informe de la Secretaría señala que... "La Comisión de Comercio Internacional de los Estados Unidos (USITC) señaló que era difícil medir el comercio digital internacional ("comercio de productos y servicios suministrados a través de Internet"), y dio algunos ejemplos concretos que indicaban que el comercio internacional de productos digitales crecía rápidamente (por ejemplo, el caso de "composiciones musicales en formato digital pertenecientes a una parte en un país dado descargadas por consumidores de otros países"), pero concluyó que "los datos sobre ese tipo de operaciones son escasos, y la necesidad de disponer de más información es un tema recurrente tanto en este sector como entre y los investigadores".*

*Al analizar las preocupaciones relacionadas con la propiedad intelectual en la esfera del comercio, la Comisión señaló que, según los sectores que creaban contenidos (programas informáticos, música, películas, libros y videojuegos), la piratería en Internet era "el mayor obstáculo al comercio digital en esos sectores"; indicó, además, que los intermediarios de Internet estaban preocupados "por la falta de claridad de los marcos jurídicos y por qué se los consideraba responsables de las infracciones o conductas ilegales de los usuarios de sus sistemas".*

*Question 9. ¿Qué medidas han tomado los EE.UU. para superar la falta de claridad que tienen los Proveedores de servicios de Internet sobre los marcos jurídicos relacionados con su responsabilidad sobre los contenidos protegidos por propiedad intelectual?*

**RESPONSE:** The Digital Millennium Copyright Act (DMCA), with specific provisions related to ISPs codified in 17 U.S.C. §512, and regulations promulgated under the DMCA provide legal frameworks governing potential liability for Internet Service Providers. Additional clarity is provided via court decisions, consistent with the U.S. system of common law jurisprudence. ISP liability has also been addressed during the ongoing copyright review by the House Subcommittee on Courts, Intellectual Property, and the Internet, discussed above in response to Question 22 from Canada. On March 13, 2014, the Subcommittee held a hearing on "Section 512 of Title 17" and heard testimony from online service providers, content owners, and academics. Information about the hearing can be found at <http://judiciary.house.gov/index.cfm/hearings?ID=3A1D170D-D431-486F-AEFA-3724B0D95AE9>. The U.S. Department of Commerce's Internet Policy Task Force has also hosted a Multistakeholder Forum in which representatives of copyright owners, Internet Service Providers and users have discussed nonlegislative ways to improve the operation of the DMCA notice and takedown system. For more information, see <http://www.uspto.gov/learning-and-resources/ip-policy/copyrights>.

*Question 10. ¿Qué respuesta se ha dado a los Proveedores de Servicios de Internet (PSI) cuando preguntan por las razones por las que se los considera responsables de las infracciones o conductas ilegales de los usuarios de sus sistemas?*

**RESPONSE:** Court determinations that may result in the imposition of liability on Internet Service Providers are accompanied by a written opinion providing the reasons therefore.

**4 POLÍTICAS COMERCIALES, POR SECTORES****4.1 Agricultura****4.1.1 Ley de Agricultura de 2014****4.1.1.1 Panorama general**

*Los párrafos 4.3 y 4.5 del informe de la Secretaría señalan que... "4.3. Uno de los cambios más significativos que afectaron a la estructura del sistema de protección de los ingresos en el sector agropecuario fue la eliminación del Programa de Pagos Directos (DP). Con arreglo a este programa, que había sido la piedra angular de las reformas de la política agraria desde que concluyeron las negociaciones de la Ronda Uruguay, cada año se efectuaban pagos a los agricultores y los propietarios de tierras aproximadamente 5.000 millones de dólares EE.UU. en concepto de apoyo a los ingresos no vinculado. También se suprimieron el Programa de Pagos Anticíclicos (CCP) y el Programa de apoyo a los ingresos agrícolas (ACRE). Estos tres programas*

(DP, CCP y ACRE) fueron sustituidos por dos nuevas medidas, el Programa de cobertura de pérdidas relacionadas con los precios (PLC) y el Programa de cobertura de riesgos agrícolas (ARC).

4.5. Como alternativa al Programa PLC, los agricultores pueden participar en el nuevo Programa ARC, un plan de primas de complemento basadas en los ingresos, vinculado a los precios corrientes y también a una proporción de la superficie de base, entre otros parámetros. Los programas PLC y ARC comprenden los mismos productos básicos que los programas cancelados (cereales, arroz, semillas oleaginosas, legumbres, cacahuetes (maníes)), con exclusión del algodón americano (upland)."

*En relación con los nuevos programas sustitutos mencionados:*

*Question 11. ¿Cuáles son los criterios para el cálculo y otorgamiento individual o grupal de las primas de complemento que se prevé entregar mediante estos programas?*

**RESPONSE:** The criteria for triggering ARC/PLC payments, including examples, can be found through accessing the ARC/PLC webpage at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=arpl&topic=landing>. In particular, see the ARC/PLC fact sheet at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplc.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplc.html). The ARC/PLC regulation (as well as other Farm Service Agency regulations) is at: <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-ii>.

*Question 12. ¿Cómo es la metodología para la fijación de los precios de referencia anunciados para el PLC y ARC?*

**RESPONSE:** The reference prices in the Price Loss Coverage (PLC) program were established by the 2014 Farm Bill.

*Question 13. ¿Cuáles serían los montos máximos de las primas que se prevé otorgar en desarrollo de los programas mencionados?*

**RESPONSE:** There is no aggregate cap or limit for ARC or PLC payments.

El párrafo 4.9 del Informe de la Secretaría señala que... "En líneas generales, la nueva Ley de Agricultura supone un gran cambio en la política agrícola con respecto a algunos productos. Su repercusión dependerá de varias opciones que deben escoger los productores (por ejemplo, entre los programas PLC y ARC; entre los programas ARC y SCO; la reasignación de la superficie de base, etc.). La nueva Ley elimina las medidas de sostenimiento de los precios del mercado y las subvenciones a la exportación para los productos lácteos, así como los pagos directos en función de la producción agrícola de períodos anteriores. No obstante, la sustitución de los pagos directos desvinculados por instrumentos tales como las primas de complemento vinculadas a los precios corrientes podría causar mayores distorsiones del comercio y la producción."

*Question 14. Sobre las primas de complemento vinculadas a los precios corrientes, se solicita una descripción más amplia acerca de sus características, particularmente, sobre sus montos máximos, condiciones de otorgamiento y demás aspectos relativos a su funcionamiento.*

**RESPONSE:** With the 2014 Farm Bill, the new counter-cyclical covered commodity safety net programs are the Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC) programs. The Farm Service Agency's ARC/PLC web page provides information on maximum per-farm payment amounts and calculations, eligibility requirements, and other information at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=arpl&topic=landing>.

In particular, see the ARC/PLC fact sheet at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplc.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplc.html). The ARC/PLC regulation (as well as other Farm Service Agency regulations) is at: <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-ii>.

**The Margin Protection Program for Dairy is also a counter-cyclical protection program. Information on payment calculations, eligibility requirements, and other information can be found at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=dmpp&topic=landing>.**

Question 15. ¿Se han previsto mecanismos para controlar que las primas de complemento de los nuevos programas no lleguen a causar los efectos desfavorables y perjuicio grave por subvaloración de precios a que hacen referencia los artículos 5.c, 6.3.c del Acuerdo de Subvenciones y Medidas Compensatorias de la OMC?

**RESPONSE: New programs are paid on historical production without reference to current production, removing incentives that could lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings will be based on market incentives.**

#### **4.1.1.4.2 Garantías de crédito a la exportación**

El párrafo 4.46 del Informe de la Secretaría señala que... "El Programa de Garantía de Créditos de Exportación (GSM-102) es administrado por el USDA, que está obligado por ley a prever la concesión de 5.500 millones de dólares EE.UU. en garantías de préstamos cada ejercicio, con el fin de alentar al sector privado de los Estados Unidos a financiar las exportaciones comerciales de productos agrícolas estadounidenses, en particular a países en desarrollo. El programa garantiza los créditos concedidos por los exportadores estadounidenses, o, más frecuentemente, por instituciones financieras estadounidenses a bancos extranjeros aprobados para la compra de productos agrícolas estadounidenses por extranjeros. En el ejercicio de 2013, los exportadores estadounidenses obtuvieron garantías de créditos en el marco del programa por un total de 3.000 millones de dólares EE.UU.

El funcionamiento del programa GSM-102 está sujeto a la obligación legal de que los honorarios cubran los costos de explotación y las pérdidas del programa a largo plazo. Las comisiones varían en función de la duración del préstamo, el tipo de riesgo del país del deudor y la frecuencia de los reembolsos."

Question 16. Nos gustaría conocer que otros cambios se han realizado a este programa, y de acuerdo a estos cómo será notificado.

**RESPONSE: All GSM-102 program operational requirements and the current status of the program are available on the following website: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.**

#### **4.1.1.4.3 Promoción de las exportaciones**

El párrafo 4.48 del informe de la Secretaría señala que... "El Servicio Exterior de Agricultura del USDA administra cuatro programas de promoción de las exportaciones, que fueron autorizados de nuevo hasta el ejercicio de 2018 sin cambios en su financiación. El Programa de Acceso a los Mercados (Ley Pública 113-79, artículo 3102) suministra asistencia financiera para compartir los gastos en actividades de promoción de las exportaciones que beneficien a productos estadounidenses genéricos y de marca (189.800 millones de dólares EE.UU. en el ejercicio de 2013). El Programa de Promoción de los Mercados Extranjeros (artículo 3103) facilita fondos de contraparte principalmente para la exportación de productos básicos genéricos y a granel (32.700 millones de dólares EE.UU. en el ejercicio de 2013). El Programa para Mercados Emergentes (artículo 3203) suministra fondos de asistencia técnica para la promoción de las exportaciones agrícolas estadounidenses a estos mercados (9.200 millones de dólares EE.UU. en el ejercicio de 2013). El Programa de Asistencia Técnica para Cultivos Especiales (Artículo 3205) presta asistencia a organizaciones estadounidenses en proyectos destinados a hacer frente a obstáculos al comercio relacionados con medidas sanitarias y fitosanitarias y con obstáculos técnicos al comercio (7.300 millones de dólares EE.UU. en el ejercicio de 2013)."

Question 17. Nos gustaría conocer los ítems que se financian bajo la figura de "promoción de las exportaciones" del Programa de Acceso a Mercados.

**RESPONSE:** Under the MAP, USDA/FAS provides cost-share assistance to eligible U.S. organizations for activities such as consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research and technical assistance.

*Question 18. ¿Cuáles son las diferencias para que un producto sea calificado como "genérico" y "de marca"?*

**RESPONSE:** USDA/FAS does not define brand or trademark products. However, under the MAP, brand and generic promotion are:

***Brand promotion***—an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a MAP Participant in the brand program.

***Generic promotion***—an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.*, a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted U.S. agricultural commodity or product from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos or brand names. However, in that case, the MAP Participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.*, a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

*Question 19. ¿Cómo funciona el Programa de Promoción de Mercados Extranjeros?*

**RESPONSE:** Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. These programs are widely available export promotion and advisory services.

**COSTA RICA****PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT****Page 39 (paragraph 2.51)**

In September 2012, the Department of Commerce announced a related "Make it in America" program to accelerate insourcing, i.e. by encouraging firms to bring back jobs and investments to the United States.<sup>50</sup> It offered a one-time US\$40 million competition to projects supporting regional economic development, advanced skills training, greater supply chain access, and other enhancements. As of October 2013, US\$20.5 million had been awarded to 10 applicants.<sup>51</sup> On 3 December 2013, the Hollings Manufacturing Extension Partnership (MEP) awarded a total of US\$3.75 million in Make it in America grants to 10 MEP centers in nine states. The 3-year grant awards are in addition to the recently announced US\$20.5 million in Make it in America funding from the Department of Commerce's Economic Development Administration, the Department of Labor's Employment and Training Administration, and the Delta Regional Authority. The overall objective of the Make it in America Challenge is to make it more attractive for businesses to build, continue, or expand their operations in the United States.

Question 1. Has United States considered the effects that the "Make it in America" program will have on trade with FTA partners? Does the program focus on specific economic sectors?

Question 2. Can the United States please explain how this program is consistent with its foreign trade policy?

**RESPONSE:** The Make it in America program was a one-time program, carried out in 2012, to identify innovative projects focused on increasing investment and employment. Further information is available at <http://www.commerce.gov/news/fact-sheets/2012/09/%202025/fact-sheet-make-it-america-challenge>. The winning projects are described at <http://www.eda.gov/challenges/MakeItInAmerica/winners.htm>.

**Page 89 (paragraph 3.189)**

Intellectual property (IP) – how it is protected, administered and enforced, both domestically and in exports markets – is a central consideration of United States trade policy. In articulating its objectives in the context of current trade negotiations, the Administration has stressed the importance of IP for the U.S. economy, both in creating well-paid jobs and in supporting high value exports. It attributes nearly 40 million jobs and 60% of merchandise exports to "IP-intensive" industries, on the basis of a 2012 report by the Economics and Statistics Administration and the U.S. Patent and Trademark Office. While the U.S. IP system is among the world's most mature and well established, the dynamic character of IP in the contemporary United States economy led to various developments during the review period; policy initiatives on the part of the Administration and the legislature underscored the continuing significance of legal and policy settings in this field for the overall U.S. trade profile.

Question 3. Can the United States provide information on the IP policy initiatives underway, both by the Administration and the legislature?

**RESPONSE:** In addition to Administration's IP policy initiatives, the House Subcommittee on Courts, Intellectual Property, and the Internet has been conducting a comprehensive review of the current state of U.S. copyright laws. As of December 2013, there have been eighteen copyright review hearings before the Subcommittee, and future hearings are expected to take place in 2015. The U.S. Copyright Office has also undertaken several studies on U.S. copyright law at the request of Congress as well as under its own initiative. The Office published two reports, Copyright Small Claims and Resale Royalties: An Updated Analysis, in 2013 and is currently engaged in three ongoing studies – Orphan Works and Mass Digitization, the Making Available Study, and the Music Licensing Study.

The Administration is also engaged in copyright policy initiatives focusing on copyright policy, creativity and innovation in the digital economy. Work is proceeding along three

**paths on issues identified in the Administration's July 2013 Green Paper on Copyright Policy, Creativity, and Innovation in the Digital Economy:**

**Preparation of a paper that will address three policy issues: (1) the legal and licensing environment for "remixes" (the combination of portions of existing works to produce something new and creative), (2) "digital first sale" (the extent to which consumers who receive copies of works by digital transmission may "resell" those copies), and (3) the calculation of the level of statutory damages for certain types of online infringement.**

**Convening of a multistakeholder forum to identify best practices and/or produce voluntary agreements for improving the operation of the Digital Millennium Copyright Act (DMCA) notice and takedown system for removing infringing content from the Internet.**

**Exploring ways in which the government can facilitate the further development of a robust online licensing environment. A public meeting will take place early next year.**

*Question 4. Given the dynamic character of IP in the economy and recent legal developments, to what extent has the United States revised its policies with regard to test data protection, copyrights and responsibility of Internet service providers?*

**RESPONSE:** Beginning with the Digital Millennium Copyright Act in 1998, the U.S. Copyright Act has been amended more than 25 times. For a list of the statutory enactments from 1976 through 2010 contained in Title 17 of the United States Code, see <http://copyright.gov/title17/92preface.html>. See also <http://www.copyright.gov/title17/> (noting very recently enacted legislation, the STELA Reauthorization Act of 2014). Furthermore, as discussed above in response to Question 22 from Canada, the House Subcommittee on Courts, Intellectual Property, and the Internet has held a series of hearings to review the current state of U.S. copyright law. There have been 18 hearings as of December 2014, and they are expected to resume in 2015.

*Page 94 (paragraph 3.200)*

*The overall strategic goal of the Department of Commerce Strategic Plan for 2014-18 is to expand the U.S. economy and fostering U.S. job growth through increased exports and inward foreign investment. It identified a role for the USPTO in helping build the capacity of U.S. regional economies to accelerate the production of value-added goods and services, strengthening the digital economy, and accelerating the growth of innovation-intensive economic sectors by building public and private capacity to invent, improve, and commercialize new products and services, as well as promoting enhanced IP protection abroad. The USPTO's own strategic plan for 2014-18 sets out three goals for this period: optimize patent quality and timeliness; optimize trademark quality and timeliness; and provide domestic and global leadership to improve IP policy, protection, and enforcement.*

*Question 5. Can United States please provide further details on how it plans to "optimize patent quality and timeliness"?*

**RESPONSE:** To realize the goal of optimizing patent quality and timeliness, the USPTO has set forth a series of objectives. In particular these objective include the following: (1) refining the optimal patent pendency, (2) increasing efficiencies and patent examination capacity to align with the optimal patent pendency, (3) increasing international cooperation and work sharing, (4) continuing to enhance patent quality, (5) ensuring optimal information technology (IT) service delivery to all users, (6) continuing and enhancing stakeholder public outreach, and (7) maintaining the Patent Trial and Appeal Board's (PTAB) ability to provide timely and high quality decisions. Further details can be found in the United States Patent and Trademark Office Strategic Plan (2014-2018) at [http://www.uspto.gov/about/stratplan/USPTO\\_2014-2018\\_Strategic\\_Plan.pdf](http://www.uspto.gov/about/stratplan/USPTO_2014-2018_Strategic_Plan.pdf).

**Page 99 (paragraph 3.219)**

Coordination and effectiveness of mechanisms to enforce IP rights both domestically and in foreign markets remain a major policy concern for the United States. The Intellectual Property Enforcement Coordinator (IPEC) issued the 2013 Joint Strategic Plan on Intellectual Property Enforcement, which highlighted developments in enforcement since 2009. These included increases of 71% in new cases, 159% in arrests, 103% in convictions, and 264% in indictments by Immigration and Customs Enforcement (ICE)-Homeland Security Investigations (HSI). Pending Federal Bureau of Investigation health and safety-focused investigations rose by 308% and related arrests by 286%. Seizures of infringing imports increased by 53%. Voluntary private sector "best practice" initiatives were undertaken by financial service providers, on-line markets, Internet service providers, and advertisers.

Question 6. Can United States please provide further information on the "best practice" initiatives undertaken by the private sector? Also, is there coordination between the public institutions overseeing IP matters and the private sector in the formulation of such practices?

**RESPONSE:** On June 20, 2013 the United States issued a request for public comment on voluntary private sector initiatives regarding IPR protection and enforcement, and is currently in the process of evaluating those response. In light of this on-going review, the United States is not in a position to provide an evaluation of such initiatives at this time. U.S. government IPR enforcement actions are distinct from voluntary private sector initiatives.

**Page 141 (paragraph 4.135)**

The health insurance market of the United States is largely open and proportionally bigger than other developed countries' markets where public social security systems are dominant, thus making it an attractive destination for the establishment of foreign-based health insurers.

Question 7. Given an open market on insurance services, does the United States anticipate eliminating the restrictions on United States' citizens to receive treatment outside the United States when using certain government-sponsored programmes? Has the U.S. considered that this would allow its citizens to receive a larger variety of services through mode 2 and eventually reduce the cost of the services that such programmes recognize?

**RESPONSE:** As noted in the report, the private insurance market in the United States is more open and much larger than similar markets in other developed countries where government-operated health systems predominate. As a part of this, while U.S. government-sponsored programs do not generally cover services through mode 2, consumers have access to other insurance plans and providers that may cover services received outside of the United States. An insurance company that is not part of a government-sponsored program is able to cover services through mode 2 if it wants to, and many consumers also have the option to purchase travel insurance when traveling abroad that will cover mode 2 health care services if their primary health insurance does not. U.S. consumers covered by private insurance have made increasingly frequent use of Mode 2 health care services around the world. While the United States is not currently considering changes to coverage of government-sponsored programs, much of the health care spending in the United States occurs outside the scope of such programs.

**PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT****Page 4 (paragraph 1.4)**

More broadly, the United States will appropriately utilize every available policy tool – and will continue to develop new tools – to pursue the most efficient and productive pathways to expand trade and foster economic growth, consistent with WTO rules. In 2013, the United States made substantial progress with its trading partners towards concluding the Trans-Pacific Partnership (TPP) negotiations. The United States expects the TPP will be an ambitious, comprehensive, high-standard trade agreement in the world's fastest growing region. The United States also participated in the launch of two ground-breaking trade negotiations – the Transatlantic Trade and Investment Partnership (T-TIP) and the Trade in Services Agreement (TiSA). Progress with the

---

*European Union toward a T-TIP agreement is expected to further strengthen the world's largest trade relationship, while TiSA promotes fair and open competition in the service sectors of participating countries.*

*Question 8. With respect to TPP and TTIP negotiations, how is the United States reaching out to the public to ensure they are receiving the input they need about the process?*

**RESPONSE:** Outreach to members of the public, and consultation with our public stakeholders, is a critical element of our process of negotiating trade agreements like TPP and T-TIP. USTR and other agencies have been listening to and consulting with a broad range of stakeholders since well before these two negotiations were launched, and they will continue to do so as they proceed toward conclusion.

Prior to the launch of both TPP and T-TIP (as well as the expansion of TPP to include Mexico, Canada and Japan), USTR published Federal Register Notices seeking public comment on the objectives for these negotiations, and held public hearings on these negotiations. Hundreds of comments were received from a diverse array of stakeholders, and many stakeholders also participated in the related hearings. The comments provided informed our negotiating priorities and continue to guide our participation in these negotiations.

In addition, U.S. and other TPP and T-TIP negotiators meet with stakeholders on a regular basis, including before, during, and after negotiating rounds. For example, alongside the TPP and T-TIP negotiating rounds, USTR and our negotiating partners (from TPP countries and the EU, respectively) have hosted stakeholder consultation sessions. During these sessions, negotiators met with and listened to up to 70 presentations from representatives of a wide array of interests, including industry, small business, academia, labor unions, environmental groups, and consumer advocacy organizations. The stakeholder presentations and briefings have consistently drawn as many as 300 global stakeholders.

In Washington, USTR negotiators regularly consult with stakeholders on the TPP and T-TIP negotiations through an advisory system involving outreach to business, labor, environmental, public interest and other stakeholders. That is augmented by a full schedule of ad hoc briefings with organizations and individuals, as well as stakeholder outreach travel within the United States.

*Question 9. What is the expected timeline for completion of negotiations of TPP and TTIP?*

**RESPONSE:** TPP leaders met in November 2014, noted the significant progress that ministers and negotiators had made in recent months in narrowing gaps on the agreement, and stated that the end of the negotiation was coming into focus. All TPP parties are working to conclude the negotiation as soon as possible, so that each country can start to enjoy the agreement's benefits.

With regards to the Transatlantic Trade and Investment Partnership, the United States and the European Union have had seven rounds of negotiations since TTIP was launched in July 2013. Both sides are committed to achieving significant progress in 2015.

***Page 26 (paragraph 5.18)***

5.18. In May 2013, USAID and the American National Standards Institute (ANSI) entered into a public-private partnership that will coordinate private-sector subject matter experts from ANSI member organizations in the delivery of training and other technical exchange with interested Standards Alliance countries on international standards and best practices. In coordination with USTR, the USAID-ANSI partnership will include activities in up to ten markets representing a variety of geographical regions and levels of economic development. In consultation with TPSC member agencies and private sector experts, ANSI reviewed the applications received based on consideration of bilateral trade opportunities, available private sector expertise that may be leveraged, demonstrated commitment and readiness for assistance, and potential development impact. Participating countries/regions for the first year include: Central America (CAFTA-DR,

*Panama), Colombia, the East African Community, Indonesia, Middle East/North Africa, Peru, Southern Africa Development Community, developing ASEAN members, and Yemen.*

*Question 10. What are the most important results of Standards Alliance programming in 2013 and 2014, specifically in Central America (CAFTA-DR)?*

**RESPONSE:** The highlights of the Standards Alliance work to date are described in the quarterly reports, which are available on the Standards Alliance website: <http://standardsalliance.ansi.org>. In Central America, work began with the initial assessment meetings conducted in May 2014. As a result of those consultations, more activities are planned for 2015 that will include work in sectors such as food additives and textiles.

**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/307 y, del Informe de la Secretaría de la OMC circulado como documento WT/TPR/S/307, ambos de fecha 11 de noviembre de 2012, la República de Cuba solicita que sean incluidas en el duodécimo examen de ese Miembro, las preguntas que a continuación se relacionan.*

**Preguntas relativas al Informe de la Secretaría (WT/TPR/S/307).**

*Como se menciona en el informe de la Secretaría de la OMC, en el párrafo 3.59 de la página 65, correspondiente al acápite .1.6.3 "Sanciones, controles o procedimientos especiales", el Gobierno de los Estados Unidos mantiene diversas sanciones contra determinados países, entre ellos Cuba, por distintos motivos, muchas de las cuales imponen restricciones comerciales.*

*Por más de 50 años, el gobierno estadounidense ha mantenido en vigor las leyes, disposiciones y prácticas que sirven de sustento a su política de bloqueo económico, comercial y financiero contra Cuba.*

*Se mantienen para Cuba las condiciones onerosas y ajenas a la práctica comercial internacional, bajo las cuales se realizan las compras de alimentos a compañías de los Estados Unidos, persistiendo la amenaza de que las licencias otorgadas para estos fines pueden ser canceladas en cualquier momento por la Oficina de Control de Activos Extranjeros del Departamento del Tesoro de los Estados Unidos (OFAC). Igualmente se mantiene la prohibición de otorgar financiamientos y créditos a Cuba y están prohibidas las relaciones bancarias directas entre los dos países.*

*Adicionalmente, en el párrafo 3.61 de la página 66 del Informe de la Secretaría, se plantea que: "Aunque estaba previsto que determinadas disposiciones de la Ley de Comercio con el Enemigo (Trading with the Enemy Act) relativas a Cuba expiraran en septiembre de 2012 y 2013, el Presidente las prorrogó por períodos de un año; por consiguiente, están actualmente en vigor hasta septiembre de 2014".*

*A esta afirmación podemos añadir que el 5 de septiembre de 2014 el Presidente Obama prorrogó nuevamente por un año esta Ley que sustenta, no solo la aplicación de las medidas del bloqueo, sino también la autoridad del Presidente para imponer otras leyes y disposiciones complementarias que conforman la política de bloqueo hacia Cuba.*

*En cuanto a la transportación de estos productos, que bajo severas condiciones se adquieren en el mercado estadounidense, se mantiene la prohibición a los barcos que participan en este servicio a tomar cargas en Cuba hacia otros destinos y la prohibición a los barcos cubanos a participar en estos embarques.*

*En el párrafo 4.146 de la página 165 del Informe de la Secretaría se enuncia que los Estados Unidos alegan que "por razones de seguridad nacional, se prohíbe la entrada en los puertos estadounidenses a los buques procedentes de Camboya, Corea del Norte, Cuba, el Irán, Libia y Siria".*

*En febrero de 2012, el Presidente Obama prorrogó mediante una proclama al Congreso, la "Extensión de la emergencia respecto a Cuba" y la "Autoridad de emergencia sobre la regulación de anclaje y movimiento de embarcaciones", las que, entre otras regulaciones, prohíben el arribo de barcos y yates de recreo a Cuba, en correspondencia con las prohibiciones imperantes a los viajes de los ciudadanos estadounidenses a Cuba.*

*A lo anterior se puede añadir que ha sido muy recurrente en los últimos años la imposición por parte del Gobierno de los Estados Unidos de multas millonarias a bancos internacionales por realizar operaciones con Cuba, lo cual manifiesta el alcance extraterritorial del bloqueo en flagrante violación de las normas del comercio internacional.*

*Esta práctica alcanzó su máxima expresión cuando la OFAC anunció, el 30 de junio de 2014, la imposición de una mega multa ascendente a 8 mil 970 millones al banco francés BNP Paribas, por violaciones de las regulaciones del bloqueo a Cuba y de sanciones a otros países. En consecuencia, el BNP Paribas ha cancelado todas sus relaciones con entidades cubanas, lo que constituye un obstáculo adicional a las relaciones económicas entre Cuba y varios socios comerciales europeos y del resto del mundo.*

*Tomando en consideración los elementos antes señalados, el Gobierno de la República de Cuba solicita recibir respuestas concretas del Gobierno de los Estados Unidos sobre las siguientes interrogantes, relacionadas con el Informe de la Secretaría:*

*Question 1. ¿Se consideran los Estados Unidos un digno y disciplinado miembro de la Organización Mundial de Comercio cuando por más de 50 años ha mantenido subyugado desde el punto de vista económico, comercial y financiero a otro Miembro fundador de la OMC, organización "que responde*

*al deseo garantizado de actuar en un sistema multilateral de comercio más justo y más abierto en beneficio y por el bienestar de los pueblos", tal y cual se enuncia en el párrafo 2 de la Declaración de Marrakech?*

**RESPONSE: The United States is a serious and committed member of the WTO and rejects the premise of this question.**

*Question 2. A pesar de haber sido el principal promotor del Acuerdo de Facilitación del Comercio, en el marco del cual ratificó que respetaría la Libertad de Tránsito reconocida en el GATT, ¿cómo pueden conciliar los Estados Unidos tantas limitaciones comerciales a los buques de otros miembros que quieran comerciar con Cuba, con el supuesto compromiso de implementar a cabalidad este reciente Acuerdo? ¿Cómo puede una economía pequeña y vulnerable ser el pretexto para alegar lo que, a todas luces, consiste en una infundada seguridad nacional? Acaso no se da cuenta el Gobierno de los EE.UU. del descrédito que sufren constantemente en la OMC cuando continúan con su política de bloqueo contra Cuba?*

**RESPONSE: The United States appreciates the hard work of all Members, including Cuba, to conclude the negotiation of the Trade Facilitation Agreement (TFA). We agree with Cuba on the trade facilitative aspects of the transit provisions of the TFA, in particular the ability of these provisions to assist small economies and land locked developing countries in promoting regional trade. As noted in the Bali Ministerial Decision, these provisions complement the non-discrimination principle of Article V of GATT 1994.**

*Question 3. ¿Puede explicar el Gobierno de los EE.UU. la compatibilidad del alcance extraterritorial de su política de bloqueo contra Cuba, con las disposiciones de la OMC? En pocas palabras, ¿creen los EE.UU. que la alegación de "seguridad nacional" contra Cuba, es una justificación para afectar los derechos adquiridos por otros Miembros de la OMC? Un ejemplo de ello son las sanciones millonarias a bancos europeos.*

**RESPONSE: The United States' embargo on trade with Cuba is fully compliant with our relevant obligations under our international trade agreements. The embargo is not a blockade; the embargo regulations apply only to persons or property subject to U.S. jurisdiction. The United States considers the embargo a bilateral issue that has no place being discussed in multilateral fora.**

**Preguntas relativas al Informe de los Estados Unidos (WT/TPR/G/307).**

*Cuba, por doce años consecutivos, ha denunciado en el Órgano de Solución de Diferencias (OSD) a los Estados Unidos por mantener vigente una medida incompatible con las disposiciones de la OMC. Desde el año 2002 el Órgano de Solución de Diferencias dictaminó que la "Sección 211 de la Ley Ómnibus de Asignaciones de 1998" es incompatible con el Acuerdo sobre los ADPIC y con el Convenio de París para la Protección de la Propiedad Industrial y emitió recomendaciones y resoluciones que no han sido cumplidas por los Estados Unidos, contraviniendo una decisión del máximo órgano jurisdiccional de la OMC en detrimento de titulares de marcas cubanas, como es el caso de la marca de ron Havana Club.*

*Este incumplimiento de los Estados Unidos está en contradicción con los siguientes extractos de su informe, donde manifiesta que:*

- "La observancia estricta de las normas comerciales en todo el abanico de mercancías y servicios sigue siendo un pilar central de la política comercial de los Estados Unidos. Durante casi dos decenios, el mecanismo de solución de diferencias de la OMC ha resultado útil para los Miembros como foro excepcional para el examen y la adjudicación de diferencias con los interlocutores comerciales del país." (Véase párrafo 1.5 de la página 4 del Informe de los Estados Unidos WT/TPR/G/307).
- "Desde la entrada en vigor de los Acuerdos de la Ronda Uruguay en 1995, un aspecto central de la política de los Estados Unidos ha sido asegurar la aplicación efectiva y a su debido tiempo de sus compromisos en la OMC. Los Estados Unidos creen que es importante, no solo para los intereses comerciales estadounidenses sino para todo el sistema de la OMC, lograr que todos los Miembros cumplan sus compromisos. Las diversas manifestaciones de esta política van desde una participación activa y constructiva en las deliberaciones de los comités de la OMC hasta la utilización del mecanismo de solución de diferencias. La política comercial de los Estados Unidos

*trata de respaldar y promover el estado de derecho." (Véase párrafo 4.4 de la página 13 del Informe de los Estados Unidos WT/TPR/G/307).*

*"Para asegurar el cumplimiento de los Acuerdos de la OMC, los Estados Unidos han sido uno de los países del mundo que ha recurrido con más frecuencia a los procedimientos de solución de diferencias de la OMC. Desde la creación de la Organización en 1994, los Estados Unidos han presentado 103 reclamaciones en la OMC, y hasta ahora han obtenido decisiones favorables en 70 de ellas, de las que 29 se resolvieron favorablemente de manera amistosa y otras 41 mediante procedimientos de los grupos especiales y el Órgano de Apelación de la OMC. Los Estados Unidos han obtenido soluciones favorables y decisiones favorables prácticamente en todos los sectores, con inclusión de las manufacturas, la propiedad intelectual, la agricultura y los servicios". (Véase párrafo 4.6 de la página 13 del Informe de los Estados Unidos WT/TPR/G/307)*

*En este último párrafo extraído del Informe de los Estados Unidos, apreciamos que se omiten los fallos del OSD no favorables a este Miembro, entre estos figura el que dictaminó en el año 2002 el Órgano de Solución de Diferencias, el cual estipuló que la "Sección 211 de la Ley Ómnibus de Asignaciones de 1998" es incompatible con el Acuerdo sobre los ADPIC y con el Convenio de París para la Protección de la Propiedad Industrial.*

*A partir de los elementos antes señalados, el Gobierno de la República de Cuba solicita recibir respuestas concretas del Gobierno de los Estados Unidos sobre las siguientes interrogantes, relacionadas con su Informe:*

*Question 4. ¿Es realmente el Gobierno de los Estados Unidos un miembro respetuoso de los compromisos y normas de la OMC y de los fallos de su Órgano de Solución de Diferencias (OSD), cuando, entre otros, todavía sobre sus espaldas pesa un incumplimiento de más de 12 años, por el cual deliberadamente no cumplen una decisión del OSD?*

**RESPONSE: The United States does not accept the factual and legal characterization contained in these statements and 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. Furthermore, 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, para. 362.**

**The United States refers to its statements on this matter in the Dispute Settlement Body.**

*Question 5. ¿Cuándo el Gobierno de los Estados Unidos permitirá al legítimo titular de la marca Havana Club, el simple requisito administrativo de pagar la cuota de renovación de esta marca?*

**RESPONSE: Please see the response to question 4 above.**

**DOMINICAN REPUBLIC**

*Documento WT/TPR/S/307.-*

*Question 1.- En torno al tema de inversión. Quisiéramos saber si los Estados Unidos tienen algún tipo de registro de inversión extranjera. En caso afirmativo, ¿Cómo funciona?.-*

**RESPONSE:** The United States does not have a general registration requirement for foreign investment. 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.

*Question 2.- En cuanto al Acuerdo de Asociación Transpacífico (TTP), tenemos interés en conocer las medidas que está tomando los Estados Unidos, para evitar que la cadena de suministro de textiles y vestuarios establecida en el DR-CAFTA se vea alterada.-*

**RESPONSE:** We understand and appreciate the sensitivities of existing supply arrangements, and are taking care that such arrangements are not disrupted by TPP.

*Question 3.- 3.32. Desde principios de 2012, fecha en que los Estados Unidos introdujeron en su Arancel los cambios del SA 2012, no se ha modificado la nomenclatura del texto jurídico del HTSUS.<sup>26</sup> En dicha ocasión los Estados Unidos no introdujeron una serie de cambios del SA 2012 relativos a las películas fotográficas del capítulo 37, que siguen pendiente.<sup>27</sup> Sin embargo, a finales de 2012 la Comisión de Comercio Internacional de los Estados Unidos (USITC) inició una investigación para proponer determinadas modificaciones, algunas de las cuales afectan al capítulo 37.<sup>28</sup> La USITC ha introducido cambios importantes, que se aplican retroactivamente desde 2012, para otorgar el trato de franquicia arancelaria a los mandos inalámbricos para consolas de videojuegos que utilizan sistemas de transmisión infrarrojos. Otros cambios propuestos han consistido en rectificar la designación o descripción incorrecta de determinados productos químicos.*

*A República Dominicana, le interesa conocer cuáles son, los cambios propuestos por los Estados Unidos a La Organización Mundial de Aduanas, a los cambios en la nomenclatura del 2012, en relación a los productos de fotografía del capítulo 37.*

**RESPONSE:** Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the U.S. International Trade Commission conducted an investigation and sought public comment on the proposed changes. No requests for changes to the Commission's recommendation were received. The required Congressional layover period has been completed. The omitted HTS provisions are expected to be proclaimed by the President by the end of 2014, and it is expected that the effective date of these modifications will be February 3, 2012, the date on which the other 2012 changes to the Harmonized System were reflected in the HTS by Presidential Proclamation 8771. No change in duty treatment would result upon the implementation of the omitted provisions.

**Question 4**

Párrafo 4.2. Los programas de nutrición explican el 80% del presupuesto del Farm Bill. Bajo el "Supplemental Nutrition Assistance Program", el Estado suministra los medios que permitan a los beneficiarios comprar productos alimenticios. Cuáles son los productos que pueden comprar los beneficiarios y que están abarcados por el programa? Explicar en qué medida se incentiva el beneficiario a comprar productos locales? A qué precios se encuentran los productos alimenticios (subvencionados o precio de mercado)?

**RESPONSE:** SNAP benefits, which are distributed in the form of electronic debit cards, are limited to the purchase of food items for use at home as well as seeds and plants to produce foods for use at home. Participants can use benefits at places such as supermarkets, grocery stores, and farmers markets to purchase eligible items at market prices. There are no benefits to encourage the purchasing of domestic products over imported products; purchases may include both domestic and/or imported products.

**Question 5**

Párrafo 4.4. Los pagos realizados bajo los programas "Price Loss Coverage" y "Agriculture Risk Coverage" se realizan en base a los precios de mercado. Estamos preocupados por el hecho de que estos pagos podrían enviar señales erradas al mercado. Han analizado la envergadura de las posibles distorsiones que podrían generar estos programas?

**RESPONSE:** The PLC and ARC programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.

**Question 6**

Párrafo 4.7. En qué consiste el "Federal Crop Insurance"? Como se diferencia del "Price Loss Coverage"? En qué medida no se generan sobrecompensación para los beneficiarios del "Price Loss Coverage" y del "Federal Crop Insurance"?

**RESPONSE:** The Federal crop insurance program offers producers the opportunity to purchase insurance policies to protect against a percentage of yield or revenue losses for over one hundred crops, as well as for pasture, forage, and grazing land, and livestock. Coverage is based on a producer's average historical yield (usually over 10 years) and if revenue insurance is purchased, on the expected harvest price at planting.

The PLC program provides producers with payments when commodity prices fall below a statutory reference price and on a percentage of historical production. Recipients are not required to produce any product to receive payments.

Since the two programs provide payments on entirely different bases—current plantings vs. historical production--the question of "over compensation" is not relevant.

**Question 7**

Párrafo 4.10. Cuál es el mecanismo implementado para asegurar que el país no pasa de su Medida Global de Ayuda consolidada?

**RESPONSE:** The 2014 Farm Bill, like previous Farm Bills, contains a "circuit breaker" that gives the Secretary of Agriculture the authority to make adjustments to expenditures to ensure the United States does not exceed its WTO commitments.

**Question 8**

Párrafo 4.14. Está indicado que los precios de referencia se encuentran en la tabla A4.2, sin embargo no están. Por favor, suministrar dichos precios de referencia.

**RESPONSE:** The final two columns in Table A4.2 provide the reference prices for the Price Loss Coverage program as included in the 2014 Farm Bill and converted into US\$/ton.

**Question 9**

Párrafo 4.14. Está señalado que los nuevos precios de referencia son mayores a los fijados bajo el programa "Counter-Cyclical Payments". Cuáles fueron los criterios que resultaron en la fijación de estos precios a la alza?

**RESPONSE:** The Counter-Cyclical Payments program was repealed by the 2014 Farm Bill. The Price Loss Coverage program is a new program under the 2014 Farm Bill, for which Congress provided a statutory set of reference prices. Congress did not specify the reasons for its selection of reference prices. However, there has been a significant rise in commodity prices since the enactment of the 2008 Farm Bill.

**Question 10**

Párrafo 4.24. Explicar en qué consiste la compra de "import access rights". En qué sentido esta medida es compatible con las reglas de la OMC? Como se notifican dichas compras?

**RESPONSE:** Under the U.S. refined sugar re-export program, refiners may acquire rights to import raw sugar at world market prices. In 2013, sugar refiners who held licenses under this program were permitted to exchange voluntarily their import access rights for domestic sugar held by USDA.

The purchases are accounted for in the U.S. domestic support notification as part of the sugar market price support program, which is located in Supporting Table DS:5.

**ECUADOR**

*1. De conformidad con la Sección 2 Régimen de Comercio e Inversión, 2.3.2.2 Regímenes preferencias unilaterales, página 33, párrafo 2.25, hace alusión a que los programas no son mutuamente excluyentes y algunos países en desarrollo y PMA tienen derecho a participar en más de uno (cuadro A2.3).*

*Sobre el Cuadro A2.3 (página 188), en relación a los beneficiarios de las preferencias comerciales unilaterales otorgadas por los Estados Unidos: situación 30 de junio de 2014. La última autorización del Congreso estableció la vigencia del SGP hasta el 31 de julio de 2013 y hasta el momento no ha existido pronunciamiento alguno sobre su posible prórroga.*

*Considerando la importancia de estos esquemas preferenciales unilaterales para el acceso y diversificación de los productos de especial interés de los países en desarrollo Miembros, como son los bienes agrícolas, ¿podría los Estados Unidos indicarnos si tiene previsto retomar las discusiones sobre la posibilidad de renovar el SGP Sistema Generalizado de Preferencias? De ser así, ¿Existe alguna fecha tentativa?*

**RESPONSE: The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.**

*2. De conformidad con la Sección 3 Políticas y Prácticas Comerciales, por medidas, 3.3 Medidas que afectan a la producción y el comercio, página 87, párrafos 3.135 y 3.136, respecto de la reforma fiscal para simplificar el código de impuestos a las sociedades y rebajar el tipo máximo.*

*"Entre las medidas propuestas figura la eliminación de lagunas fiscales, el otorgamiento a las pequeñas empresas de incentivos para invertir, el establecimiento de un tipo máximo del 25% para los impuestos sobre las manufacturas y la eliminación de los incentivos para que las empresas se trasladen al extranjero mediante la aplicación de un impuesto mínimo sobre los ingresos percibidos en el extranjero".*

*Podría los Estados Unidos explicarnos cómo funcionaría este impuesto mínimo y su cuantía, ¿cuáles son los incentivos que se aplican en la actualidad para que las empresas se trasladen al extranjero?, los ingresos percibido en el extranjero se encuentran exentos de impuestos actualmente?*

**RESPONSE: Please see details in The President's Framework for Business Tax Reform, available at <http://www.treasury.gov/resource-center/tax-policy/Documents/The-Presidents-Framework-for-Business-Tax-Reform-02-22-2012.pdf>.**

*3. De conformidad con la Sección 3 Políticas y Prácticas Comerciales, por medidas, 3.1.6.2 Licencias de importación, página 62-63, Cuadro 3.7 Productos sujetos a licencias de importación, el cual hace alusión al objetivo de las licencias de importación y a ciertas disposiciones para acceder a la misma.*

*En el caso de la asignación de las licencias para el azúcar se refiere a que "todos los importadores pueden solicitar certificados para azúcares especiales. Solo los refinadores de azúcar de los Estados Unidos pueden solicitar licencias para la importación de azúcar fuera de contingente".*

*¿Podría Estados Unidos explicar con mayor detalle el funcionamiento de esta asignación de licencias que permite sólo a los refinadores estadounidenses solicitar licencias fuera del contingente? ¿Existe algún requisito de cumplimiento para que los refinadores estadounidenses puedan solicitar estas licencias fuera del contingente? Asimismo, podría indicarnos ¿Cómo funciona el programa de reexportación de azúcar y qué vinculación tiene con la asignación de licencias dentro o fuera del contingente?*

**RESPONSE: The refined sugar re-export program, administered pursuant to 7 CFR 1530.101, establishes the requirements that cane refiners must meet in order to be eligible for a license to ship under HTS lines 1701.13.20 and 1701.14.20. The program**

**establishes a license against which a refiner can: export domestically produced refined sugar and later import low-duty raw cane sugar; import low-duty raw cane sugar for refining and distribution to licensed U.S. manufacturers of sugar-containing products and/or licensed producers of polyhydric alcohol for non-food purposes; or import raw sugar, refine it and export it into the world market. There is no limit to the quantity that may be entered in any particular time period, but the licensee must comply with provisions of the regulation to maintain eligibility for the license.**

*En el caso de la asignación de las licencias para lácteos se cita que "los importadores o fabricantes de productos lácteos pueden solicitar licencias de importación si cumplen los criterios en materia de resultados establecidos en el Reglamento sobre las Importaciones respecto de las cantidades importadas en los 12 meses anteriores y, en el caso de los fabricantes, el nivel especificado de producción de lácteos en los 12 meses anteriores. Los fabricantes deben figurar en la lista de "Fábricas de Productos Lácteos Inspeccionadas" (Dairy Plants Surveyed) del Departamento de Agricultura de los Estados Unidos"*

*¿Podría Estados Unidos explicarnos con mayor detalle el funcionamiento de esta asignación de licencias, en especial de algunas condiciones (cumplimiento de criterios en materia de resultados) que se estarían estableciendo a importadores y fabricantes para acceder a dichos contingentes?*

**RESPONSE: These details can be found in the U.S. Code of Federal Regulations (CFR) at 7 CFR 6.23.**

4. De conformidad con la Sección 2 Régimen de Comercio e Inversión, 2.3.2.2.4 Ley de Preferencias Arancelarias Andinas, modificada por la Ley de Promoción Comercial Andina y Erradicación de la Drogas (ATPA/ATPDEA), página 37, párrafo 2.39 y 2.41, indica que "la finalidad de las leyes ATPA y ATPDEA era promover un desarrollo económico de base amplia, diversificar las exportaciones y luchar contra el tráfico de drogas ofreciendo oportunidades económicas alternativas a los países beneficiarios". En el párrafo 2.41 manifiesta que "En abril de 2013, la Oficina del Representante de los Estados Unidos para las Cuestiones Comerciales (USTR) solicitó que se efectuara un examen (aún no concluido) para comprobar si el otro beneficiario, el Ecuador, cumplía los criterios de admisibilidad. En particular, se cuestionó su admisibilidad por lo que se refería a los criterios relativos a la protección de la propiedad intelectual y la ratificación de los laudos arbitrales".

*Podría Estados Unidos explicarnos, ¿Cuál es la relación existente entre la protección de la propiedad intelectual, la ratificación de los laudos arbitrales y la lucha contra el tráfico de drogas?*

**RESPONSE: The preferential access to benefits under the Andean Trade Preferences Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA), is conditioned on a number of factors set forth in U.S. law which apply to all ATPA/ATPDEA beneficiary countries. Among these conditions are the protection of the intellectual property rights and enforcement of arbitral awards. It should be noted that the ATPA/ATPDEA expired on July 31, 2013, and has not been renewed by Congress.**

5. De conformidad con la Sección 3 Políticas y Prácticas Comerciales, por medidas, 3.1.9 Prescripciones sanitarias y fitosanitarias, página 74, párrafo 3.87, "el 4 de enero de 2011 entró en vigor la Ley de modernización de las normas de la FDA sobre la inocuidad de los alimentos (FSMA) (Ley Pública 111-353), que supuso una reforma importante de la legislación sobre la inocuidad de los alimentos y los piensos para animales, que son de la competencia de la FDA. Entre las reformas relacionadas con las importaciones cabe citar la verificación de los proveedores extranjeros (los importadores están obligados a asegurar que sus proveedores extranjeros aplican controles preventivos adecuados)".

*Podría los Estados Unidos indicarnos, ¿En qué consiste esta verificación? y ¿Se ha considerado el posible costo que podría conllevar esta verificación para los países Miembros en desarrollo y menos adelantados?*

**RESPONSE: The proposed rule for the foreign supplier verification program provides that importers would be required to perform certain risk-based activities to verify certain information with respect to the suppliers of the foods that they import. FDA is currently considering comments that were received which may include additional information on**

**the impacts for developing and least developed member countries. More information can be found online at: <http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM412924.pdf>.**

6. *De conformidad con la Sección 3 Políticas y Prácticas Comerciales, por medidas, 3.1.9 Prescripciones sanitarias y fitosanitarias, página 75, párrafo 3.90, "la Ley autoriza a la FDA a aplicar un gravamen a determinadas instalaciones nacionales y extranjeras y a la reinspección de los importadores. Anteriormente era la FDA quien asumía los costos de estas actividades. El gravamen también puede aplicarse a los efectos del retiro de alimentos del mercado cuando un establecimiento nacional de elaboración de alimentos o un importador incumple una orden de retiro, y para cubrir los costos administrativos del programa facultativo de autorización de importadores, a la certificación de las exportaciones de alimentos y al programa de auditores independientes (terceros)".*

*Podría los Estados Unidos informarnos, ¿Si este costo se aplica únicamente a las importaciones o si se aplica también a los productos nacionales?*

**RESPONSE: FSMA authorizes FDA to assess and collect fees for certain reinspections of domestic and foreign facilities and certain importer reinspections that result from a previous inspection where FDA has determined that noncompliance was materially related to food safety requirements of the FD&C Act. More information can be found on FDA's website at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm257982.htm>. FDA has not assessed or collected any of these reinspection fees to date.**

7. *En la sección sobre medidas sanitarias y fitosanitarias no se menciona el proceso de elaboración y adopción de medidas MSF, tampoco existe mención a este tema en el documento WT/TPR/G/307.*

*Al respecto, podría los Estados Unidos informarnos, ¿Si además del nivel Federal, los Estados o Gobiernos subcentrales pueden elaborar sus propias medidas sanitarias y/o fitosanitarias? y ¿Existe algún mecanismo previsto por el Gobierno Federal para garantizar a la Membresía que las medidas adoptadas a nivel subcentral cumplen con las disposiciones del Acuerdo MSF?*

**RESPONSE: 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. Federal agencies are the competent authorities on SPS measures affecting importation. All U.S. federal agencies follow the requirements of the Administrative Procedures Act, which is compliant with WTO transparency requirements.**

8. *En la sección 2 Régimen de Comercio e Inversión, 2.1.3 Novedades, en la página 29, párrafo 2.11. del acápite 2.1.3.2 del informe de la Secretaría se menciona que "En 2013, el Presidente estableció el grupo de trabajo sobre el tráfico de especies de fauna y flora silvestres, con objeto de formular y aplicar una estrategia nacional de lucha contra el tráfico de fauna y flora silvestres, en particular la caza furtiva y el comercio ilegal". Asimismo, en la página 30, párrafo 2.12 del acápite 2.1.3.3 se expresa que "En junio de 2014, el Presidente estableció un grupo de trabajo para mejorar la coordinación de las iniciativas del Gobierno de los Estados Unidos para combatir la pesca ilegal, no declarada y no reglamentada y el fraude en el sector de los frutos del mar y le encormentó la elaboración y aplicación de un marco general de lucha contra esas prácticas (...) y ayudarán a los países extranjeros a desarrollar su capacidad de lucha contra la pesca ilegal y el fraude en ese sector".*

*¿Qué mecanismos o procedimientos se han previsto para garantizar que las medidas que se adopten no restrinjan innecesariamente el comercio?*

**RESPONSE: The United States strives to ensure that its international trade and environmental policies and measures are mutually supportive, and that measures to protect the environment are implemented in a manner consistent with international trade obligations. The Task Forces are comprised of a broad range of U.S. agencies, including the Office of the U.S. Trade Representative (USTR), and are coordinating**

**across U.S. government agencies in developing and implementing recommendations. USTR, as a participant in the Task Forces, will seek to ensure that implementing measures comply with international trade commitments. Additionally, the Administrative Procedure Act of 1946 (APA) provides the basis for transparency and accountability in developing Federal regulations. The APA requires agencies to undertake a notice and comment process open to all members of the public, both domestic and foreign, for rulemakings, and to take public comments into account in developing final regulations. Executive Order 12866 – Regulatory Planning and Review sets out the regulatory philosophy, principles, and actions that guide federal agencies in planning, developing, and reviewing Federal regulations. These practices ensure openness, transparency, and accountability in the regulatory process, and, as a result, help the United States to ensure that it meets its international trade obligations.**

*9. En la Sección 3: Políticas y prácticas comerciales , por medidas, 3.1 Medidas que afectan directamente a las importaciones y 3.1.1.2 Iniciativas para garantizar la seguridad de las importaciones, entre las páginas 48 y 50 del Informe de la Secretaría, se enuncian varias iniciativas que estarían destinadas a garantizar la seguridad en las importaciones, tales como la iniciativa sobre la "Seguridad de la Carga", según la cual se exigiría el escaneo del 100% de los contenedores de carga destinados a los Estados Unidos. La magnitud de las disposiciones ha obligado a los Estados Unidos a aplazar en varias ocasiones la puesta en marcha de esta iniciativa y en el presente año ha sido aplazada nuevamente hasta julio de 2016. El Ecuador estima que los procedimientos aplicados en varias de estas iniciativas podrían resultar excesivamente problemáticos y onerosos para los países en desarrollo. De esta manera, la iniciativa podría dar lugar a la reducción del comercio con los Estados Unidos para los países que no puedan cumplir con los requisitos de escaneo exigidos.*

*¿Ha considerado Estados Unidos un tratamiento diferenciado para los países en desarrollo en la implementación de estas medidas, sobre todo dada la complejidad y el alto costo que significarán?*

**RESPONSE: The Secretary of Homeland Security under his authority has extended the deadline until at least May 5, 2016, 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.**

*10. En la Sección 3: políticas y prácticas comerciales, 3.3 Medidas que afectan a la producción y el comercio, 3.3.2 Subvenciones y otros tipos de ayuda pública, en la página 88, párrafo 3.138 se dice que "Según las autoridades, no existe en los Estados Unidos un marco jurídico general que regule las subvenciones. Al contrario, están en vigor varios programas de subvenciones al nivel federal en virtud de la legislación o de programas gubernamentales ejecutados por muchos organismos que dependen del Poder Ejecutivo". Asimismo, en el párrafo 3.140. se menciona que "En la mayoría de los casos, las subvenciones adoptan la forma de subsidios, ventajas tributarias, garantías de préstamos y pagos directos. Los sectores de la agricultura y la energía siguen siendo los principales beneficiarios".*

*¿Cuenta los Estados Unidos con un calendario o cronograma para continuar reduciendo sus medidas de estímulo fiscal?*

**RESPONSE: In general, stimulus from the American Recovery and Reinvestment Act, and subsequent acts enacted in 2009 through 2012, has been tapering. Including the ARRA, from 2009 through 2012, approximately US\$1,479 billion of fiscal support was available (a four year period), while from 2009 through 2019 - a ten-year period - stimulus support falls to US\$709 billion. (See Table 4, Council of Economic Advisers, The Economic Impact of the American Recovery and Investment Act Five Years Later, February 2014, [http://www.whitehouse.gov/sites/default/files/docs/cea\\_arr\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_arr_report.pdf). Moreover, stimulus provisions were often frontloaded to have more immediate impact.**

*Sobre este mismo tema, en la página 31, acápite 2.3 Acuerdos y arreglos comerciales, sección 2.3.1 Participación en la OMC, párrafo 2.19 del Informe de la Secretaría se menciona que los Estados Unidos tienen tres notificaciones relativas a la agricultura pendientes o que requieren actualización (sobre subvenciones a la exportación, ayuda interna y utilización de contingentes arancelarios).*

*¿Cuándo Estados Unidos planea realizar dichas notificaciones?*

**RESPONSE:** The United States submits each of these annual notifications to the Committee on Agriculture each year. The United States recently submitted its domestic support notification, G/AG/N/USA/100, dated December 8, 2014. Please see G/AG/N/USA/99, dated November 5, 2014, for the latest U.S. notification on export subsidies. On tariff quotas, please see G/AG/N/USA/94, dated February 5, 2014 for the latest MA:2 notification on quota fill.

11. En la Sección 3: políticas y prácticas comerciales, 3.3.6 Derechos de propiedad intelectual, 3.3.6.3 Sistema de patentes, en la página 104, párrafos 3.204. y 3.205. del Informe de la Secretaría expresa que, en el período examinado, "el Gobierno anunció una serie de iniciativas basadas en las reformas de la Ley destinadas a mejorar el sistema de patentes, fomentar la innovación y proteger a los innovadores de los denominados litigios infundados". Entre esas medidas se incluye "la renovación anual del Programa piloto "Patentes para la Humanidad", que promovía iniciativas destinadas a aprovechar tecnologías patentadas para hacer frente a necesidades humanitarias en todo el mundo. Ya se habían otorgado subsidios a proyectos de reducción del precio de los medicamentos contra el VIH y el paludismo, la mejora de la nutrición alimentaria, el suministro de energía solar en zonas remotas, la lucha contra los fármacos falsificados tóxicos y el abastecimiento de agua potable. En el marco del programa, la USPTO otorga subsidios en cinco categorías de desarrollo: medicina, nutrición, saneamiento, energía para uso doméstico y nivel de vida".

Podría Estados Unidos facilitar más información en torno al Programa "Patentes para la Humanidad"? Cómo se ajusta este programa a las obligaciones estipuladas en el ADPIC con respecto a la protección de la salud pública, tomando en cuenta la gravedad de los problemas de salud pública que afligen a muchos países en desarrollo y menos adelantados?

**RESPONSE:** Patents for Humanity is consistent with the TRIPS Agreement and promotes public health. It is a voluntary program that recognizes excellence in using patented technologies to help the less fortunate. Financial considerations are explicitly excluded from the evaluation criteria, which focus on the real-world impact a technology makes on improving lives. Two of the 2013 Patents for Humanity award recipients, Gilead Sciences and the University of California Berkeley, developed innovative ways to lower the costs of certain HIV and malaria medicines. More information about their efforts can be found on the USPTO website at: <http://www.uspto.gov/patent/initiatives/patents-humanity/2013-award-recipients>.

The USPTO recognizes that different models can be effective for addressing humanitarian issues and does not require any particular funding model for participation in the program

12. Respecto a medidas antidumping y derechos compensatorios frecuentemente utilizadas por los Estados Unidos, el Departamento de Comercio (DOC) ha mantenido una política de larga data consistente en tratar las restricciones a la exportación como subvenciones sujetas a medidas compensatorias. El DOC ha aplicado esta política, de manera regular, en las investigaciones sobre derechos compensatorios de las importaciones provenientes de varios países. Por otra parte, esta práctica sólo podría justificarse si el DOC tratase a una restricción a la exportación como una situación en la que hay "encomienda u orden" de los productores de la mercancía objeto de la investigación sobre limitaciones a la exportación.

¿Podría explicar la fundamentación –conforme lo aplicado en las investigaciones efectuadas por la DOC- para el tratamiento de esta supuesta limitación de las exportaciones como una subvención sujeta a medidas compensatorias? ¿Se ajusta esta política aplicada a las obligaciones de los Estados Unidos en virtud del Acuerdo de la OMC sobre Subvenciones y Medidas Compensatorias, teniendo en cuenta las interpretaciones del Órgano de Apelación en torno al significado de las palabras "encomienda u ordene" incluido en el artículo 1.1 (a) (1) (iv) del Acuerdo sobre Subvenciones y Medidas Compensatorias?

**RESPONSE:** In each of the countervailing duty cases in which the U.S. Department of Commerce (DOC) has determined export restraints to constitute countervailable subsidies, the evidence and rationale upon which DOC relied for that determination is fully described in the "Issues and Decision Memorandum" that accompanies the notice

**of the final determination for each case. Copies of the Issues and Decision Memoranda and the Notice of Final Determination for all of DOC's countervailing duty determinations are publically available at: <http://enforcement.trade.gov/frn/index.html>.**

## EL SALVADOR

**Informe de la Secretaría**

**POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS**

*Medidas que afectan directamente a las importaciones: Procedimientos y requisitos aduaneros. Consejo Ejecutivo Interinstitucional para las Operaciones en Frontera (BIEC).*

Párrafo 3.7. En virtud de la misma orden ejecutiva, el Presidente estableció formalmente en 2014 el Consejo Ejecutivo Interinstitucional para las Operaciones en Frontera con el objetivo de desarrollar políticas y procedimientos para aumentar la coordinación entre los organismos competentes en materia de aduanas, seguridad en el transporte, salud y seguridad, medidas sanitarias y fitosanitarias, comercio y medio ambiente, a fin de mejorar los procesos de las cadenas de suministro y la identificación de los envíos ilícitos. El Consejo está integrado por un presidente perteneciente al Departamento de Seguridad Interior, y por funcionarios del Departamento de Estado, el Departamento del Tesoro, el Departamento de Defensa, el Departamento de Interior, el Departamento de Agricultura, el Departamento de Comercio, el Departamento de Salud y Servicios Sociales, el Departamento de Transporte, el Departamento de Seguridad Interior, la Agencia de Protección del Medio Ambiente y otros organismos con intereses o atribuciones en materia de gestión de las fronteras.

1 Pregunta: ¿Podrían los Estados Unidos brindarnos mayor explicación sobre el funcionamiento de este Consejo Ejecutivo interinstitucional y su interrelación y compatibilidad con el Acuerdo sobre Facilitación al Comercio de la OMC?

**RESPONSE:** The Border Interagency Executive Committee (BIEC) was created by Executive Order 13659, Streamlining the Export/Import Process for America's Businesses. This committee was created to help meet the deadline for the creation of a single window for imports and exports by December 31, 2016, and further facilitate the movement of goods while reducing time and costs. This is a domestic committee that is part of the coordinated, "whole of government" U.S. approach to trade facilitation, including work at the WTO. For further information on the E.O. see, <http://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>.

**Informe del Gobierno:**

**Numeral 1: 1 LOS ESTADOS UNIDOS EN EL SISTEMA MUNDIAL DE COMERCIO:** Párrafo 1.1.

"... Los Estados Unidos siguen firmemente resueltos a aplicar una estrategia ambiciosa de comercio e inversión para crear y sostener puestos de trabajo y promover el crecimiento económico y el desarrollo. Reconociendo que el comercio ha contribuido y sigue contribuyendo poderosamente a la expansión de la economía mundial, los Estados Unidos tratan de impulsar medidas de apertura de los mercados que aumenten las oportunidades económicas y apoyen la creación de empleos a través de las exportaciones en el marco de un sólido sistema internacional de comercio basado en normas y fomentar las relaciones comerciales mundiales..."

2 Pregunta: Dado el papel tan importante que juega los Estados Unidos en el sistema multilateral de comercio como uno de sus pilares de política comercial, ¿Podría Estados Unidos brindar mayor información acerca del estado de su Autoridad de Promoción Comercial (TPA), el cual entendemos es un elemento requerido para llevar adelante sus negociaciones en materia de comercio?

**RESPONSE:** The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.

**Numeral 5 INICIATIVAS DE CREACIÓN DE CAPACIDAD RELACIONADA CON EL COMERCIO.** Asistencia relacionada con el comercio prestada por los Estados Unidos en el marco de la Organización Mundial del Comercio:

Párrafo 5.4. ...."Los Estados Unidos han apoyado de forma directa, y seguirán haciéndolo, las actividades de asistencia técnica relacionada con el comercio de la OMC. Al ser uno de los principales proveedores de ayuda bilateral para la creación de capacidad comercial, los Estados Unidos siguen siendo un interlocutor activo en las conversaciones sobre ayuda para el comercio de la OMC..."

*3 Pregunta: Podría la delegación de los Estados Unidos indicarnos ¿Cuáles son sus objetivos de política comercial en el marco del programa de ayuda para el comercio de la OMC y como asegura que la cooperación bilateral sea congruente con los fines mismos perseguidos en el ámbito multilateral?*

**RESPONSE:** The United States has been a long-time supporter of the WTO Aid for Trade Initiative and remains committed to partnering with developing countries to foster opportunities through expanded trade and stronger economic growth. Overall U.S. support for trade capacity building since 2001 has now surpassed US\$15 billion.

The United States takes a whole-of-government approach to providing Aid for Trade. USAID, one of our principal providers of trade-related assistance, works closely with the Millennium Challenge Corporation, and other U.S. agencies to provide trade-related technical assistance.

For assistance delivered by USAID (the primary provider of assistance) there are three objectives of trade capacity building activities support: participation in trade negotiations, implementation of trade agreements, and economic responsiveness to opportunities for trade. These first two elements ensure that assistance will compliment efforts on the multilateral level. Bilateral cooperation is also a partnership between the host country government and the USG. Recipient governments are encouraged to share their development objectives and strategies and mainstream trade into those conversations.

**EUROPEAN UNION****WT/TPR/S/307**

**Page 39, section 2.4.3. Investment Regulations and Restrictions, paras 2.53 and 2.54 on the CFIUS Review process.** "Foreign companies must provide detailed information of an investment operation at the very early stages of a project in order to avoid future notices, reviews and investigations by the Committee on Foreign Investment in the United States (CFIUS). There are of course legal and economic costs associated with this. In the past years there has been an increase both in notices and investigations."

**Question 1:** Are there any plans to mitigate the costs that are associated to this process for foreign companies? What measures are being taken to ensure the confidentiality of the information provided during the process?

**RESPONSE:** CFIUS does not charge any fees for its reviews. CFIUS takes great care to ensure the confidentiality of the information provided during the process. By law, any information or documentary material filed with CFIUS in the notice is exempt from disclosure under the U.S. Freedom of Information Act (FOIA) and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.

**Question 2:** Could the U.S. give the list of the cases for which specific conditions were imposed on investors after a CFIUS review? For those cases, could information be given about the type of conditions that were imposed on the investors to allow the investment to finally take place?

**RESPONSE:** By law, information filed with CFIUS may not be disclosed to the public. Accordingly, we do not comment on information relating to specific transactions.

**Page 47, para 3.20 on the Secure Freight Initiative (SFI).** "The SFI, like the CSI, has its beginnings in the 2006 SAFE Port Act in order to improve container security. Section 232 provides for the SFI to implement at least three pilot ports to test the feasibility of 100% scanning of cargo containers destined to the United States. The SFI has been continually delayed. The deadline of May 2012 was not met, and it was further extended by two years, to 1 July 2014. In May 2014, the Secretary of the Department of Homeland Security extended the deadline until July 2016, as the conditions cited for delay in 2012 still prevailed."

**Question 3:** Is the U.S. Administration considering to take actions to seek the repeal of the 100% maritime container scanning requirement by the U.S. Congress? If so, could the U.S. Administration specify such actions and their timeframe.

**RESPONSE:** The Secretary of Homeland Security under his authority has extended the deadline until at least May 5, 2016, 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, without seeking further legislative changes.

**Pages 52-55 section 3.1.5.1 on the import fees.** The report shows that the U.S. has several different fees, other than customs duties, applicable upon import. The different fees make it difficult for an importer or exporter to know what the total fees will amount to. E.g. the Merchandise Processing Fee for informal entries (import of goods for private use or small commercial sales with a maximum value of 2500 USD) is an uncertainty upon importation since the fee (US\$2, US\$6 or US\$9) is dependent on how the consignment is handled and prepared by the U.S. Customs and border Protection.

**Question 4:** Will the U.S. small brewers discounted excise tax be extended to small brewers from overseas in a near future?

**RESPONSE:** At this time there are no plans to amend the current excise tax.

**Page 56, para 3.5.** "The U.S. CBP is responsible for enforcing hundreds of laws, on behalf of around 40 federal agencies, that may restrict or prohibit importation. The laws may prohibit the importation of a product or allow a product to be imported under certain conditions (e.g. licensing). Other restrictions, such as limitations on the entry via certain ports or restrictions on routing are also possible (Table 3.6)."

**Question 5:** Could the United States explain the criteria used to determine whether a product is to be covered by the prohibition or restriction above mentioned? What product characteristics are considered when issuing the laws that result in prohibition or limitation of imports?

**RESPONSE: U.S. Customs and Border Protection (CBP) enforces requirements that are set forth in U.S. laws and regulations. The enforcement actions that are to be taken are generally set by Congress in the statute itself, and CBP or another federal agency charged with enforcing the statute will promulgate regulations implementing the requirements of the law. Some of the considerations taken into account in determining if good should be prohibited or restricted is whether those goods are of the type that would be allowed to enter such as they have been treated or meet certain emission requirements, which would mean that only certain goods are restricted. Other goods may be prohibited altogether because there is a health or safety concern that would preclude the importation of a type of good altogether.**

**Page 58 section 3.1.6.2 on import licensing.** In February 2013, the U.S. Department of Agriculture requested public comments on the Dairy Tariff-Rate Import Quota Licensing Program, with a deadline of 8 April 2013. EU stakeholders submitted comments to the program. To date, a final rule has not been issued.

**Question 6:** In light of the comments received, how does the U.S. Department of Agriculture envisage amending the regulation on the dairy licensing program (especially as regards section 6.25)? When is the final rule expected to be published?

**RESPONSE: Any notice related to the dairy import licensing rule-making process will be published in the Federal Register.**

**EU follow up question:** When does the U.S. expect the notice related to the dairy import licensing rule to be published in the Federal Register? The EU would be pleased to receive further elements on the modification and the publication procedure.

**FOLLOW UP RESPONSE: The proposed rule was published in the Federal Register on December 23, 2014, with comments due by February 23, 2015. It can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-29807.pdf>.**

**Page 66, para 3.75. Standards.** The report states that in the period under review, no major changes were made to U.S. regulatory policy. However, regulatory practices are under review with respect to the participation of federal regulators in the development and use of standards, and in conformity assessment activities.

**Page 67, para 3.76. Voluntary standards.**

**Question 7:** When a regulatory Federal Agency determines that mandatory compliance with a standard is needed to address a particular policy objective, how does it decide that a particular standard is suitable for agency use, i.e. fit for the purpose of fulfilling such a policy objective? Can the U.S. indicate if in any of these cases, it can happen that those regulations provide for alternative ways to prove compliance with the requirements of the legislation (i.e. by using standards different from those referenced in the legislation but which are deemed to provide equivalent levels of protection or by referencing two or more different standards?) . If so, could the U.S. elaborate and give examples.

**RESPONSE: When a U.S. regulator agency consider whether mandatory compliance with a particular standard is needed to achieve a particular policy objective, it would make that decision similarly to how it makes other regulatory decisions. It draws from any applicable statutory guidance together in particular with the principles for regulatory development established in the Executive Order 12866.**

With respect to the second question, regarding alternative ways to prove compliance, 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 has such provisions. Its equivalency procedures are available online: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5087107>.

*Para 3.77 Elaboration of standards*

**Page 67, para 3.80 regarding U.S. notifications to the TBT.** "The United States submitted 269 TBT notifications in 2013 (248 in 2012)<sup>69</sup>, including sub-federal measures notified under Article 3.2 of the TBT Agreement (Table A2.2). The United States was the only WTO Member to notify at the local government level during the review period, with 11 sub-federal notifications submitted in 2013, mainly relating to environmental protection. The federal regulatory agencies with greatest number of TBT notifications related to international trade include: the Department of Energy (DOE), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), Department of Transportation (DOT), Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), and the Federal Trade Commission (FTC)."

*Question 8: Could the U.S. elaborate in which cases and under which circumstances the legislation can refer to the use of standards not developed using a consensus-driven process? Will the U.S. opt for adopting guidelines that would establish the rationale and the circumstances under which such an exceptional procedure could be used?*

**RESPONSE:** U.S. law and policy directs federal agencies to rely on voluntary consensus standards and relevant international standards, where appropriate. Paragraph 6 of Circular A-119 states that "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." (See also the National Technology Transfer Advancement Act). Paragraph 6.a.2 of Circular A-119 further specifies "impractical" as including "circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard." The text of Circular A-119 can be found online: [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).

The proposed revisions to Circular A-119 state that the proposed revisions *continue* the preference for voluntary consensus standards over government-unique standards and establish a further preference for voluntary consensus standards over other types of standards (including voluntary standards that are developed by voluntary non-consensus bodies). In doing so, the proposed revisions acknowledge that other types of standards, including those developed by voluntary non-consensus bodies, are in use in the marketplace and may be relevant in meeting agency missions and priorities and that under such circumstances agencies would be able to use such standards.

*Question 9: The EU would like to know what are the working methods by which the U.S. Enquiry Point ensures that all U.S. State level technical regulations or conformity assessment procedures falling under the TBT Agreement are identified and then, where applicable, notified to the WTO. Does the U.S. Administration ensure that Congress bills are notified?*

**RESPONSE:** The U.S. WTO Inquiry Point staff reviews on a regular basis a database of sub-federal proposed technical regulations. 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.

With respect to bills under consideration in the U.S. Congress, bills often change significantly before they become law and sometimes bills never become U.S. law at all. 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: <https://www.congress.gov/>.

*Page 68, para 3.82 states that: "There were no major new policy developments on standardization during the review period.<sup>72</sup> The American National Standards Institute (ANSI), a non-governmental body and the national standardization body, coordinates private-sector standardization and conformity assessment activities, and accredits organizations whose standards development process meets ANSI requirements of due process and consensus.<sup>73</sup> U.S. agencies participate in national and international standards development activities and ANSI committees. In 2012, the U.S. Government announced a new funding facility in collaboration with ANSI that is intended to assist developing countries in implementing their commitments under the TBT Agreement."*

*Question 10: Could the U.S. provide additional information on the participation of its agencies and ANSI in national and international standardisation bodies, such as ISO and IEC?*

**RESPONSE:** The American National Standards Institute (ANSI) is a membership-based private sector umbrella organization that coordinates the U.S. standards systems. ANSI is the U.S. member body to the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). Many U.S. government experts participate in the U.S. mirror committees for ISO and IEC technical committees to develop standards in a range of sectors and collaborate with experts from other economies. U.S. government experts also actively engage in intergovernmental standardization bodies like Codex Alimentarius and UNECE Working Party 29.

**In addition, Section 7 of Circular A-119 describes U.S. policy with respect to Federal participation in voluntary consensus standards bodies. The text of the Circular can be found online: [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).**

*Page 68, para 3.84 states that "Executive Order 13609 of 1 May 2012 seeks to promote international cooperation. The United States uses a number of mechanisms for regulatory cooperation, including 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 initiatives, such as the Regulatory Cooperation Councils between the United States, and Canada and Mexico (see also SPS section 3); as well as mutual recognition agreements (MRAs)". Nevertheless at this stage, the EU operators still lack access to information on State level regulations and this becomes a barrier to entry. The EU operators lack access to information on State level regulations and this becomes a barrier to entry.*

*Question 11: Are the U.S. considering the possibility of implementing a Single Point of Information for all new regulations, both federal and sub-federal?*

**RESPONSE: The United States is not aware of any effort to establish a single point of information for both federal and sub-federal regulations.**

**EU follow up question:** When does the U.S. expect the notice related to the dairy import licensing rule to be published in the Federal Register? The EU would be pleased to receive further elements on the modification and the publication procedure.

**FOLLOW UP RESPONSE:** The proposed rule was published in the Federal Register on December 23, 2014, with comments due by February 23, 2015. It can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-29807.pdf>.

*Page 69, para 3.90 section 3.1.9.1. Food and Drug Administration. "The FSMA authorizes the FDA to levy fees on certain domestic and foreign facilities and importer re-inspections".*

*Question 12: Could the U.S. explain whether and how the FDA approach to inspecting individual foreign facilities is in line with CODEX guidelines, particularly CAC/GL 26-1997 (Guidelines for the design, operation, assessment and accreditation of food import and export inspection and certification systems)?*

**RESPONSE: The United States does not understand the question, as the CODEX guidelines referenced address the assessment and accreditation of inspection and**

**certification systems rather than the fees charged for the direct inspection by the importing country's government. However, FDA's approach to inspecting individual facilities is consistent with all Codex Guidelines, including those guidelines that recognize the importance of performing individual inspections to determine conformity with applicable requirements whether the facilities are covered by a recognized official inspection system or not.**

***EU follow up questions:*** Under which conditions will FDA consider to conduct systems-based audits as they are described in the CODEX standard mentioned, rather than conducting audits in every individual establishment? Does FDA charge similar fees for inspection of U.S. domestic establishments as for establishments in the EU? The EU does not charge any fees for verification audits in the USA. Can the U.S. comment on the discriminatory aspect of these inspection fees?

**FOLLOW UP RESPONSE:** As a matter of resources and prioritization, FDA does not inspect every individual establishment. FDA will continue to select establishments for inspection based on risk. FDA will continue to use a systems-based approach where appropriate in conjunction with an equivalence or systems recognition determination.

**FDA does not charge fees for an initial inspection of any facility, domestic or foreign.** The FDA Food Safety Modernization Act authorizes FDA to assess and collect fees for certain reinspections of domestic and foreign facilities and certain importer re-inspections that result from a previous inspection where FDA has determined that noncompliance was materially related to food safety requirements of the Federal Food, Drug, and Cosmetic Act. More information can be found on FDA's website at: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm257982.htm>. FDA has not assessed or collected any of these reinspection fees to date.

Additional information may also be found here: <https://www.federalregister.gov/articles/2014/08/01/2014-18172/food-safety-modernization-act-domestic-and-foreign-facility-reinspection-recall-and-importer>.

**As described above, the FDA's reinspection fees are non-discriminatory.**

***Page 69, para 3.91 Food Safety Inspection Service.*** "The United States has recognized 35 countries with meat, poultry, and/or egg inspection systems equivalent to its own. According to the authorities these are not equivalence agreements but rather recognitions by the FSIS. In addition it is reported that the system does not grant either Party additional market access."

**Question 13:** Could an explanation be provided on the distinction between an equivalence agreement and recognition by FSIS? Does this recognition imply that the recognized systems provide a level of protection equivalent to that provided in the U.S.?

**RESPONSE:** FSIS' equivalence determinations enable another Member's competent regulatory authority to certify establishments that are eligible to export meat, poultry or processed egg products to the United States. FSIS does not enter into mutual equivalence arrangements; rather FSIS makes independent determinations based on the efficacy of the other Member's meat, poultry or processed egg inspection system to prevent food-borne illness.

***EU follow up question:*** How many samples and inspections does FSIS need to make an equivalence determination related to listeria controls in ready to eat foods? Over 3.000 samples of EU hams were subjected to systematic, costly and time-consuming analyses at U.S. entry inspections. Epidemiological data demonstrates identically low incidences of listeriosis in EU and U.S. populations. What are the conclusions drawn by FSIS from these data?

**FOLLOW UP RESPONSE:** The U.S. makes determinations of equivalence by evaluating whether foreign food regulatory systems attain the appropriate level of protection provided by our domestic system. Thus, foreign food regulatory systems must employ equivalent sanitary measures that provide the same level of protection against food hazards as is achieved domestically. FSIS evaluates foreign food regulatory systems for equivalence through document reviews, on-site audits, and port-of-entry inspection of products at the time of importation. Port of entry inspections and samples are taken on a random basis to verify that foreign inspection systems are meeting U.S. import

**requirements. U.S. health officials target intensified sampling to the same product from the production establishment when a violation of U.S. public health standards is detected.**

**In the case of EU hams from Italy, the listeria violations extended across multiple production establishments and production dates, indicating a systemic problem. As a result of the serious threat to public health, U.S. officials were required to increase testing to 100%. Listeria continues to be an ongoing health concern as violations were detected in Italian hams in late December 2014. FSIS continues to work cooperatively with the Italian Ministry of Health to address this serious health concern and plans to lift the 100% testing requirements once the Italian Ministry of Health is able to effectively demonstrate appropriate corrective actions were taken to prevent further listeria contamination.**

*The report also states in the same paragraph that the Food Safety Systems Recognition Arrangement between the U.S. and New Zealand does not grant either party additional market access.*

*Question 14: Could the U.S. describe the practical effects of such arrangement? Would this arrangement have any effects in relation to the implementation of the FDA Food Safety Modernization Act, particularly in respect of the provisions on Foreign Supplier Verification Program?*

**RESPONSE:** The Food Safety Systems Recognition Arrangement is between The New Zealand Ministry for Primary Industries (MPI) and the United States Food and Drug Administration (FDA) to safeguard public health and to ensure the safety and integrity of foods traded between the United States and New Zealand. FDA has proposed a rule that lays out the proposed relationship of systems recognition to the requirements under the Foreign Supplier Verification Program when certain conditions are met and documented. This proposed rule can be found at <http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM417133.pdf>.

*Page 70 section 3.1.9.3 Animal and Plant Health Inspection Service.*

*In accordance with the International Plant Protection Convention, Article VII, 2i, the U.S. established a list of regulated pests. The said Article provides that contracting parties shall keep their lists of regulated pests updated.*

*Question 15: When conducting pest risk assessments for individual products from different countries, APHIS usually identifies further quarantine pests, in addition to those that are listed on the IPPC web site. Is the pest list (published in accordance with Art VII 2i) updated accordingly? How does the U.S. establish and confirm the current and lasting absence of all quarantine pests on their territory?*

**RESPONSE:** When APHIS conducts a risk assessment, it may identify further quarantine pests in addition to those that are listed on IPPC web site. APHIS strives to update its pest list on the IPPC website, for example, most recently providing information on the status of a quarantine pest, *Globodera rostochiensis*, on September 2014. APHIS establishes and confirms the current and lasting absence of quarantine pests on the United States through a Cooperative Agricultural Pest Survey (CAPS) program that draws on a network of public and private resources to provide a comprehensive status of plant quarantine pests and diseases.

*Page 70, para 3.93. "On 4 March 2014, a new APHIS regulation (BSE Comprehensive Rule) entered into force bringing U.S. import requirements generally into line with the OIE's criteria for classifying regions for BSE risk status (negligible, controlled, and undetermined risk). The regulation also allows APHIS to conduct its own risk assessment."*

*Question 16: Is it the case that APHIS will always exercise the legislative possibility to carry out its own risk assessment? If not, what are the criteria used by APHIS to decide to exercise its own risk assessment? When a risk assessment is carried out, what are the criteria used? How is a final decision made as to whether to recognize the OIE status of a country?*

**RESPONSE:** The BSE Comprehensive Rule went into effect in March 2014. This rule laid out the process by which either APHIS could concur with OIE designations of BSE risk status or conduct a separate risk assessment if requested by a country. To date, no country has requested a separate risk assessment, therefore none have been completed. APHIS has concurred with all of the OIE designations as adopted during the May 2013 General Session, and is evaluating the OIE designations adopted during the May 2014 General Session.

**Para 3.93** "As a result, products that were previously restricted but pose no risk to human health (e.g. boneless beef from countries that have had a case of BSE) may be imported into the United States, provided other import requirements are met."

*Question 17: Where products were previously restricted but pose no risk to human health) and where countries are listed as eligible for slaughter and processing in 9 CFR 327.2, 381.196, or 590.910, but whose eligibility is suspended, why is an equivalence re-verification deemed to be necessary? Given that this process merely represents a return to the status quo that existed prior to the suspension of eligibility, it would seem to be overly burdensome to require to impose a process of re-verification involving site visits. Can the U.S. provide information as to how it proposes to deal with other (non-BSE) TSEs?*

**RESPONSE:** The BSE Comprehensive Rule that went into effect in March 2014 relieved certain restrictions related to BSE, raising the potential to resume importations of animal products previously banned due to BSE concerns. In instances where an exporting country's animal slaughter and processing inspection system has previously been determined as eligible to export to the United States, but has been suspended for an extended period, the United States must ensure that any modifications to either the foreign or domestic food safety requirements are equivalent and verified through on-site audits.

**EU follow up Questions:** Can the U.S. indicate a target date for the full re-instatement of trade in beef and small ruminants from the EU Member States in conformity with OIE standards and recommendations? Can U.S. confirm that adequate resources are being made available to ensure a swift conclusion of this re-instatement process?

**FOLLOW UP RESPONSE:** The date for an equivalence determination for reinstating beef/small ruminant is largely dependent upon the individual applicant's ability to provide the necessary information to FSIS in a timely manner. FSIS has a process for assessing the submissions for equivalence determinations. The timeline for the FSIS process is contingent on the completeness of the submission, as well as the presence of an inspection system during the in-country audit. The United States is ensuring that the necessary resources are available to assess each request for reinstatement.

**Page 70, para 3.94** "The EPA is required to conduct a risk assessment to study the potential health and ecological effects of a pesticide before it can enter the U.S. market. Since 2012, the EPA has established 897 tolerances for pesticides on food, 827 of which are new trade facilitating tolerances, according to the authorities; the remainder are revised tolerances"

*Question 18: What is meant by 'trade-facilitating tolerances' in this context? How are Codex MRLs taken into account when establishing or reviewing existing U.S. tolerances?*

**RESPONSE:** Trade-facilitating tolerances (EPA parlance for MRLs) refers to tolerances that are established where no current Codex or U.S. tolerance currently exists, or where the tolerance is less restrictive than an MRL established by Codex. Under U.S. law, EPA must take into consideration Codex tolerances when establishing U.S. tolerances and harmonize with Codex MRLs unless there is a scientific justification for deviating. During the rulemaking process, EPA will publish in the Federal Register a comparison with the Codex tolerance as well as provide a scientific justification for any deviations. The United States notifies these measures to WTO Members through the SPS Committee at the time of publication in the Federal Register.

**Page 72, para 3.104 and table 3.9, para 3.2.3. Export prohibitions, restrictions and licensing.** In the table 3.9, the currently existing export restriction on natural gas and electric

power are listed. However, the existing export restrictions on crude oil stemming from the Energy Policy and Conservation Act of 1975 are not included.

**Question 19:** What is the reason for this situation and does the U.S. plan any changes to the existing export restrictions on crude oil and natural gas as a consequence of the increasing extraction of indigenous resources, especially unconventional hydrocarbons?

**RESPONSE:** The United States is closely monitoring the implications of growing domestic energy supplies, including the economic, environmental and security opportunities and challenges that it presents. Exports of crude oil are administered by the Department of Commerce's Bureau of Industry and Security, while exports of natural gas are administered by the Department of Energy. With respect to natural gas, projects that have been approved to date will enable the export of up to 5.7 billion cubic feet per day (bcf/d) of LNG, and conditional approval has been provided for another 4.9 bcf/d, for a total of 10.6 bcf/d.

***Page 85, para 3.168 on U.S. legal framework public procurement overview.***

The report suggests that the U.S. legal framework has not changed substantially since 2012 and that the main legislation remains the Buy American Act and the Trade Agreements Act. However, it should be noted that since 2012 other legal instruments appear to have taken over the Buy American Act as primary vehicle of domestic preference legislation. Focus has shifted towards complementary domestic preference laws such as domestic content restrictions attached to Federal funds (the Buy America Act). One recent example is the Water Resources Reform and Development Act (WRRDA) adopted in 2014, which imposed new and permanent Buy America restrictions on procurements funded by the Environmental Protection Agency's (EPA) Clean Water infrastructure fund – the Clean Water State-Revolving Fund.

**Question 20:** Could the U.S. elaborate in detail what the implications of the above described law WRRDA are on suppliers and services providers of other GPA parties if they want to bid in a project funded by the Environmental Protection Agency's (EPA)?

**RESPONSE:** Sections 5004 and 5035 of the Water Resources Reform and Development Act of 2014 (WRRDA) require that any funds made available from a State water control revolving fund to be used on treatment plants or any other eligible projects only use iron and steel products produced in the United States. However both Sections also require that this "be applied in a manner consistent with United States obligations under international agreements." Suppliers and service providers of other GPA parties maintain the same ability to participate in procurements for such projects as prior to enactment of the WRRDA.

***EU follow up questions:*** Environmental Protection Agency (EPA) is a Federal entity covered by U.S. GPA commitments. It is understood that EPA mainly grants funding for procurement purposes to State entities instead of carrying out procurement itself. U.S. response contains that the recently adopted Act "WRRDA", which imposes new Buy America restrictions, is applied "in a manner consistent with United States obligations under international agreements". Could the U.S. elaborate whether entities which are covered by U.S. GPA commitments are recipients of the funding and whether entities which are covered by U.S. GPA commitments practically conduct the procurement in relation to "the clean water infrastructure fund" as well as the "the clean water state-revolving fund (which are funds concerned by WRRDA)? Could the U.S. explain also what steps the U.S. have taken to ensure compliance with their GPA commitments in this respect for the covered entities?

**FOLLOW UP RESPONSE:** Recipients of grants made pursuant to the Water Resources Reform and Development Act of 2014 (WRRDA) must adhere to all relevant congressionally mandated requirements. This includes the requirements of sections 5004 and 5035 WRRDA that the funds "be applied in a manner consistent with United States obligations under international agreements."

*It appears that there is a particular proliferation of initiatives both at U.S. Federal and State government level containing domestic content restrictions which affect in particular infrastructure procurement. A number of legislative initiatives, such as the Grow America Act, have been*

*launched in particular in 2014. Some of these initiatives demand a further rise of domestic content of U.S. manufactured products up to 100%.*

*Question 21: Does the U.S. assess the cost of such measures on its budget and on the-consumers and taxpayers? Does the U.S. consider addressing the growing trend of legislative initiatives which tend to impose increased local content requirements either at Federal and/or State level?*

**RESPONSE:** The U.S. Government assesses the fiscal implications of pending legislation, and all branches of government in the United States, at every level of government, take seriously their obligation to ensure they are working in the best interests of U.S. citizens. The executive branch of the U.S. federal government does not oversee the legislative proposals introduced by members of the federal or state legislatures. The United States is committed to ensuring its covered procurements are conducted consistent with U.S. international obligations.

***Page 86 Section 3.3.5.2. Procedures, para 3.178 on small business sub-contracting plans.***

According to the report all contracts over US\$650 000 must include a small business subcontracting plan. It should be noted that according to "The Small Business Subcontracting Program" ([http://www.acquisition.gov/far/html/Subpart%2019\\_7.html](http://www.acquisition.gov/far/html/Subpart%2019_7.html)) a prime contractor which gives preference to U.S. small businesses appears to have an advantage. According to the Federal Acquisition Regulation and the U.S. Small Business Administration, small businesses are defined as U.S. small business.

*Question 22: Could the U.S. explain how the required sub-contracting plan is prepared? Could the U.S. clarify whether this obligation implies a localisation requirement and whether any requirement in this context may affect negatively the opportunities of suppliers and service providers of GPA parties to participate successfully in U.S. government contracts? Could the U.S. explain whether this obligation is considered as a "small business set-aside"? (According to the U.S. GPA commitments Annex 7 - General notes "the Agreement does not apply to set-asides on behalf of small or minority owned businesses. A set-aside may include any form of preference, such as the exclusive right to provide a good or service, or any price preference".)*

**RESPONSE:** Subcontracting plans are required for prime contract awardees that are other than small businesses for contracts or contract modifications that exceed US\$650,000, or US\$1,500,000 in the case of construction of a public facility. For more information about subcontracting plans, see SBA's regulations at 13 C.F.R. §125.3

***EU follow up questions:*** The U.S. response contains that the requirement is addressed to prime contractors which are not small businesses themselves. Could the U.S. clarify whether as result of this requirement, prime contractors must choose U.S.-based small businesses as sub-contractors? In this context, could the U.S. also explain whether this sub-contracting plan requirement is considered to be a "small business set-aside"? As defined by U.S. GPA commitments Annex 7 - General notes, a subcontracting plan requirement would not appear to be a "set-aside". How does the U.S. therefore ensure that their commitments for covered entities are respected?

**FOLLOW UP RESPONSE:** A small business for purposes of the subcontracting plan must meet the definition of "business concern" defined in 13 C.F.R. § 121.105 (available at <http://www.ecfr.gov>) and must meet the size standard for the NAICS code assigned to the particular subcontract by the prime contractor. The Agreement defines a set-aside on behalf of a small- or minority-owned business to include any form of preference, such as the exclusive right to provide a good or service, or any price preference.

***Page 88 section 3.3.5.3. Foreign participation, para 3.186, Table 3.21 concerning "Services excluded by the U.S. from trade agreements".***

US has excluded from the scope of its GPA commitments "operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally funded Research and Development centers." For example under the GPA such services are excluded from scope for all government buildings. The exact scope of this exclusion is not clear.

Question 23: Could the U.S. clarify the exact scope of the services covered by the following exemption: "operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally funded Research and Development centers."? For instance are IT services, building-cleaning and property management services carved out from coverage on the basis of this exemption?

**RESPONSE: The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.**

**EU follow-up question:** There is no clarification of the exact scope of the wording "services associated with the management and operation of government facilities" in U.S. GPA commitments (US Appendix I). Could the U.S. clarify the scope of this wording for example by references to U.S. law (such as the Federal Acquisition Regulation)? Could the U.S. provide practical examples of service contracts which are covered by the exemption concerned? For instance, are contracts for IT services, building-cleaning and property management services carved out from coverage on the basis of this exemption if they are procured by government entities for their own facilities?

**FOLLOW UP RESPONSE: The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.**

**Page 89 section 3.3.5.3. Foreign participation, para 3.188 on "access conditions to state procurement".** According to the report, access conditions to state procurement are defined in state legislation and some 37 states participate in the GPA. The EU would like to ask U.S. the following questions in order to clarify in more detail what is covered by the U.S. commitments for those 37 states:

Question 24: Could the U.S. elaborate in detail what does the definition of "executive branch agencies of the state" cover under GPA commitments and whether it (automatically) covers all executive entities of the State Government with purchasing authority such as departments, divisions and offices of executive branch agencies?

**RESPONSE: The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.**

**EU follow-up question:** The terms "executive branch agency of the State" is commonly used in U.S. Appendix I. Could the U.S. clarify whether the wording "executive branch agencies of the State" typically covers all executive entities of the State in question? If all executive entities are not covered by this wording, could the U.S. provide examples of State legislation which define the relevant wordings. Could the U.S. also provide examples of State government entities which would typically fall outside this wording?

**FOLLOW UP RESPONSE: The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.**

Question 25: Could the U.S. specify if for any State, entities which are not specifically listed but are subordinate to committed executive branch agencies of State government are covered by the GPA (when they conduct procurement for themselves)?

**RESPONSE: The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.**

**EU follow-up question:** Some sub-ordinated entities are specifically named in U.S. Appendix I. Could the U.S. clarify for instance, to what extent State central procurement offices or central procurement agents which are not State Departments, are covered by U.S. commitments if the U.S. Appendix I refers to "executive branch agencies of State".

**FOLLOW UP RESPONSE:** The United States believes the language in the U.S. Appendix I to the revised GPA is sufficiently clear.

***Page 93, table 3.23 GIs***

*Question 26: Are the U.S. considering to protect GIs (those that are not considered common names in the US) at the same level as they are protecting names of viticultural significance?*

**RESPONSE:** The U.S. Patent and Trademark Office administers the U.S. trademark system and the Alcohol and Tobacco Tax and Trade Bureau administers alcohol beverage labeling regulations. The agencies administer distinct programs under separate legal authorities. Any amendments to these respective statutory authorities would require actions by the United States Congress. The United States protects GIs in a manner consistent with the TRIPS Agreement.

*Pages 94-95, paras 3.203 and 3.204 on the implementation of the Leahy-Smith America Invents Act (AIA), and para 3.206 on recent U.S. Supreme Court landmark decisions on patent-eligibility subject matter. The report outlines the main features of the patent reform introduced by the AIA, stating that the USPTO identified AIA implementation as helping "the U.S. align with international norms". The report adds that the U.S. Administration announced a series of initiatives to protect innovators from "frivolous litigation".*

*Question 27: Does the U.S. plan to publish its patent applications within 18 months (i.e., putting an end to the U.S. opt-out publication system, which is not an international standard)?*

**RESPONSE:** The U.S. Patent and Trademark Office publishes most patent applications at 18 months after the filing date. However, under the law (35 U.S.C. Section 122(b) (2) (B)(i)), if an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).

*Question 28: To what extent are the U.S. initiatives against "frivolous litigation" (e.g., payment of attorneys' fees; losers pay approach) achieving results? What further initiatives might the U.S. seek to pursue?*

**RESPONSE:** 35 U.S.C. Section 285 provides that the court may award reasonable attorney fees to the prevailing party "in exceptional cases." In Octane Fitness v. Icon Health & Fitness (2014), the U.S. Supreme Court held that whether a case is "exceptional" for purposes of the statute was to be determined on a case-by-case basis, considering the totality of the circumstances.

*Question 29: Does the U.S. intend to adopt rules as a follow up to the U.S. Supreme Court ruling in the recent case Octane Fitness, LLC v. ICON Health & Fitness, Inc. (patent lawsuit fee-shifting)? Does the U.S. envisage measures to reduce patent litigation costs (e.g., avoid unnecessary discovery during certain stages of a patent trial)?*

**RESPONSE:** USPTO examination rules and guidelines are drafted to be consistent with U.S. law including U.S. case law precedents such as Supreme Court decisions.

*Page 99 section 3.3.6.7. IP enforcement, para 3.219 on seizures of infringing imports and "voluntary private sector "best practices"*

According to the report seizures of infringing imports increased by 53% and voluntary private sector "best practices" initiatives were undertaken by a number of private stakeholders (financial services providers, internet service providers, advertisers, etc).

*Question 30: Could the U.S. describe the state of play of existing "voluntary private sector best practices initiatives" and the perspectives?*

**RESPONSE:** On June 20, 2013, the United States issued a request for public comment on voluntary private sector initiatives regarding IPR protection and enforcement, and is currently in the process of evaluating those responses. In light of this on-going review, the United States is not in a position to provide an evaluation of such initiatives at this

---

**time. U.S. government IPR enforcement actions are distinct from voluntary private sector initiatives.**

*Para 3.3.6.4 Trade secret protection*

*Question 31: Is there an established procedure for customs authorities to suspend the release of, or to detain, goods for reasons of an alleged trade secret misappropriation without a court order or the hearing of the holder of the goods? How are the decisions of the United States International Trade Commission prohibiting the import of goods on the basis of trade secret misappropriation enforced at the USA borders?*

**RESPONSE:** Section 499 of the Tariff Act of 1930, as amended, provides generally that imported merchandise shall not be delivered from customs custody until it has been examined and found to comply with the requirements of the laws of the United States, to include laws relating to trade secrets. See 19 U.S.C. § 1499. Imported merchandise may be detained by U.S. Customs and Border Protection (CBP) under this statute and no court order or hearing is required in this regard.

Trade secrets may be and typically are enforced at the border under Section 337 of the Tariff Act of 1930, as amended (Section 337), pursuant to which the U.S. International Trade Commission (ITC) may order exclusion of articles from entry when it finds "[u]nfair methods of competition [or] unfair acts in the importation of [those] articles." See 19 U.S.C. §1337(a)(1)(A). The ITC has long interpreted 19 U.S.C. §1337 to apply to trade secret misappropriation. See e.g., *TianRui Group Co. v. ITC*, 661 F.3d 1322, 1326 (Fed. Cir. 2011). CBP enforces ITC exclusion orders related to trade secrets. See, e.g., *Certain Cast Steel Railway Wheels, Processes for Manufacturing or Relating to Same and Certain Products Containing Same*, ITC Inv. 337-TA-655 (Feb. 16, 2010); *Rubber Resins and Processes for Manufacturing Same*, ITC Inv. 337-TA-849 (Jan. 15, 2014). Trade secret exclusion orders are enforced in the same manner as other exclusion orders.

Lastly, it should also be noted that the theft of trade secrets related to a product or service used in or intended for use in interstate or foreign commerce is a criminal offense under 18 U.S.C. §1832. The theft of trade secrets under this section of Title 18, or the theft of trade secrets involving imports or exports associated with economic espionage under 18 U.S.C. § 1831, is investigated by ICE HSI. Similarly, measures taken to circumvent Section 337 exclusion orders may constitute the basis for establishing a knowing importation contrary to law under 18 U.S.C. § 545 and also will be investigated by ICE HSI.

*Page 101 section 4.1.1. The new 2014 farm bill*

*Section 4.1.1.1. Overview*

*The WTO Secretariat reports on the General impact of the reform based on the January 2014 CBO baseline.*

*Question 32: What is the most recent estimate of the impact of the measures in the current year? Will the most recent baseline be reviewed after the farmers' sign up to the programmes?*

**RESPONSE:** The United States does not have an official estimate of the impact of the complete Farm Bill. However, USDA's most recently available projections were contained in the cost-benefit assessment (CBA) associated with the ARC/PLC regulation (published on September 26, 2014), and can be found at: <http://www.regulations.gov/<#!documentDetail:D=FSA-2014-0010-0002>. These projections were based on May 2014 supply and demand conditions. The President's Budget is released in February each year; the President's Budget released in February 2016 will incorporate enrollment data in estimating ARC/PLC outlays.

*The 2014 new farm bill contains provisions (as was the case for the 2008 bill) regarding marketing orders. These elements are not covered by the Secretariat report but the EU considers those as important. The U.S. applies marketing orders with regard to specific products, which are managed by the Agricultural Marketing Service (AMS). However, Marketing Orders appear to be applied on*

*the basis of criteria not based on risk assessment and not in line with international practices and CODEX recommendations, notably inspection of 100% of imported products. This procedure creates unnecessary delays and extra costs which are significantly higher compared to those imposed to domestic producers (notably storage costs at customs).*

*Question 33: Could the U.S. explain why, for the products covered by the Marketing Order, the inspections of imported products do not follow standard practices and risk assessment? Could the U.S. inform whether there is any intention to revise the nature of the Marketing Orders policy?*

**RESPONSE:** The U.S. Department of Agriculture's (USDA) inspection service determines quality and condition factors for produce items at destination markets in the United States. USDA partners with State agencies to provide uniform and coordinated services to industry members nationwide, including shipping point locations and ports of entry. Through cooperative agreements with State agencies, USDA trains Federal and State inspectors, licenses State inspectors to grade and certify products on USDA's behalf, monitors inspection results and maintains U.S. grade standards, inspection manuals and other materials, all for the purpose of performing inspections consistently and uniformly.

USDA and/or State personnel perform inspections at ports to ascertain the product's compliance with quality and condition factors, such as size, color, shape, and the presence of internal defects or external bruising and scaring. These factors impact the marketability of the food items, and USDA does not intend to change policies that reinforce performance of our services. Other U.S. Government agencies conduct safety inspections on imported products of all kinds, and, because of the vast amount of merchandise reaching our shores, they use risk assessments to focus their efforts and maximize their resources to keep the United States' supply of food and other materials safe.

*Question 34: Could the U.S. indicate if, for products covered by Marketing Orders, it is possible to apply other practices less economically burdensome than the 100% inspection at the port of entry? What is the rationale for the 100% inspection at the port of entry for those products?*

**RESPONSE:** Section 8e of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) provides that imports of certain products need to meet the same standards as those applied to products being handled according to a federal marketing order in the United States.

*Page 103, para 4.8 reports that the new Farm Bill introduces a Margin Protection Programme for Dairy and a Dairy Donation Programme.*

*Question 35: What specific dairy products can be subject to these programmes? What are the conditions, including time limits for government purchases, for the operation of the new Dairy Product Donation Programme? Assuming that there are time limits for these governmental purchases, what measures can be taken if the margin below US\$4 per cwt of milk last longer than the period during which the purchases can be made? Are there any quantitative limits on the governmental purchase?*

**RESPONSE:** To be eligible for the MPP-Dairy program, a dairy operation must produce and market milk commercially from cows located in the United States. All dairy products are eligible to be purchased under the Dairy Donation Program.

**Purchases will cease at the end of the month in which it is determined that:**

- The actual dairy production margin for the previous month is above US\$4 per cwt;
- Purchases have taken place for three consecutive months;
- U.S. cheddar or NDM price exceeds world prices by 5% if the actual dairy production margin is at or below US\$4 but above US\$3; or
- U.S. cheddar or NDM price exceeds world prices by 7%, if the margin is US\$3 or less.

If purchases end after three consecutive months and margins are still below US\$4 per cwt of milk, the conditions for program activation must be met again. Margins will be tracked to determine if they remain below US\$4 per cwt of milk for two additional months then purchases could begin again. This would require three months to determine the final margin for the two prior months since publication of full month prices occurs a month later. The program would make purchases for three consecutive months, cease operation for three months and then restart making purchases for another three months if margins remain below US\$4 per cwt for an extended period of time and other program restrictions are not met.

**There are no quantitative limits on government purchases.**

*Question 36: Are there any rules on how dairy products will be distributed to the low-income recipients?*

**RESPONSE:** Regulations for the existing USDA Food and Nutrition Service (FNS) programs will govern how the products will be distributed. Public or private nonprofit organizations that receive Dairy Product Donation Program products may transfer those products to other nonprofits only if the transferee will likewise distribute to domestic low-income recipients without cost or waste, consistent with existing FNS regulations. FNS regulations in 7 CFR 250.13(d)(1) provide that donated foods "be distributed only to recipient agencies and individual recipients eligible to receive them" under applicable program regulations. FNS regulations in 7 CFR 250.13(a)(1)(ii) provide that donated foods "not be sold, exchanged or otherwise disposed of without the approval of the Department."

*Page 107 paras 4.18 and 4.19. The WTO Secretariat reports that the new Farm Bill eliminates the old programme of Counter-cyclical payments (CCP) but introduces new programmes: Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC), which in nature are also counter-cyclical. It also eliminates direct payments and export subsidies. The impact of these programmes will depend on the choices producers make (e.g. PLC vs. ARC). The Secretariat Report states: Page 104 paragraph 4.9 reports that "The move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions".*

*Question 37: Past counter-cyclical payments were notified as non-product specific AMS (ACRE as product-specific). Taking into account that the programs are linked to production (either historical in the PLC or to current yields in the ARC) in the Farm Bill legislation, does the U.S. consider that PLC and ARC are product-specific?*

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United will notify the classification of these programs as part of its official domestic support notification.

*Question 38: Can a farmer freely reallocate base acres throughout the PLC/ARC programmes among different commodities? Is reallocation a one-time only option as this seems to be the case of updating yields, or can the reallocation be done on an annual basis?*

**RESPONSE:** All landowners and each farm operator have been provided with a summary of all covered commodities planted or considered planted (P&CP) during the 2008-12 crop years as reported on form FSA-578, and have a one-time opportunity to update those records provided there are crop insurance records (or other verifiable documentation) available to support those updates. The landowner has the opportunity to redistribute the farm's base acres based on a proration of each covered commodity planted or considered planted in crop years 2009 through 2012 to the total acres of all covered commodities planted or considered planted during that time. This is a one-time decision. Upland cotton base acres are not eligible for re-allocation. For more information, see: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplc.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplc.html).

*Question 39: What are the restrictions, if any on planting other, non-programme products on the base acres?*

**RESPONSE:** Producers who participate in the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs are subject to an acre-for-acre payment reduction when fruits (including nuts) and vegetables (except mung beans, dry peas, lentils, and chickpeas) and/or wild rice (FAV/WR) are planted on: a) more than 15% of the base acres of a farm enrolled in ARC using the county coverage or PLC, or b) more than 35% of the base acres of a farm enrolled in ARC using the individual coverage.

More detailed information regarding FAV/WR planting restrictions on farms enrolled in ARC or PLC is available in the "Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Program Fruit, Vegetable and Wild Rice Provisions" fact sheet, which can be found on FSA's website at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140520\\_insup\\_en\\_arcpic.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140520_insup_en_arcpic.html).

*Page 107 section 4.1.1.2.4 Marketing loans and page 111 conservation programmes*

*Question 40: Which are the programs where benefits are tied to meeting the conservation compliance requirements? What is the proportion of subsidies that the farmers may receive under the particular programmes (e.g. PLC, ARC, indemnity programmes, marketing loans) that they risk losing in case of non-compliance?*

**RESPONSE:** To be eligible for marketing assistance loans, loan deficiency payments, Agricultural Risk Coverage payments, Price Loss Coverage, and other program benefits, the producer must comply with highly erodible land (HEL) and wetland conservation provisions. The conservation compliance regulation providing a comprehensive listing of programs linked to conservation compliance and penalties can be found at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=4e8a90c3af45f21b887a7479eca58871&node=pt7.1.12&rqn=div5>.

In addition, Section 2611 of the 2014 Farm Bill links eligibility for the premium subsidy paid by the Federal Crop Insurance Corporation (FCIC) to compliance with the highly erodible land (HEL) and wetland conservation provisions of the Food Security Act of 1985. Detailed information on conservation compliance and crop insurance may be found on RMA's website at: <http://www.rma.usda.gov/news/currentissues/farmbill/>.

*Page 112 section 4.1.1.4.1 Food aid*

*It is reported that in the 2013 Financial Year, the U.S. shipped 1.37 million tons of in-kind food aid with a total value of US\$694 million to meet emergency and development food-aid needs. According to the 2013 report on food assistance prepared for the Food Assistance Committee by the Secretariat of the International Grains Council, the U.S. provided approximately US\$1 billion of the emergency assistance through in-kind food aid.*

*Question 41: Could the U.S. clarify what the precise figure is for 2013 and possibly for preceding years on:*

- a) total value of in-kind food aid for emergency purposes.
- b) total quantity of in-kind food aid for emergency purposes.
- c) total value of in-kind food aid for non-emergency purposes.
- d) total quantity of in-kind food aid for non-emergency purposes.

**RESPONSE:** See the following table on USAID Title II Programs (emergency and non-emergency)

Fiscal Year (FY)	Value of in-kind food aid (US\$)	Quantity of in-kind food aid (MT)
FY2013 Emergency	US\$1,045,788,300	856,870
FY2013 Non-Emergency	US\$299,829,500	251,130
FY2012 Emergency	US\$1,174,282,800	988,337

Fiscal Year (FY)	Value of in-kind food aid (US\$)	Quantity of in-kind food aid (MT)
FY2012 Non-Emergency	US\$427,381,700	438,360
FY2011 Emergency	US\$1,225,456,200	1,033,350
FY2011 Non-Emergency	US\$426,277,900	428,310
FY2010 Emergency	US\$1,522,550,800	1,652,790
FY2010 Non-Emergency	US\$401,015,000	500,150

**USDA Programs (non-emergency only; USDA does not provide emergency food aid)**

Value of Assistance	2010	2011	2012	2013	Total
USDA Programs	US\$320,558,100	US\$367,500,000	US\$439,200,000	US\$333,100,000	US\$1,460,358,100

MT of Commodities Shipped	2010	2011	2012	2013	Total
USDA Programs	324,760	369,085	330,814	250,960	1,275,619

**Para 4.44.** According to the report the 2014 Farm Bill eliminates the need to use monetization to generate cash in many situations and allow USAID to reduce monetization to the 15% floor.

**Question 42:** Keeping the above in mind, could the U.S. specify to what extent, in terms of a percentage of the total value on year-on-year basis, were the U.S. international food aid programmes monetised during the past 5 years? Are there any plans to eliminate the provision of non-emergency in-kind food aid and its monetisation, which imply a high risk of commercial displacement in local markets?

**RESPONSE:** A limited portion of commodities provided as in-kind assistance are monetized. The U.S. Government works with the implementing organizations and the recipient governments to analyze the markets and choose commodities that will not disrupt local production, prices, local markets, or commercial trade. The selected commodities are intended to address shortfalls in consumption due to limitations in production, trade, or income. Monetization is conducted in countries that have low income, high stunting rates, limited foreign exchange, and limited access to trade-financing credit. The implementing organizations conduct public solicitations to ensure that a wide range of buyers are informed and to encourage competition to ensure that the sales occur at price levels that do not undercut commercial transactions.

Monetization offers benefits to the recipient countries by introducing commodities that are not produced, or imported commercially, within the country in sufficient quantity to meet local needs. This increases the overall availability of food and the nutritional offerings within the recipient country.

*Page 113, para 4.47 Export credit guarantees*

**Question 43:** Could the U.S. confirm that, following the signature of the Memorandum of Understanding between Brazil and the United States related to the WTO Cotton Dispute, the Export Credit Guarantee Programme (GSM-102) will be amended so that the maximum tenor length would not exceed 18 months?

**RESPONSE:** The United States is operating the GSM-102 program under the terms agreed between the United States and Brazil in the 2014 Memorandum of Understanding, including 18 month tenor.

*Page 114, para 4.54. Biomass crop assistance programme*

The USDA FSA provides three types of incentives for bio energy crops, including woody biomass, which although down from US\$432 M in 2010 will persist till 2018: a) up to 50% or even 75% (max: US\$500 - US\$750 per acre) for establishing crops; b) annual payments for 5 - 15 years (herbaceous:/woody perennial crops); c) US\$20 - US\$45/t per dry ton towards cost of collecting, harvesting, storing, and transporting the crop to designated biomass conversion plants.

*Question 44: Could the U.S. explain the rationale for such subsidies as the EU understands that they cover all stages of the biomass crop and that each component of these subsidies already provides U.S. producers with a comparative advantage vis-à-vis their competitors?*

**RESPONSE:** The Biomass Crop Assistance Program is intended to benefit the environment. At current funding levels, the Biomass Crop Assistance Program is not expected to affect trade.

**Page 116, Agricultural tariffs and tariff quotas (section 4.1.2)**

The Secretariat report notes that most tariff rate quotas were under-filled (based on the 2012 notification). It points to a particularly low fill rate for tariff rate quotas for cotton and tobacco (based on the notified data, the quota had a 58% fill rate).

*Question 45: Could the U.S. indicate the reasons why these quotas are largely underfilled?*

**RESPONSE:** Fill rates for tariff quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff quota to another and from year to year. With regards to the 2012 notification, most of the tariff rate quotas with very low fill rates are administered on a first come, first-served basis. For a more detailed indication of the allocation methods for U.S. tariff rate quotas, the United States would direct the EU's attention to G/AG/N/USA/2/add.3, dated October 5, 2001.

**Page 121, para 4.76**

The FBO rules places an obligation on the foreign banking organisations with U.S. assets greater than US\$50 bn to establish an Intermediate Holding Company (IHC) on the U.S. territory. In addition, foreign broker-dealers will have to be controlled by the IHC in the U.S. territory and, as a consequence of that, will be subject to additional prudential requirements (i.e. those applicable to BHCs) in comparison to U.S. broker-dealers and to the supervision of FED (instead of SEC).

*Question 46: Could the U.S. explain the reasons for this differentiated treatment and the implications on the level playing field in this sector?*

**RESPONSE:** Details are available in the final rule, available at: "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations" Final Rule, Federal Reserve System, 12 CFR Part 252 [Regulation YY; Docket No. 1438], Federal Register, Vol. 79, No. 59 / Thursday, March 27, 2014 / Rules and Regulations. <http://www.gpo.gov/fdsys/pkg/FR-2014-03-27/html/2014-05699.htm>. The Federal Reserve reasserted the non-discriminatory approach and "due regard to the principle of national treatment and equality of competitive opportunity, and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States". (Federal Register Vol. 79, no 59. p. 17241) This was also a requirement of Dodd-Frank Act Section 165.

*Page 121, para 4.77. The G20 guidance from St. Petersburg summit (September 2013), as reinforced in the Brisbane Communiqué (November 2014) and Path Forward reached between the European Commission and CFTC regarding the joint understanding on package of measures on how to approach cross-border derivatives (July 2013) stipulate that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulation and enforcement regimes.*

*Question 47: How has the United States taken in account the G20 guidance and the Path forward on deference in practice, in the implementation of Title VII of the Dodd-Frank Act on derivatives?*

**RESPONSE:** Consistent with the G-20 guidance, the United States supports the use of deference regarding OTC derivatives when it is justified by the quality of the respective regulatory and enforcement regime, is based on similar outcomes, is non-discriminatory, and pays due respect to home country regulation regimes. Of note, CFTC staff has provided extensive regulatory relief—principally through the issuance of no-action letters—to global market participants operating in foreign jurisdictions that do not yet have comparable rules in place.

**GUATEMALA**

1) ¿Qué estrategia de exportación de productos energéticos ha implementado EEUU, frente a la creciente producción interna de gas y petróleo?

**RESPONSE:** The United States is closely monitoring the implications of growing domestic energy supplies, including the economic, environmental and security opportunities and challenges that it presents. Exports of crude oil are administered by the Department of Commerce's Bureau of Industry and Security, while exports of natural gas are administered by the Department of Energy. With respect to natural gas, projects that have been approved to date will enable the export of up to 5.7 billion cubic feet per day (bcf/d) of LNG, and conditional approval has been provided for another 4.9 bcf/d, for a total of 10.6 bcf/d.

2) ¿Qué expectativas se tiene a corto plazo respecto de la renovación del Mandato para promover el Comercio (TPA)?

**RESPONSE:** The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.

3) De acuerdo con el reporte de la Secretaría, la puesta en marcha de la Iniciativa sobre la Seguridad de la Carga (SFI) ha sido aplazada hasta 2016. En caso de aprobarse su entrada en vigencia al finalizar este período, ¿qué acciones se tendría pensado llevar a cabo para no generar retrasos y gastos adicionales en el despacho de mercancías?

**RESPONSE:** The Secretary of Homeland Security under his authority has extended the deadline until at least May 5, 2016, 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, without further legislation.

4) En relación con la Ley de Modernización de las normas de la FDA sobre la inocuidad de los alimentos (FSMA), ¿cómo planea trabajar la FDA con las autoridades y entes acreditadores de terceros países, en la implementación de un programa de acreditación por auditores independientes (terceros) ?

**RESPONSE:** U.S. Food and Drug Administration has issued a proposed rule that sets eligibility requirements for recognition as an accreditation body. An accreditation body can be a foreign government agency or a private-sector (third-party) body. In either case, it must also meet standards for legal authority, competency and capacity, impartiality and objectivity, quality assurance, and records procedures program. More information is provided at the link: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm361903.htm>.

5) En nuevas negociaciones comerciales, ¿cómo asegura EEUU que no se erosionen los beneficios acordados bajo TLC anteriores en materia de reglas de origen?

**RESPONSE:** Rules of origin ensure that partner countries receive the benefits negotiated under FTA preferential market access arrangements. Rules of origin in new trade negotiations do not erode any of the benefits negotiated in previous FTAs but facilitate market access arrangements negotiated with new trading partners.

6) Con relación al tema de asistencia técnica para la implementación del Acuerdo sobre Facilitación de Comercio, ¿piensa Estados Unidos formar parte de los donantes para la nueva "Unidad del Acuerdo sobre la Facilitación de Comercio" creada por el Director General para apoyar a países en desarrollo y PMAs en la implementación del Acuerdo?

**RESPONSE:** The United States has committed to helping support developing countries' implementation of the TFA. Bilaterally, we have worked with over 27 countries in conducting WTO Trade Facilitation needs assessments, and nineteen countries have received U.S. assistance under the continuing Partnership for Trade Facilitation. We are

also providing support in other ways, such as our contribution to the World Bank Group's Trade Facilitation Support Program. We welcome the effort by the Director General to establish a new WTO "Facility" to help developing countries and LDCs implement the TFA. We have already begun discussions with the WTO Secretariat to determine how those programs can inform and work with the new WTO mechanism. We will also be sharing our knowledge and best practices in delivery of assistance programs.

7) *En cuanto a la participación de Estados Unidos en la iniciativa de las negociaciones plurilaterales sobre bienes ambientales, ¿cómo afectará esta iniciativa en cuanto a su participación y compromiso en las negociaciones dentro del Comité de Comercio y Medio Ambiente en Sesión Especial?*

**RESPONSE:** The United States sees no conflict between the EGA negotiations and the CTE-SS' work to liberalize trade in environmental goods. The recently launched EGA negotiations present a unique opportunity to add impetus and energy to the multilateral trading system. The EGA is being negotiated by a group of WTO Members committed to liberalization in this sector, but the benefits will accrue to all WTO Members, as the participants plan to eliminate tariffs on agreed products on an MFN basis.

8) *En el tema de Agricultura, ¿cuándo presentará las notificaciones o realizará las actualizaciones pendientes sobre las subvenciones a la exportación, ayuda interna y utilización de contingentes arancelarios?*

**RESPONSE:** The United States submits each of these annual notifications to the Committee on Agriculture each year. The United States recently submitted its domestic support notification, G/AG/N/USA/100, dated December 8, 2014. Please see G/AG/N/USA/99, dated November 5, 2014, for the latest U.S. notification on export subsidies. On tariff quotas, please see G/AG/N/USA/94, dated February 5, 2014 for the latest MA:2 notification on quota fill.

9) *Observamos que un aspecto importante dentro de su política comercial es el tema de las consideraciones relativas a los trabajadores y a la protección al medio ambiente.*

*En cuanto al tema de las consideraciones relativas a los trabajadores, quisiéramos saber lo siguiente:*

a. *¿Cuáles son los derechos básicos que protege Estados Unidos? En especial, nos gustaría saber si Estados Unidos ofrece protección a los trabajadores en temas como vacaciones, bonificaciones obligatorias, salarios mínimos y seguridad en el trabajo.*

**RESPONSE:** U.S. laws protect internationally recognized labor rights, such as the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for employment of children and the prohibition and elimination of the worst forms of child labor, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, elimination of discrimination in respect of employment and occupation.

The Fair Labor Standards Act (FLSA) (<http://www.dol.gov/whd/flsa>) is the Federal law that sets minimum wage (<http://www.dol.gov/whd/minimumwage.htm>) standards. The federal minimum wage for covered nonexempt workers is US\$7.25 per hour. For more information on the FLSA, see <http://www.dol.gov/dol/topic/wages/index.htm>. The FLSA does not address nonproduction cash bonuses-payments that are not production-based. Vacations, bonuses, and breaks are a matter of agreement between an employer and an employee (or the employee's representative). If bonus payments are made, the FLSA, with some exceptions, requires bonus payments to be included as part of an employee's regular rate of pay in computing overtime.

The laws relating to occupational safety and health are found primarily in two statutes, the Occupational Safety and Health Act, (OSH) Act ([https://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=OSHACT](https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=OSHACT)), and the Federal Mine Safety and Health Act (Mine Act)

(<http://www.msha.gov/REGS/ACT/ACTTC.HTM>). The OSH Act was enacted to "assure safe and healthful working conditions for working men and women." The OSH Act created the Occupational Safety and Health Administration (OSHA) (<http://www.osha.gov/>) at the federal level and provided that states could run their own safety and health programs as long as those programs were at least as effective as the federal program. Safety and health conditions in most private industries are regulated by the OSHA within the U.S. Department of Labor (USDOL) or OSHA-approved state plans (<https://www.osha.gov/dcsp/osp/index.html>). The Mine Safety and Health Administration (MSHA) (<http://www.msha.gov/>) within the USDOL has responsibility for administration and enforcement of the Mine Act, which protects the safety and health of workers employed in the nation's mines. The Act applies to all mining and mineral processing operations in the United States, regardless of size, number of employees, or method of extraction.

b. *En cuanto al tema de la protección al derecho a la libre asociación de trabajadores y creación de sindicatos, nos gustaría saber cuáles son los requisitos y procedimientos legales para la inscripción y formación de sindicatos? ¿Existe algún tiempo específico para la inscripción de un sindicato? ¿Gozan los trabajadores que participan y solicitan la inscripción de un sindicato de algún tipo de protección contra represalias?*

**RESPONSE:** There is no requirement under U.S. law that a union be registered in order to be recognized, nor are there any general conditions that must be fulfilled by workers' and employers' organizations when they are being established. The National Labor Relations Act (NLRA), which is administered by the National Labor Relations Board (NLRB), guarantees employees "the right to self organization, to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid...". The NLRA provides that it is an unfair labor practice for an employer to "interfere with, restrain, or coerce" employees in the exercise of these rights. For more information on the NLRB and the NLRA, see <http://www.nlrb.gov/resources/national-labor-relations-act>.

c. *En cuanto a las inspecciones de trabajo, quisiéramos saber ¿Con cuántos inspectores de trabajo cuenta Estados Unidos para verificar el cumplimiento de la legislación laboral en su país?*

**RESPONSE:** The OSHA has approximately 2,200 federal and state-plan inspectors, the Wage and Hour Division (WHD) has over 1,000 investigators, and the MSHA has about 1,100 inspectors.

d. *¿Cuáles son los procedimientos especiales administrativos y judiciales con los que cuenta Estados Unidos para la resolución de asuntos laborales?*

**RESPONSE:**

**Procedures in the Private Sector**

The NLRB is an independent Federal agency that enforces the NLRA, including the provisions related to collective bargaining and the right to strike to secure better working conditions. The NLRB consists of a five-member board and an independent General Counsel. An individual, a union, or employer initiates a case concerning NLRA-covered unfair labor practices by filing a charge with an NLRB Regional Office. The charge is investigated by the regional office on behalf of the General Counsel, and if determined that the charge has merit, the Regional Director will first seek to remedy the violation by proposing terms of a settlement agreement which fully remedies the meritorious allegations.

If a case is not settled, a formal complaint is issued by the Regional Office and a hearing is held before an Administrative Law Judge (ALJ). The ALJ then issues a decision which includes an order. If a party fails to comply with the order, the General Counsel's office files an enforcement petition in the United States District Court of Appeals. For more information on the process, see: <http://www.nlrb.gov/resources/nlrb-process>.

**The Railway Labor Act (RLA) protects the freedom of association and organizing rights of employees in the railroad and airline industries. The RLA sets forth specific**

procedures, including mandatory mediation, that must be followed before a strike or lockout can take place in those industries. The RLA is administered by the National Mediation Board (NMB), an independent U.S. Federal-government agency that facilitates labor-management relations within the nation's railroad and airline industries. The NMB is headed by a three-member board. Pursuant to the RLA, NMB programs provide dispute-resolution processes to effectively meet its statutory objectives: avoiding interruption to commerce or to the operation of any carrier; forbidding any limitation upon freedom of association among employees; providing for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; and providing for the prompt and orderly settlement of all disputes growing out of grievances related to the implementation and management of collective bargaining agreements. For more information on the NMB and the RLA, see: <http://www.nmb.gov/>.

#### **Procedures in the Public Sector**

The Federal Labor Relations Authority (FLRA) is an independent administrative federal agency created by Title VII of the Civil Service Reform Act of 1978 (the Statute: [http://www.flra.gov/statute\\_about](http://www.flra.gov/statute_about)). The Statute allows certain non-postal federal employees to organize, bargain collectively, and participate through labor organizations of their choice in decisions affecting their working lives. The Postal Reorganization Act governs labor-management relations in the Postal Service.

The Statute defines and lists the rights of employees, labor organizations, and agencies so as to reflect the public interest demand for the highest standards of employee performance and the efficient accomplishment of Government operations. Specifically, the Statute requires that its provisions "should be interpreted in a manner consistent with the requirement of an effective and efficient Government."

The Statute establishes distinct components within the FLRA, including the Authority, the Office of the General Counsel of the Authority, and the Federal Service Impasses Panel. The FLRA structure also includes an Office of Administrative Law Judges. These components are depicted below in the order in which cases generally process through the FLRA. The business of the FLRA, and thus the FLRA mission, is to carry out five (5) primary statutory responsibilities as efficiently as possible and in a manner that gives full effect to the rights afforded employees and agencies under the Statute. Those five primary responsibilities are: resolving complaints of unfair labor practices; determining the appropriateness of units for labor organization representation; adjudicating exceptions to arbitrators' awards; adjudicating legal issues relating to the duty to bargain; and, resolving impasses during negotiations.

#### **Federal Mediation Services**

The Federal Mediation and Conciliation Services (FMCS), has responsibility for assisting parties to labor disputes, at their request, to settle such disputes through conciliation and mediation. FMCS has no enforcement authority. It may offer its services in a labor dispute, either on its own or at the request of one or more of the parties. When the FMCS does assist parties to resolve their labor-management disputes, it does so by providing an experienced mediator. The mediators provided by FMCS are neutral third parties, employed by FMCS and they have no authority or responsibility to impose a government solution or recommendation. For more information, see <http://www.fmcs.gov/internet/>.

e. ¿Cómo se asegura la tutelaridad del trabajador dentro del ámbito laboral? Los trabajadores necesitan de un abogado para iniciar un proceso laboral para reclamar sus derechos?

**RESPONSE: Workers do not need a lawyer to request enforcement of their rights nor to have their labor rights enforced.**

The WHD of the USDOL administers and enforces the FLSA with respect to private employment. Workers may file a complaint free of charge with the WHD by contacting the local Wage and Hour Division office (<http://www.dol.gov/whd/america2.htm>), or by calling the program's toll-free help line at 1-866-4USWAGE (1-866-487-9243). The WHD conducts investigations in response to complaints but also conducts investigations on its own of certain types of businesses or industries. Workers do not need a lawyer to

file complaints with the WHD. All complaints are confidential; the name of the worker and the nature of the complaint are not disclosable. See <http://www.dol.gov/WHD/workers.htm#complaint>. WHD attempts to get the worker fully compensated; however, if a meritorious case cannot be settled the USDOL may bring suit on behalf of the worker against the employer. For more information, see <http://www.dol.gov/whd/regs/compliance/hrg.htm>. Alternatively, an employee may file a lawsuit *pro se*, or in the employee's own name, without an attorney.

Employees or their representatives have a right to request an inspection of a workplace if they believe there is a violation of a safety or health standard, or if there is any danger that threatens physical harm, or if an "imminent danger." The OSH Act gives complainants the right to request that their names not be revealed to their employers. OSHA compliance safety and health officers conduct inspections without advance notice, either in response to a complaint or as part of planned or programmed inspections. Complaints can be filed Online Complaint Form ([https://www.osha.gov/pls/oshaweb/owadisp.showForm?p\\_id=113](https://www.osha.gov/pls/oshaweb/owadisp.showForm?p_id=113)) or by contacting a local OSHA Regional or Area Office (<https://www.osha.gov/html/RAMap.html>). For more information on OSHA enforcement, see <https://www.osha.gov/dep/index.html>.

An individual, a union, or employer can initiate an unfair labor practice case under the NLRA by filing a charge with an NLRB regional office. The charge is investigated by the regional office on behalf of the General Counsel to determine whether there is reasonable cause to believe that the NLRA has been violated. For more information see above, or see <http://www.nlrb.gov/what-we-do/investigate-charges>.

f. *Como parte de esta política comercial, ¿piensa Estados Unidos ratificar los convenios fundamentales y los convenios de gobernanza de la OIT?*

**RESPONSE:** The United States has ratified two of the ILO's eight fundamental conventions (Convention 105 on the abolition of forced labor and Convention 182 on the worst forms of child labor) and one of the four so-called governance conventions (Convention 144 on tripartite consultation). Although it does not anticipate that it will ratify any additional ILO conventions in the coming year, the United States has demonstrated consistently that U.S. law and practice is largely compatible with almost all ILO standards.

**HONDURAS*****GOVERNMENT REPORT WT/TPR/G/307******3. APERTURA Y RENDICION DE CUENTAS: MAS APOYO A FAVOR DEL COMERCIO******Página 9, párrafo 3.3***

*Question 1: A que se refiere el termino relativo a: "incluidas las cuestiones relativas a los productos básicos (por ejemplo el café y el caucho) y siempre que guarden relación con los temas comerciales".*

**RESPONSE:** USTR has the lead responsibility for the conduct of, and is the chief representative of the United States for, all international trade negotiations, including those related to commodities, such as coffee, sugar, and cocoa. USTR also advises the President and Congress with respect to international commodity agreements.

*Question 2: Que debemos entender por "siempre que guarden relación con temas comerciales", y lo referente a la inversión directa?*

**RESPONSE:** In relation to investment, USTR leads the negotiation of the investment chapters of U.S. free trade agreements and co-leads the negotiation of bilateral investment treaties with the U.S. Department of State. USTR also leads the U.S. delegation in investment policy dialogues in the context of APEC and the NAFTA, and participates in investment discussions in other international fora. USTR also routinely engages with U.S. trading partners on country-specific investment barriers, through Trade and Investment Framework Agreements and other bilateral dialogues.

*Question 3: En lo referente a: "Este organismo ha evolucionado de manera que, en la actualidad, consta de comités de tres niveles que constituyen el mecanismo principal para fijar y coordinar la posición oficial de los Estados Unidos en asuntos de comercio internacional e inversiones relacionados con el comercio" ¿Quién conforma el comité de tres niveles?*

**RESPONSE:** The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first-line operating group, with representation at the senior civil service level. Supporting the TPSC are more than 80 subcommittees responsible for specialized issues and these subcommittees represent the third tier.

***4 EVOLUCION DE LA POLITICA COMERCIAL DESDE 2012******Página 14, párrafo 4.10***

*Question 4: -¿Podrían ampliar la información relacionada con las cuestiones nuevas y emergentes que se ocupa el Acuerdo de Asociación transpacífico?*

**RESPONSE:** In order for the Trans-Pacific Partnership (TPP) agreement to achieve the greatest possible impact in opening markets, promoting growth, and deepening regional economic integration, it must address new and emerging issues that traders and investors face in the region today. TPP members, recognizing that, have made negotiation of a "21<sup>st</sup>-century" agreement one of our shared objectives for TPP. Some of these new and emerging issues will be reflected in new commitments in such areas as State-owned enterprises, digital commerce, regulatory coherence, and work to facilitate development. We also have expanded or updated work from previous agreements to reflect new issues or shared concerns, including on intellectual property, environment, and labor. Through these efforts, TPP partners hope to achieve an agreement that promotes regional economic integration, economic growth and development, prosperity, and jobs.

*Question 5: ¿Se incluyen los temas de telecomunicaciones, inversión, servicio, financieros en dicho acuerdo?*

**RESPONSE: Yes.**

*Question 6: ¿Qué significa el termino "la coherencia en asuntos de Reglamentación"?*

**RESPONSE: In the Trans-Pacific Partnership (TPP) agreement, regulatory coherence refers to commitments in the agreement to help ensure that trade across the agreement is more seamless and that differing regulatory approaches across the TPP region do not impede trade. It also refers to the use of good regulatory practices in the process of developing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy measures, as well as to efforts across government to enhance regulatory cooperation to further these objectives and promote trade, growth and employment.**

#### **8 COMERCIO DE LAS PEQUEÑAS Y MEDIANAS EMPRESAS**

*Página 32, párrafo 8.2*

*Question 7: -¿Podría ampliar acerca de los principales bienes y servicios exportados por las Pymes Estadounidenses (1% de las Pymes que exportan) y los principales países de destino de dichos bienes y servicios?*

**RESPONSE: Leading goods export markets for U.S. small and medium sized enterprises are: Mexico (US\$60.9 billion, 2012 export value for SMEs), Canada (US\$56.4 billion), China (US\$39.2 billion), Japan (US\$20.7 billion), United Kingdom (US\$17.6 billion). For further information on leading goods exports commodities by U.S. SMEs, go to <http://tse.export.gov/edb>SelectReports.aspx?DATA=ExporterDB>; and <http://www.census.gov/foreign-trade/Press-Release/edb/2012/>.**

#### **SECRETARIAT REPORT: WT/TPR/S/307**

##### **2. RÉGIMEN DE COMERCIO E INVERSIÓN**

###### **2.1.1. Mandato de Promover el Comercio**

*Página 26, Párrafo 2.6*

*Question 8: ¿Influye la política en la aprobación de un nuevo mandato de Promover el Comercio.*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.**

###### **2.3.2 Acuerdos Regionales y Preferenciales**

*Página 32, Párrafo 2.20*

*Question 9: El Acuerdo de Libre Comercio con la Unión Europea reducirá el porcentaje arancelario en régimen NMF, ¿Cuál beneficia más a los EUA, el que se realiza en libre comercio o el que se lleva a cabo en régimen NMF?*

**RESPONSE: A concluded T-TIP agreement will liberalize trade between the Parties. However, there can be no substitute for an ambitious, trade liberalizing result at the multilateral level.**

*Página 11, párrafo 5*

*Question 10: Podría EUA ampliar ¿Cuál era el objetivo abarcado por los dos pilares tradicionales de apoyo al mercado de los productos lácteos que fueron eliminados a la luz de la nueva Ley de agricultura.*

**RESPONSE: The 2014 Farm Bill eliminated the Dairy Product Price Support Program and the Dairy Export Incentive Program. The Dairy Product Price Support Program provided a standing offer by the government to buy dairy products whenever market prices fell**

**below the supported price. Its purpose was to keep dairy product prices from falling to extremely low levels. The Dairy Export Incentive Program provided bonuses to dairy product exporters to enable dairy product exports when U.S. dairy product prices were above world market prices.**

**Página 12, párrafo 11**

*Question 11: ¿Cuáles son los principios sobre los cuales se están desarrollando los nuevos reglamentos en materia de inocuidad en función de la nueva Ley de Agricultura?*

**RESPONSE:** The new Farm Bill does not contain the food safety provisions discussed in paragraph 11. Rather, paragraph 11 discusses the Food Safety & Modernization Act (FSMA). The key elements of the Food Safety Modernization Act (FSMA) are preventive controls, inspection and compliance, imported food safety, response to food safety issues, and enhanced partnerships. The U.S. Food and Drug Administration (FDA) is developing policies in each of these areas to implement the law. FDA has issued several proposed rules, including: Preventive Controls for Human Food, Preventive Controls for Animal Food, Produce Safety Standards, Foreign Supplier Verification Program, Accreditation of Third Party Auditors, Sanitary Transport of Food and Feed, and Intentional Contamination. FDA is currently working on finalizing these proposals as well as drafting other proposed rules, as directed by FSMA. FSMA is discussed in paragraphs 3.86 to 3.90 in WT/TPR/G/307. More information can be found on FDA's website at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm>.

*Question 12: Cual es la definición de "la utilización de normas consensuales voluntarias como base para los reglamentos técnicos.?*

**RESPONSE:** OMB Circular A-119 (1998) provides that "use" means incorporation of a standard in whole, in part, or by reference for procurement purposes, and the inclusion of a standard in whole, in part, or by reference in regulation(s). The National Technology Transfer and Advancement Act (NTTAA) and Circular A-119 (1998) direct Federal agencies to use voluntary consensus standards, in lieu of government-developed standards, except where inconsistent with law or otherwise impractical. Thus, where a Federal agency determines that mandatory compliance with a standard is needed to address a particular public policy objective, it shall rely on voluntary consensus standards rather than developing its own unique standard. Federal agency use of voluntary consensus standards is summarized in annual reports prepared by NIST, in collaboration with the Interagency Committee on Standards Policy (ICSP). The link to NTTAA Annual reports is: <http://standards.gov/NTTAA/agency/index.cfm?fuseaction=NTTAAReports.main>.

**2 REGIMEN DE COMERCIO E INVERSION**

**2.1 Marco General**

**Página 26, párrafo 2.2 y 2.3**

*Question 13: -Favor indicar los nombres de los 14 organismos y oficinas del poder ejecutivo que forma parte del grupo de Examen de Política Comercial (TPRG) y del Comité Técnico de Política Comercial (TPSC).*

**RESPONSE:** Member agencies of the TPSC and the TPRG consist of the U.S. Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, Health and Human Services, Homeland Security, the Environmental Protection Agency, the Office of Management and Budget, the Council of Economic Advisers, the Council on Environmental Quality, the U.S. Agency for International Development, the Small Business Administration, the National Economic Council, and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

**2.4.3 Reglamentaciones y Restricciones en Materia de Inversiones.**

**2.4.3.1 Comité de Inversiones Extranjeras en los Estados Unidos (CFIUS)**  
**Página 41, Párrafo 2.52**

Question 14: -¿En la actualidad se han denegado la solicitud de información por amenazas de seguridad?

**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 the CFIUS statute, executive order, regulation, and in the guidance document noted above, all of which are available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

**3 POLÍTICA Y PRÁCTICAS COMERCIALES, POR MEDIDAS**

**3.1.4.1 Nomenclatura**

**Página 52, Párrafo 3.32**

Question 15: -¿Podría ampliar lo relativo a las películas fotográficas que afectan el capítulo 37 (SA 3702.96, 3702.97 y 3702.98)?, en lo relativo a la introducción de los cambios del SA2012?

**RESPONSE:** Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the U.S. International Trade Commission conducted an investigation and sought public comment on the proposed changes. No requests for changes to the Commission's recommendation were received. The required Congressional layover period has been completed. The omitted HTS provisions are expected to be proclaimed by the President by the end of 2014, and it is expected that the effective date of these modifications will be February 3, 2012, the date on which the other 2012 changes to the Harmonized System were reflected in the HTS by Presidential Proclamation 8771. No change in duty treatment would result upon the implementation of the omitted provisions.

**Página 53, párrafo 3.34**

Question 16: -¿Por qué motivos no se ha aprobado ni certificado los cambios del SA 2017 y SA 2012 en la lista de Estados Unidos de América en la OMC?

**Página 53, párrafo 3.35**

Question 17: -¿A qué cambios de nomenclatura se refiere los que fueron introducidos por los EUA en el sector de calzado?

**RESPONSE TO 16 AND 17:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the footwear nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The footwear changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm).

Specifically, the full text of the Presidential Proclamation regarding the footwear changes is published in the Federal Register, available at the following website: [http://www.usitc.gov/tariff\\_affairs/hts\\_documents/PP8742.pdf](http://www.usitc.gov/tariff_affairs/hts_documents/PP8742.pdf).

**3.1.6.2 Licencias de Importación**

**Página 61, párrafo 3.38**

Question 18: -¿Cuáles aspectos del programa de licencias de importación para los productos lácteos, han sido modificados por la norma propuesta por el Departamento de Agricultura de los Estados Unidos de América?

**RESPONSE:** The most recent change to the dairy import-licensing program was in 2010. On February 6, 2013, USDA published an advanced notice of proposed rulemaking, asking for public comment on changes to the Dairy Tariff-Rate Import Quota Licensing Program. USDA is reviewing those comments.

- 3.1 Medidas que afectan Directamente a las Importaciones*  
*3.1.7 Medidas Antidumping, Compensatorias y de Salvaguardia*  
*3.1.7.1 Medidas Antidumping, Compensatorias*  
*Página 66, párrafo 3.64*

Question 19: -¿Podría explicar la delegación de Estados Unidos, en qué consiste los cambios que introdujo el departamento de Comercio en sus prácticas, citada en el pie de página 58?

**RESPONSE:** The document referenced in footnote 58 identifies two changes in how the U.S. Department of Commerce conducts antidumping administrative reviews. The first change refines Commerce's practice with respect to the methodology for respondent selection in certain antidumping duty proceedings. The second change in practice involves the discontinuation of the conditional review of the nonmarket economy entity. Now, if an interested party wants Commerce to conduct such a review, it must request a review of the entity in accordance with Commerce's regulations. More detailed information regarding these changes in practice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>

Question 20: -¿Cuáles son los cambios anunciados en la investigación sobre derechos antidumping en relación con la selección de los declarantes en los procedimientos de examen administrativo, para determinar la tasa antidumping aplicable y su conformidad con el Acuerdo Antidumping OMC?

**RESPONSE:** The question is unclear to the United States. If Honduras's question refers to whether these changes are consistent with the WTO Antidumping Agreement, the United States administers all aspects of its trade remedy laws in accordance with the applicable WTO agreements.

*Página 66, párrafo 3.65*

Question 21: -¿A qué disposiciones reglamentarias previamente retiradas que regulan al Dumping selectivo, se refiere la decisión judicial citada en el pie de página 60?

**RESPONSE:** This information was notified to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures in document G/ADP/N/1/USA/1/Suppl.16 - G/SCM/N/1/USA/1/Suppl.16 (dated May 19, 2014). In those documents, the United States referenced the U.S. Court of International Trade's decision in *Gold East (Jiangsu) Paper Co. v. United States*, 918 F. Supp. 2d 1317 (2013).

- 3.1.7.2 Examen por Extinción*  
*Página 70 párrafo 3.71*

Question 22: -¿Podría enumerar los elementos o criterios más relevantes a considerar, establecidos en los procedimientos internos de examen, para determinar si los derechos deben o no seguir aplicándose?

**RESPONSE:** In determining whether revocation of an order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the U.S. International Trade Commission considers the factors set out in U.S. law at 19 U.S.C. § 1675a(a). In determining whether revocation of a countervailing duty order or an antidumping duty order 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 U.S. Department of Commerce considers the factors set out in U.S. law at 19 U.S.C. §§ 1675a(b) and (c).

**3.1 Medidas que afectan Directamente a las Importaciones**  
**3.1.8 Reglamentos y Normas Técnicas a las Importaciones**  
**Página 71, párrafo 3.76**

Question 23: -¿Podrían ampliarse la función y/o participación de los órganos de reglamentación federal en la prácticas de reglamentación?

**RESPONSE:** The U.S. Administrative Procedure Act of 1946 established the regulatory process for all regulations of general application. Subsequent executive orders and government circulars have established certain procedures and timelines for the rulemaking process. A full description of the U.S. rulemaking process can be found online:

[https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf?utm\\_source=APHA&utm\\_medium=APHA&utm\\_term=APHA&utm\\_content=APHA&utm\\_campaign=APHA](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf?utm_source=APHA&utm_medium=APHA&utm_term=APHA&utm_content=APHA&utm_campaign=APHA)

Question 24: ¿Son los órganos de reglamentación federal, nuevos organismos nacionales para emitir regulaciones?

**RESPONSE:** The Unified Agenda provides uniform reporting of data on regulatory and deregulatory activities under development throughout the Federal government, covering approximately 60 departments, agencies, and commissions. Each edition of the Unified Agenda includes regulatory agendas from all Federal entities that currently have regulations under development or review. Fall editions of the Unified Agenda include the Regulatory Plan, which presents agency statements of regulatory priorities and additional information about the most significant regulatory activities planned for the coming year. The Unified Agenda can be found at <http://www.reginfo.gov>.

Question 25: ¿Cuál es la definición de "normas consensuales voluntarias"?

**RESPONSE:** The definition of the term "voluntary consensus standard" is included in section 4 of Circular A-119 (1998), which can be found online: [http://www.whitehouse.gov/omb/circulars\\_a119/](http://www.whitehouse.gov/omb/circulars_a119/).

Question 26: ¿Las normas consensuales voluntarias, son notificadas a la OMC para la respectiva consulta internacional, en caso de tener carácter de obligación o a los organismos de normalización en caso de ser voluntarios?

**RESPONSE:** The United States notifies all technical regulations to the WTO, including technical regulations based on voluntary consensus standards.

**Página 72 Párrafo 3.77**

Question 27: -En relación al párrafo 3.77 de Reglamentos y Normas Técnicas (3.1.8), se agradece ampliar el concepto de "marcada preferencia".

**RESPONSE:** Paragraph 3.77 refers to proposed revisions to Circular A-119 (1998). The proposed revisions to Circular A-119 would establish a general preference for using voluntary consensus standards in Federal regulation and for other Federal agency uses. The current Circular prefers voluntary consensus standards over government-unique standards (as required under Section 12(d) of the NTTAA). The proposed revisions to the Circular continue this preference and establish a further preference for voluntary consensus standards over other types of standards (including voluntary standards that are developed by voluntary non-consensus bodies). In proposing these revisions, it is acknowledged that other types of standards, including those developed by voluntary non-consensus bodies, are in use in the marketplace and may be relevant in meeting agency missions and priorities and that under such circumstances agencies would be able to use such standards. In terms of the concept of "preference", paragraph 6 of Circular A-119 (1998) states that "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." Paragraph 6.a.2 specifies "impractical" as including "circumstances in which such use

would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard."

*Question 28: En caso de ser una exigencia, cuáles son los requisitos y parámetros que deberían cumplir con la "marcada preferencia"?*

**RESPONSE:** Federal policy regarding the use of voluntary consensus standards is contained in paragraph 6 of OMB Circular A-119. The text can be found online:  
[http://www.whitehouse.gov/omb/circulars\\_a119/](http://www.whitehouse.gov/omb/circulars_a119/).

### 3.1.9 Prescripciones Sanitarias y Fitosanitarios

#### 3.1.9.1 Administración de Productos Alimentarios y Farmacéuticos (FDA)

Página 74 y 75, Párrafo 3.87 y 3.88

*Question 29: ¿En relación al número 3.1.9 de la Prescripciones sanitarias y fitosanitarias, ¿podría ampliar EUA sobre los cambios surgidos conforme la Ley Pública 111-353, sobre los productos "pienso para animales"?*

*Question 30: ¿Qué requisitos deben considerarse para los "piensos para animales que ingresan de otro países"?*

*Question 31: ¿Qué medidas se incluyen cuando se refieren a "las medidas preventivas de control del suministro de piensos para animales"?*

**RESPONSE:** Public Law 111-353 is the Food Safety Modernization Act (FSMA). The Food and Drug Administration (FDA) has not finalized its regulations to implement the requirements of FSMA. The United States has notified to the WTO several FDA proposed regulations to implement FSMA. In response to the comments received, FDA has made changes to the original drafts and has re-opened these for comment. The revised drafts of the rules are available at [www.fda.gov/fsma](http://www.fda.gov/fsma). We suggest reviewing the rule dealing with preventive controls for animal food and foreign supplier verification to obtain insight into the requirements that are being proposed. We encourage stakeholders to file comments on the re-proposals on or before December 15, 2014.

### 3.2.5.2 Comparación de Inversiones Privadas en el extranjero (OPIC)

Página 85

*Question 32: ¿Favor proporcionar información adicional, por ejemplo en que países la OPIC financia o ha financiado proyectos y en qué sectores?*

**RESPONSE:** OPIC is able to consider projects in more than 150 developing and post-conflict countries. A full list of countries where OPIC operates is available at <http://www.opic.gov/doing-business-us/OPIC-policies/where-we-operate>. As a general matter, OPIC activities are not limited to particular sectors. However, OPIC is categorically prohibited from supporting certain types of projects. These prohibitions are listed at: <http://www.opic.gov/doing-business-us/applicant-screener/insurance-eligibility-checklist#1>.

Página 86, párrafo 3.128

*Question 33: ¿Pueden proporcionar información, ejemplos o identificar sectores que se ha considerado tienen prohibición de actuación por la OPIC?*

**RESPONSE:** As noted above, generally OPIC activities are not limited to particular sectors. However, there are types of projects that OPIC will not support. These projects are listed at: <http://www.opic.gov/doing-business-us/applicant-screener/insurance-eligibility-checklist#1> and include:

- Projects that involve conversion or degradation of Critical Forest Areas or related Critical Natural Habitats. "Critical Natural Habitats" means (1) existing internationally recognized protected areas, areas initially recognized as protected

by traditional local communities (e.g., sacred groves), and sites that maintain conditions vital to the viability of protected areas (as determined by the environmental assessment procedure); and (2) sites identified on supplementary lists by authoritative sources identified by OPIC (such sites may include areas recognized by traditional local communities (e.g., sacred groves), areas with known high suitability for biodiversity conservation and sites that are critical for vulnerable, migratory or endangered species; listings are based on systematic evaluations of such factors as species richness, the degree of endemism, rarity, and vulnerability of component species, representativeness and the integrity of ecosystem processes). "Critical Forest Areas" means a type of natural forest that qualifies as Critical Natural Habitat.

- Projects involving the construction of "large dams" that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) displace large numbers of inhabitants (5,000 persons or more) or (F) impact local inhabitants' ability to earn a livelihood.
- Projects involving the commercial manufacturing of ozone-depleting substances (ODS) or the production or use of persistent organic pollutants (POPs) that are banned or scheduled to be phased out of production and use by international agreement during the life of the project. A list of these substances and chemicals can be obtained from OPIC on request. The ODS list is defined by the Montreal Protocol as amended and U.S. implementing regulations. The POPs prohibition refers to twelve products whose ban and phase out are provided for under the Rotterdam Convention of 2004. OPIC's prohibition is consistent with the position of the U.S. government in the negotiations that preceded such convention with respect to the various categories of POPs, which include pesticides, industrial chemicals and unintentional by-products.
- Projects that require resettlement of 5,000 or more persons.
- Projects in or impacting natural World Heritage Sites (areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).
- Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.
- Extraction or infrastructure projects in or impacting: protected area Categories I, II, III, and IV (Strict Nature Reserve/Wilderness Areas and National Parks; Natural Monuments and Habitat/Species Management Areas), as defined by the International Union for the Conservation of Nature. Projects in IUCN Categories V (Protected Landscape/Seascape) and VI (Managed Resource Protected Area) must be consistent with IUCN management objectives.
- Areas protected by the Ramsar Convention are considered within the appropriate IUCN Category to which they are assigned.
- Projects established as a result or in contemplation of reducing or terminating U.S. based operations. Such operations include "runaway plants" as well as outsourcing the provision of goods and services from the United States. Business process outsourcing (BPO), such as software design, customer service and accounting functions, is also included within this prohibition.
- Projects involving gambling; tobacco or related products; alcoholic beverages (if contrary to local religious or cultural norms); media communications of an adult or political nature; or military production or sales.

- **Pharmaceuticals or medical equipment not approved for use by the U.S. Food and Drug Administration or by a public health authority from one of the countries listed under the Drug Export Act of 1986.**

### **3.3.5 Contratación Pública**

#### **3.3.5.2 Procedimientos**

**Página 95, Párrafo 3.174**

*Question 34: ¿El contrato es adjudicado al mejor postor que cumpla las condiciones del contrato. Cuando el Gobierno necesita obtener más información de los proveedores antes de iniciar el proceso de licitación en pliego cerrado, se utiliza un procedimiento de dos etapas. Cuales son esas dos etapas?*

**RESPONSE:** The Federal Acquisition Regulation (FAR) at Subpart 14.5—Two-Step Sealed Bidding, states that the two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. The approach allows the government to develop an adequately descriptive and not overly restrictive statement of the Government's requirements, including an adequate technical data package, so that resulting acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex acquisitions. The Government contracting officer implements this process by completing the following two steps:

- (1) The request for technical proposals (e.g., the engineering approach, special manufacturing processes, and special testing techniques). During this stage, the proposals are evaluated and discussed, if necessary. Pricing is not discussed during this stage.
- (2) The submission of sealed priced bids by those suppliers who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with the sealed bid procedures in FAR Subparts 14.3 and 14.4.

[https://acquisition.gov/far/current/html/Subpart%2014\\_5.html#wp1074586](https://acquisition.gov/far/current/html/Subpart%2014_5.html#wp1074586)

**Párrafo 94, párrafo 3.176**

*Question 35: ¿Podría definirnos el término "Fuentes Prescritas" y cuáles son estas?*

**RESPONSE:** Information on "required sources" including an enumeration of the various types of "required sources" can be found in Part 8 of the Federal Acquisition Regulation ([www.acquisition.gov/far/](http://www.acquisition.gov/far/)). Sections 8.002 through 8.004 provide a general overview. The required sources generally reflect a preference for use of existing government inventory and centralized purchasing programs, as well as use of government programs such as the Federal Prison Industries and programs to purchase from businesses providing employment for the blind or severely disabled.

**Párrafo 95, párrafo 3.179**

*Question 36: ¿En el Sistema de Gestión de Adjudicaciones (SAM) pueden registrarse proveedores extranjeros?*

**RESPONSE:** The System for Award Management (SAM.gov) is open to the public and any supplier, domestic or foreign, seeking to do business with the Federal Government can register. However, the ability of the Federal Government to purchase foreign goods or services is determined by applicable U.S. laws and regulations, consistent with U.S. government procurement obligations under the WTO GPA and FTAs.

### **3.3.5.3 Participación extranjera**

**Página 96, párrafo 3.184**

**Question 37:** ¿Cuáles son los productos admisibles objeto de adquisiciones comprendidas en el alcance del Acuerdo sobre Contratación Pública de la OMC y algunos ALC pertinentes, así como en el caso de los PMAs, que el USTR ha eximido de las disposiciones de la Ley de Promoción de la Compra de Productos Estadounidenses?

**RESPONSE:** Eligible products are those covered by the United States under the WTO GPA and Free Trade Agreements (FAR 25.403(a)). Least Developed Countries end products are eligible products for procurements covered by the United States under the GPA (FAR 25.404).

### 3.3.5.3 Participación extranjera

Página 96, párrafo 3.186

**Question 38:** ¿De qué forma, los países que nos parte del Acuerdo Plurilateral de Contratación Pública, pueden tener acceso a la base de datos sobre Contrataciones públicas abarcadas por Acuerdos Internacionales?

**RESPONSE:** The public will have access to the database to obtain information.

### 4. Políticas Comerciales por Sectores

#### 4.1 Agricultura

##### 4.11 Ley de Agricultura de 2014

###### 4.1.1.1 Panorama General

Página 112, párrafo 4.1

**Question 39:** La nueva ley de Agricultura de 2014, establece que la mayor parte de los programas pueden ejecutarse por un periodo de cinco años, aunque algunos de carácter permanente. Podrían explicar en qué consiste dicha selección de programas y por qué algunos pueden ser permanentes?

**RESPONSE:** Program type does not determine whether authorization is permanent vs. short-term. Congress may choose to authorize programs permanently or for a temporary period. The primary difference between the two is whether a program will continue operating at the end of the Farm Bill period without reauthorization or will require new authorization under a new Farm Bill or other legislation. This difference determines whether a program can be ended simply by not including it in new legislation or whether it must be expressly terminated, suspended, or superseded by new legislation. It may also affect budget availability for new Farm Bills under Congressional budget rules.

#### 4.1.2 Aranceles Agrícolas y Contingentes Arancelarios

Página 131, párrafo 4.65

**Question 40:** Podrían explicar sobre los factores que han influido en la baja utilización de los contingentes?

**RESPONSE:** The fill rates for U.S. tariff-rate quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff quota to another and from year to year. With regards to the 2012 notification, most of the tariff rate quotas with very low fill rates are administered on a first come, first-served basis. For a more detailed indication of the allocation methods for U.S. tariff-rate quotas, the United States would direct Honduras' attention to G/AG/N/USA/2/add.3, dated October 5, 2001.

### 4.2 Servicios

#### 422 Telecomunicaciones

##### 4.2.2.2 Marco Jurídico e Institucional

Página 141, párrafo 4.91

**Question 41:** A que organismos solicita asesoramiento la FCC?

**RESPONSE:** The Department of State, Office of the United States Trade Representative, Department of Defense, Department of Homeland Security, and the Department of Justice.

**4.2.2.3 Medidas de Política**

**Página 144, párrafo 4.97**

*Question 42: Pueden proporcionar los nombres de los países con los que USA tiene intención de negociar Acuerdos de Reconocimiento Mutuo sobre Telecomunicaciones.*

**RESPONSE: The United States supports telecommunication mutual recognition agreements and is open to engagement with any WTO Member that expresses interest.**

**HONG KONG, CHINA***Questions on the Secretariat Report***A. Trade Policy and Practice by Measure****Tariff (Page 50, para. 3.35)**

The Secretariat Report of the last Trade Policy Review on the U.S. in 2012 already pointed out that although the U.S. had implemented other nomenclature changes to the Harmonized Tariff Schedule of the United States (HTSUS) with respect to certain footwear by Presidential Proclamation 8742, such changes have not been notified to the WTO for modification of the U.S.' WTO schedule. The same observation is reported again in this year's Secretariat Report.

*Question 1:*

We would like to know the latest situation and whether the U.S. has any plan to notify the WTO of the modification so as to reflect the changes to its tariff schedule?

**RESPONSE:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the footwear nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The footwear changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm).

Specifically, the full text of the Presidential Proclamation regarding the footwear changes is published in the Federal Register, available at the following website: [http://www.usitc.gov/tariff\\_affairs/hts\\_documents/PP8742.pdf](http://www.usitc.gov/tariff_affairs/hts_documents/PP8742.pdf).

*Import prohibitions, restrictions and licensing (Page 56, para 3.55 and Table 3.6)*

Effective 5 August 2013, consumer products and industrial equipment found not to comply with the energy conservation and labelling standards pursuant to the Energy Policy and Conservation Act of 1975 and its implementing regulations would be refused admission into the US.

*Question 2:*

While we support measures to enhance energy efficiency and improve information for consumers, how would the concerned U.S. authorities ensure that the new regulation will not become trade barriers that impede legitimate trade?

**RESPONSE:** Appliance and equipment efficiency standards have served as one of the most effective U.S. policies for improving energy efficiency and saving consumers energy and money. The goal of the regulation is to implement the mandate of the Energy Policy and Conservation Act of 1975 to refuse admission into the United States of certain consumer products and industrial equipment that do not meet applicable labeling or energy conservation requirements. U.S. Customs and Border Protection (CBP) solicited public comment before the rule was finalized and made changes to facilitate trade. The United States is confident that the regulation is not an unnecessary barrier to trade.

*Anti-dumping and Countervailing Measures (Page 61, para 3.65)*

Note that the U.S. has issued a final rule on the use of market economy input prices in non-market economy (NME) proceedings. Under the new rules, additional parameters must be met, such as threshold, before the Department of Commerce can use market economy input prices in non-market economy investigations.

*Question 3:*

Could the U.S. share with us what is the policy intention behind the change, and whether the new rules would result in higher AD duty rates on goods from NMEs?

**RESPONSE:** The United States revised the threshold applied to the use of market economy input prices in non-market economy proceedings because prior proceedings

**indicated that market economy input prices were not the best available information for valuing all purchases of an input when market economy purchases of the input did not account for substantially all (i.e., 85 percent) purchases of that input. Antidumping duty determinations are based on the specific facts and circumstances that exist in a proceeding; therefore, any impact from the rule change would depend on the specifics of a particular proceeding.**

*The Secretariat Report states that the Department of Commerce in 2014 confirmed that it would not apply the previously withdrawn regulatory provisions governing targeted dumping. In this regard, we note that the relevant Federal Register (i.e. 79 FR 22371 of 22 April 2014) indicates that the Department of Commerce would instead continue to determine whether to apply an alternative comparison method as appropriate based upon the particular facts in each case.*

**Question 4:**

*Could the U.S. share with us what are the current criteria and considerations in its determination of comparison methodology in anti-dumping investigations and reviews?*

**RESPONSE: In investigations and administrative reviews, the U.S. Department of Commerce will calculate margins of dumping by comparing the weighted average of the normal values (NV) with the weighted average of the export prices (EP) (or constructed export prices (CEP)) for comparable merchandise (i.e., the average-to-average method) unless Commerce determines another method is appropriate in a particular case. Commerce may compare NV to EP/CEP on a transaction-to-transaction basis only in unusual situations, such as when there are very few sales of the subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made. In addition, when Commerce finds a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or time periods, and it can explain why these differences cannot be taken into account appropriately by using the average-to-average method, it may calculate margins of dumping by comparing the weighted average of the NV to individual EP/CEP transactions (i.e., the average-to-transaction method).**

**B. Trade Policies by Sector**

**Financial Services (Page 122, para. 4.80)**

*According to the Secretariat report, the Housing Reform and Taxpayer Protection Act was introduced in the Senate in March 2014. The proposed Act would wind down the two giant mortgage-finance agencies, Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp (Freddie Mac), and establish a new system to be regulated by the Federal Mortgage Insurance Corporation (FMIC).*

**Question 5:**

*Please share with us the scope and the details of the Housing Reform and Taxpayer Protection Act, including its latest legislative progress and the expected effective date, if any. What are the responsibilities and authorities of FMIC, and how would it differ from Fannie Mae and Freddie Mac in supporting the mortgage-financing market?*

**RESPONSE: We do not expect the Housing Reform and Taxpayer Protection Act to be enacted in the 113th Congress. To be considered further, legislation would need to be reintroduced in the 114th Congress, which will begin in early January 2015.**

**Telecommunication Services (Pages 124 & 125, para. 4.90)**

*The Federal Communications Commission (FCC) has determined not to apply the 20% limit to the class of common carrier wireless licensees in which foreign investments is held in the licensee through US-organised entities that do not control the licensee. This non-application would be subject to the determination of the FCC that the particular foreign investment is consistent with the public interest, upon the filing of a petition for declaratory ruling by the licensee. The FCC may also attach conditions to a licence or deny a licence if it finds it is in the public interest to do so.*

**Question 6:**

*In determining whether to apply the 20% limit or conditions to the licensees, are there any objective criteria or measurements, like reference to international standards or practices, for the*

*assessment? Are all foreign investors subject to the same assessment criteria? Is there any mechanism for the licensees to lodge an appeal against the decision of the FCC?*

**RESPONSE:** The public interest standard for granting common carrier wireless licenses to companies with foreign ownership that would exceed the limits in the Communications Act has not changed for WTO investors. Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act. FCC actions are subject to the provisions of the Administrative Procedure Act, which provides for the possibility of judicial review.

***Audiovisual Services (Page 135, para. 4.112)***

The FCC streamlined the review of foreign investment in April 2013 by (i) requiring identification of only those foreign investors that would hold equity and/or voting interests greater than 5% (or 10% in certain situations); (ii) considering requests for specific approval for any named foreign investor (even those holding interests below these amounts) to increase its equity and/or voting interest at some future time; and (iii) considering requests for specific approval of any named foreign investor to acquire a controlling interest up to 100% at some future time.

**Question 7:**

*How many licencees with foreign investments have been approved under the streamlined procedures since April 2013, and specifically, how many of them have been granted the specific approval to acquire a controlling interest up to 100% at some future time? Are there any licensees being 100% controlled by foreign investors at present? Has the U.S. any plan to further liberalise audiovisual services, in particular in term of foreign investment?*

**RESPONSE:** Hong Kong, China appears to have misunderstood this part of the Secretariat's report. The April 2013 streamlining of Section 310 licensing only applies with respect to commercial mobile suppliers, not broadcasters.

***Maritime Transport (Page 144, para. 4.147)***

*In order to address port congestion in the medium term, the Port Development Program run by the Maritime Administration (MARAD) would double the cargo-handling capacity in every major U.S. port by 2020.*

**Question 8:**

*More details on the Port Development Program would be appreciated, specifically planned measures to double the cargo-handling capacity. Is the Program supported by public funding or providing incentives for private investments? Can foreign investors participate in the Program?*

**RESPONSE:** Through the Maritime Administration's Deepwater Ports Licensing Program, MARAD has been promoting the transportation of LNG to the United States for several years. To date, twenty Deepwater Port License Applications have been filed for approval. (Eighteen applications were filed for licenses to import liquefied natural gas (LNG) and two applications were filed for licenses to import oil).

**Of the twenty applications, nine have been approved. Currently, there are three existing Deepwater Ports – (two LNG terminals and one oil facility).**

**The Maritime Administration is also currently developing a National Maritime Strategy that will provide recommendations aimed at supporting the growth of the U.S. maritime industry and ensuring the availability of U.S.-flag vessels for the nation's economic and national security. The strategy will address issues such as port infrastructure, U.S. flag vessels, cargo, mariners and other maritime matters.**

For further details on MARAD's Deep Water Port Program, see:  
[http://www.marad.dot.gov/ports\\_landing\\_page/deepwater\\_port\\_licensing/dwp\\_current\\_ports/dwp\\_current\\_ports.htm](http://www.marad.dot.gov/ports_landing_page/deepwater_port_licensing/dwp_current_ports/dwp_current_ports.htm);  
[http://www.marad.dot.gov/ports\\_landing\\_page/deepwater\\_port\\_licensing/dwp\\_vessels\\_mariners/dwp\\_vessels\\_mariners.htm](http://www.marad.dot.gov/ports_landing_page/deepwater_port_licensing/dwp_vessels_mariners/dwp_vessels_mariners.htm).

**INDIA****Questions on the Government Report*****Country Report Para 1.5, Page 4:***

"Robust trade enforcement across the spectrum of goods and services remains 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 challenges facing U.S. workers and businesses, as well as emerging issues that have important implications for the future of the rules-based global trading system. Vigorous work by relevant agencies, including the Departments of Agriculture, Commerce and State, help ensure that the trade 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 remains one of the Administration's strategic priorities."

*Question 1: In the past in the meeting of TRIMS Committee and Subsidies Committee, questions have been raised on the local content requirement in renewable energy schemes being implemented through policies, programs and laws including but not limited to the following:* (i) Washington (RCW 82.16.110 through 82.16.130) and the Washington Administrative Code (WAC 458-20-273); (ii) State of California Self-Generation Incentive Program (SGIP) under the California Public Utilities Code (Sections 360-380), as modified by the Senate Bill 412, and the SGIP Handbook 2013; (iii) Los Angeles Department of Water and Power's (LADWP) Solar Incentive Program implemented by the LADWP under the Solar Photovoltaic Incentive Program Guidelines; (iv) Montana Tax Incentive for Ethanol Production (TIEP) under the Ethanol Tax Incentive and Administration Act of 1983 (Montana Code Annotated 2011, Section 15-70-522); (v) Montana Tax Credit for Biodiesel Blending and Storage under Montana Code Annotated 2011, Section 15-32-703, (vi) Refund for Taxes paid on Biodiesel by Distributor or Retailer under the Montana Code Annotated 2011, Section 15-70-369; (vii) Massachusetts Clean Energy Centre's Commonwealth Solar Hot Water Program; (viii) Michigan: Renewable Energy Credits under the Clean, Renewable, and Efficient Energy Act (Public Act 295); (ix) Commercial Solar Photovoltaic Performance-Based Incentive Program; (x) Austin Energy Residential Solar PV Rebate Program.

*Is the United States undertaking any review of the renewable energy schemes at the Federal and the Sub-federal level to ensure compliance with the local content requirements under TRIMS and the Subsidies Agreement?*

**RESPONSE:** India submitted requests for information from the United States in the TRIMS and Subsidies Committees with respect to the aforementioned programs (see, G/TRIMS/W/117; G/SCM/Q2/USA/59). The United States replied to these questions (see, G/TRIMS/W/129/Rev.1; G/SCM/Q2/USA/61). In the course of drafting answers to India's questions, consultations were held with state officials. Similar consultations regularly occur with state officials.

***Country Report Para 1.5 and 1.6, Page 4:***

"Robust trade enforcement across the spectrum of goods and services remains a central pillar of U.S. trade policy. ....The United States will continue vigilant trade enforcement efforts at the WTO..."

*Question 2: Would the U.S. agree that enforcement of trade rules applies equally to the U.S. fully implementing the DSB recommendations in disputes in which it has been requested to bring its measures in conformity with its obligations under the WTO? In many disputes, despite the lapse of the reasonable period of time, in certain cases exceeding 10 years, the U.S. has not complied with the findings of the Panel/ Appellate Body as adopted by the DSB. These include: U.S. - Shrimp (WT/DS404), U.S. - Section 211 ("Havana Club") (WT/DS176), U.S. - Hot-Rolled Steel from Japan (WT/DS184), U.S. - Continued dumping and subsidy offset act of 2000 - Byrd Amendment (DS217), and U.S. - Measures affecting the cross border supply of gambling and betting services (DS285). Could the U.S. provide more information on when it will be able to comply with those recommendations? Would the U.S. agree that non-compliance with DSB recommendation creates*

*an undesirable precedent and poses a severe risk to the stability of the multilateral trading system?*

**RESPONSE:** The United States has resolved the vast majority of disputes in which the Dispute Settlement Body has issued recommendations with respect to a U.S. measure. For example, in the fourth quarter of 2014, the United States successfully resolved both the Upland Cotton (DS267) and Clove Cigarettes (DS406) disputes. As for the remaining few instances where U.S. efforts have not yet been successful, the United States has been working actively towards resolving such matters. Accordingly, the record shows that the United States has a strong record of support for the WTO dispute settlement system, including through implementation actions and working with other Members to resolve disputes.

#### Questions on the Secretariat Report

##### **Secretariat Report para 2.20, page 30:**

"While the United States continues to conduct the majority of its trade through the MFN regime it has a long tradition of offering unilateral preferences to developing countries and more recently through bilateral or regional reciprocal free-trade agreements. Since the last Review of the United States, imports under reciprocal preferences have grown while unilateral preferential imports have declined as a percentage of total imports. In 2013, reciprocal trade preferences amounted to 18.3% and unilateral trade preferences to 3.3% of total imports"

*Question 3: Why there has been a decline in the imports under unilateral preferences to Developing Countries during the period under review?*

**RESPONSE:** The decrease in total U.S. imports under unilateral preference programs in recent years is attributable to a number of factors, but above all to the decrease in the U.S. demand for, and the international price of, petroleum products. This factor alone accounted for about 85% of the decrease. The second most significant factor was the removal of a number of beneficiary countries from eligibility for U.S. unilateral preference programs following the entry into force of their respective free trade agreements with the United States. For example, Colombia and Peru, which previously received benefits under both GSP and ATPA, and Panama and Costa Rica, which received benefits under both GSP and CBERA/CBTPA, instead received preferential market access in line with the negotiated FTAs. Taken together, these two factors more than accounted for the overall decline in U.S. imports under AGOA, GSP, ATPA, and CBERA/CBTPA between 2008 and 2012 (the last full year in which GSP and ATPA/ATPDEA were authorized).

##### **Secretariat Report Para 3.1.4.2, Page 50:**

"The United States has three different types of tariff pertaining to: MFN rates of duty; special rates of duty for FTAs, non-reciprocal preferences, and special programmes like pharmaceuticals or civil aircraft; and a column for non-MFN duties. While the majority of tariffs are ad valorem (89%), the United States also uses specific and compound duty rates (11%). These are concentrated in agriculture, fish, fuels, textiles, and footwear sectors. The United States assesses duties on an f.o.b. basis."

*Question 4: What are the types of Non Ad valorem Duties charged by U.S. on its imports. What % of tariff lines do these cover?*

*Question 5: What is the plan to convert the Non Ad valorem duties to Ad Valorem duties?*

**RESPONSE:** As indicated in Table 3.2 and Chart 3.3 of the Secretariat's report, there are 1,146 tariff lines with non-ad valorem tariff rates in the HTSUS, which account for 10.9% of U.S. tariff lines. As noted in the Secretariat Report, these non-ad valorem tariff rates comprise specific and compound duty rates.

##### **Secretariat Report Para 3.48, Table 3.4, Page 53:**

"Pursuant to a number of laws or regulations, U.S. Customs and Border Protection (CBP) collects a number of agricultural fees on behalf of the Department of Agriculture...."

*Question 6: Could the U.S. clarify whether the agricultural fees collected by CBP is in the nature of border adjustments or in lieu of services rendered in connection with importation?*

**RESPONSE:** The agricultural fees collected by CBP are for services rendered in connection with importation. APHIS used information from the CBP ABC model, which has been in existence for more than 10 years, to determine the safeguarding activities' costs. The CBP activity set includes inspection of shipments and monitoring compliance.

*Question 7: Could the U.S. clarify the reason for using different units for calculation of assessments payable vis-a-vis domestic [7 CFR §1260.172 (a)(2)] and imported [7 CFR §1260.172 (b)(2)] beef and beef products? Taking the units for calculation of assessment payable to be same for both domestic and imported beef and beef products (that is either on per head or per kg basis), could the U.S. then clarify the comparable assessment payable by domestic and imported beef and beef products under 7 CFR §1260.172?*

**RESPONSE:** The rate of the assessment on imported beef and beef products is based on the mandatory US\$1 per head assessment collected on each sales transaction of domestic cattle in the United States as provided under the Beef Promotion and Research Act (Act). The Act requires that assessments be collected on both domestic and imported live cattle and on imported beef and beef products. The U.S. Customs and Border Protection collects the assessments on imported cattle, and imported beef and beef products. The assessment on imported beef and beef products is determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principal factor in calculating live animal equivalents. USDA looks at total imported beef and veal production on a carcass weight equivalent to identify the top 10 countries exporting to the United States. These countries account for more than 99% of U.S. beef and veal imports. USDA then calculates the average carcass weight of cattle slaughtered in each country by dividing total beef production by the total number of cattle slaughtered. Based on USDA calculations, the average carcass weight of these 10 exporting countries is approximately 592 pounds. In 2013, approximately, US\$5.7 million in assessments were collected on imported live cattle and imported beef and beef products.

*Question 8: Could the U.S. clarify the assessment rate for imported pork and pork products as established by the Board and approved by the Secretary under 7CFR §1230.71 (e)? Could the U.S. clarify the units utilized for calculation of assessments payable to domestic pork and pork products [7 CFR §1230.71]? Taking the units for calculation of assessment payable to be same for both domestic and imported pork and pork products (for instance on per pound basis), could the U.S. then clarify the comparable assessment payable by domestic and imported pork and pork products under 7 CFR §1230.71?*

**RESPONSE:** The rate of the assessment on imported pork and pork products is based on mandatory assessment of US\$0.40 of US\$100 market value of all pigs sold in the United States, as well as an equivalent amount on imported pigs, pork, and pork as provided under the Pork Promotion, Research and Information Act (Act). The U.S. Customs and Border Protection collects the assessments on imported live hogs, and imported pork and pork. The Act requires that assessments be collected on both domestic and imported live hogs and on imported pork and pork products. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors. These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the non-pork components of pork products. The carcass weight equivalent is converted to a live animal equivalent weight for the assessment by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. The equivalent value is multiplied by the applicable assessment rate of 0.40% due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

*Question 9: Could the U.S. clarify the method for calculation of assessment payable in respect of imported and domestically produced dairy products? Further, using the methodology applicable for*

*imported dairy products, could the U.S. indicate the corresponding assessment payable for domestic dairy products?*

**RESPONSE:** Domestic dairy producers pay a mandatory assessment of 15 cents per hundredweight of milk produced and marketed commercially. A 2011 Final Rule amended the Dairy Promotion and Research Order to establish a dairy import assessment program as required by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Importers of dairy products pay a mandatory assessment rate of 7.5 cents per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. Since the mandatory 7.5-cents assessment is per one hundred pounds of milk, the final rule applied a standard rate of assessment per unit of milk solids. On average, during the period of January 2006 through December 2007, a hundredweight of U.S. producer milk contained 12.45 pounds of milk solids (3.68% butterfat and 8.77% nonfat milk solids). Since the assessment rate stated in the 2008 Farm Bill is 7.5 cents per hundredweight of milk or its equivalent, the final rule established the assessment rate per volume of imported milk solids as volume of imported milk solids as US\$0.00602 per pound (US\$0.075/12.45 pounds) or US\$0.01327 per kg (1 kg = 2.204623 pounds). This rate is applied to the cow's milk solids content for imported dairy products.

*Question 10: Could the U.S. clarify whether in respect of domestic dairy products the assessment is undertaken on the basis of milk solid content? If yes, could the assessment rate for domestic dairy products on the basis of milk solid content be indicated? If no, then would the U.S. agree that this discriminating parameter of calculating assessment payable under 7 CFR §1150.152 violates its national treatment obligation under Article III of GATT?*

**RESPONSE:** The domestic assessment is not based on milk solids content. However, if converted to the equivalent assessment on the basis of milk solids content, the assessment rate for domestic dairy products would be twice as high as the assessment rate for imported milk solids. U.S. producers pay the equivalent of US\$.012 per pound of milk solids whereas the assessment rate per volume of imported milk solids is US\$0.00602 per pound of milk solids. In other words, the assessment on importers is equivalent to approximately one-half the payment domestic dairy farmers are required to remit.

*Question 11: Could the U.S. clarify the reason for using additional assessment rate of US\$0.01327 per kg of milk solids for calculation of assessments payable in case of imported dairy products under 7 CFR §1150.152 (b)(1)?*

**RESPONSE:** See answer to question 9.

*Question 12: According to 7 CFR §1207.510 (2), no assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes. Could the U.S. clarify how this is not in violation of its national treatment obligation under Article III of GATT?*

**RESPONSE:** The potato Research and Promotion (R&P) program is national in scope and funded by domestic and imported assessments. The potato R&P program, implemented in 1972, is administered under the Potato Research and Promotion Plan (Plan) (7 CFR part 1207). The Plan is authorized under the Potato Research and Promotion Act (Act)(7 U.S.C. 2611 -2627).

The Act defines the term "producer" as "any person engaged in the growing of five or more acres of potatoes," while it defines "importer" as "any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans or seed potatoes into the United States" The Act also defines "handler" as "any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes in a manner specified in a plan issued pursuant to this chapter or in the rules and regulations issued thereunder."(7 U.S.C. 2612). These terms are also defined in the Plan.

**Section 1207.342 of the Plan, states "[t]he funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers."** Section 1207.512, designated handler, states "[t]he assessment of each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth." Section 1207.513 (b), Payment of assessments, states "[t]he designated handler is responsible for payment of the assessment on domestically produced potatoes. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment."

*Secretariat Report 3.58, Table 3.7, Page 58:*

*Question 13: Could the U.S. clarify how much time (average, maximum and minimum) is taken to grant the import licenses for steel under 78 FR 11090? Could the U.S. also state the number of such licenses issued since 2005?*

**RESPONSE: Applications for U.S. steel licenses require an estimated ten minutes to complete. It takes seconds for the system to automatically process. Because they are automatically generated, a completed license form with a license number is shown on the screen immediately (for printing) and a confirmation email is generated and sent automatically. Since 2005, there have been more than 3 million licenses generated.**

*Secretariat Report 3.66, Page 61:*

*"The United States had 294 anti-dumping and countervailing measures in place at the end of 2013, an increase of 18% since 2010. There was a general increase in the use of anti-dumping and countervailing duties on emerging markets during 2010-14, while remedies with respect to developed countries decreased. China was the country mainly affected, accounting for over 40% of all orders in 2013. The Republic of Korea and Chinese Taipei were also slightly more impacted during the period, whereas EU countries, Japan, and Brazil all had slightly lower levels of remedies applied"*

*Question 14: In respect of the 294 AD and CVD measures in force at the end of 2013, could the U.S. indicate the number of measures which have been in force for more than (i) 5 years; (ii) 10 years; and (iii) 20 years?*

**RESPONSE: The United States does not organize its statistics regarding antidumping duty or countervailing duty investigations in the form Turkey is requesting. However, the dates on which antidumping and countervailing duty orders entered into force can be found at: <http://www.usitc.gov/documents/orders.xls>.**

*Question 15: Could the U.S. provide the reasons behind increasing antidumping and countervailing measures from 2010.*

**RESPONSE: The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether such dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by those imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.**

*Secretariat Report para 3.1.7.2, page 65:*

*"While the number of reviews has varied over the last eight years, there has been a significant trend with fewer orders being revoked. In 2007-8, approximately half of all orders were revoked, whereas in 2013-14, about 90% of reviews resulted in the continuation of the remedy (Chart 3.8)"*

*Question 16: From the chart 3.8 giving overview of sunset reviews of Anti-dumping and Countervailing Measures conducted by the U.S. during 2007 to 2014, there is an increasing trend of continuation of Anti-dumping and CVD Measures from the year 2009 onwards. In 2013-14 about 90% reviews resulted in the continuation of the remedy. In the case of India, there are 4 Anti-dumping measures which continue for a period ranging from 19 years to 28 years. Could the U.S. inform the reasons for prolonged continuation of Anti-dumping measures? Whether U.S. domestic industry has not been protected for unreasonably long period?*

**RESPONSE:** The United States disagrees with India's characterization as to why antidumping and countervailing measures are imposed. The United States administers its trade remedy laws in accordance with applicable WTO agreements. In a sunset review, when 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 U.S. International Trade Commission considers the factors set out in U.S. law at 19 U.S.C. § 1675a(a). 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 U.S. Department of Commerce considers the factors set out in U.S. law at 19 U.S.C. §§1675a(b) and (c). The determinations in each sunset review are case-specific. The results for all sunset reviews can be found on the USITC's website (<http://pubapps2.usitc.gov/sunset/>). From this website India can obtain, on a case-by-case basis, information about the rationale for either the continuation or termination of a countervailing duty or an antidumping duty order.

*Secretariat Report 3.2.3, Table 3.9, Page 72:*

*Question 17: Can the United States provide information on the number of cases in which the Secretary has refused to provide inspection to a new slaughtering house under §603 (b)?*

**RESPONSE: As of December 11, 2014, FSIS has refused to provide inspection to a slaughter establishment under §603 (b) a total of 68 times.**

*Question 18: What is the number of cases wherein the condition of obtaining a certificate for export to a particular country was waived by the Secretary in exercise of his discretion under §614?*

**RESPONSE: The Secretary has not used his discretion and waived the requirements under §614 to export product without a certificate.**

*Question 19: What are the considerations taken into account by the Secretary while deciding to waive the requirement of a certificate for export under the above provision?*

**RESPONSE: As noted in the previous question and response, the Secretary has not waived requirements for the issuance of an export certificate so there has been no occasion to take into account such considerations.**

*Secretariat Report 3.2.3, Table 3.9, Page 72:*

*Question 20: What are the considerations taken into account for taking a measure in furtherance of the aim of 'public health', 'health of the consumers' and 'public interest' under §1031?*

**RESPONSE: The key considerations for the adoption of measures prescribed in 21 USC 1031 are that the policies implemented are based on science/evidence to ensure safe, wholesome, otherwise not adulterated, and properly labeled and packaged eggs and egg products are distributed in commerce for human consumption.**

*Question 21: When can a Secretary undertake reinspection under §1034 on the grounds of being necessary of eggs and egg products capable of use as human food in each official plant?*

**RESPONSE: Imported eggs and egg products capable of use as human food are subject to FSIS reinspection to ensure they are safe, wholesome, accurately labeled, and not adulterated.**

*Question 22: If egg products inspected at any official plant were not found to be adulterated, then under what circumstances can the Secretary mandate that such products may not be pasteurized under §1036?*

**RESPONSE: Egg products must first be pasteurized and then found to be not adulterated before they may leave an official plant and enter into commerce. Nonpasteurized egg products may leave an official plant only if they bear labeling indicating that the products are for further processing in an official plant. They may not be released into consuming channels until they have been subjected to pasteurization, heat treatment, or other approved methods of treatment (9 CFR 590.415).**

***Secretariat Report 3.2.3, Page 72:***

*"The United States imposes restrictions, licensing requirements, additional controls and prohibitions on a variety of exports for national security and foreign policy reasons. The exporter may have to identify additional factors such as the country of destination, end-use, and\foreign person or firm, depending upon the relevant requirements. The categories of items subject to controls were not changed during the review period (Table 3.9)."*

*Question 23: From Table no. 3.9 under product category it is shown that 1) Agriculture Risk Products and 2) High value and value added agricultural products are subject to export restriction, control and licensing. Could the U.S. please provide detailed information about the reasons for export restrictions, controls, or licensing of these products and the method of control? What are the alternate ways to achieve the appropriate level of protection and whether the measure applied for export prohibition is the least trade restrictive amongst them?*

**RESPONSE: The table erroneously includes programs under the Department of Agriculture as export restrictions. All of these programs pertain to programs applicable to domestic producers as well as importers in the areas of food safety, organic certification, and marketing orders.**

***Secretariat Report 3.2.4.2, Page 76-78:***

*"In May 2014, the Administration launched NEI/NEXT as the successor of the NEI. It builds on the principles of the NEI and lessons learned from NEI customer surveys, and provides a strategic framework to continue export growth. There are five main points: connect more U.S. businesses to global customers, streamline U.S. export services and processes, expand access to finance, promote exports and FDI, and help developing economies improve their business environment to open new markets. NEI/NEXT is a long-term project to help U.S. companies reach their export potential and create and support American jobs."*

*Question 24: Could the U.S. please clarify which U.S. government agencies are involved in expanding access to finance, promoting exports and FDI under NEI and its successor NEI/NEXT projects?*

**RESPONSE: NEI and NEI/NEXT are whole-of-government efforts. Agencies include: Department of Homeland Security, Department of Commerce, Department of Energy, Department of Labor, Department of Transportation, the Export-Import Bank, the Small Business Administration, Department of State, the U.S. Agency for International Development, Department of Agriculture, the Office of the U.S. Trade Representative, and the U.S. Trade and Development Agency.**

*Question 25: Could the U.S. please clarify if the export finance under NEI and its successor NEI/NEXT is contingent upon use of local content? What are local content and foreign content requirements under these projects?*

**RESPONSE: There are no domestic content requirements for export financing. Ex-Im Bank's Congressional and legal requirements do stipulate that the purpose of the financing Ex-Im provides is to support U.S. jobs. To meet this mandate, Ex-Im's financing covers the U.S. value and other amounts (such as local costs)**

**necessary to maintain U.S. exporter competitiveness. Hence, Ex-Im Bank does not impose any requirement over the use of domestic over imported goods; it simply limits its support to the U.S. portion and other eligible amounts.**

**Secretariat Report 3.2.5.1, Page 76-78:**

Question 26: (a) Could the U.S. please clarify whether all lending programs of Ex-Im Bank are self-financed in the sense that its fees and services charged cover its operating costs? (b) If not, whether there is cross-subsidization to cover its operating costs between lending programs? (c) Which sector benefits the most from its lending programs and lending to which sector is most profitable for the Ex-Im Bank? (d) Whether the Ex-Im Bank lending is heavily concentrated in one sector? (e) Whether U.S. provides federal budget support to Exim Bank for its operations?

**RESPONSE: Yes, all programs are self-financed. The small business sector benefits the most from the Bank's programs as most SME financing does not come from private banks, but rather internally generated funds, supplemented by borrowings from family and friends, as well as informal sources, or moneylenders. The long term project finance transactions are the most profitable. Below is a list of major industrial sectors in terms of exposure. The U.S. does not provide federal budget support to the Ex-Im Bank for its operations.**

SECTOR	FY 2014 (in millions)
Air transportation	US\$50,668.7
Manufacturing (other)	US\$19,960.7
Oil and Gas	US\$16,381.2
Power Projects	US\$7,325.3
All Other	US\$17,671.9
Total	US\$112,007.8

Question 27: (a) Can the U.S. please confirm whether the Exim Bank Annual Report 2013 states that as of September 30, 2012 the re-estimate of the credit loss of the outstanding balances of FY1992 through FY2012 commitments indicated that a net of US\$577.3 million of additional funds were needed in the financing accounts, mostly to cover funding costs on direct loans, which had exceeded original budget estimates? (b) In view of these facts in the Annual Report of Exim Bank, can the U.S. please clarify whether the long term export credit and credit guarantee programmes of Exim Bank covered its long term operating costs?

**RESPONSE: In any given year, necessary reserves go up or down. Since 1992, Ex-Im has sent a net of US\$11 billion to Treasury in excess reserves.**

Question 28: (a) Whether Exim Bank's short term - loans, guarantee and Insurance programs are profitable and these operations are sufficient to cover Ex-Im Bank's long term operating costs? (b) If these do not cover the long term operating costs, whether these programs can not be construed as prohibited export subsidies covered under item (j) of Annex I of ASCM?

**RESPONSE: Yes, fees are sufficient to cover operating costs.**

Question 29: Can the U.S. please clarify whether in case of loan guarantees given by Exim Bank, is it the designated lender or the borrower who bears the costs of fees and services charged?

**RESPONSE: The borrower bears the cost of fees. U.S. Ex-Im charges fees in compliance with the OECD's "Arrangement on Officially Supported Export Credits."**

Question 30: (a) Can the U.S. please elaborate on the provisions made by the Exim Bank for pre-emptive losses and current allowances for outstanding losses? (b) Whether they are enough to cover its long term operating costs? (c) What is the accounting methodology to calculate loss reserves and whether it takes into account systematic market risks? (d) Can the U.S. please confirm whether the Government Accountability Office (GAO) in its 2013 report measured internal performance of Exim Bank and made observations regarding improvements to the loss estimation model as the current practices may not assess appropriately the loss rates, credit subsidy cost estimates? (e) Can the U.S. please clarify whether in the above GAO Report it was noted that the Ex-Im Bank report on the 2012 changes to the loss model showed that there was increase in the

*percentage of defaulted transaction for loan guarantee from 14% to 19% and for insurance transaction from 11% to 14%?*

**RESPONSE:** The Ex-Im Bank sets aside reserves for expected losses for the life of all the transactions, which are reviewed annually for any changes. These reserves are sufficient to cover all costs associated with these programs. The Ex-Im Bank uses GAAP for federal agencies. The Ex-Im Bank has implemented all GAO recommendations from its 2013 report and those recommendations are closed. As stated in the GAO report, the Ex-Im Bank excluded certain transactions to improve the model's predictive ability. As the denominator in the model decreased, and the numerator stayed essentially unchanged, the percent increased as noted in the report. From a dollar perspective, the improvements had a small impact.

*Question 31: (a) Whether Small Business Administration (SBA) is also an agency tasked with export promotion? (b) Can the U.S. please clarify whether the Government guaranteed export loan from a lender participating with SBA or Exim Bank can increase the borrowing base against total collateral value? (c) Does the Government guarantee confer a benefit to the borrower as the loan provided coupled with the Government guarantee is on terms more advantageous than those that would have been available to the borrower on the market? (d) Further, can the U.S. please clarify whether such provision of Government guarantee which is linked to export performance cannot be construed as prohibited export subsidy as per ASCM? (e) Please clarify if the Ex-Im Bank required additional funds over original budget estimates to cover credit loss of outstanding balances?*

**RESPONSE:**

- (a) Yes, SBA is tasked with export promotion.
- (b) Yes, the guaranty typically allows for the lender to provide a higher advance on collateral; however, as discussed further below, a fee must be paid for the guaranty, which generally results in a total cost to the borrower that is higher than non-guaranteed conventional loans.
- (c) No, the government guarantee does not provide a benefit because a guaranty fee is charged on the loan, which passes through to the borrower. Consequently, the borrower often faces higher costs than if the loan had been done conventionally.
- (d) Since the total cost to the exporter for such financing is generally higher than for non-guaranteed conventional loans, there is no benefit.
- (e) Over 20 years, the fees the Ex-Im Bank have charged have been in excess of net claims and administrative expense. The Ex-Im Bank has required **no** additional funds over original budget estimates because there was no net credit loss in the program.

*Secretariat Report 3.2.5.1, Page 76-78:*

*Question 32: Can the U.S. please clarify in terms of risks, whether the Ex-Im bank takes into account the prevailing market risks while determining the rate of interest for direct loans, guarantees and insurance?*

**RESPONSE:** The Ex-Im Bank looks to the rates prescribed in the terms of the OECD's "Arrangement on Officially Supported Export Credits" when setting interest rates and charging fees.

*Question 33: (a) Can the U.S. please clarify whether the Ex-Im Bank guarantee program benefits the borrower from increased borrowing rate and generous advance? (b) Whether such government backed guarantee confer a financial contribution to the borrower within the meaning of Article I ASCM?*

**RESPONSE:** The fees applied in Ex-Im Bank guarantee transactions comply with the terms of the OECD's "Arrangement on Officially Supported Export Credits" and cover all operating costs, consistent with item (j) of the Illustrative List of the ASCM.

*Question 34: As per the Tables in Annual Report for FY2013 for long-term loans and guarantees authorization, the following reasons were identified as the primary purpose for seeking Ex-Im Bank support:*

- To assume commercial or political risks that exporter or private financially institution are unwilling or unable to undertake;

- To overcome maturity or other limitation in private sector export financing;
- To meet competition from a foreign, officially sponsored export-credit agency.

*Can the U.S. please provide details of the overall budget allocated for the last five years to Exim Bank for counteracting competitive disadvantages from foreign export credit agencies?*

**RESPONSE: There is no program budget allocation for the Ex-Im Bank for counteracting competitive disadvantages from foreign ECAs.**

*Secretariat Report 3.2.4.3, Page 77:*

*Question 35: For the Dairy Export Initiative Program "which allows exporters to sell certain U.S. dairy products in foreign markets at prices lower than the exporter's cost of acquiring them", (CRS Report, 2013) could the U.S. clarify whether through this program the U.S. government is not encouraging dumping of U.S. dairy products in the foreign markets?*

**RESPONSE: Please see 2.1.1.2.6, subparagraph 4.27, page 109 of the Secretariat Report.**

*Secretariat Report 3.3.2, Page 80:*

"3.139. The latest subsidies notification to the WTO on federal and sub-federal programmes, submitted in May 2014, contained statistical information up to 2012. The magnitude of government assistance has decreased since the previous review (Table 3.15).

"3.140. In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients."

*Question 36: In the U.S. Subsidies Notification to the WTO under the sub-federal level programmes for the state of Massachusetts (Page 178 of U.S. Subsidies Notification) there is a programme The Commonwealth Solar II Rebate Program II of the state of Massachusetts. Can the U.S. please clarify what is the eligibility criteria for various commercial, industrial and other applicants to be eligible to avail the rebates under this programme? Whether there is any criteria to use domestically produced goods as a condition to avail the rebates under this programme?*

**RESPONSE: Eligibility criteria are provided in the United States' notification. As noted above, India submitted a request for information from the United States in the Subsidies Committees with respect to the aforementioned program (see, G/SCM/Q2/USA/59). The United States replied to these questions (see, G/SCM/Q2/USA/61).**

*Secretariat Report 3.142, Page 81:*

*Question 37: How does the U.S. ascertain that the public works eligible for recovery funds under ARRA, 2009 are solely for government purposes and not for commercial sale or resale?*

**RESPONSE: ARRA provided funding for various Federal Government activities and programs, including numerous programs providing Federal financial assistance. The implementing regulations for Federal procurements using ARRA funds defined "public building or public work" as "a building or work to serve the interest of the general public". FAR §25.601. The regulations governing the use of Federal assistance funds provided under ARRA define "public building and public work" as being of a governmental entity. 2 CFR §176.140 (a)(2). The various Federal activities and programs that received ARRA funding impose additional criteria on the use of those funds that would address the use of the public building or public works for which funding was provided.**

*Question 38: Could the U.S. confirm that for each and every public work implemented in furtherance of ARRA, 2009 recovery funding, no toll/fee or charges of similar nature are being levied for the use of said public works?*

**RESPONSE: ARRA provided funding for various Federal Government activities and programs, including numerous programs providing Federal financial assistance. The various Federal activities and programs that received ARRA funding impose additional criteria on the use of those funds that would address the use of the public works for which funding was provided. Any information would be anecdotal to a specific program.**

*Secretariat Report para 3.143, page 81:*

*"Trade Adjustment Assistance (TAA) continues to be an important aspect of U.S. trade policy, helping firms and workers adjust to trade liberalization. In 2011, the President signed an extension of the worker, firm, and farmer programmes until 31 December 2014."*

*Question 39: U.S. is requested to provide details about Trade Adjustment Assistance. What would be future course of action (in place of TAA), as it is valid till 31st December, 2014?*

**RESPONSE:** Please see the U.S. Department of Labor's website for detailed information on the Trade Adjustment Assistance (TAA) program (<http://www.dolleta.gov/tradeact/>). Regarding the expiration of the TAA program, Congress may choose to extend the authorization period of the TAA. If Congress does not extend the authorization period, or take other action through appropriations or authorization legislation, the program will begin to phase out on January 1, 2015. Under such a scenario, only workers who were included in groups certified as eligible to apply for TAA and adversely affected on or before December 31, 2014, or in the case of ATAA and RTAA have begun receiving payments as of December 31, 2014, will receive benefits after January 1, 2015. No new groups will be certified and no workers in a certified group adversely affected after December 31, 2014 will receive benefits.

**Secretariat Report 3.166, Page 85:**

*"For fiscal year 2012, U.S. spending on federal procurement contracts amounted to US\$517 billion, approximately 14% of 2012 federal government expenditures."*

*Question 40: Out of the amount of US\$517 bn., could the U.S. provide details of the value of procurement made from suppliers outside the U.S. and the countries from which these procurements were made? Could the U.S. also indicate the amount of procurement made at the sub-federal level during 2011 and 2012, which are covered by obligations under the GPA?*

**RESPONSE:** As indicated in Paragraph 3.186, the United States is overhauling its database of procurements covered under international agreements. Once finalized the public will have access to the database to obtain information. Statistics on the procurement conducted by the 37 states covered by U.S. commitments under the GPA are included in the statistics that the United States submits to the WTO Committee on Government Procurement.

*Question 41: Out of the amount of US\$517 bn. could the U.S. indicate the value of procurement through limited tendering on grounds of protection of exclusive rights and additional purchases from original suppliers? Could the U.S. further indicate the percentage of these procurements made from foreign suppliers?*

**RESPONSE:** As indicated in Paragraph 3.186, the United States is overhauling its database of procurement covered under international agreements. Once finalized the public will have access to the database to obtain information, including information on limited tendering procurements the United States covers under the GPA.

*Question 42: Out of the amount of US\$517 bn. could the U.S. indicate the value of procurement of IT Services during 2011 and 2012? Could the U.S. further indicate the percentage of these procurements made from foreign suppliers?*

**RESPONSE:** As indicated in Paragraph 3.186, the United States is overhauling its database of procurements covered under international agreements. Once finalized the public will have access to the database to obtain information. The database will allow the public to search for information on the value of procurements of goods and services, including IT services, the United States covers under the GPA.

**Secretariat Report 3.177, Page 86:**

*Question 43: Could the U.S. state the value of procurement made from the designated groups in which the value of the contract was above the threshold of U.S. obligations under the GPA?*

**RESPONSE:** The Small Business Goaling report for Fiscal Year 2013 is available online: [https://www.fpdsgov/downloads/top\\_requests/FPDSNG\\_SB\\_Goaling\\_FY\\_2013.pdf](https://www.fpdsgov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2013.pdf).

Prior year small business reports are available online at: [https://www.fpds.gov/fpdsg\\_cms/index.php/en/reports/63-small-business-goaling-report.html](https://www.fpds.gov/fpdsg_cms/index.php/en/reports/63-small-business-goaling-report.html).

The goaling report includes contracts with an estimated value of US\$3,000 or more and modifications to those contracts.

*Secretariat Report para 3.184, page 87:*

*Question 44: Which all products have been waived by USTR from "Buy American Act" requirement in acquisitions covered under the WTO Government Procurement Agreement?*

**RESPONSE:** The Buy American Act applies to all goods procured by the U.S. Federal government. The Buy American Act is waived for eligible products in acquisitions covered by the WTO Government Procurement Agreement and some relevant free trade agreements (FTA). Information on the United States coverage schedule under the revised GPA can be located on the WTO webpage: [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_app\\_agree\\_e.htm#revisedGPA](http://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm#revisedGPA).

Information on the United States coverage schedule under Free Trade Agreements can be found on the webpage of the Office of the U.S. Trade Representative: <https://ustr.gov/issue-areas/government-procurement/ftas-government-procurement-obligations>.

*Secretariat Report 3.200, Page 94:*

*Question 45: Could the U.S. state the number of compulsory licenses issued till date under 28 USC §1498, under the Clean Air Act (42 USC §7608) and as a remedy to anticompetitive practices under the Sherman Act, separately? Could the U.S. further specify the products for which the compulsory licenses have been issued? Could the U.S. also clarify the grounds on which such compulsory licenses have been issued?*

**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.

*Question 46: Could the U.S. state the number of compulsory licenses issued for government use out of the total compulsory licenses issued?*

**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 right holder 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.

*Question 47: Could the U.S. elucidate whether any assessment has been undertaken to ascertain the impact of compulsory licenses being issued on the research and development expenditure of patent holders?*

**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 right holder 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.

*Secretariat Report 3.222, Page 100:*

*Question 48: The Panel in U.S. Section 301 was clear in its reasoning when it stated that Members faced with even a threat of unilateral action, especially when it emanates from an economically powerful Member, may in effect be forced to give in to the demands imposed by the Member exerting the threat, even before DSU procedures have been activated. Could the US, then, confirm that without recourse to the multilateral trading system it shall not identify any WTO member country as priority foreign country pursuant to Sections 181 and 182 of the Trade Act of 1974 as a Priority Foreign Country classification would be a unilateral determination inconsistent with the provisions of Article 23 of the DSU?*

**RESPONSE:** In its report, the panel in U.S. – Sections 301–310 of the Trade Act of 1974 (DS152) determined that Sections 304, 305, and 306 of the Trade Act of 1974 were not inconsistent with the obligations of the United States, including the obligations under Article 23 of the DSU.

*Secretariat Report 4.3, Page 102:*

*Question 49: Could U.S. explain the reasons for eliminating CCP and direct payment?*

**RESPONSE:** The 2014 Farm Bill emphasizes farmers' participation in crop insurance programs. The Farm Bill terminated the Direct and Counter-cyclical Payment program.

*Secretariat Report 4.4, Page 102:*

"In the PLC programme, deficiency payments are provided when commodity prices fall below the statutory "reference prices". The PLC payments are coupled to current prices, but decoupled from actual production, to the extent that payments are based on historical yields and a percentage of historical planted acres (base acres)..."

*Question 50: PLC programme is similar to CCP programme in terms of nature of support. It is requested to explain the reasons for elimination of Counter-cyclical payments. Why the upland cotton is not covered under PLC?*

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

**Under the 2014 Farm Bill, upland cotton is not covered under the PLC or ARC programs and is instead eligible for the new Stocked Income Protection Plan (STAX) program which provides an additional insurance option for upland cotton producers only.**

*Secretariat Report 4.14, Page 106:*

*Question 51: Considering PLC is only for wheat, feed grains, rice, oilseeds, peanuts and pulses; could the U.S. confirm that the domestic support given under PLC will be notified as product specific and not as non-product specific under the amber box?*

*Secretariat Report 4.17, Page 107:*

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.

*Question 52: Could the U.S. clarify whether the domestic support given under ARC will be notified as product specific or as non-product specific under the amber box and the reasons thereof?*

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.

**Secretariat Report 4.18, Page 107:**

"The ARC scheme is revenue-based. The programme guarantees a portion of a producer's revenue loss relative to a target (benchmark) revenue from covered commodities"..... "Farmers are given a choice between a revenue guarantee that is determined at farm-level (individual ARC) or at county level"

*Question 53: What is the difference between ARC at county level and individual level?*

**RESPONSE:** The Agriculture Risk Coverage (ARC) program is a new revenue-based program that makes payments to producers when revenue drops below a percentage of the "benchmark" revenue. The ARC program bases payments on 85% of historical "base" acres. Producers may choose county-based or individual coverage.

- **County-based Coverage**

For producers choosing county-based ARC, payments are provided to producers with historical "base" acres when county crop revenue (actual average county yield times national farm price) drops below 86% of the county benchmark revenue (5-year Olympic average county yield times 5-year Olympic average of national price or the loan rate—whichever is higher for each year). For each covered commodity enrolled on the farm, the county ARC payment amount is the difference between the per-acre guarantee (as calculated above) and actual per-acre revenue, times 85% of base acres of the commodity.

- **Individual Coverage**

For producers choosing individual ARC coverage, payments are based on the difference between an individual farm guarantee and actual individual farm revenues. The farm's individual ARC guarantee equals 86% of the farm's individual benchmark guarantee, defined as the ARC guarantee price (the 5-year Olympic average of national price or the loan rate—whichever is higher for each year) times the 5-year Olympic average individual yield, summing across all crops on the farm and weighting by plantings. The payment amount is the individual farm payment rate (the difference between the individual farm guarantee and actual individual farm revenue, but no greater than 10% of the farm's benchmark revenue) times 65% of base acres for all covered commodities for the individual farm.

*Also what are the similarities between ACRE and ARC?*

**RESPONSE:** ACRE and ARC are both revenue-based programs, and both programs make payments based on historical base acres.

**Secretariat Report 4.57, Page 115:**

"The Federal crop insurance programme is permanently authorized under the Federal Crop Insurance Act of 1980, as amended, inter alia, by subsequent Farm Bills. The new Farm Bill retains the federal crop insurance programme, albeit with a number of amendments and increased spending for subsidized crop insurance. Most of the increase is due to two new insurance plans: for cotton (Stacked Income Protection Plan for producers of upland cotton), and for other crops (Supplemental Coverage Option). New insurance plans will also be made available for peanuts (peanut revenue insurance) and bio-energy crops, amongst others"

*Question 54: How much is the premium subsidy (percentage) under the Federal crop insurance programme, STA, SCO and peanut revenue insurance? Why a new insurance programme for cotton and peanut is introduced under 2014 bill? How the premium subsidy under different insurance programme will be treated under WTO provisions related to domestic support to agriculture sector?*

**RESPONSE:** The premium subsidy for Stacked Income Protection (STAX) is 80 percent. The Supplemental Coverage Option (SCO) subsidy is 65 percent. The new Peanut Revenue plan of insurance has the same subsidy level as other Federal reinsured plans of insurance and is dependent on the coverage level chosen by producers.

The new insurance program for cotton producers was developed as an alternative to the commodity programs for other commodities. The new Peanut Revenue plan of insurance was developed as a result of peanuts not previously being eligible for crop insurance and is consistent with current Federal reinsured plans of insurance for other commodities such as corn, soybeans, rice, barley and cotton.

The SCO and STAX insurance programs will not be available before the 2015 crop year and thus have not yet been fully implemented. The United States will determine how they will be notified after they are fully in place.

---

## ADDITIONAL QUESTIONS FROM INDIA

**(Secretariat Report)**

---

**Secretariat Report Para 1.32, Page 20**

"Services imports are as diversified as exports. Transport, travel, and insurance services are the main categories. While the United States is a net exporter in the major services categories, its balance continues to be negative in transport, communication, and computer and information services."

**Question 1:** The U.S. GATS commitments put no limitations ('None' entry) for Mode 1, 2 and 3 of Computer and related services. However, the Ohio state Governor issued an Executive Order on June 21, 2011 governing the expenditure of public funds for offshore services. According to this Order, no state cabinet agency, Board or Commission (Executive agency) shall enter into any contract, which uses any public funds within its control to purchase services, which will be provided outside the United States. The U.S. is requested to clarify how this Executive Order is consistent with its GATS commitments for computer and related services, which prescribe no limitations on mode 1. The U.S. is also requested to inform if any other State is also having similar or other restrictions on outsourcing of services.

**RESPONSE: The GATS does not cover government procurement.**

**Question 2:** The U.S. is requested to inform whether restrictions on content development, distribution and projection, exhibition and broadcasting of foreign audiovisual production exist (both federal and state level) or not. If yes, it is requested to indicate what these restrictions are.

**RESPONSE: We are not aware of any measures restricting the production, distribution, and exhibition of content based on nationality in the United States. The United States maintains restrictions on ownership of broadcasting entities, but those do not extend to nationality-based restrictions on the content.**

**Question 3:** The U.S. is requested to inform if there exist any restrictions on foreign films, such as, broadcasting quotas, local content requirements, screen quotas etc. The U.S. is also requested to inform the regulations/restrictions applied at the state level by various states on foreign service providers in the following services (all modes)- (i) Architectural services; (ii) Accountancy services; (iii) Legal services; (iv) Audio-visual services.

**RESPONSE: Please see the response to Question 2 above with respect to audiovisual content. The United States maintains GATS commitments for audiovisual services and the professional services sectors identified, and our state-level restrictions can be found in those entries. It is beyond the scope of this exercise to provide all the non-discriminatory regulations relevant to foreign service suppliers in these sectors.**

**Secretariat Report Para 3.91, Page 69-70**

"The Food Safety and Inspection Service (FSIS) of the USDA is responsible, *inter alia*, for ensuring the safety and accurate labelling of meat, poultry, and processed egg products, including imports. The FSIS is also responsible for recognizing foreign regulatory systems as providing a level of protection for these commodities equivalent to that provided in the United States. The United States has recognized 35 countries with meat, poultry, and/or egg inspection systems....."

**Question 4:** The U.S. is requested to provide the list of 35 countries with whom it has entered into equivalence agreements.

**RESPONSE: FSIS has made a determination that there are 35 countries eligible to export meat, poultry, and processed egg products to the United States. A list of those countries eligible and the species that are eligible for export to the U.S. can be found at:**

<http://www.fsis.usda.gov/wps/wcm/connect/4872809d-90c6-4fa6-a2a8-baa77f48e9af/Countries+Products+Eligible+for+Export%2B.pdf?MOD=AJPERES>.

**Secretariat Report Para 3.139, Page 80**

The latest subsidies notification to the WTO on federal and sub-federal programmes, submitted in May 2014, contained statistical information up to 2012. The magnitude of government assistance has decreased since the previous review (Table 3.15).

3.140. In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients.

**US Subsidies Notification - WTO Document G/SCM/N/253/USA of 9 May 2014**

**2.1 Energy Supply – Renewable Energy Resources**

**1. Periods covered by the notification**

The period covered is fiscal years 2011 and 2012.

**2. Policy objective and/or purpose**

To lead the national effort to develop renewable energy technologies, to accelerate acceptance and use of renewable energy technologies and to improve the United States' overall economic, energy security, and environmental health through the development of clean, competitive power technologies.

**3. Background and Authority**

P.L. 101-218, "Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989"

**Question 5:** In the U.S. Subsidies Notification (G/SCM/M/253/USA of 9 May 2014) to the WTO under the programme at serial no. 2.1 Energy Supply – Renewable Energy Resources there are several legislations to implement the programme. This question relates to P.L. 101-218, "Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989".

As per Section 6 of the Act, which deals with Joint Ventures, one of the aims of the Act is to enhance the ability of domestic firms to compete with foreign enterprises in sales of renewable energy and energy efficiency technologies. Can the U.S. please clarify what is the eligibility criterion for U.S. firms to be eligible to avail the benefits under this programme? Whether there is any criteria to use domestically produced goods as a condition to avail the benefits under this programme?

**RESPONSE:** The eligibility criterion are consistent with the policy objectives discussed in the U.S. subsidies notification. Any assistance provided is not contingent upon the use of domestic over imported goods.

**Question 6:** In the U.S. Subsidies Notification to the WTO the programme at serial no. 3.10 relates to Advanced Energy Property Credit. Can the U.S. please clarify what is the eligibility criteria for applicants or firms to be eligible to avail the benefits under this programme? Whether there is any criteria to use domestically produced goods as a condition to avail the benefits under this programme?

**RESPONSE** Beyond the detailed information already provided in the United States' subsidies notification, below please below find the definition of a "qualifying advanced energy project" taken from the Internal Revenue Code (I.R.C. §48CIRCS48C, 26 U.S.C.A. §48C). Eligibility for this program is not contingent upon the use of domestic over imported goods.

**§ 48C. Qualifying advanced energy project credit**

**(c) Definitions.--**

**(1) Qualifying advanced energy project.--**

(A) In general.--The term "qualifying advanced energy project" means a project (i) which re-equips, expands, or establishes a manufacturing facility for the production of--

- (I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,
  - (II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,
  - (III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,
  - (IV) property designed to capture and sequester carbon dioxide emissions,
  - (V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),
  - (VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or
  - (VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and
  - (ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.
  - (B) Exception.--Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).
- (2) **Eligible property.**--The term "eligible property" means any property--
- (A) which is necessary for the production of property described in paragraph (1)(A)(i),
  - (B) which is--
    - (i) tangible personal property, or
    - (ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and
  - (C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

*Question 7: Does the United States have data on subsidies regarding federal and sub federal programs reflecting 2013/2014?*

**RESPONSE:** The United States is currently updating the information for the over 650 subsidy programs included in its 2011/2012 subsidies notification to reflect the years 2013/14. The next new and full notification is due June 30, 2015.

*Question 8: Has the United States made any changes to its subsidies programs since 2012?*

**REONSE:** As noted above, the United States is in the process of compiling its 2013/2014 subsidies notification. Given the number of programs previously notified for 2011/2012 (over 650), it is likely that there have been changes to one or more of the programs since 2012.

*Question 9: Why are the target price or reference price for most commodities under PLC much higher than CCP as shown in Table A?*

**RESPONSE:** The reference prices were determined by Congress as part of the 2014 Farm Bill and reflect a significant shift in market dynamics seen over the past several years.

*Given the higher reference rate and elimination of direct payments, does USA agree that PLC is more trade distorting than CCPs?*

**RESPONSE:** PLC payments are made on historical production without reference to current production removing the incentives that lead to surplus production. Because

**producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

*What is the rationale behind exclusion of Upland cotton under PLC?*

**RESPONSE:** Under the 2014 Farm Bill, upland cotton is not covered under the PLC or ARC programs. Upland cotton is instead eligible for the new Stacked Income Protection Plan (STAX) program, which is available for only upland cotton.

**Table A: Target Price for Various Crops under PLC and CCP**

(US\$)

Commodity	Quantity measure	Target prices under CCP	Target prices under PLC
Wheat	Bushel	4.17	5.5
Corn	Bushel	2.63	3.7
Grain sorghum	Bushel	2.63	3.95
Barely	Bushel	2.63	4.95
Oats	Bushel	1.79	2.4
Upland cotton	Pound	0.71	n.a
Long-grain rice	Hundredweight	10.5	14
Medium-grain rice	Hundredweight	10.5	14
Peanuts	Ton	495	535
Soybeans	Bushel	6	8.4
Other Oilseeds	Hundredweight	12.68	20.15
Dry peas	Hundredweight	8.32	11
Lentils	Hundredweight	12.81	19.97
Small chickpeas	Hundredweight	10.36	19.04
Large chickpeas	Hundredweight	12.81	21.54

A. In domestic support notifications of USA, CCPs were treated as non-product specific to agriculture sector. However, as shown in Table A, target price varies for different crops and these target prices are product specific. The payments under CCPs were linked to current prices. Therefore, given the nature of CCPs, it should be treated as product specific support to agriculture sector rather than as non-product specific support. Given this background, what was the rationale behind notifying CCPs as Non-product specific support to agriculture sector and thus underestimating product specific support to various crops covered under CCPs?

**RESPONSE:** The countercyclical program made payments based on fixed historical area and yields and not current production. Recipients were not required to produce any product to receive payments. For example, a countercyclical payment for wheat base acres would still be given to a producer growing corn (or any other commodity) on those wheat base acres or if the producer planted no crop.

B. As shown in Table C, payments under CCPs were largely skewed towards large farmers or big corporate. Top 10% of farmers have received 76% of payments under CCP. Given the similarities between CCPs and PLC, are there any provisions under new farm bill to minimise the concentration of payments under PLC? If yes, then could the USA provide this information?

**Table C: Concentration of Counter-Cyclical Payments**

<i>Pct. of Recipients</i>	<i>Pct. of Payments</i>	<i>Number of Recipients</i>	<i>Total Payments 1995-2011</i>	<i>Payment per Recipient</i>
%	%		<i>US\$ Million</i>	<i>US\$</i>
Top 1%	35%	12,188	5284.2	4,33,558
Top 2%	47%	24,377	7099.57	2,91,241
Top 3%	54%	36,565	8124.39	2,22,190
Top 4%	59%	48,754	8873.14	1,81,998
Top 5%	63%	60,943	9477.38	1,55,512
Top 10%	76%	1,21,886	11445.66	93,905
Top 15%	84%	1,82,829	12555.75	68,675
Top 20%	89%	2,43,772	13257.41	54,384
Remaining 80% of recips.	11%	9,75,091	1712.23	1,756

Source: EWG subsidy database.

**RESPONSE:** The Agricultural Act of 2014, commonly known as the 2014 Farm Bill, amended the statutory provisions regarding payment limitations and the adjusted gross income (AGI) eligibility criterion in the Food Security Act of 1985. The provisions will affect the direct and indirect payments that any individual or entity may receive for various programs. In the case of the Price Loss Coverage (PLC) Program, direct and indirectly attributed payments for combined Agriculture Risk Coverage (ARC) and PLC payments plus marketing loan benefits for a given program (crop) year are limited to US\$125,000 per individual and entity. There are separate limits for "covered commodities" and peanuts (peanuts have a separate US\$125,000 payment limit). Furthermore, individuals and entities whose prior 3-year (excluding the most recent year) average AGI exceeds US\$900,000 are ineligible for these payments.

**Secretariat Report Para 4.15, Page 106**

**Question 10:** Given the fact that updation of yield and base acre is allowed under new farm bill, could the USA clarify the following:

A. What is the definition of generic base acre under new farm bill?

**RESPONSE:** Upland cotton base acres become "generic base acres" for use in ARC/PLC under the 2014 Farm Bill. Generic base acres are retained on the farm at the tract level and may: (a) not be reallocated; (b) be planted to any crop; (c) receive ARC or PLC payments for the acres planted to a covered commodity; (d) be reduced for CRP participation; (e) be reduced when taken out of agricultural production; or (f) be reduced on farms having more base acres than available cropland.

B. What are the rules governing the allocation of payments from generic and commodity-specific base acre? What were the specific rules for minimising the link between current production and payment under CCPs under Farm Act 2008? How are these proposed to be changed in the Farm Bill of 2014?

**RESPONSE:** Generic base acres are retained on the farm at the tract level and may: (a) not be reallocated; (b) be planted to any crop; (c) receive ARC or PLC payments for the acres planted to a covered commodity; (d) be reduced for CRP participation; (e) be reduced when taken out of agricultural production; or (f) be reduced on farms having more base acres than available cropland. The 2014 Farm Bill removed upland cotton as a covered commodity for the ARC/PLC programs, and upland cotton base acres cannot be reallocated (as described in section 1112) to the base acreage of another covered commodity. Upland cotton base acres become generic base acres for use in ARC/PLC.

**Generic base acres planted to a covered commodity are eligible for ARC/PLC payments and will be attributed to a covered commodity as follows:**

- If a single covered commodity is planted on the farm and the total acreage planted equals or exceeds the generic base acres on the farm, the generic base acres are attributed to that covered commodity in an amount equal to the total number of generic base acres on the farm.
- If multiple covered commodities are planted on the farm and the total number of acres planted to all covered commodities on the farm exceeds the generic base acres on the farm, the generic base acres will be attributed to each of the covered commodities on the farm on a pro rata basis to reflect the ratio of:
  - The acreage planted to a covered commodity on the farm; to The total acreage planted to all covered commodities on the farm.
- If the total number of acres planted to all covered commodities on the farm does not exceed the generic base acres on the farm, the total acres planted to each covered commodity are attributed to that covered commodity.

For a more detailed explanation and some examples see the ARC/PLC factsheet on FSA's webpage at: [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf\\_20140925\\_insup\\_en\\_arcplic.htmlInd](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140925_insup_en_arcplic.htmlInd).

#### Secretariat Report Para 4.18, Page 107

**Question 11:** Could the U.S. clarify the following:

- A. Can a farmer choose one crop under individual ARC and other crops at county level? If yes, then what are the conditions that a farmer has to comply with in order to benefit from this flexibility?

**RESPONSE: No. If a farm is enrolled in individual ARC, then the base acres of all covered commodities are enrolled in individual ARC.**

- B. What kind of information is a farmer required to provide in order to enrol or register under ARC?

**RESPONSE: For county ARC, producers must annually enroll the farm and submit an annual acreage report of all the cropland on the farm. For individual ARC, producers must annually enroll the farm and submit an annual acreage report of all the cropland and production of covered commodities on the farm.**

- C. Is it possible for a farmer to get ARC payments under the county option without actually cultivating a specific crop? What is the mechanism in place to verify the farmer acre under various crops during each year?

**RESPONSE: Yes, it is possible for a farmer to receive county ARC payments without actually cultivating a crop. However, producers are required to maintain the land in an agricultural or conserving use and effectively control noxious weeds. Producers are randomly selected for compliance review and spot-checks of acreage reports annually.**

#### Secrétariat Report Para 4.20, Page 107

**Question 12:** How much quantity of cotton, corn, wheat, barely and Rice was forfeited by Commodity Credit Corporation (CCC) under Farm ACT 2008?

**RESPONSE: CCC does not forfeit grain; rather, grain is forfeited to CCC. The quantity forfeited to CCC under the 2008 Farm Act for crop years 2008-2013 is 4,000 bushels of**

**wheat, 33,000 bushels of barley and 4,933 running bales of upland cotton. No corn or rice was forfeited to CCC.**

**Question 13:** What are the provisions under new Farm bill to dispose forfeited crops by Commodity Credit Corporation (CCC)?

**RESPONSE:** The same provisions for disposing of forfeited crops by the CCC are in effect for the 2014 Farm Bill as under the 2008 Farm Bill.

**Question 14:** Whether the amount mentioned under marketing loan programme in various domestic support notifications of the USA covers only interest subsidy or full payments to farmers?

**RESPONSE:** The United States reports benefits under the marketing loan programme on two different Supporting Tables DS6 and DS7. Marketing loan gains and loan deficiency payments that are provided directly to producers are reported as non-exempt direct payments on Supporting Table DS6. Interest subsidies, less fees paid by producers when loans are originated, are reported as other product-specific support on Supporting Table DS7.

#### **Secretariat Report Para 4.1.1.10, Page 115**

**Question 15:** The USA has notified premium subsidy for various crops under non-product specific support. However, premium rate is determined on the basis of individual crop yield and area. Therefore, could the USA explain the rationale behind the treatment of crop insurance premium as non-product specific support rather than product specific support?

**RESPONSE:** The United States has in the past notified its crop insurance program as non-product specific. However, the United States has notified crop insurance as a product-specific amber box program in its latest domestic support notification for 2012. The United States intends to submit revised 2008-2011 notifications reflecting our determination that our crop insurance program should be categorized as product-specific.

**Question 16:** In USA, the insurance policies are sold by 18 approved private insurance companies, whose operating and administrative costs are partially reimbursed and losses underwritten by the federal government. USA has notified these payments under green box. However, reimbursement of operating and administrative expenses play important role in determining the premium rate for various crops and private insurance company will charge lower premium rate for various crops. USA is requested to clarify the linkage between premium rate and reimbursement of operating expenses. Does USA agree that by this mechanism, private insurance companies are underestimating the premium rate for various crops?

**RESPONSE:** RMA determines the premium rates for the crop insurance program, and is directed by law to set those rates at a level sufficient to cover expected losses. Over the last 20 years, the average loss ratio (loss divided by premium, a common measure of actuarial performance) has been below 1.00, indicating that premium rates have generally not been understated.

**Question 17:** USA is requested to provide Crop wise and Farm wise insurance premium subsidy after 2008 onwards.

**RESPONSE:** Data for 1989 to the present is available on RMA's website at: <http://www3.rma.usda.gov/apps/sob/>.

**Question 18:** As per Environmental Working Group, crop insurance subsidies now cost the taxpayer US\$9 billion a year and overwhelmingly flow to the largest and most successful farm businesses. While some farms annually collect more than US\$1 million in crop insurance premium support, the bottom 80% of policyholders annually collect about US\$5,000. 26 farm businesses benefitted from US\$1 million in subsidies to buy crop insurance in 2011. 10% of farm businesses received 54% of all insurance subsidies in 2011 Is there any mechanism under New Farm bill to minimise this inequitable distribution of insurance subsidy?

**RESPONSE:** The premium subsidy rate per dollar of insurance coverage does not depend on the size of the grower. However, the new Farm Bill increased the subsidy rate provided to new and beginning growers.

**Question 19:** What are the reasons behind the concentration of insurance subsidy to four crops (corn, soybeans, wheat and cotton) which accounted over 80% of insurance premium subsidy?

**RESPONSE:** The four crops are the primary food and fibre crops grown in the United States, and represent over 77% of insured value for the crop insurance program. Because premium and premium subsidy are calculated as a percent of insured value, they account for a similarly high proportion of the total premium and subsidy.

**Question 20:** Crop insurance premium subsidy is also skewed towards few states like Texas, North Dakota, Iowa, Minnesota, Illinois, whereas participation of other states like Massachusetts, Utah and West Virginia etc. in crop insurance subsidy is very low. What are the reasons behind the skewed nature for regional/state participation in crop insurance premium subsidy?

**RESPONSE:** Texas, North Dakota, Iowa, Minnesota, and Illinois are substantial producers of the four primary food and fibre crops mentioned in the previous question. As noted, those crops represent over 77% of insured value for the crop insurance program.

**Question 21:** Instead of increasing the coverage of federal crop insurance up to 86%, why has the USA government introduced the Supplemental Coverage Option (SCO).

**RESPONSE:** The Supplemental Coverage Option (SCO) provides growers the opportunity to obtain part of their insurance coverage on an area basis.

**Question 22:** Stacked Income Protection Plan is a new revenue insurance that covers losses of up to 20 % of expected county revenue. Given the fact that STAX and SCO differentiate between various crops like cotton and other crops, would the USA agree that STAX and SCO should be treated as product specific support under Amber box. If not, then reasons thereof may be provided.

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.

**Question 23:** USA farmers are covered through price risk programmes, revenue risk programmes, market assistance loan and highly subsidized crop insurance schemes. Given these programmes, it is possible that farmers are over compensated than their actual loss. What are the mechanism under New Farm Bill to prevent the overcompensation of the payments under various programmes?

**RESPONSE:** The 2014 Farm Bill contains specific provisions to ensure that producers are not over-compensated. For example, producers cannot receive payments for grazing losses under both the Noninsured Crop Disaster Assistance Program (NAP) and the Livestock Forage Program (See Section 1416 (6)(d)). Producers cannot enroll in both ARC and PLC for a given crop on a farm, and if they choose ARC, they are not eligible for the Supplemental Coverage Option under federal crop insurance. The Risk Management Agency will use enrolment data to ensure that producers cannot enroll in both ARC and SCO.

#### **Secretariat Report Para 4.76, Page 121**

"On 18 February 2014, the Federal Reserve approved a final rule establishing a number of enhanced prudential standards, including liquidity, risk management, and capital to strengthen the supervision and regulation of U.S. banks with assets of at least US\$50 billion, as well as U.S. operations of foreign banks that have more than US\$50 billion in non-agency U.S. assets. Under the new rule, foreign banks with U.S. assets of at least US\$50 billion are required to establish intermediate holding companies for their U.S. financial operations (other than branches and agencies) and to meet, with some accommodative exceptions, the same capital, liquidity and

*other standards as U.S. bank holding companies of comparable size. The Federal Reserve estimates that approximately 20 foreign banks, many based in the European Union, will have to establish intermediate holding companies in the United States. Domestic banks subject to the new rule will need to comply by 1 January 2015, while foreign banks will generally be required to do so by 1 July 2016."*

**Question 24:** *The U.S. is requested to clarify if domestic banks with U.S. assets of at least US\$50 billion are also required to establish intermediate holding companies for their U.S. financial operations and to meet capital, liquidity and other standards?*

**RESPONSE:** Please see the "Financial Stability Oversight Council 2014 Annual Report": <http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf>.

#### **Secretariat Report Para 4.80, Page 122**

*"The Dodd-Frank Act does not address the problem of housing finance and the future of the two giant mortgage-finance agencies, Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp (Freddie Mac), which remain under the control of the Federal Housing Finance Agency (FHFA). On 16 March 2014, the Housing Reform and Taxpayer Protection Act was introduced in the Senate and remains pending. It would wind down Fannie Mae and Freddie Mac over the next five years and establish a new system to be regulated by a new entity known as the Federal Mortgage Insurance Corporation (FMIC), modelled in part after the FDIC. The Act would also change other aspects of government regulation surrounding the US\$10 trillion mortgage market. For instance, under the terms of the legislation, private investors would be responsible for taking a first loss position of at least 10% of the mortgage-backed security's value."*

**Question 25:** *The U.S. is requested to clarify what aspects of the government regulations surrounding the U.S. mortgage market will be changed and how, after the Housing Reform and Taxpayer Protection Act comes into existence.*

**RESPONSE: We do not expect the Housing Reform and Taxpayer Protection Act to be enacted in the 113th Congress.**

#### **Secretariat Report Para 4.81, Page 122**

*"According to the IMF, U.S. financial firms in general have strengthened their balance sheets over the last few years. However, more progress is needed in some areas, notably in terms of "shadow banking", i.e. given the size and prominence of money market mutual funds in short-term funding markets, their regulation should be reinforced to further enhance financial stability; and U.S. banks' exposure to struggling euro-zone sovereigns, although improved recently, is still relatively high at around 5% of their assets if indirect exposure through derivatives and guarantees is included. Moreover, the IMF has warned that "too big to fail" banks are still major sources of systemic risks and has called for tighter supervision. The implicit subsidy for "too big to fail" banks in the United States is estimated at about US\$70 billion."*

**Question 26:** *The U.S. is requested to indicate-*

1. *In what form was the implicit subsidy provided to "too big to fail" banks?*
2. *What are the criteria for providing this subsidy to various banks?*
3. *Does any discrimination exist in providing such subsidy to foreign banks vs domestic banks? If yes, details thereof.*

**RESPONSE:** See the 2011 FSOC Study & Recommendations Regarding Concentration Limits on Large Financial Companies, which notes that Dodd-Frank "establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's consolidated liabilities would exceed 10% of the aggregate consolidated liabilities of all financial companies...The financial sector's concentration limit should help reduce the prospects for any increase in implicit subsidy for the nation's largest financial firms." Additional details are available at:

<http://www.treasury.gov/initiatives/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf>.

#### **Secretariat Report Para 4.92, Page 125**

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

**Question 27:** The GATS, in principle, provides for removing the MFN exemptions within 10 years of their coming into existence. The U.S. is requested to inform when it is expected to eliminate the MFN exemptions in various services taken by it under the GATS?

**RESPONSE:** The United States will consider removing the MFN exemptions identified by India when the conditions that gave rise to their scheduling substantially change. Specifically, market access and national treatment commitments by WTO Members for DTH and DARS services are practically non-existent, and measures restricting the foreign supply of such services are widespread. The United States has offered to remove this reservation in the Doha negotiations, provided that other WTO Members make meaningful commitments as well. Similarly, with respect to deductability of advertising expenses, at least one WTO member discriminates against foreign suppliers and until this is addressed, exemption continues to be justified.

#### **Secretariat Report Para 4.93, Page 125**

"In November 2012, the FCC adopted the Report and Order (FCC-12-145) and eliminated the International Settlements Policy (ISP) in order to modernize its international telephony rules, further lower the price for international calls, and increase competition. At the same time, the FCC adopted safeguards to protect against anticompetitive conduct in specific cases. Nonetheless, the FCC maintains a "List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets". This list of carriers is used for the purposes of implementing certain FCC rules on switched services over private lines and U.S. international common carriers and cable landing licensees."

**Question 28:** Could the U.S. clarify the following-

1. What are the safeguards adopted by the FCC to protect against anticompetitive conduct in specific cases?
2. What are the FCC rules that are being implemented on switched services over private lines and U.S. international common carriers and cable landing licensees?

#### **RESPONSE:**

1. The key safeguards the FCC employs are a prohibition on "special concessions" offered by the dominant supplier in its home country relating to U.S. origin or destination traffic; and a range of reporting requirements.
2. There are no specific rules relating to offering switched services over private lines. Suppliers looking to offer such services need a standard authorization to offer international services, known as an international 214 authorization.

#### **Secretariat Report Para 4.97, Page 128**

"On 4 March 2014, the United States announced its intention to negotiate Telecommunications Mutual Recognition Agreements (MRAs) with selected countries "to facilitate U.S. exports of telecommunications equipment." The United States has negotiated MRAs with a number of multilateral organizations and economies, including in the context of APEC."

**Question 29:** The U.S. is requested to inform-

1. What are the elements/provisions of Telecommunications Mutual Recognition Agreements (MRAs) negotiated by the US?

**RESPONSE:** In each of the agreements, participating countries agree to accept the test results and/or product approvals performed by the Conformity Assessment Bodies (CABs) of the other country based on the use of a set of internationally accepted procedures. The present MRAs only address the issue of harmonizing conformity assessment procedures and do not attempt to harmonize regulatory standards or technical standards. The scope of the MRA includes all equipment subject to telecommunications regulations, including wire and wireless, network terminal attachments, terrestrial and satellite equipment. For such equipment the APEC TEL MRA, for example, covers electromagnetic compatibility (EMC), radio and telephone terminal equipment requirements.

**Secretariat Report Para 4.114 Table 4.10, Page 135**

"At sub-federal and municipal levels there exist numerous recent support schemes designed to attract, through subsidies or tax breaks, the production of films and television programs. Table 4.10 contains a non-exhaustive inventory of those schemes at the state level."

**Question 30:** Table 4.10 provides a non-exhaustive inventory of support schemes at the state level. However, it does not provide the eligibility criteria for granting these support schemes. For instance, it talks about qualified production expenditures for schemes in various states (such as Alaska, Arkansas etc.) but does not specify what constitute the qualified production expenditure. The U.S. is requested to explain the eligibility criteria for these support schemes.

**RESPONSE:** Eligibility criteria for production incentives vary by state. The criteria for any specific state can be found on the website of the relevant film commission. Links to all relevant film commissions in the United States can be found at: <http://www.afci.org/directory/us>.

In addition, India may refer to U.S. notifications under SCM Article 25.

**Secretariat Report Para 4.124, Page 139**

"Prior to the PPACA, individuals who did not have access to any of the above sources of health coverage could purchase medically underwritten health insurance from regional or national insurers. Several states actually did have restrictions on medical underwriting, but most did not....."

**Question 31:** The U.S. is requested to inform the States having restrictions on medical underwriting and also to explain what these restrictions are.

**RESPONSE:** Medical underwriting is a process used by insurance companies to try to figure out a person's health status when he or she is applying for health insurance coverage to determine whether to offer coverage, at what price, and with what exclusions or limits. For example, prior to 2014, many health insurance plans could charge people more because they had what was known as a pre-existing condition, a health problem that existed before the date that the coverage started. A pre-existing condition could range from HIV/AIDS or cancer to simply being a woman or a victim of domestic violence. Prior to the Affordable Care Act, 6 states had guaranteed issue for all products and 7 had it for some products: <http://kff.org/other/state-indicator/individual-market-guaranteed-issue-not-applicable-to-hipaa-eligible-individuals/>. This meant that they could not discriminate based on pre-existing conditions and must allow individuals to enroll regardless of health status, age, gender, or other factors that might predict the use of health services. Because of the Affordable Care Act, beginning on January 1, 2014, all individual and group health plans must guarantee issue health policies/plans to all applicants, regardless of health status, and can only vary premiums based on age, tobacco use, family size, geographic location and

**plan category:** <https://www.healthcare.gov/lower-costs/how-plans-set-your-premiums/>.

**Secretariat Report Para 4.133, Page 141**

"The United States is the world's leading destination for foreign healthcare workers. It hosts the largest number of foreign healthcare workers in absolute terms although foreign professionals make up a larger share of the workforce in many European countries. In 2010, demand for physicians exceeded supply by 13,700 physicians and 22% of the physicians operating in the U.S. graduated from foreign medical schools. As a result of the healthcare reform and the additional demand it will entail, it is expected that the supply-demand gap for physicians will widen in the coming years. As a consequence, foreign caregivers are allowed to practice in the United States under specific programmes, for instance a visa-waiver program, which allows U.S. trained international medical graduates to stay in the United States if they practice in a medically-underserved area for three years. To date, 9,000 physicians have worked under this program."

**Question 32:** Could the U.S. clarify the following -

1. What are the specific programmes and their features under which foreign caregivers are allowed to practice in the U.S.?
2. Do these specific programs also cover foreign nurses?
3. Does the U.S. have any specific arrangement to allow for foreign qualified nurses and para-medical professionals to work in the U.S.? If yes, what are these programs?
4. Are there any national treatment discrimination for foreign qualified nurses and para-medical professionals while they seek to work in the U.S.? If yes, what?

**RESPONSE: The following provides an overview of certain programs that enable health care providers from foreign countries to receive training or provide clinical care in the U.S.**

**Training**

The Department of State's Exchange Visitor Program (EVP), provides non-immigrant visas for individuals to participate in academic or training exchange programs. Students and various professions including physicians are eligible for the EVP. More information can be found at <http://j1visa.state.gov>.

**Clinical Care**

In order to provide care in the United States, a foreign educated or trained physician must be licensed in a U.S. State (in addition to holding an appropriate visa).

To be licensed, a foreign physician must complete a U.S. residency program, as well as U.S. Medical Licensing Examination (USMLE) Steps 1, 2, &3. To compete for a residency position, all foreign-trained physicians (including U.S. citizens & permanent residents trained abroad) must be certified by Educational Commission for Foreign Medical Graduates (ECFMG).

Most foreign physicians enter U.S. Residencies on the J-1 (training) visa; the 2-year post training foreign residency requirement of the J-1 visa may be waived in return for an agreement to work for 3 years in an underserved area.

We are unaware of similar programs for nurses or paramedical professionals.

We do not have detailed information about any measures of the type described for nurses and paramedical professionals. We note that U.S. national treatment obligations under the relevant WTO Agreement do not extend to those sectors.

**ADDITIONAL QUESTIONS FROM INDIA**

**Question 33: Ohio order to curb offshoring (Aug 2010):** What steps U.S. has taken to curb adoption of such executive orders banning outsourcing / offshoring by other states? Is the federal government considering the state of Ohio to repeal its order and uphold United States free trade principles?

**RESPONSE:** See our response to Question 1 above.

**Question 34:** We understand that specific bill S.744, HR 15 other related bills in the current Congress would lapse if not passed by the House of Representatives before 6 January 2015, when the new Congress convenes. We are concerned that the Indian tech sector and overseas companies are becoming a soft target for U.S. lawmakers in the recent years. We are concerned that provisions such as those mentioned in S.744 bill may come back in new form. What assurances can U.S/ Administration provide that similar efforts by the new Congress would be thwarted and Indian IT industry would not be targeted? We have seen similar efforts in this space for past many years. Are there any assurances from the U.S. that it will not adopt forced localisation measures in the services space?

**RESPONSE:** The U.S. Executive Branch will not speculate how Congress may choose to proceed on the pending legislation mentioned above. We also note that, to be considered further, legislation would need to be reintroduced in the 114th Congress, which will begin in early January 2015.

**Question 35: Visa fee hike:** Border Security Bill (Public Law 111-230) signed by President Obama into law in 2010 increased visa fee for companies with at least 50 employees in the U.S. and more than 50% of their employees on H-1B or L-1 visas by US\$2,000 for H-1B visas and US\$2,250 for L-1 visas through September 30, 2014. Thereafter, the James Zadroga 9/11 Act (Public Law 111-347) in 2011 increased the duration of applicability of this increase till September 30, 2015. This fee hike largely impacts Indian service providers in view of the business model adopted by them. This is a discriminatory provision in U.S. law. We would like to know what steps the U.S. Government plans to take to ensure that this provision does not get extended beyond September 2015?

**RESPONSE:** The visa-related provisions in these statutes are consistent with the United States' international trade commitments. Any changes with respect to these provisions would be a product of the legislative process.

**Question 36: Centralisation of L visas in Chennai:** This centralisation, when brought in, was with the objective of bringing in consistencies in visa adjudication process apparently and it was indicated that once consistency was achieved U.S. missions will go back to accepting applications at local missions. This measure has been in force since 2011 and has added to cost burden of companies leveraging Indian talent, and defeats the purpose of having multiple missions in large country such as India. Could U.S. indicate till how long this measure will remain in force?

**RESPONSE:** The U.S. Department of State has not set any timeframe for decentralizing Blanket L visas. Over the next six months, the Department's Bureau of Consular Affairs and U.S. Mission India will evaluate the current situation and the possibility of decentralizing Blanket L visa adjudication.

**Question 37: L1 guidance from EO:** The latest Executive Order brought about by President Obama on 21<sup>st</sup> Nov mentions need to bring about transparency in L1 visa process on the issue of specialised knowledge which till date uses ambiguous terms to adjudicate visas where specialised knowledge has been defined as "more than ordinary but not extra-ordinary". In Leading to rejection rate that is highest in the world (around 40%), Indian software sector/ NASSCOM has been calling for more objective list of parameters which is easy to comply with and in fact submitted such a list to U.S. Embassy few years ago where no action was taken. Could U.S indicate whether the new guidance proposes to bring about objectivity in the L1 visa process.

**RESPONSE:** The referenced L-1 guidance is currently under development. It will aim to promote consistency and efficiency in L-1B adjudications.

**Question 38:** The James Zadroga Act (Public Law 111-347) 2011 imposes 2 % excise tax on U.S. Govt procurement of goods and service purchased by foreign supplier (such as India) - Could the U.S. indicate till how long these measures be in force? Is there any consideration of repealing these measures.

**RESPONSE:** The effective date of the statute was the date of its enactment, January 2, 2011. The U.S Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

#### **FDA Drug Rates**

The Food and Drug Administration (FDA) on 2 August 2014 announced rates for abbreviated new drug applications (ANDAs), prior approval supplements to an approved ANDA (PASs), drug master files (DMFs), generic drug active pharmaceutical ingredient (API) facilities, and finished dosage form (FDF) facilities user fees related to the Generic Drug User Fee Program for fiscal year (FY) 2015. The new rates are effective 1 October 2014 and will remain in effect through 30 September 2015. According to the Business Standard, the new fees indicate that Indian generic pharmaceutical firms may have to pay 12-15% more in annual facility fees due to the new rates. For example, a foreign FDF facility will now have to pay US\$262,717 for FY2015, compared to US\$235,152 a year ago - an increase of 12%. Similarly, the FY2015 fees for a foreign API is now US\$56,926 - 15% higher than the current rate. A federal register notice giving more details at web link: <https://www.federalregister.gov/articles/2014/08/01/2014-18108/generic-drug-user-fee-abbreviated-new-drug-application-prior-approval-supplement-drug-master-file>

<b>Generic Drug User Fee Act (GDUFA)</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2013</b>
Domestic API Facility	US\$41,926	US\$34,515	US\$26,458
Foreign API Facility	US\$56,926	US\$49,515	US\$41,458
Domestic FDF Facility	US\$247,717	US\$220,152	US\$175,389
Foreign FDF Facility	US\$262,717	US\$235,152	US\$190,389

**Question 39:** Can the United States provide an explanation of the necessity of the rate increases and evidence that it will not adversely impact drug exports to the U.S? Could the U.S. clarify why GDUFA fees are higher for foreign facilities?

**RESPONSE:** The rates for products and facilities subject to fees under the Generic Drug User Fee Amendments of 2012 (GDUFA) are determined annually through a process required by statute (21 USC 379j-42) and published annually in the Federal Register (FR) for the upcoming fiscal year (FY). See, for instance, the FR announcement published on August 1, 2014 setting GDUFA fees for FY2015 at ([https://www.federalregister.gov/articles/2014/08/01/2014-18108/abbreviated-new-drug-application-prior-approval-supplement-drug-master-file-final-dosage-form?utm\\_campaign=pi+subscription+mailing+list&utm\\_medium=email&utm\\_source=federalregister.gov](https://www.federalregister.gov/articles/2014/08/01/2014-18108/abbreviated-new-drug-application-prior-approval-supplement-drug-master-file-final-dosage-form?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov)). In that announcement, the calculations by which the fees were determined were explained in detail for GDUFA facility, application and Drug Master File (DMF) fees. In effect, the changes seen in the rates from year to year are driven by the economic realities of each fee type. To the best of our knowledge, there has not been a study of the impact on drug exports to the United States for the GDUFA rate increases.

Part of the statute (see 21 USC 379j-42(b)(2)(C)-(D)) lays out the requirement that foreign facilities pay a higher fee than domestic U.S. companies. This foreign facility fee differential is intended to reflect the actual cost of the service considering the fact that conducting inspections of foreign facilities is more expensive for the FDA than for domestic facilities, due in part to travel costs and the additional costs of arranging for visas, translation and interpretation services, etc. This factor is incorporated into the calculations mentioned above and are detailed in the same FR notice referenced above.

**Question 40:** With regard to the exports of GI and PPGI under HS Code 7210, it is observed that the exports are mainly in the thickness range of .5 mm and below. The industry in USA is not keen in the manufacturing these sizes. It is observed that while imposing antidumping duties some products which are not manufactured in U.S. also get covered for imposition of duty. Could the

*U.S. authorities clarify the steps taken to exclude products not manufactured in U.S. for imposition of antidumping duties?*

**RESPONSE:** Whether or not to exclude products from the imposition of antidumping duties depends on the written scope of the applicable antidumping duty order. While the scope description accompanying an antidumping duty order normally lists HS subheadings for convenience and Customs purposes, the written description of the scope is dispositive. An interested party can request a scope inquiry in accordance with the U.S. Department of Commerce's regulations if it wishes a specific product to be examined as to whether it should be included within the scope of an antidumping duty order.

*Question 41: Has the Special 301 process been utilized in any manner that conflicts with WTO norms and procedures?*

**RESPONSE: The Special 301 process is consistent with WTO norms and procedures.**

**Background:** The SIMA system and licensing system is mandated by Departments of Commerce and Treasury Institute. The stated objective of SIMA is to collect the import license information and assess the import trend of the steel mill product imports.

*Question 42: What is the larger purpose this data collection?*

**RESPONSE:** The Steel Import Monitoring and Analysis system collects detailed statistics on steel imports in order to provide interested parties with timely information on import trends in the steel sector. The system is viewed as an important and transparent tool to support rational decision-making by all interested parties.

*Question 43: Could U.S. clarify the exact product coverage under this scheme?*

**RESPONSE:** All imports of basic steel mill products are subject to the import licensing requirement. A complete list of the Harmonized Tariff Schedule codes covered under the requirement is available on the SIMA website at: <http://enforcement.trade.gov/steel/license/>.

*Question 44: It is understood that this scheme has been extended till 2017. If the purpose is only to track trend then why is it time bound?*

**RESPONSE:** Broad authority to collect information on imports is granted to the Secretary of Commerce and delegated to the Director of the Bureau of the Census. When the original authority for the SIMA system granted by the President expired in March 2005, the system was continued pursuant to the Department of Commerce information collection authority (13 U.S.C. 301(a) and 302). For purposes of administering the SIMA system, this authority was temporarily transferred from the Director of the Census Bureau to the Under Secretary for International Trade for four years. One of the conditions of the temporary transfer of authority to the Under Secretary for International Trade was that any future periodic extensions of the SIMA system be notified to the Secretary and subject to review. Therefore, under current authority the SIMA system must be renewed.

**INDONESIA****SECRETARIAT REPORT****2 TRADE AND INVESTMENT REGIME****2.1 General Framework****2.1.3 New Developments****2.1.3.3 Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud****Page 29 Para 2.1.2**

"In June 2014, the President established a task force to enhance coordination of U.S. Government efforts to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud and directed the task force to develop and implement a comprehensive framework to combat IUU fishing and seafood fraud. Further, the President noted the national interest to promote sustainable fishing practices and the plan to implement the UNFAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The framework acknowledges that the United States will continue to promote its policy of legally and sustainably caught, and accurately labelled seafood, and will assist foreign nations in building capacity to combat IUU fishing and seafood fraud."

Question 1. What are the procedures in place to ensure that the U.S. Government task force uses a science-based, transparent process to develop and implement regulations and laws?

**RESPONSE:** The Task Force is providing its recommendations to the President in December 2014. The recommendations will be published in the *Federal Register* with an opportunity for public comment. Upon receiving guidance from the President on the recommendations, the Task Force will begin its implementation of the recommendations and, within one year, will report to the President on its progress. The Administrative Procedure Act of 1946 (APA) provides the basis for transparency and accountability in developing Federal regulations. The APA requires agencies to undertake a notice and comment process open to all members of the public, both domestic and foreign, for rulemakings, and to take public comments into account in developing final regulations. In addition, Executive Order 12866 – Regulatory Planning and Review sets out the regulatory philosophy, principles, and actions that guide federal agencies in planning, developing, and reviewing Federal regulations. These practices ensure openness, transparency, and accountability in the regulatory process, and, as a result, help the United States to ensure that it meets its international trade obligations, including, where appropriate, to base measures on scientific evidence.

Question 2. How will task force's activities coordinate with existing U.S. reviews that address labor or other aspects of IUU fishing and seafood fraud?

**RESPONSE:** The Task Force is comprised of a broad range of U.S. agencies. See Presidential Memorandum – Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (June 17, 2014). The Task Force is coordinating across U.S. government agencies and is taking a whole of government approach to developing recommendations to combat IUU fishing and seafood fraud.

Question 3. How will WTO members and others know if the IUU regimens and practices are under review and/or being recommended for annual review and change (e.g. like the U.S. Department of State Trafficking in Persons review)?

**RESPONSE:** The Task Force is providing its recommendations to the President in December 2014. The recommendations will be published in the *Federal Register* with an opportunity for public comment. Upon receiving guidance from the President on the recommendations, the Task Force will begin its implementation of the recommendations and, within one year, will report to the President on its progress. Information regarding

IUU measures is available online at:  
[http://www.nmfs.noaa.gov/ia/iuu/iuu\\_overview.html](http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html).

## **2 TRADE AND INVESTMENT REGIME**

### **2.3 Trade Agreements and Arrangements**

#### **2.3.2 Regional and preferential agreements**

##### **2.3.2.2 Unilateral preferential regimes**

###### **2.3.2.2.2 Generalized System of Preferences (GSP)**

**Page 35 Para 2.34**

"Since the suspension of the GSP programme in July 2013, a number of countries continue to be reviewed for worker rights, child labour, IPR, or arbitral awards issues that could alter their beneficiary status. Product addition or removal petitions are also being reviewed. In 2013, the major products benefiting from GSP preferences were crude petroleum, automobile tyres, and jewellery of precious metal; and major beneficiaries of GSP were India, Thailand, and Brazil."

Question 4. We would like to know the beneficiaries status for Indonesia on the U.S. GSP programme which suspended since July 2013?

**RESPONSE:** Indonesia continues to be a designated beneficiary country of the GSP program, notwithstanding the ongoing GSP country practices review of Indonesia's protection of intellectual property rights, which was launched in June 2012. However, as a result of the July 2013 expiration in legal authorization of the GSP program, GSP-eligible goods from Indonesia and most other GSP beneficiary countries are currently subject to normal-trade-relations rates of duty. (Beneficiary countries of the African Growth and Opportunity Act continue to benefit from trade preferences under GSP, even during the lapse in GSP, consistent with the provisions of the AGOA statute.) The full list of GSP beneficiary countries can be found at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1401gn.pdf>.

## **3 TRADE POLICIES AND PRACTICES BY MEASURE**

### **3.1 Measures Directly Affecting Imports**

#### **3.1.6 Import prohibitions, restrictions, and licensing**

##### **3.1.6.1 Prohibitions and restrictions**

**Page 57 Table 3.6**

"Toxic substances Imports will not be released from CBP custody unless proper certification is presented to presented to CBP indicating that the import "complies with" or "is not subject to" TSCA requirements."

Question 5. Related to the requirements by US-EPA which will apply formaldehyde emission standards for Wood Composite Products (TSCA) for: a) Hardwood Plywood (HWPW); b) Medium Density Fiberboard (MDF); and c) Particle Board (PB), Indonesia asks for further clarification on the scope of products that will be imposed because there are some allegations that it will also include the Laminated Products (Finished Products)?

**RESPONSE:** On 10 June 2013, the U.S. Environmental Protection Agency (EPA) proposed two regulations. The first proposal would establish a framework for a third-party certification program to ensure that composite wood panel producers comply with the formaldehyde emission limits established under Title VI of the Toxic Substances Control Act (TSCA). The second proposal would implement formaldehyde emission standards under Title VI of TSCA and would apply to hardwood plywood, medium-density fiberboard, particleboard, and finished goods containing these products that are sold, supplied, offered for sale, or manufactured (including imported) in the United States. The EPA is carefully considering all comments as it works to develop final rules. Therefore, EPA cannot provide a determination at this time on the issues raised. These issues, and many others, will be addressed when the final rules are published, including a comprehensive response to comment document that will be placed in the dockets for the final rules.

Question 6. Whether the difference of the new formaldehyde standards with the Californian Air Resources Board (CARB) standards?

**RESPONSE:** The composite wood product formaldehyde emission standards contained in TSCA Title VI are identical to the emission standards currently in place in California. The proposed regulatory proposal would implement these emissions standards and is designed to ensure compliance with the TSCA Title VI formaldehyde emission standards while aligning, where practical, with the regulatory requirements in California.

Question 7. Is this not inflict a double certification for the exporters?

**RESPONSE:** The EPA has not yet implemented a third-party certification program. The proposed rule can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-10/pdf/2013-13254.pdf>.

Question 8. Labelling requirements for both CARB and TCSA have the same requirements. Indonesia asks EPA to accept Indonesia's products which have had a label from CARB?

**RESPONSE:** Please see the answer above.

Question 9. In addition under the terms of the new standard, the Wood Composite Products which is exported the U.S. must have a certificate from the third party that accredited or tested through other lab that which was appointed, and also shows the results test for any product every quarter as well as quality control testing which indicates that these products have met the standards required by. Indonesia would like to have further information from U.S. on the procedure of being a third party certifier (TPC) for government institutions and private institutions in the exporter country?

**RESPONSE:** Please see the answer above.

### **3 TRADE POLICIES AND PRACTICES BY MEASURE**

#### **3.1 Measures Directly Affecting Imports**

##### **3.1.8 Technical regulations and standards**

###### **Page 67 Para. 3.78**

"Executive Order 12866 (Regulatory Planning and Review) directs federal agencies to follow certain principles in planning, developing, and reviewing federal regulations, and describes the role of the Office of Information and Regulatory Affairs (OIRA) within the OMB in the rule-making process. All "significant" regulatory actions by federal agencies must be reviewed by OIRA before publication and, to this end, agencies must submit the text of the draft regulatory action to OIRA along with, *inter alia*, an assessment of the potential costs and benefits of the regulatory action. In addition, agencies must prepare a regulatory impact analysis (RIA) for each regulation that OIRA or the agency designates as "economically significant" with an impact on the economy of over US\$100 million in at least one year. The regulatory impact analysis provides a more in-depth cost-benefit analysis of feasible regulatory alternatives."

Question 10. Concerning to Regulatory Impact Analysis (RIA), are there any standards methodology for agencies to issued RIA?

**RESPONSE:** The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has developed reference materials to assist U.S. government agencies in developing regulatory impact analyses. The guidance document can be found here: [http://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](http://www.whitehouse.gov/omb/circulars_a004_a-4/).

Question 11. Concerning the standards for Toys product, are there any standards regulation required for import of toys?

**RESPONSE:** Toy safety requirements in the United States are the same regardless of the source of the product. All products that are designed or intended primarily for use by children ages 12 or younger must meet the following U.S. requirements:

- The domestic manufacturer or importer must issue a "Children's Product Certificate" (<http://www.cpsc.gov/cpc>) based on passing test results from a CPSC-accepted, third-party laboratory (<http://www.cpsc.gov/cqi-bin/labsearch/>).
- The product must have distinguishing marks, generally referred to as "tracking labels" (<http://www.cpsc.gov/en/Business--Manufacturing/Business-Education/tracking-label>)

If the children's product is a toy, it must comply with the Federal toy safety standard in section 106 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The toy safety standard refers to ASTM F 963-11 and ASTM F 963-07ε1 which covers toys and toy chests designed for use by children. A summary of these standards is available on ASTM International website: <http://www.astm.org/Standards/F963.htm>.

### ***3 TRADE POLICIES AND PRACTICES BY MEASURE***

#### ***3.1 Measures Directly Affecting Imports***

##### ***3.1.8 Technical regulations and standards***

###### **Page 68 Para. 3.81**

"Since the last Review of the United States, five specific trade concerns have been raised in the TBT Committee against measures taken by the United States. Furthermore three WTO dispute settlement proceedings taken against the United States under the TBT Agreement are pending (Table A2.1)."

Question 12. Specifically related to issues of Sustainable Palm Oil, Indonesia has asked the U.S. Government to revoke the issue of Notice of Data Availability (NODA) that has been pending for two years that prohibit the export of Palm Oil because the products from Indonesia do not meet the lifecycle greenhouse gas (GHG) requirements. Indonesia urge this revocation because there is no technical evidence showed that Indonesia plantation and industrial of palm oil caused such damages to the environment after the visit site have been conducted by the U.S. Expert Team in 2012?

**RESPONSE:** EPA's analysis of palm oil as biofuels feedstock is still ongoing. 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. As always, the United States is committed to implementing the RFS2 program consistent with our WTO obligations.

As a point of clarification, EPA's analysis does not affect palm oil exports to the United States for food or other purposes and it does not prohibit the export of palm oil biofuels to the United States. EPA's analysis will only be used to determine whether such fuels are eligible under U.S. law to be used to comply with the renewable fuel mandates of the RFS program.

Question 13. What are the result of U.S. Expert Team 2012 site visit in Indonesia?

**RESPONSE:** The results of that visit will be integrated into EPA's analysis.

Question 14. Indonesia also asks U.S. to review their policy on restrictions on trans-fat so that had no negative impacts to the market access on export of Indonesia food products to US.

**RESPONSE:** On 8 November 2013, the U.S. Food and Drug Administration (FDA) issued a tentative determination that partially hydrogenated oils (PHOs), which are the primary dietary source of industrially-produced trans fatty acids (or trans fat) are not generally recognized as safe for any use in food based on current scientific evidence, and therefore are subject to regulation as food additives. This tentative determination was based on new scientific evidence and the findings of expert scientific panels regarding the health risks associated with the consumption of trans fat.

**The comment period for that determination closed on 8 March 2014. FDA is currently evaluating the comments received and will implement any final determination regarding the regulatory status of trans fat in a manner consistent with our WTO obligations.**

**3 TRADE POLICIES AND PRACTICES BY MEASURE**

**3.1 Measures Directly Affecting Imports**

**3.1.9 Sanitary and phytosanitary requirements**

**3.1.9.1 Food and Drug Administration**

**Page 69 Para. 3.87**

"The FDA Food Safety Modernization Act (FSMA), a major reform of legislation on food safety and the safety of animal feed under the responsibility of the FDA, entered into force on 4 January 2011 (P.L. 111-353). The import-related reforms include: foreign supplier verification (i.e. importers are responsible for ensuring that their foreign suppliers have adequate preventive controls in place); a voluntary qualified importer programme for expedited review and importation of food; an accredited third-party auditor programme; authority to require certification of imported food items where there is a known food-safety risk; and possible refusal of entry into the United States if FDA access to inspect a foreign facility is denied."

Question 15. Indonesia asks U.S. to provide the capacity building and socialization of FSMA Regulation as an effort on Indonesia-US cooperation to help Indonesia industry to meet the FSMA requirements?

**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. FDA developed this plan in consultation with officials from other parts of the U.S. government; foreign government officials; non-governmental organizations that represent interests of consumers; food industry representatives; and other stakeholders. FDA issued a final International Food Safety Capacity-Building Plan in February of 2013, available at <http://www.fda.gov/downloads/Food/GuidanceRegulation/UCM341440.pdf>.

Question 16. Indonesia urges U.S. Government in this case USFDA to make a prior notification to Indonesia competent authority before conducting the inspection to verify facilitation and infrastructure of Indonesia industry?

**RESPONSE:** FDA sends an advance notification to the Competent Authority responsible for food safety in the country where FDA will be conducting an inspection. When contacting a Competent Authority, FDA copies their Embassy. FDA always welcomes the Competent Authority to observe FDA inspections conducted in their country. FDA's Food Facility Inspection Program can be found at: <http://www.fda.gov/food/complianceenforcement/inspections/ucm211823.htm>.

Question 17. Indonesia expects for U.S. recognition of Indonesia institutions that have been certified as U.S. partners associated with the pillars of partnership in FSMA?

**RESPONSE:** The United States thanks Indonesia for its interest in U.S. recognition of Indonesian institutions. Under FSMA, FDA will be able to accredit qualified third party auditors to certify that foreign food facilities are complying with U.S. food safety standards.

**Page 69 Para. 3.90**

"The FSMA authorizes the FDA to levy fees on certain domestic and foreign facilities and importer re-inspections. The costs of these activities were previously borne by the FDA. Fees may also be assessed for food recall activities when a domestic food facility or importer does not comply with a recall order, and for administrative costs associated with the voluntary qualified importer programme, food export certifications, and the third-party auditor programme."

**Question:**

The paperwork required of food facilities is extensive. For example, food facilities in Indonesia must renew their food facility registrations during the period from October 1, 2014, and ending on December 31, 2014, after just doing so two years ago. FDA encourages food facilities to renew their registrations early in the three-month renewal period by mailing in the registration, sending a CD or completing online registration. The registration requirements in section 415 of the FD&C Act apply to domestic and foreign food facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

**RESPONSE:** Under FSMA, all food facilities that are required to register with FDA under section 415 of the FD&C Act, including foreign facilities, are required to submit registration renewals to FDA during the registration renewal period. Information can be found at FDA's website at [www.access.fda.gov](http://www.access.fda.gov).

FSMA also gives the U.S. Food and Drug Administration (FDA) new powers to prevent food safety problems and to enforce mandates, including creating extensive new auditing and other responsibilities for the FDA overseas. However, the agency is not equipped and does not have the capabilities to handle these responsibilities because of its few overseas facilities and small budget for professional staff. This will create bottlenecks in Indonesia's and other countries' producers to gain approved audits and other approvals.

**RESPONSE:** FDA works with Congress and our partners to ensure that FDA is funded sufficiently to achieve our food safety and food defense goals. FDA will employ a risk-based inspection strategy to meet inspectional mandates.

The Government of Indonesia has applied to FDA to be recognized officially as having an equivalent food safety system and to become a "third-party auditor." It has also applied for its laboratory facilities to become certified to facilitate the approval processes for Indonesian food suppliers, manufacturers, processors, etc. However, the FDA has not been unable to initiate the process to approve the Government of Indonesia's requests.

**RESPONSE:** On July 29, 2013, the FDA published for public comment its proposed rule to establish a program for accreditation of third-party auditors, also known as certification bodies, to conduct food safety audits and issue certifications of foreign facilities and the foods for humans and animals they produce. The proposed rule would implement Section 307 of the FDA Food Safety Modernization Act (FSMA).

**The proposed rule sets eligibility requirements for accreditation as a third-party auditor. A third-party auditor can be a foreign government, foreign cooperative or other third-party**

**This proposed rule has not yet been finalized, so FDA has not made any determinations regarding the accreditation of any third party auditors.**

See <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm361903.htm>.

Question 18. How do these additional food safety regulations under FSMA comply with the WTO's Principle of Nondiscrimination in Trade?

**RESPONSE:** Under Article 2.1 of the WTO SPS Agreement, WTO Members have the right to take sanitary and phytosanitary measures necessary for the protection of human life and health. Under the proposed rule for the Foreign Supplier Verification Program (FSVP), importers would be required to perform certain risk-based activities to verify that food imported into the United States has been produced in a manner that provides the same level of public health protection as food that is produced by domestic producers. The proposed rule for FSVP can be found at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm361902.htm>.

Question 19. In order for the FSMA to be consistent with the WTO Principles of Nondiscrimination, the rules must be based on scientific risk assessments. Did the U.S. Government performed a scientific risk assessment that determined what FSMA would reduce?

**RESPONSE:** FDA's rules that implement FSMA are still in the proposed stage and have not yet been finalized. At the time of the issuance of the proposed rules, FDA issued a variety of draft scientific documents related to those proposed rules. These draft documents (and the proposed rules) can be accessed through FDA's website [www.fda.gov/fsma](http://www.fda.gov/fsma).

*Question 20. Could the U.S. elaborate on the compliance of the above statutes with its obligations under the SPS Agreement?*

**RESPONSE:** FSMA and its implementing regulations are consistent with U.S. obligations under the SPS Agreement. FDA has issued several proposed rules, including: Preventive Controls for Human Food, Preventive Controls for Animal Food, Produce Safety Standards, Foreign Supplier Verification Program, Accreditation of Third Party Auditors, Sanitary Transport of Food and Feed, and Intentional Contamination. FDA is currently working on finalizing these proposals as well as drafting other proposed rules, as directed by FSMA. Assessments of risk appropriate to the circumstances are being conducted. All proposed rules have been notified to the WTO.

*Question 21. Indonesia is concerned that such statute would have a significant impact on its exports to the U.S. market. Therefore, could the U.S. provide more detailed information on the status of implementation?*

**RESPONSE:** Congress has established specific implementation dates in the legislation. Some authorities will go into effect quickly, and others require FDA to prepare and issue regulations and guidance documents. FDA is committed to implementing the requirements through an open process with opportunity for input from all stakeholders. Between January 2013 and January 2014, the FDA published for public comment seven proposed regulations to implement elements of the FSMA. The proposed regulations address produce safety, preventive food controls, foreign supplier verification programme, accreditation of third-party auditors, preventive controls in the animal feed supply, protection against intentional adulteration of food, and sanitary transportation of food. Supplemental notices of proposed rulemaking were published on September 19, 2014, for four proposed rules (produce safety, preventive food controls, foreign supplier verification).

*Question 22. FDA has many expanded responsibilities, but the need for cooperation is great and my Government has indicated its readiness for some time. It has been at the detriment to Indonesia's exporters that the Government of Indonesia not been able to move forward with FDA on its requests for laboratory certifications, standards equivalency, and approval of third-party auditor processes. What are the U.S. Government's plans to address that problem?*

#### **See response to Question 15**

**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. FDA developed this plan in consultation with officials from other parts of the U.S. government; foreign government officials; non-governmental organizations that represent interests of consumers; food industry representatives; and other stakeholders. FDA issued a final International Food Safety Capacity-Building Plan in February of 2013, available at <http://www.fda.gov/downloads/Food/GuidanceRegulation/UCM341440.pdf>.**

*Question 23. How does the U.S. intend to ensure that a sufficient number of third-party entities are trained and certified to determine if foreign suppliers?*

**RESPONSE:** U.S. Food and Drug Administration has issued a proposed rule that sets eligibility requirements for recognition as an accreditation body. Under the proposed rule, an accreditation body can be a foreign government/agency or a private third-party. The proposed rule provides that accreditation bodies could begin to apply for recognition when the program goes into effect, and third-party auditors could seek accreditation after one or more FDA-recognized accreditation bodies begin accepting

**applications. More information is provided at the link: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm361903.htm>**

**3 TRADE POLICIES AND PRACTICES BY MEASURE**

**3.1 Measures Directly Affecting Imports**

**3.1.9 Sanitary and phytosanitary requirements**

**3.1.9.4 Environmental Protection Agency**

**Page 70 Para. 3.94**

"The Environmental Protection Agency (EPA) is responsible, *inter alia*, for registering pesticides (including herbicides and fungicides) for use in the United States, and establishing maximum residue limits (MRLs) for pesticides on food, known as "tolerances" in the United States. The EPA is required to conduct a risk assessment to study the potential health and ecological effects of a pesticide before it can enter the U.S. market. Since 2012, the EPA has established 897 tolerances for pesticides on food, 827 of which are new trade facilitating tolerances, according to the authorities; the remainder are revised tolerances."

**Question:**

The U.S. EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. The Renewable Fuel Standard (RFS) program regulations were developed in collaboration with refiners, renewable fuel producers, and many other stakeholders. The RFS program was created under the Energy Policy Act (EPAct) of 2005, and established the first renewable fuel volume mandate in the United States. As required under EPAct, the original RFS program (RFS1) required 7.5 billion gallons of renewable- fuel to be blended into gasoline by 2012.

Under the Energy Independence and Security Act (EISA) of 2007, the RFS program was expanded in several key ways, including that EISA established new categories of renewable fuel, and set separate volume requirements for each one. EISA also required EPA to apply lifecycle greenhouse gas performance threshold standards to ensure that each category of renewable fuel emits fewer greenhouse gases than the petroleum fuel it replaces. The adoption of a final rule to implement standards for other feedstocks for biofuel now functions as a non-tariff barrier that reduces the value of imported palm oil fuel from Indonesia as compared to approved feedstocks such as U.S.-grown corn. In December 2011, the U.S. EPA issued a "Notice of EPA Issues Notice of Data Availability (NODA) Concerning Renewable Fuels Produced from Palm Oil under the RFS Program. Its purpose was to "release and request public comments on its lifecycle greenhouse gas (GHG) analysis of palm oil used as a feedstock to produce biodiesel and renewable diesel under the Renewable Fuel Standard (RFS) program." EPA's analysis showed that biodiesel and renewable diesel produced from palm oil did not meet the minimum 20% lifecycle GHG reduction threshold needed to qualify as renewable fuel under the RFS program and, hence, could not be added to biodiesel under the RFS.

Question 24. Please explain why the technical regulations to review the compliance of palm oil with RFS are not more trade-restrictive than necessary to fulfill the objectives of the EISA of 2007?

**RESPONSE: EPA's analysis of the lifecycle greenhouse gas emissions associated with using palm oil as a feedstock in biofuel production is still ongoing, including gathering additional scientific information. The United States appreciates Indonesia's comments and the additional information it has provided during this process. It would be premature to provide further comment given that the Environmental Protection Agency is still in the process of addressing comments on the preliminary evaluation and has not issued a final determination. EPA's science-based methodology for assessing the lifecycle impact of different fuel pathways was proposed on May 26, 2009 and finalized on March 26, 2010. The TBT Committee was notified of both the proposed and final rules. The United States is committed to implementing the RFS2 program consistent with our WTO obligations. As a point of clarification, EPA's final analysis will only be used to help determine whether fuels made from palm oil are eligible under U.S. law to be used to comply with the renewable fuel mandates of the RFS program. It will have no impact on the import of palm oil for food or other purposes, and it will have no impact on the import of palm oil-based biofuels that are not used for compliance with the RFS program requirements.**

***3 TRADE POLICIES AND PRACTICES BY MEASURE******3.3 Measures Affecting Production and Trade******3.3.6 Intellectual Property Rights******3.3.6.7 IP Enforcement*****Page 100 Para. 3.222**

"The USTR 25th annual Special 301 Report<sup>196</sup> monitoring IP protection in trading partners linked IP protection to global health, the digital economy, education, and entertainment internationally, and to more than 30 million jobs in the United States. The report focused on concerns about trademark counterfeiting and copyright piracy; digital, internet, and broadcast piracy; government use of software; and trademark and domain name disputes. It recorded concerns that geographical indications (GI) protection should not violate prior trademark rights or deprive interested parties of the ability to use generic or common terms. Other aspects included IP and health policy, and supporting pharmaceutical and medical device innovation through improved market access. Some 95 trading partners were reviewed in 2013 and 82 in 2014; with 40 and 36 placed on the Priority Watch List or Watch List, respectively. The Special 301 Report also described positive trends in a number of countries, outlined international cooperation and capacity building on enforcement, and identified international best practices among trading partners."

During the transition period and implementation of TRIPS Agreement of WTO, Indonesia has conducted various adjustments of its national rules for the protection of intellectual property rights but still Indonesia is included in the list of PWL country.

Question 25. Indonesia asks for U.S. clarification regarding Indonesia status on Priority Watch List (PWL) of the new Special 301 Report published by the U.S. Government on 30 April 2014 because Indonesia has made a significant progress in combating infringement of intellectual property right in accordance with Indonesia commitment on TRIP'S Agreement?

**RESPONSE: Indonesia has been on the Priority Watch List since 2009, for the reasons clearly identified in annual Special 301 Reports. The United States and Indonesia have engaged in an effort to negotiate a mutually agreed action plan to address the concerns identified in the report. The United States encourages Indonesia to resume its engagement in those discussions.**

***3 TRADE POLICIES AND PRACTICES BY MEASURE******3.3 Measures Affecting Production and Trade******3.3.6 Intellectual Property Rights******3.3.6.7 IP Enforcement*****Page 100 Para. 3.223**

"The Special 301 Out-of-Cycle Review of Notorious Markets for 2013 identified specific markets around the world that were assessed as causing particular economic harm to U.S. businesses and workers, through IP infringement.<sup>197</sup> The report listed 23 online markets, located in Canada, East Asia, Eastern Europe, and the EU that were assessed as responsible for extensive copyright piracy, as well as a number of physical markets in Asia, Latin America, and Eastern Europe. The report cited successful enforcement actions to close or disrupt a number of online markets listed in the corresponding review for 2012, including the closure of a BitTorrent index in Canada and the restriction of facilities enabling infringing activities and pirate and counterfeit trade on sites in China, as well as a major licensing deal with a Chinese website. Successful enforcement activities against physical markets in infringing goods were reported in Pakistan and Mexico."

Question 26. Indonesia asks for U.S. clarification regarding the inclusion of 4 traditional market/mall in Indonesia in notorious market 2013.

**RESPONSE: The United States references the written reasons provided in the December 2013 Notorious Markets report. The United States urges the government of Indonesia to consider taking effective enforcement actions to address concerns with these markets.**

**4 TRADE POLICIES BY SECTOR****4.1 Agriculture****4.1.1 Agriculture Act of 2014****4.1.1.1 Overview****Page 101 Para. 4.1**

"The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) expired in 2012, although many provisions were extended for another year by the American Taxpayer Relief Act of 2012. The new Farm Bill, the Agricultural Act of 2014 (P.L. 113-79) was enacted on 7 February 2014. Most programmes are authorized for a period of five years (crop or fiscal years 2014-18), although some are permanently authorized by the legislation. As required by the Act, the USDA is in the process of developing the implementing regulations, which are necessary for producer sign-up and government payments."

*Question 27. Could U.S. gives detailed information on what kind of programmes that authorized for a period of five years and what kind of programmes that permanently authorized by the legislation?*

**RESPONSE:** Program type does not determine whether authorization is permanent vs. short-term. The primary difference between the two is whether a program will continue operating at the end of the Farm Bill period without reauthorization or will require new authorization under a new Farm Bill or other legislation. This difference determines whether a program can be ended simply by not including it in new legislation or whether it must be expressly terminated, suspended, or superseded by new legislation. It may also affect budget availability for new Farm Bills under Congressional budget rules.

Some Farm Bill programs are permanently authorized by current or previous Farm Bills. The 2014 Farm Act provides new permanent authorization for the Livestock Indemnity Program, Livestock Forage Assistance Program, Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program, and the Tree Assistance Program. Commodity price support programs, although permanently authorized under the Agricultural Adjustment Acts of 1938 and 1949, are suspended in favor of the Price Loss Coverage and Agricultural Risk Coverage programs, but only for the life of the Farm Bill. The 1996 Farm Bill permanently authorized the Noninsured Crop Assistance Program. Other programs are permanently authorized under other types of legislation: the Consolidated Farm and Rural Development Act permanently authorizes agricultural credit and rural development loan and grant programs, the Federal Crop Insurance Act permanently authorizes the crop insurance program, the Healthy, Hunger-Free Kids Act permanently authorizes the child nutrition programs, and other programs like agricultural research and extension are authorized under a number of other laws.

All other programs under the 2014 Farm Bill are authorized for a specific period, usually the five-year life of the Farm Bill. Major programs authorized for only five years include the Margin Protection Program for Dairy Producers, the Conservation Reserve Program, the Environmental Quality Incentives Program, the Conservation Stewardship Program, Food for Peace, and the Supplemental Nutrition Assistance Program.

*Question 28. What is the rationale consideration for this two type period of authorization?*

**RESPONSE:** Please see response to Question 27. Congress may choose to authorize programs permanently or for a temporary period.

**Page 101 Para. 4.2**

"The 2014 Farm Bill was prepared during a period (2012-13) of exacerbating budgetary pressures. Government expenditures are estimated at US\$489 billion for the life of the new Farm Bill, with savings of about US\$5 billion (Chart 4.1). However, about 80% of the projected expenditures under the new Farm Bill are for nutrition programmes. The 2014 Farm Bill continues a long-term policy shift from the traditional commodity, conservation, and disaster payments towards subsidized crop insurance (Chart 4.2)."

*Question 29. What are programmes that will be conduct by the authority for nutrition programmes?*

**RESPONSE:** Nutrition programs under the Farm Bill include the Supplemental Nutrition Assistance Program (SNAP) and three smaller programs: (1) the Food Distribution Program on Indian Reservations (FDPIR), an alternative to SNAP that provides packages of nutritious foods to low-income Native Americans who live on or near reservations, (2) the Commodity Supplemental Food Program (CSFP) that provides food packages to low-income elderly, and (3) the Emergency Food Assistance Program (TEFAP), which provides USDA foods and administrative funds to nonprofit emergency food providers such as food banks.

**Other nutrition programs administered by USDA, including the child nutrition programs, and the Women, Infants, and Children (WIC) program, are authorized and funded under other legislation.**

**Page 102 Para. 4.3**

*"One of the most significant changes affecting the structure of the U.S. farm safety net is the elimination of the Direct Payments (DP) programme. The DP programme has been a cornerstone of U.S. agricultural policy reforms since the end of the Uruguay Round negotiations, and provided about US\$5 billion annually in decoupled income support to farmers and landlords. The Counter-Cyclical Payments (CCP) programme and the Average Crop Revenue Election (ACRE) programme have also been eliminated. These three measures (DP, CCP, and ACRE) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC)."*

*Question 30. What is the fundamental difference between the three measures (DP, CCP and ACRE) with the two new measures (PLC and ARC)?*

**RESPONSE:** Under the 2008 Farm Bill, direct payments were made, based on historical acres and historical yields), regardless of market conditions or whether a crop was planted under the 2014 Farm Bill, the PLC program is a counter-cyclical price-based program. The ARC program is a revenue-based program whereby the producer chooses either individual- or county-level coverage for the life of the 2014 farm bill.

**Page 102 Para. 4.7**

*"Federal crop insurance with subsidized insurance premiums is available for over 100 commodities and livestock. Crop insurance traditionally provides coverage for about 70-75% of expected revenues or yields. The 2014 Farm Bill introduces a new subsidized insurance programme (Supplemental Coverage Option) that allows eligible farmers to top up their crop insurance, in order to cover a portion of the deductible of the insurance. For producers of upland cotton, a new subsidized insurance plan, Stacked Income Protection (STAX), will be available starting in the 2015 marketing year. The Supplemental Coverage Option (SCO) is not available for ARC and STAX participants. These are examples of how the new Farm Bill attempts to address the issue of overlap of the price- and revenue-based income supports and crop insurances, and the potential for overcompensation of farmers' actual losses. The sugar regime with its key instruments (price support; a domestic marketing allotment fixed at 85% of domestic consumption; feedstock flexibility programme and other measures to divert surplus sugar to ethanol production and other uses; tariff rate quotas) remains unchanged."*

*Question 31. What are commodities that covered on the new subsidized insurance programme?*

**RESPONSE:** The crops covered by SCO for 2015 are corn, cotton, soybeans, sorghum, rice, barley, and wheat. STAX is available only for cotton.

*Question 32. Is this subsidized insurance programme also applies to foreign investor in agriculture sector?*

**RESPONSE:** To be eligible, non-citizens must have received either a Social Security Number or Employer Identification Number and must be eligible to receive federal

**benefits. With certain exceptions, only United States citizens, United States non-citizen nationals and "qualified aliens" (and sometimes only particular categories of qualified aliens) are eligible for federal, state, and local public benefits. The category of "qualified alien" is defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 8 U.S.C. § 1611 et seq.**

#### **4 TRADE POLICIES BY SECTOR**

##### **4.1 Agriculture**

###### **4.1.1 Agriculture Act of 2014**

###### **4.1.1.1 Overview**

###### **Livestock sector**

**Page 103 Table 4.1**

	<b>2008 Farm Bill</b>	<b>2014 Farm Bill</b>
<b>Commodity programmes</b>	Marketing loan programme	<p>Maintained</p> <ul style="list-style-type: none"> <li>• Coupled to current prices and production</li> <li>• Loan rates unchanged, except for potential downward adjustment of upland cotton loan rate</li> </ul>
	Direct payments	<p>Eliminated</p> <ul style="list-style-type: none"> <li>• DP-style programme for upland cotton until Stacked Income Protection (STAX) is implemented</li> </ul>
	Counter-cyclical payments (CCP)	Eliminated
		<p>Introduces Price Loss Coverage (PLC).</p> <ul style="list-style-type: none"> <li>• Payments coupled to current prices (counter-cyclical) with a guarantee price level higher than in the CCP programme</li> <li>• Payments are tied to base acres and historical yields with the option of updating yields and reallocating base acres</li> </ul>
	Average Crop Revenue Election (ACRE) programme	<p>Eliminated</p> <p>Introduces Agriculture Risk Coverage (ARC).</p> <ul style="list-style-type: none"> <li>• Payments based on revenue loss</li> <li>• Choice between revenue guarantee at county level (county ARC) and farm-level (individual ARC)</li> <li>• Payments are coupled to current prices</li> <li>• Payments are tied to base acres, with the option of reallocating base acres</li> </ul>
<b>Crop insurance</b>	Federal Crop Insurance Programme (permanently authorized)	<p>Maintained</p> <p>Amendments include new subsidized insurance programmes:</p> <ul style="list-style-type: none"> <li>• Supplemental Coverage Option (SCO)</li> <li>• Stacked Income Protection Plan for producers of upland cotton (STAX)</li> </ul>
<b>Disaster assistance</b>	Non-insured Crop Disaster Assistance Programme (NAP)	Maintained
	Supplemental Revenue Assistance Payments Programme (SURE)	Not authorized after FY2011.
	Livestock Indemnity Programme (LIP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Livestock Forage Disaster Programme (LFP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Emergency Livestock Assistance Programme (ELAP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Tree Assistance Programme (TAP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond

	<b>2008 Farm Bill</b>	<b>2014 Farm Bill</b>
<b>Export credit guarantees</b>	Export credit guarantee programme (GSM-102)	Maintained Amendments include: <ul style="list-style-type: none"> <li>• Maximum tenor reduced to 24 months</li> <li>• Flexibility given to the U.S. Secretary of Agriculture to adapt the programme pursuant to such terms as may be agreed between the United States and Brazil in the cotton dispute WTO/DS267</li> </ul>
<b>Sugar</b>	<i>Sugar programme</i>	<i>Unchanged</i> Includes price support and supply control measures.
	<i>Dairy Export Subsidy Programme (DEIP)</i>	<i>Eliminated</i>
	<i>Dairy Product Price Support Programme</i>	<i>Eliminated</i>
	<i>Milk Income Loss Contract (MILC) Programme</i>	<i>Eliminated.</i>
		<i>Introduces Margin Protection Programme for Dairy</i> <ul style="list-style-type: none"> <li>• Subsidized scheme for insuring milk margins (US\$4-8/cwt)</li> <li>• Deficiency payments are made when milk margin declines below (insured) level of US\$4-8/cwt</li> <li>• Decoupled from actual production</li> </ul>
		<i>Introduces Dairy Product Donation Program.</i> <ul style="list-style-type: none"> <li>• CCC dairy product purchase programme for distribution to low-income people in times of low margins (US\$4/cwt or below)</li> <li>• Time-limited market support purchases at prevailing market prices</li> </ul>
	<i>Federal Milk Marketing Orders</i>	<i>Unchanged</i>

*Question 33. How the mechanism of the policy of "Administered Price" on the program of the Price Loss Coverage (PLC) consistent with the Agreement on Agriculture (AoA)?*

**RESPONSE: The PLC program does not make use of an administered price or act as a market price support measure. The PLC program provides producers with direct cash payments when market prices fall below the PLC reference price for a fixed level of historical production of a covered commodity. Further, PLC payments are unaffected by whether the producer increases, decreases, or stops production or produces a different covered commodity. Market prices are not directly impacted by the PLC program and can fluctuate freely, including below the PLC reference price.**

*Question 34. How is the consistency of the policy of granting the Export Credit Guarantee Program" with the commitment from developed country to reduce/eliminate export competition as the spirit in negotiating agriculture sector in WTO?*

**RESPONSE: The Export Credit Guarantee program complies with all WTO disciplines.**

**Page 104 Para 4.9**

"Overall, the new Farm Bill is a big change in agriculture policy for some products. Its impact will depend upon a number of choices producers must make (e.g., PLC versus ARC; ARC versus SCO; reallocation of base acreage, etc.). The new Farm Bill eliminates market price support and export subsidies for dairy products, and direct payments for historical crop production. However, the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions."

*Question 35. Indonesia asks U.S. for further clarification related to the impacts caused by this policy for agricultural export products from developing countries which enter to U.S. market. whether this policy becomes an obstacle to developing countries to export their products to U.S. because it will be hard to compete with U.S. domestic products which have a better quality products and more efficient production systems?*

**RESPONSE:** Although the new ARC and PLC programs make payments when prices or revenue decline, they are decoupled from actual farm production decisions. The 2014 Farm Bill eliminated both market price support and export subsidies for dairy products. The United States would also note that U.S. agricultural tariffs, both bound and applied, continue to be amongst the lowest in the world, affording export opportunities to all U.S. trading partners.

#### 4 TRADE POLICIES BY SECTOR

##### 4.1 Agriculture

###### 4.1.1 Agriculture Act of 2014

###### 4.1.1.2 Title I (Commodities)

###### 4.1.1.2.1 Elimination of direct payments

**Page 105 Table. 4.2**

(US\$ million)

	Marketing Year 2010	Marketing Year 2011
<b>Green Box</b>		
Domestic food aid	118,958	125,117
Direct payments	94,915	103,151
Environmental Quality Incentives Program (EQIP)	4,898	4,745
	1,246	1,231
<b>Blue Box</b>	0	0
<b>Current Total AMS</b>	4,119	4,654
Dairy product price support	2,845	2,835
Milk income loss contract payments (MILC)	0.6	403
Sugar price support	1,258	1,406
<b>De minimis</b>	5,880	9,714
Subsidized crop insurance	4,712	7,461
Supplemental Revenue Assistance Payments (SURE)	525	1,442
Counter-cyclical payments	17	0
ACRE payments	9	52
Marketing loan payments	128,958	139,485

Question 36. Could U.S. give us data of Aggregate Measures Support (AMS) period of 2012-14?

**RESPONSE:** The U.S. 2012 domestic support notification was posted on the WTO website on December 8, 2014. The United States is still in the process of collecting relevant data for 2013 and 2014 and will continue to notify its domestic support in a timely manner.

Question 37. Under this new regulation, does U.S. have the revision of AMS of those products?

**RESPONSE:** We cannot say with precision what the level of AMS support will be under the new Farm Bill. Any effort to estimate support levels would depend on a number of critical assumptions regarding program sign-up, base acre updates, and commodity prices.

Question 38. How the increasing amount of domestic support program (from 2010-11) given by U.S. Government will be consistent with the spirit of Doha Development Agenda (DDA)?

**RESPONSE:** The United States initially proposed that it would liberalize its agricultural policies as part of a broader reform in a Doha context. If and when WTO Members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.

In the meantime, the United States remains committed to its current WTO commitments and calls upon all Members to abide by their existing commitments and obligations, including those related to transparency. This will permit negotiators to reach an agreement that will address the critical issues that face agricultural trade today and achieve the spirit of the DDA.

**Page 108 Para. 4.23**

"The U.S. sugar programme, composed of price support and supply control measures, remains unchanged. The "non-recourse" sugar loan programme guarantees a minimum or floor price to domestic sugar producers. The 2008 Farm Bill requires the sugar programme to be administered, to the maximum extent possible, with no cost by avoiding forfeitures of sugar loan collateral. Hence, USDA must establish a level of domestic marketable supply to support a market price that is higher than the loan rate offered by the sugar loan programme (so-called loan forfeiture level). Once the U.S. government acquires ownership of the sugar, the CCC is limited in the ways it may dispose of it, and the CCC will always lose money when it sells its inventory. USDA controls the level of marketable sugar supply through: (1) management of the marketing allotments, which limits the amount of domestic sugar that may be marketed for food or human consumption during the year, (2) **limiting import access via tariff quota administration, and** (3) the Feedstock Flexibility Program, which authorizes the Secretary of Agriculture to sell surplus sugar to bio-energy producers (sugar for ethanol). The United States is traditionally a net-importer of sugar."

Question 39. Could U.S. more elaborate about tariff rate quota for sugar?

**RESPONSE:** The U.S. has TRQs for raw and refined sugar which are defined in U.S. Additional Note 5 of Chapter 17 of the U.S. Harmonized Tariff Schedule. The raw sugar TRQ has a fixed minimum quantity pursuant to the WTO Uruguay Round Agreements (1,117,195 MTRV). USTR has been delegated the authority to allocate the TRQ quantity and has historically allocated the raw sugar TRQ among 40 countries based on their historical shipments to the United States during a base period. The minimum refined sugar TRQ to which the United States is committed under the WTO Uruguay Round Agreements is 22,000 MTRV of which 1,656 MTRV is currently reserved for specialty sugar. Certificates of quota eligibility must accompany imports from any country for which an allocation has been provided.

**OTHERS****Export Subsidies For Corn And Soybeans**

"Through the GSM-102 Program, GSM 103 Program and the Supplier Credit Guarantee Program (SCGP), corn and soybean farmers are benefiting from prohibited subsidies. This is based on the application of the recent Cotton Panel's findings to very similar programs benefiting corn and soybean growers. The three export guarantee programs essentially insure lenders, for a fee, against default by foreign banks and buyers. The Commodity Credit Corporation, which oversees and manages the operation of the export guarantee programs, guarantees repayment of credit extended by lenders to finance export deals. Thus, by reducing risk to lenders, they facilitate exports to countries that would not otherwise be able to obtain financing to purchase the products."

Question 40. The Government of Indonesia views that the GSM-102 Program, GSM 103 Program and the Supplier Credit Guarantee Program (SCGP) qualify as export subsidies in the case of corn and soybeans. Article 6.3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) confirms this, as did the recent Cotton Panel finding. Why these export guarantee are programs continuing for corn and soybeans?

**RESPONSE:** There are no WTO findings showing that the GSM-102 program, in its current form, is a subsidy under Article 6.3. With respect to GSM-103 and the Supplier Credit Guarantee Program, those programs no longer exist, as was reported in Secretariat Report WT/TPR/S/235.

Question 41. To address differences that have arisen over how the United States might comply with the WTO cotton case won by Brazil, Title III of the 2014 Farm Bill law granted flexibility to the Secretary of Agriculture to make changes to the credit guarantee program to meet the terms agreed upon by both countries. Have changes been made since passage and enactment of the 2014 Farm Bill and, if so, what have they been? Have they been notified at the WTO?

**RESPONSE:** Page 113 of WT/TPR/S/307 summarizes the changes in the Export Credit Guarantee program mandated by the 2014 Farm Bill. Current program terms and

**conditions are readily available on our website at [http://www.fas.usda.gov/programs/  
export-credit-quarantee-program-qsm-102](http://www.fas.usda.gov/programs/export-credit-quarantee-program-qsm-102).**

**JAPAN*****Report by the Secretariat (WT/TPR/S/307)******3 TRADE POLICIES AND PRACTICES BY MEASURE******3.1 Measures Directly Affecting Imports******3.1.7 Anti-dumping, countervailing, and safeguard measures******3.1.7.1 Anti-dumping and countervailing duties******(Question 1: Pages 61-65, Paragraphs 3.63-3.70)***

The DSB adopted its recommendations and rulings that found the U.S. statutory provision regarding "all others rate" to be inconsistent with the Anti-Dumping Agreement in August 2001, over 13 years ago. Although the U.S. took certain measures to implement part of the DSB recommendations, the remaining part has not yet been implemented. Up until now, since they have been left untreated, the provision in question has been applied to new anti-dumping investigations inconsistent with the WTO agreements and also could be applied in the future. The Government of Japan again requests the recommendation be implemented immediately. A full and prompt implementation of the DSB's recommendations and rulings is essential to the effectiveness and credibility of the WTO dispute settlement system. Japan would like to know what steps the U.S. government intends to take to complete full implementation together with the Congress.

**RESPONSE: As noted in the DSB, the U.S. Administration will work with the U.S. Congress with respect to appropriate statutory measures to resolve this matter.**

***(Question 2: Page 61, Paragraph 3.63)***

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. The Government of Japan urges the Government of the U.S. to promptly halt the distribution of revenues under the Byrd Amendment and resolve the inconsistency with the WTO Agreements. In this respect, please indicate the specific view about further distribution of the U.S. Government.

**RESPONSE: As Japan notes, the Continued Dumping and Subsidy Offset Act of 2000 was repealed in 2006. Pursuant to that repeal, there has been no distribution to domestic firms of antidumping and countervailing duties collected on goods entering the United States on or after October 1, 2007. Therefore, the United States has taken all steps necessary to implement the DSB's recommendations and rulings as regards the Continued Dumping and Subsidy Offset Act of 2000.**

***(Question 3: Page 61, Paragraph 3.64)***

According to the Report by the Secretariat, in 2014, following the outcome of a court case, the Department of Commerce (DOC) confirmed that it would not apply the previously withdrawn regulatory provisions governing targeted dumping. However, the DOC has not changed its approach to apply the average-to-transaction method under the second sentence of the Article 2.4.2 of the Anti-dumping Agreement, which includes the denial of offsets for non-dumped sales when aggregating the transaction specific comparison results (so-called "Zeroing"). Japan is of the view that Zeroing is inconsistent with the WTO Agreement and is concerned that the DOC applies the above mentioned sentence as an alternative method to Zeroing. Japan would like to know the US's opinion on this point.

**RESPONSE: When Commerce finds a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or time periods, and it can explain why these differences cannot be taken into account appropriately by using the average-to-average method, it may calculate margins of dumping by comparing the weighted average of the normal values to individual export price (or constructed export price) transactions (i.e., the average-to-transaction method). Commerce's application of the average-to-transaction method is consistent with the Antidumping Agreement.**

### **3.1.7.2 Sunset reviews**

**(Question 4: Pages 65-66, Paragraphs 3.71-3.72)**

*Removal of the Long Continued Anti-dumping Measures*

*With regard to the anti-dumping measures against products made in Japan, the oldest existing measure was imposed in 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 request of domestic industries, the U.S. government repeats the extension of the period for anti-dumping measures and continues them over the long term in many cases. The Japanese government calls for the U.S. to quickly remove unfairly long-continued anti-dumping measures and would like to know the U.S. view on this.*

**RESPONSE:** The United States administers its trade remedy laws in accordance with applicable WTO agreements. The determinations in each sunset review are case-specific. The results for all 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, information about the rationale for either the continuation or termination of an antidumping duty order.

### **3.3 Measures Affecting Production and Trade**

#### **3.3.5 Government procurement**

##### **3.3.5.1 Overview**

**(Question 5: Page 85, Paragraph 3.168)**

*Please explain whether or not the bills titled "GROW AMERICA ACT" and "Invest in American Jobs Act of 2014" are still been viable following the midterm elections.*

**RESPONSE:** It would be inappropriate for the U.S. Executive Branch to speculate how Congress may choose to proceed on this pending legislation.

**(Question 6: Page 85, Paragraph 3.168)**

*Recently, the concept of "localization barriers to trade" has been taken up at various international forums dealing with trade and investment. Would the United States clarify whether the local content requirement imposed in the process of the Government Procurement is included in the concept of "localization barriers to trade"? Does the United States agree that Parties to the WTO should decrease or delete "localization barriers to trade" even outside the commitments made in the WTO or GPA frameworks?*

**RESPONSE:** The United States has one of the most open and transparent procurement systems in the world. Like every other GPA member the United States excludes certain procurements. The United States does not believe maintaining exclusions under the GPA is contrary to our interest in reducing "localization barriers to trade." The United States strongly supports additional WTO Members joining the GPA and recognizes that flexibility on critical sensitivities is often the key to opening up other commercially significant government procurement markets. As such the United States believes expanded GPA membership is critical to its work on combating/reducing localization barriers to trade.

**(Question 7: Page 85, Paragraph 3.168)**

*Please provide the USG's view on the rationale of introducing Buy American provisions, especially from the viewpoint of U.S. economic growth and job creation. At the same time, Japan would like the U.S. to provide some examples of the opinions expressed by the U.S. stakeholders including the U.S. Chamber of Commerce and Business Roundtable on costs or impact of Buy American policy on U.S. growth and job creation.*

**RESPONSE:** The United States Executive Branch does not track all legislative proposals. The United States is committed to ensuring its covered government procurement is conducted consistent with its obligations under the WTO Agreement on Government Procurement.

**(Question 8: Page 85, Paragraph 3.168)**

*Japan is concerned about the recent trend that Buy American provisions are built into recent laws such as the American Recovery and Reinvestment Act of 2009 (ARRA) and Consolidated Appropriations Act of 2014. In addition, Japan is also concerned that the new bill that, for a waiver for rolling stock, gradually raises the percentage of cost of components and subcomponents produced in the United States from 60% to 100%. 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 the international efforts against protectionism. In this context, Japan would like to know if the U.S. has established or is planning any new laws with Buy American provisions since 2012 except the laws as mentioned above.*

**RESPONSE:** The executive branch of the U.S. federal government does not oversee the legislative proposals introduced by members of the federal or state legislatures. The United States is committed to ensuring its covered procurements are conducted consistent with U.S. international obligations.

**3.3.5.2 Procedures****(Question 9: Page 86, Paragraph 3.177)**

*According to Paragraph 3.177 of the report by the Secretariat, purchases below US\$150,000 are reserved for small business categories under a "simplified acquisition procedure". Would the United States clarify whether foreign SMEs are accorded the same treatment as U.S. SMEs? If not, would the United States explain the rationale or historical background underlying this policy?*

**RESPONSE:** Information on the U.S. small business preference programs and eligibility requirements can be found at the following webpage: <https://www.sba.gov/category/navigation-structure/contracting>.

**The Small Business Act states that "[i]t is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation."** 15 U.S.C. §631(a).

**3.3.6 Intellectual property rights****(Question 10: Page 89, Paragraph 3.189)**

*The United States has a five-year marketing exclusivity for new chemical entity (NCE) which is shorter compared with EU countries, Canada and Japan with eight- to ten-years of marketing exclusivity. Does the United States have a plan to extend the NCE exclusivity period?*

**RESPONSE:** Extending the exclusivity period in the United States for undisclosed test or other data submitted as a condition of approving the marketing of pharmaceutical products which utilize new chemical entities would require an act of Congress. The current Congress, which is the 113<sup>th</sup> Congress, is scheduled to end on January 3, 2015. The 114<sup>th</sup> Congress will begin thereafter and extend until January 3, 2017. We are not in a position to provide information on whether Members of Congress may introduce draft legislation in the new Congress, and how data exclusivity issues may be addressed, if at all.

\*21 U.S.C. §355. New drugs

(c) Period for approval of application; period for, notice, and expedition of hearing; period for issuance of order

(3)(E)

(ii) If an application submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, is approved after September 24, 1984, no application which refers to the drug for which the subsection (b) application was submitted and for

*which the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted may be submitted under subsection (b) of this section before the expiration of five years from the date of the approval of the application under subsection (b) of this section, except that such an application may be submitted under subsection (b) of this section after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (b)(2)(A) of this section.*

*(j) Abbreviated new drug applications*

*(5)(F)*

*(ii) If an application submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, is approved after September 24, 1984, no application may be submitted under this subsection which refers to the drug for which the subsection (b) application was submitted before the expiration of five years from the date of the approval of the application under subsection (b) of this section, except that such an application may be submitted under this subsection after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in subclause (IV) of paragraph (2)(A)(vii).*

### **3.3.6.3 The patent system**

**(Question 11: Page 94, Paragraph 3.202)**

*It is often pointed out that granting low-quality patents through low-quality examination may result in causing problems of so-called "patent thickets" or "evergreening of patents". To address this situation, the United States seems to take measures to promote high-quality examination and Japan is interested in them. Would the United States elaborate in detail on the measures the United States has adopted or will adopt, if any, to address patent quality issues other than monitoring quality through the Quality Composite Score referred to in paragraph 3.202?*

**RESPONSE:** The U.S. Patent and Trademark Office (USPTO) has created a number of programs and initiatives to continue improving patent quality. For example, the Patent Examiner Technical Training Program (PETTP) is designed to ensure patent examiners keep pace with the state of the art developments by inviting volunteer assistance from scientists, engineers, professors and industrial designers to participate as guest lecturers. The Prior Art Search initiative is part of the Software Partnership which involves the scientific community in sharing best practices in search strategy and improvement of tools and resources which should help the USPTO identify the most relevant search resources and determine the best prior art for examination. For further information see: [http://www.uspto.gov/patents/init\\_events/index.jsp](http://www.uspto.gov/patents/init_events/index.jsp).

**(Question 12: Page 95, Paragraph 3.204)**

*Japan is interested in the initiatives of the United States to protect innovators from "frivolous litigation". Japan considers that one of the factors which induce frivolous litigation is high litigation awards, including high attorney's fees most of which are for the discovery process and the large amount of damages awarded by courts which can be three times the amount of actual injury at maximum. Has the United States taken or will it take any measures or initiatives to address "frivolous litigation" focusing on these regards, other than the 7 legislative recommendations and 5 executive actions announced on the website referred to by the link in footnote 171? Please explain the measures of initiatives, if any.*

**RESPONSE:** The discussion in the United States on patent litigation reform legislation relating to abusive patent litigation is ongoing.

### **3.3.6.4 Trade secret protection**

**(Question 13: Pages 95-96, Paragraph 3.207)**

*We would like to know the developments of the "Administration Strategy on Mitigating the Theft of U.S. Trade Secrets", which was issued in Feb 2013. As it has been one and a half years, could you please provide the information about the concrete results of the respective 5 action items which*

*are mentioned in the strategy. In particular, we are interested in knowing the support for developing Voluntary Best Practice and statistics related to Enforcement Operations.*

**RESPONSE:** On June 20, 2013, the United States issued a request for public comment on voluntary private sector initiatives regarding IPR protection and enforcement, and is currently in the process of evaluating those response. In light of this on-going review, the United States is not in a position to provide an evaluation of such initiatives at this time. U.S. government IPR enforcement actions are distinct from voluntary private sector initiatives.

**With regard to the request for statistics on enforcement operations referenced above, the Department of Justice and the Federal Bureau of Investigation each issue an annual report to Congress pursuant to the PRO-IP Act, describing their IP enforcement efforts, including trade secret enforcement. The PRO-IP Act reports covering the past year should be completed and released in the near future.**

**Agencies at U.S. embassies around the world form IPR working groups in support of U.S. companies abroad and formulate work plans in support of those goals. Trade secrets are part of those IPR work plans. Foreign Commercial Service Officers from the International Trade Administration and Intellectual Property Attaches from the U.S. Patent and Trademark Office collaborate with embassy interagency teams to ensure protection and enforcement of trade secrets.**

**The United States Patent and Trademark Office and the International Trade Administration conduct outreach and provide training to small- and medium-sized businesses in the United States on the paramount importance of trade secret protection and enforcement in the United States and in foreign markets through the Stopfakes.gov Roadshows. At roadshows, the Federal Bureau of Investigation presents on its enforcement role when confronting trade secret theft and economic espionage as well as trains businesses on how to protect trade secrets as well as on resources to which they have access when the need for enforcement arises.**

### **3.3.6.7 IP enforcement**

#### **(Question 14: Pages 99-100, Paragraph 3.221)**

*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 (2012-2014 to date). Furthermore, please provide us with updated information, if any, on the pilot program which was reported on the ITC's website as to be launched in June 2013.*

**RESPONSE:** USITC calculates the average length of investigations for investigations completed on the merits in months. USITC calculates this average starting on the day an investigation is instituted, the day the Notice of investigation is published in the Federal Register, through the day the Commission issues its final determination of violation or no violation terminating the investigation (the target date). USITC does not include in its calculation investigations terminated due to withdrawal of complaints, settlements, consent orders or arbitration.

**The average length of investigations completed on the merits for the last three fiscal years is as follows:**

	FY2012	FY2013	FY2014
<b>Annual average length of investigations concluded on the merits (in months)</b>	<b>16.5</b>	<b>19.7</b>	<b>17.1</b>

**For information about each investigation instituted on or after October 1, 2008, USITC has released a new information system, 337Info, on its website. The information includes: date of publication in the Federal Register of the Notice of Institution**

(i.e., institution date); target date; date of final determination on the merits or otherwise; and date of termination.

In June 2013, USITC launched a pilot program whereby the Commission may designate a potentially dispositive issue for early decision (within the first 100 days of an investigation) by the Administrative Law Judge. To date, there has been one investigation with a domestic industry issue decided within 100 days of institution. In that investigation, the Administrative Law Judge found, and the Commission affirmed, there was no domestic industry and the investigation was terminated. USITC will be evaluating this pilot program in fiscal year 2015.

#### **4 TRADE POLICIES BY SECTOR**

##### **4.1 Agriculture**

###### **4.1.1 Agricultural Act of 2014**

###### **4.1.1.1 Overview**

**(Question 15: Page 102, Paragraph 4.3)**

The new Farm Bill eliminated the direct payment classified in Green Box and started the PLC and the ARC which are considered as Amber Box. Could the United States explain how this change is consistent with the WTO disciplines? The payment based on insurance schemes such as PLC, ARC and SCO are likely to be affected by the fluctuation of international grain prices. How would the United States manage possible expansion or fluctuation of outlays?

**RESPONSE:** The 2014 Farm Bill is consistent with WTO disciplines. The United States notes that the 2014 Farm Bill not only eliminates the direct payment program, but also a number of Amber Box programs, including countercyclical payments and the Average Crop Revenue Election program. Moreover, the 2014 Farm Bill, like previous Farm Bills, contains a "circuit breaker" that gives the Secretary of Agriculture the authority to ensure that the United States does not exceed its commitment for its Total Aggregate Measure of Support.

**(Question 16: Page 102-103, Paragraph 4.7)**

Does the United States have any schemes to prevent overlapping and overcompensating with PLC, ARC, and SCO other than avoiding farmers from enrolling them simultaneously?

**RESPONSE:** USDA agencies will monitor enrollment electronically so producers cannot receive benefits from both ARC and PLC, or from both ARC and SCO.

###### **4.1.1.2 Title I (Commodities)**

###### **4.1.1.2.4 Marketing loan programme**

**(Question 17: Page 108, Paragraph 4.21)**

Could the United States explain the details of the environmental cross-compliance provisions in the market loan programme?

**RESPONSE:** Producers who obtain commodity loans must be in compliance with highly erodible land conservation and wetland provisions of the Farm Bill.

###### **4.1.1.2.8 Eligibility criteria**

**(Question 18: Page 111, Paragraph 4.36)**

Could the United States explain why payment limit for peanuts is separated from other products?

**RESPONSE:** Peanuts historically had a separate program system from other "program" commodities prior to 2002. Treatment of peanuts in more recent farm bills reflects this legacy. For example, peanuts had a separate subtitle in the 2008 Farm Bill. Peanuts have also been identified for separate treatment—this time regarding payment limits—in the 2014 Farm Bill.

**4.1.1.5 Title IV (Nutrition)**

**(Question 19: Page 113, Paragraph 4.49)**

Please explain programs/activities to reduce the expenditure for SNAP, if any.

**RESPONSE:** Most U.S. states consider Low-Income Home Energy Assistance Program (LIHEAP) payments in their calculation of SNAP benefits. The 2014 Farm Bill amends how LIHEAP payments are treated in the calculation of SNAP benefits, which is expected to reduce SNAP benefits and accounts for most of the estimated cuts in SNAP.

**4.2 Services****4.2.2 Telecom****4.2.2.2 Legal and institutional framework**

**(Question 20: Pages 124-125, Paragraph 4.90)**

According to the report by the Secretariat, Section 310 of the Communications Act, restricts granting of a common carrier wireless license to foreign governments, as well as to any non-U.S. citizens or corporations, or any corporation with more than 20% foreign ownership. However, the FCC can determine to forbear from that restriction if the particular foreign investment is consistent with the public interest.

Are there any clear criteria for the FCC to judge whether a foreign investment is consistent with the public interest or to apply "forbearance"? Would you give us some examples of cases where foreign investments are consistent with the interests of the public?

**RESPONSE:** Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act.

**(Question 21: Page 124, Paragraph 4.90)**

According to the report by the Secretariat, a common carrier wireless license with more than 20% ownership is restricted. Are there any restrictions on foreign investment in a common carrier wire license or cable license? If any, would you explain about the restriction?

**RESPONSE:** There are no restrictions on foreign investment in common carrier wireline or cable services, except to the extent that they also seek to own certain radio licenses (e.g for microwave links). Even in the latter case, a foreign-owned company can invest, if it does so indirectly (i.e. through U.S.-established subsidiaries.)

**(Question 22: Page 125, Paragraph 4.94)**

According to your report, all eligible telecommunications carriers (ETCs) are required to offer voice services and also broadband services. What are the conditions or criteria to determine whether a telecommunications carrier is eligible?

**RESPONSE:** Requirements are set out in Section 213(e) of the Communications Act, requiring, *inter alia*, that the carrier:

**(A)** offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

**(B)** advertise the availability of such services and the charges therefore using media of general distribution.

**4.2.5 Maritime transport**

**4.2.5.1 Recent developments**

*(Question 23: Page 142, Paragraph 4.138)*

*Regarding the Jones Act, does the U.S. government think that the conditions which created the need for the exemption still prevail?*

**RESPONSE:** Yes, the United States considers that the domestic cabotage regime continues to be an important means of ensuring the availability of experienced seafarers and maintaining domestic shipbuilding capability, which are important national security objectives.

*With regard to the "Jones Act vessels" or US-flag vessels, Section 304(a) of the Coast Guard and Maritime Transportation Act of 2006 stipulates that the Secretary of Transportation shall develop and implement a program to promote the transportation of liquefied natural gas to the United States on United states flag vessels ((c) program). Has such a program already been developed or implemented?*

**RESPONSE:** The Maritime Administration has developed a program, entitled StrongPorts, to assist ports with capacity and efficiency projects aimed at improving port and intermodal infrastructure. The program groups its assistance efforts around three product lines: Planning & Engagement, Financing, and Project Support. Additional information is available at <http://www.strongports.gov/toolkit>.

**ADDITIONAL QUESTIONS FROM JAPAN**

*Report by the Secretariat (WT/TPR/S/307)*

**4 TRADE POLICIES BY SECTOR****4.2 Services****4.2.5 Maritime transport****4.2.5.1 Recent developments**

(Question 1: Page 142, Paragraph 4.138)

*With regard to U.S. response to question 23, we would like to obtain clarifications on whether the objective of the "StrongPorts" program developed by U.S. Maritime Administration is to improve port and intermodal infrastructure, and not to promote the use of U.S.-flag LNG vessels. If so, is it correct to understand that currently there is no program to promote the use of U.S.-flag LNG vessels under the Coast Guard and Maritime Transportation Act of 2006?*

**RESPONSE:** Through Maritime Administration's Deepwater Ports Licensing Program, MARAD has been promoting the transportation of LNG to the United States for several years. To date, twenty Deepwater Port License Applications have been filed for approval. (Eighteen applications were filed for licenses to import liquefied natural gas (LNG) and two applications were filed for licenses to import oil).

**Of the twenty applications, nine have been approved. Currently, there are three existing Deepwater Ports – (two LNG terminals and one oil facility).**

The Maritime Administration is also currently developing a National Maritime Strategy that will provide recommendations aimed at supporting the growth of the U.S. maritime industry and ensuring the availability of U.S.-flag vessels for the nation's economic and national security. The strategy will address issues such as port infrastructure, U.S. flag vessels, cargo, mariners and other maritime matters.

**For further details on MARAD's Deep Water Port Program, see:**

[http://www.marad.dot.gov/ports\\_landing\\_page/deepwater\\_port\\_licensing/dwp\\_current\\_ports/dwp\\_current\\_ports.htm](http://www.marad.dot.gov/ports_landing_page/deepwater_port_licensing/dwp_current_ports/dwp_current_ports.htm).

[http://www.marad.dot.gov/ports\\_landing\\_page/deepwater\\_port\\_licensing/dwp\\_vessels\\_mariners/dwp\\_vessels\\_mariners.htm](http://www.marad.dot.gov/ports_landing_page/deepwater_port_licensing/dwp_vessels_mariners/dwp_vessels_mariners.htm).

(Question 2: Page 142, Paragraph 4.138)

*With regard to U.S. response to question 23, recently, some members of the Congress introduced a bill called the Growing American Shipping Act to encourage the use of U.S.-flag vessels to export U.S. LNG to other countries including Japan. Japan is following the situation with great concern as the bill may be inconsistent with the principle of the freedom of navigation and various international agreements depending on how it will be implemented. Japan would like to know the current status and future prospect of the deliberation of the bill.*

**RESPONSE: We cannot comment on current deliberations of this proposed measure or speculate as to the outcome.**

**KOREA, REPUBLIC OF****PART I: Questions Regarding the Secretariat Report****Page 20 (Para 1.34)**

*Efforts have been under way since 2012 to boost the U.S. tourism trade. In May 2012 the Government launched the National Travel and Tourism Strategy to develop and further increase travel and tourism to the United States. Its long-term goal is for 100 million foreign visitors annually by 2021. In May 2014, the President issued a report detailing progress made, including significant increases in the use of the Trusted Travel Programs, and significant reductions in visa waiting times, especially in Brazil and China. The United States is the world's largest tourism exporter.*

**Question 1**

*Korea and the U.S indeed maintain close relations in a variety of areas, including politics, the economy and culture, etc. In particular, people-to-people exchange has significantly increased since the two nations agreed on the Visa Waiver Program in 2008. However, the U.S. immigration clearance takes on average 80 minutes while it takes only 13 minutes at the Incheon International Airport in Korea. The long waiting time causes inconvenience for travellers and leaves room for improvement. Please let us know the U.S. government's input regarding this issue.*

**RESPONSE:** Over the past two years, U.S. Customs and Border Protection (CBP) has taken a number of critical steps to expedite international arrivals and improve the passenger experience, including automating travel documents. CBP eliminated the I-94 and I-94W form and is working toward Automated Primary Control kiosks to allow passengers to scan their passports and enter their customs declaration information. CBP has also increased the availability of mobile applications to expedite passport control, and it has made its trusted traveller program, Global Entry, available directly to U.S. citizens, U.S. lawful permanent residents, and nationals of seven other countries. CBP will continue to find solutions to improve the international arrivals process while ensuring a safe and secure border.

**Page 42 (Para 3.2.)**

*The U.S. Customs and Border Protection (CBP), as part of the Department of Homeland Security has a primary role in facilitating trade and enforcement, both security and trade related, at U.S. ports of entry. However, some 30 of federal agencies have a role in trade enforcement activities. Recent developments include more coordination and cooperation among federal agencies, including through the Border Interagency Executive Council (BIEC) and the International Trade Data System (ITDS).*

**Page 42 (Para 3.3.)**

*The import process has three main stages, pre-entry, entry, and post-entry, each with specific requirements (Chart 3.1). CBP regulations from 2003 require advance electronic transmission of cargo information to CBP for both arriving and departing cargo and provide for various effective dates depending upon the mode of transportation. Section 2013 of the SAFE Port Act mandates development of a regulation to require additional data for improved high-risk targeting, including appropriate security elements to be provided prior to the cargo being loaded on a vessel destined for the United States. The Importer Security Filing (ISF) rule was established in 2008 and entered into effect in 2009; there have been no major changes since that time. For maritime shipments, the importer is responsible for providing an ISF, which consists of ten data elements ("importer of record" number, consignee number, seller (owner) name and address, buyer (owner) name and address, ship to party name and address, manufacturer (supplier) name and address, country of origin, HTS classification (to the 6-digit level), container stuffing location, and consolidator (stuffer) name and address) and two from the carrier (vessel stow plan and container status messages). The ISF information is generally due 24 hours prior to the cargo being loaded. Where a vessel voyage is less than 24 hours, the ISF may be submitted any time prior to arrival.*

**Page 44 (Para 3.13.)**

C-TPAT is a voluntary public-private partnership programme which recognizes that CBP can provide the highest level of cargo security only through close cooperation with the principal stakeholders of the supply chain. Established in 2001, it was codified into law by the Security and Accountability for Every Port Act of 2006. Through this programme, CBP asks businesses to ensure the integrity of their security practices, and communicate and verify the security guidelines of their business partners within the supply chain. Businesses that apply to C-TPAT are reviewed, and if the review is favourable, receive Tier I certification status. Thereafter, Tier II may be achieved after physical examination of a company's supply chain and minimum security measures. A third level, Tier III, exists for those importer partners that show a sustained commitment beyond minimum security and have exceeded the programme's requirements and applied best practices. The advantages of participating in the C-TPAT programme include a reduction of risk score that results in fewer CBP inspections, and eligibility for expedited treatment and processing. As of June 2014, there were more than 10,732 C-TPAT certified companies, resulting in over 25,160 total validations, and accounting for around 54.1% of total merchandise imports into the United States by value.

**Question 2**

Exporters from Korea have noted that they receive requests from CBP for specific documents for material or identification papers that are generally not used in Korea or by Korean manufacturers. As an example, to verify the origin of a synthetic fiber scarf, a Korean exporter was asked to provide cutting tickets, sewing tickets and batch numbers; however those documents are not used or clearly outlined in Korea.

Does the United States have plans to request documents that are used more globally for the origin verification?

**RESPONSE: U.S. Customs and Border Protection (CBP) has developed and provided written guidance to CBP personnel and the trade community regarding documents CBP considers in reviewing claims for preferential tariff treatment of textiles and wearing apparel entered into the United States under various preference programs (including KORUS).**

The website for such guidance is: <http://www.cbp.gov/trade/priority-issues/textiles/supp-docs-app>

**Question 3**

There have been instances in which different CBP field operation officers lack consistency when requesting documents to verify the origin of products. As an example, to verify the origin of a textile product, HS code 5903, three different officers each requested different documentation:

Officer 1: affidavit corresponding to each originating material, flow charts, technical specifications and other documents explaining the manufacturing materials, documentation pertaining to assists, inventory management methods, indirect materials,

Officer 2: fabric construction, respective weights of coating/laminating substance versus textile, weight per square meter, use of the coated fabric, etc

Officer 3: original purchase order, invoice and proof of payment, timeline for all steps of production from fiber production to yarn to greige fabric to all processing steps performed, a profile of the manufacturing factory, etc

Does the United States have plans to create more consistent requirements for what documents might be requested for each product line?

**RESPONSE U.S. CBP officials might ask for different documents depending on the nature of the product line and whether the documents are necessary to demonstrate that the goods was originating and qualified for preferential treatment. To help achieve uniformity of treatment at the ports of entry, CBP has established Centers of Excellence and Expertise (CEEs). By focusing on industry-specific issues and providing tailored support for the participating importers, the CEEs will help to facilitate trade, reduce**

**transaction costs, increase compliance with applicable import laws, and, and further strengthen CBP's understanding of industry practices.**

**Question 4**

*Exporters from Korea voice concern that the CBP's security and trade examinations are too costly. When CBP executes a security examination, the time and expense for the company affected is significant. Combined, primary and secondary security examinations run 9-12 days and cost US\$1,400-US\$1,600 per container. In addition, trade examination runs 5-6 days and costs US\$1,000-US\$1,600 per container. The rate at which both examinations are conducted is too high, particularly on consolidated cargo containers. Both security and trade examinations increase the likelihood that goods are damaged while the expenses imposed on importers are determined by negotiations between the Central Examination Station (CES) and CBP. The importers who are billed lack input mechanisms to address needed issues.*

*Korea suggests that CBP reduce or waive security examinations for importers certified as C-TPAT Tier 3. Korea also requests that CBP bring in more employees and make the operations of the Central Examination Station more efficient for marine freight in order to reduce the time and expense spent on examinations. Korea also suggests that CBP reduce the general rate of trade examination in light of unnecessary delays and expense and that CBP expand and make the operations of the Central Examination Station more efficient for marine freight.*

*Along these lines, could the United States explain the plans that it has prepared or is preparing to make its customs procedure more efficient and transparent?*

**RESPONSE: CBP has no plans to waive security examinations but C-TPAT Partners continue to be examined at a considerably lower rate than non-C-TPAT Partners. Entries from non C-TPAT Partners are 3.5 times more likely to undergo a security based exam than those from C-TPAT Tier II Partners; and nine times more likely than those entries filed by C-TPAT Tier III companies. C-TPAT does not have a relationship with the Central Examination Station, as examinations are at the discretion of CBP Officers.**

**C-TPAT is currently offering Korean exporters to the U.S and members of Korea's Authorized Economic Operator (AEO) program benefits including, but not limited to, providing targeting reduction equivalent to C-TPAT Tier I reduction benefits, front of the line benefits, and priority processing for cargo that is examined.**

**Question 5**

*Although shipping documents are not required for 90% of paperless entry, importers encounter problems when they must provide CBP with additional paperwork. The requested information must often be collected from multiple sources into one response document, along with the explanation and analysis as requested by local officials.*

*Korea suggests that CBP expand the time frame allocated for importers to obtain the requested information, or that CBP encourage local port officials to advise importers that if additional time is necessary, the importer may contact the local officials who will present an extension request to his/her port management for review.*

*Does the United States have any plans to provide an expanded time frame for importers when requesting additional paperwork after the entry process?*

**RESPONSE: CBP has no current plans to extend time frames for the submission of information. The importer has sufficient time to respond to any requests for additional information and is often provided the right to request a time extension past deadline for submission of information. The ports generally take a liberal approach and grant these requests.**

**Question 6**

*CBP Importer Security Filing (ISF) requires importers and carriers to electronically report cargo information at least 24 hours before a shipment is loaded for boarding to a container vessel. This*

*imposes a heavy burden on the importer and is duplicative of the efforts required to obtain a C-TPAT certification, effectively constituting the equivalent of performing the same task twice on the same entry.*

*Korea would suggest that an importer who obtains C-TPAT Tier-3 certification should be exempt from ISF reporting requirements.*

*Could the United States explain the plans that it has prepared or is preparing to make its customs process including ISF more efficient?*

**RESPONSE:** *At this time, CBP is not considering exempting importers from ISF reporting requirements. An ISF Importer which is a certified Tier 2 or Tier 3 C-TPAT member may receive additional mitigation of up to 50% of the normal mitigation amount, depending upon the tier of C-TPAT participation. CBP currently allows Tier 3 C-TPAT and Tier 2 C-TPAT members the opportunity to register with CBP to receive their ISF Progress Reports directly from CBP.*

**Page 61~65 (Para 3.66.~3.70.)**

(3.66) *The United States had 294 anti-dumping and countervailing measures in place at the end of 2013, an increase of 18% since 2010. There was a general increase in the use of anti-dumping and countervailing duties on emerging markets during 2010-14, while remedies with respect to developed countries decreased. China was the country mainly affected, accounting for over 40% of all orders in 2013. The Republic of Korea and Chinese Taipei were also slightly more impacted during the period, whereas EU countries, Japan, and Brazil all had slightly lower levels of remedies applied. (3.67.) U.S. anti-dumping investigations have generally been below historic levels in recent years, with the exception of 2013, when there was a significant increase in investigations. Some 39 investigations were initiated in 2013, compared to an average in the other 4 years of 2010-14 of 9 per year. (3.68.) In terms of product group, anti-dumping investigations generally targeted a mix of products, except in 2013 when 35 investigations were launched in the metals sector, 33 of them relating to steel products. (3.69.) The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated. Asian countries, in particular China, were the most affected with countervailing duty investigations. (3.70) In terms of products covered, the impact is diverse. In 2011 and 2013, the metals sector was particularly affected, while in other years agriculture, wood, machinery, chemicals, and transport and vehicles were the subject of investigations.*

**Question 7**

*Although WTO members have a right to apply trade remedy measures in accordance with WTO rules, the Korean government is concerned over a recent sharp increase in the initiation of trade remedy investigations of the U.S. government. In particular, it worries that investigations are concentrated on steel products. In this regard, Korea would like to request that the U.S. deal with this issue in an objective and fair manner. It would also like to know the U.S government's view on the surge in the number of trade remedy investigations.*

**RESPONSE:** *The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.*

**Page 102 (Para 4.3.)**

*One of the most significant changes affecting the structure of the U.S. farm safety net is the elimination of the Direct Payments (DP) programme. The DP programme has been the cornerstone*

of U.S. agricultural policy reforms since the end of the Uruguay Round negotiations, and it provided about US\$5 billion annually in decoupled income support to farmers and landlords. The Counter-Cyclical Payments (CCP) programme and the Average Crop Revenue Election (ACRE) programme have also been eliminated. These three measures (DP, CCP, and ACRE) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC).

#### **Question 8**

Korea understands that producers preferred CCP over ACRE before they were replaced by new programs, PLC and ARC, respectively. Which program, between PLC and ARC, does the United States find more preferred by its producers?

**RESPONSE:** Only 8% of base acres nationally were enrolled in the ACRE program under the 2008 Farm Bill. Virtually all of the remaining base acres were enrolled in the direct and counter-cyclical payment program (DCP). National and state-level enrollment data for DCP and ACRE are available at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=dccp&topic=09cy>.

**USDA does not have data yet on PLC and ARC sign-up, as the election and enrollment process is just getting started.**

#### **Question 9**

The direct payment system is a way of compensating farmers for public interests which they accommodate while maintaining farmland, such as by protecting rural views and sustaining conditions for cultivation and ecological benefits. In this regard, the EU, Japan and Korea tend to increase the usage of fixed direct payment or green direct payment. On the other hand, the United States is moving toward abolishing fixed direct payment and raising the reference price of Price Loss Coverage (PLC) instead. Could the United States please explain reasons for this change and whether it is related to budget matter?

**RESPONSE:** The 2014 Farm Bill emphasized farmers' participation in crop insurance programs. As part of this decision, Congress terminated the Direct and Countercyclical Payment program. New programs are paid on historical production without reference to current production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives. Further, there are some counter-veiling factors in certain U.S. farm programs, which will provide lower payments when commodity prices fall and remain low.

#### **Page 103 (Para 4.7.)**

The 2014 Farm Bill introduces a new subsidized insurance programme (Supplemental Coverage Option) that allows eligible farmers to top up their crop insurance, in order to cover a portion of the deductible of the insurance. For producers of upland cotton, a new subsidized insurance plan, Stacked Income Protection (STAX), will be available starting in the 2015 marketing year. The Supplemental Coverage Option (SCO) is not available for ARC and STAX participants.

#### **Question 10**

According to the report, the newly replaced PLC is linked with the crop insurance (Supplemental Coverage Option). Considering CCP is a non-product-specific price stabilization program, can it be assumed that PLC is also irrelevant to the product and provided based on the past yielding acreage and commodity? If so, could United States please explain how it can be compatible with the SCO, which is provided on a product-specific basis?

**RESPONSE:** PLC and SCO are separate programs. Enrollment in PLC is not required to purchase SCO coverage, and the payments for the two programs are not linked. Producers who enroll in the PLC program will receive payments based on their historical base for the enrolled commodity, but are not required to plant that commodity to receive payments. However, if they do choose to plant the commodity for which they are

**enrolled in PLC, they are eligible to purchase an SCO policy for their current crop to supplement traditional crop insurance coverage.**

**PART III: Other Questions**

**Question 11**

*With regard to the E2 visa extension for Koreans working at the U.S. branches of Korean companies, many applications have recently been refused by the U.S. Considering that a candidate for "essential employees" or workforce that is "employed in a supervisory, executive" post, or of "highly specialized skill capacity" cannot be easily replaced, the recent rejections impose a heavy burden on Korean investors who have contributed to creating quality jobs in the U.S. We would like to hear the U.S. views on this issue.*

**RESPONSE:** *With regard to the E2 visa extension for Koreans working at the U.S. branches of Korean companies, many applications have recently been refused by the U.S. Considering that a candidate for "essential employees" or workforce that is "employed in a supervisory, executive" post, or of "highly specialized skill capacity" cannot be easily replaced, the recent rejections impose a heavy burden on Korean investors who have contributed to creating quality jobs in the U.S. We would like to hear the U.S. views on this issue.*

**LAO PDR**

*Secretariat Report*

*Unilateral preferential regimes*

*Page 35, para 2.33*

*The U.S. provides unilaterally preferential access to its market for LDCs through its GSP (LDC) scheme, AGOA and other arrangements. Despite the Bali decision on DFQF market access for LDCs (and Decision on measures in favor of LDCs –para 36a, Annex F of the Hong Kong Ministerial Declaration), Lao PDR does not benefit from any preferential access to the U.S. market. This puts Lao PDR in a less favorable position compared not only to other LDCs but also to the other developing countries -beneficiaries of U.S. unilateral preferences.*

*Having in mind the objective of DFQF decision adopted in Bali MC to further the integration of LDCs into the multilateral trading system and promote their economic growth and sustainable development, could U.S. please explain how it intends to implement its political commitment to provide at least 97% of DFQF for all LDCs? What are the perspectives of U.S. extending the broader AGOA and other unilateral preferences to Asian LDCs?*

**RESPONSE:** The United States supports the MC9 decision on Duty-Free and Quota-Free (DFQF) Market Access for Least-Developed Countries. 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 the Generalized System of Preferences (GSP).

Legal authorization for the GSP program expired on July 31, 2013. The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to work with the U.S. Congress to reauthorize the program at the earliest opportunity. In June 2013, the United States held a public hearing to gather information regarding the eligibility of the Lao People's Democratic Republic for GSP trade benefits. The information presented at the hearing and collected through public submissions will be used to determine the eligibility of the Lao People's Democratic Republic for GSP benefits if the GSP program is reauthorized.

The United States is committed to examining our preference programs to make them work better for developing countries. For example, the Administration has recently completed an extensive review of the African Growth and Opportunity Act (AGOA) and has been consulting with the U.S. Congress about how to update that program. 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 growing competitiveness of many emerging market GSP beneficiaries.

**MALAYSIA****SECRETARIAT REPORT****2.3.1 Participation in the WTO (Page 30)**

*2.17. In the on-going Doha Round, the United States played an active role in the Trade Facilitation negotiations, submitting 31 new or revised proposals. It has been a strong supporter of and participant in the TFA, including in reaching the successful Bali outcome. It continues to support developing and least developed countries in technical assistance activities. During the review period, the United States did not submit any proposals to other negotiating bodies.*

*2.18. Recently, the United States completed its domestic consultation procedures to enter into EGA negotiations. The United States and 13 other WTO Members announced their intention to start negotiations of an EGA in Davos in January 2014 and in June, shared information about this initiative in the WTO Committee on Trade and Environment. The negotiations were launched in July, with the aim of eliminating tariffs on a broad set of environmental goods.*

**QUESTION 1:**

*Malaysia would like to get clarification from the U.S. on its plans on how to move forward other outstanding areas under the DDA, in particular the NAMA negotiation; and*

**RESPONSE:** The United States is committed to making progress wherever possible on the Doha Development Agenda (DDA), based on common efforts. 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 based on active commitment and participation from all Members, both developed and developing. This includes WTO Members' approach to the NAMA negotiations.

**QUESTION 2:**

*Appreciate if the U.S. could share its expectation towards the plurilateral EGA negotiations as well indicate specific products on top of APEC list that it might be pushing for tariff elimination.*

**RESPONSE:** The recently launched EGA negotiations present a unique opportunity to advance U.S. economic and environmental objectives, and to add impetus and energy to the multilateral trading system. The EGA is being negotiated by a group of WTO Members committed to liberalization in this sector, but the benefits will accrue to all WTO Members, as the participants plan to eliminate tariffs on agreed products on an MFN basis. By eliminating tariffs on a broad set of environmental technologies, including those already endorsed by APEC Leaders, WTO Members can improve access to these technologies globally, thus lowering the cost of environmental protection, while unlocking opportunity for our exporters and spurring innovation in green technologies.

---

## ADDITIONAL QUESTIONS FROM MALAYSIA

### **SECRETARIAT REPORT**

#### **2.1.3.3 Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud**

2.12. In June 2014, the President established a task force to enhance coordination of U.S. Government efforts to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud and directed the task force to develop and implement a comprehensive framework to combat IUU fishing and seafood fraud.<sup>11</sup> Further, the President noted the national interest to promote sustainable fishing practices and the plan to implement the UNFAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.<sup>12</sup> The framework acknowledges that the United States will continue to promote its policy of legally and sustainably caught, and accurately labelled seafood, and will assist foreign nations in building capacity to combat IUU fishing and seafood fraud.

#### **Question**

1. In relation to the Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, Malaysia would like to understand further about the Framework. Does the framework involves new recommendation in making rules or new market measures to combat IUU fishing?
2. Could the U.S. share the outcome of the task force and comprehensive framework thus far, in enhancing coordination efforts to combat IUU fishing and seafood fraud?

**RESPONSE:** The Task Force provided its recommendations to the President on December 18, 2014. There are four thematic areas focused on addressing IUU fishing and seafood fraud: (1) international engagement; (2) enforcement; (3) partnerships; and (4) traceability. The full text of the recommendations was published in the *Federal Register* and can be found online at:

<https://www.federalregister.gov/articles/2014/12/18/2014-29628/recommendations-of-the-presidential-task-force-on-combating-illegal-unreported-and-unregulated>.

Upon receiving guidance from the President on the recommendations submitted by the Task Force on December 18, 2014, the Task Force will begin its implementation of the recommendations, including identifying more specific actions to implement them, and, within one year, will report to the President on its progress.

#### **2.3.2.1 Reciprocal trade agreements**

2.21. There have been no major developments in reciprocal trade agreements since the last Review of the United States when the free-trade agreements with the Republic of Korea, Panama, and Colombia were entering into force. No new FTAs have been concluded or entered into force since that time. However, the United States is negotiating with the European Union on T-TIP, and with a group of countries in Asia, the Pacific, and the Americas, with TPP (see Section 2.2).<sup>16</sup> At this time, neither has been concluded.

#### **Question 3**

The strength of the WTO is in its multilateralism. What would be the US' view on the likelihood of achieving an ambitious outcome in the DDA given that as more countries are involved in the regional and preferential agreements; the more difficult it would be to reach this goal.

**RESPONSE:** A 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 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 increase participation in liberalizing efforts at the WTO.

### 2.3.3 Other agreements and arrangements

#### 2.3.3.1 Anti-counterfeiting Trade Agreement

2.43. The United States is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), a plurilateral agreement negotiated among 11 trading partners.<sup>41</sup> The ACTA aims to combat infringement of intellectual property rights, in particular piracy and counterfeiting. It provides for enhanced international cooperation, promotion of enforcement practices, and a legal framework for IPR enforcement. Although the agreement was finalized in 2011, it has not yet entered into force. The agreement reportedly does not require any statutory changes to U.S. law.

#### Question 4

Since the ACTA has yet to enter into force, is there any other legal instruments in place in combating piracy and counterfeiting? If yes, what are the approaches taken by the U.S. that make them more effective in the fight against fake goods?

**RESPONSE:** The United States has taken an integrated approach to combating piracy and counterfeiting by addressing, civil, border and criminal intellectual property enforcement. The following is an illustrative list of federal statutes that address intellectual property enforcement:

##### 1. Trademarks

###### a. Civil Enforcement:

**15 USC section 1114 and 15 USC 1125 – infringement**

**15 USC section 1116 (1) – injunctions**

**15 USC section 1116(d)(1)(A) – ex parte seizure**

**15 USC section 1117(a) – damages, costs and attorney's fees**

**15 USC section 1118 – destruction of infringing articles**

###### b. Border Enforcement:

**19 USC section 1526 – Customs' seizure, forfeiture and destruction authority for marks that are recorded with CBP**

**19 USC section 1595a(c)(2)(C) and 18 USC section 2320 – Customs seizure, forfeiture and destruction authority for counterfeit marks not recorded with CBP**

**19 USC sections 1526 and 1595a(B) – fines and penalties**

###### c. Criminal Enforcement:

**18 USC section 2320 – Trafficking in counterfeit goods**

##### 2. Copyrights

###### a. Civil Enforcement:

**17 USC section 501 – infringement**

**17 USC section 502 – injunctions**

**17 USC section 503 – seizure and destruction**

**17 USC section 504 – damages**

**17 USC section 505 – costs and attorney's fees**

###### b. Border Enforcement:

**17 USC section 602 – infringing importation or exportation**

**17 USC section 603 – disposition of excluded articles**

###### c. Criminal Enforcement:

**17 USC section 506 – criminal offenses**

**17 USC section 509 – criminal seizure authority**

**18 USC section 2319 – criminal copyright infringement**

**18 USC section 2319B – unauthorized recording of a motion picture**

**18 USC section 2318 - trafficking in illicit labels or counterfeit labels, documentation or packaging for copyrighted works****18 USC section 2319A - trafficking in recordings of live musical performances****3.1.1.1 Trade facilitation measures****3.1.1.1 Single window**

3.5. It is expected that by the end of 2016, ACE will provide single-window functionality for all agencies requiring documentation to clear imports or exports, allowing traders to submit electronic data and documentation for importation and exportation. Electronic filing options will be available in lieu of current paper filing requirements and manual processes will be streamlined. ACE is being implemented or deployed in seven phases, each allowing new modules and functions to be added. As of April 2014, ACE had deployed the third of the seven modules covering simplified entry, exports, and entry summary. All import and export cargo manifest data will have to be submitted through ACE as of 1 May 2015.

**Question 5**

*Can the U.S. share the level of improvements made thus far, since the deployment of the third ACE modules covering simplified entry, exports, and entry summary in April 2014.*

**RESPONSE:** The United States does not yet have complete data on the results of ACE improvements since April 2014. However, initial improvement include: Electronic Corrections and Cancellations (deployed November 2013), which automated a paper-based process for CBP personnel; Entry summary validations (deployed November 2012 – October 2013); Incorporation of commodity filing into ACE (deployed October 2014); New advanced tools for cargo processing; Electronic air export manifest processing (deployed November 2014) and electronic ocean and rail export manifest processing (deployed January 2015), which will replace paper-based processes; Automated transmission of data to the USDA's Animal and Plant Health Inspection Service (APHIS) via the Interoperability Web Services (IWS) capability (deployed October 2014), to eliminate redundant data.

**3.1.7 Anti-dumping, countervailing, and safeguard measures****3.1.7.1 Anti-dumping and countervailing duties**

3.69. The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated. Asian countries, in particular China, were the most affected with countervailing duty investigations (Chart 3.6).

3.70. In terms of products covered, the impact is diverse. In 2011 and 2013, the metals sector was particularly affected, while in other years agriculture, wood, machinery, chemicals, and transport and vehicles were the subject of investigations (Chart 3.7).

**Question**

6. Malaysia requests the U.S. to provide break down of cases according to countries in Asia which was initiated and investigated until Final Determination of Measure under metal, wood & paper; machinery and electrical equipment and misc. manufactured.

**RESPONSE:** The decision memoranda and public notice for every preliminary and final antidumping and countervailing duty determination that the U.S. Department of Commerce makes is available at the following site: <http://trade.gov/enforcement/>. This online database is also searchable by individual country. Similarly, the status of each U.S. International Trade Commission investigation – from initiation to final determination – can be found at <https://edis.usitc.gov/edis3-external/app>.

7. Referring to Chart 3.6, can the U.S. explain the reasons for the increasing number of CVD cases, specifically on metals product?

**RESPONSE:** With regards to the volume of CVD investigations, a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exist and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where subsidization, material injury, and a causal link between the two has been found, the United States will impose a countervailing duty measure.

#### 3.1.7.2 Sunset reviews

3.71. Section 751 of the Tariff Act of 1930 provides for the review of anti-dumping and countervailing duty orders no later than five years after their publication. An average of 40 reviews per year have been conducted in the United States over the last several years, to determine whether revocation of the order would lead to continuation or recurrence of dumping or subsidy, and material injury. Through the domestic processes for review, the Department of Commerce and the USITC determine whether the duties should be kept in place (continued) or lifted (revoked).

3.72. While the number of reviews has varied over the last eight years, there has been a significant trend with fewer orders being revoked. In 2007-8, approximately half of all orders were revoked, whereas in 2013-14, about 90% of reviews resulted in the continuation of the remedy (Chart 3.8).

#### Question 8

*It is noted in the Secretariat Report that in 2007-8 approximately half of all orders of Sunset Reviews were revoked, however about 90% of reviews in 2013-14 resulted in the continuation of the remedy. Malaysia would like to know which investigated country and sectors are involved in 2013-14 (i.e. specify metal or wood or E&E or etc.)?*

**RESPONSE:** The decision memoranda and public notice for every preliminary and final antidumping and countervailing duty determination that the U.S. Department of Commerce makes is available at the following site: <http://trade.gov/enforcement/>. This online database is also searchable by individual country. Similarly, the status of each U.S. International Trade Commission investigation – from initiation to final determination – can be found at <https://edis.usitc.gov/edis3-external/app>.

#### 3.1.8 Technical regulations and standards

3.80. The United States submitted 269 TBT notifications in 2013 (248 in 2012)<sup>69</sup>, including sub-federal measures notified under Article 3.2 of the TBT Agreement (Table A2.2). The United States was the only WTO Member to notify at the local government level during the review period, with 11 sub-federal notifications submitted in 2013, mainly relating to environmental protection. The federal regulatory agencies with greatest number of TBT notifications related to international trade include: the Department of Energy (DOE), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), Department of Transportation (DOT), Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), and the Federal Trade Commission (FTC). The National Institute of Standards and Technology is the United States' enquiry point and notification authority under the TBT Agreement and responds to Members' requests for documents and information within two days, and usually within one day, according to the authorities. Comments received or inquiries for clarification of technical details in a notified measure are transmitted by the enquiry point to the relevant U.S. regulatory agency for reply as soon as possible.

#### Question 9

*Can the United States share the governance mechanism around management of 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 statutory authority for the U.S. WTO TBT Inquiry Point derives from 19 USC 2544. This authority was delegated to the Department of Commerce, and in turn, the Department of Commerce assigned the authority to the National Institute of Standards and Technology.

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

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

**In addition, the Administrative Procedures Act requires regulators to publish regulatory proposals in the *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.**

Table 3.12 Specific government programmes supporting export activities

Question 10

Referring to table 3.12, some of the programmes under NEI/NEXT such as Export Credit Guarantee Program, Facilities Program, and Dairy Export Program involve the use of export financing and export subsidy. Please explain the specific measures under these programs? Can the U.S. share how these programs to be seen as in line with the "Bali Package"?

**RESPONSE: Please see the Secretariat Report for more detail about these programs:**

- Section 4.1.1.2.6, para 4.27 (page 109) notified the elimination of the Dairy Export Incentive Program, and
- Section 4.1.1.4.2, para 4.46 (page 113) described the Export Credit Guarantee Program. The Facilities Guarantee Program is a subset of the Export Credit Guarantee Program and is to be used for establishment of, or improvement on facilities, and the export of goods (not agricultural products or commodities) and services. Where applicable, the program will adhere to the OECD Guidelines on Officially Supported Export Credits.

**The United States maintains an open and transparent system of export measures consistent with the Bali ministerial decision on export competition, which requires WTO Members to provide increased transparency on the implementation of their export competition programs.**

.3 Measures Affecting Production and Trade

3.3.1 Incentives

3.137. Given their role in supporting job creation and fostering economic growth, small businesses continue to be a priority on the government's agenda.<sup>124</sup> The U.S. Small Business Administration (SBA) provides counselling and financial assistance to small businesses through, inter alia, loan guarantees and federal procurement opportunities. Within this framework, the SBA has 32 permanent programmes, and approved 101,066 loans over the fiscal year 2013.

Question 11

As stated in 3.137, the SBA has 32 permanent programmes and approved 101,066 loans over the fiscal year 2013, can the U.S. give examples of the programmes and what are the types of small business that had benefitted from the loans given.

**RESPONSE: SBA does not have 32 programs. SBA has 17 major programs, under the broad categories of Capital, Contracting, Counseling/Technical Assistance, and Innovation:**

- Capital: 7(a) business loans; 504 (Certified Development Corporation) loans; Microloans; Disaster loans; Surety Bonds; Small Business Investment Companies
- Contracting: Prime contracting; HUB Zones; 8(a) Business Development

- **Counseling/Technical Assistance:** International Trade; Small Business Development Centers; Women Business Centers; Veteran Business Centers; SCORE; 7(j) Management Assistance
- **Innovation:** Small Business Innovation and Research; Small Business Technology Transfer

Each of these programs is described in full on the SBA website (see, <https://www.sba.gov/>). The primary program is the 7(a) loan guaranty program. Under this program SBA provides a guaranty on a loan when the lender certifies that it would not make the loan without a guaranty due to the perceived greater risk of the credit (borrower). Because of the perceived greater risk, the business is often left with the choice of not getting a business loan or obtaining a loan with an SBA guaranty. SBA charges to take that risk (guaranteed shares vary from 50% to 90% of the loan amount, depending on the loan size and program), which passes through to the borrower. The guaranty fee that SBA charges on the guaranteed portion of the loan is tiered: 2% on loans up to US\$150,000, 3% on loans from 500,001 to 700,000, 3.5% on loans 700,001 to US\$1 million, and 3.75% on guaranteed portion over US\$1 million. As a result, the borrower typically pays a higher total cost than it would if it were able to obtain financing without SBA support. SBA programs assist small business in nearly every sector of the economy.

### 3.3.2 Subsidies and other government assistance

3.140. In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients.

#### **Question 12**

*Why do these two sectors still remain the largest recipients of subsidies and does the U.S. consider reducing subsidies in these two sectors in the future?*

**RESPONSE: The U.S. Congress is largely responsible for the establishment and continued funding of U.S. subsidy programs. Therefore, it is difficult to speculate as to why specific policy outcomes are reached or will be reached in the future.**

#### 3.1.1.1.5.1 Customs-Trade Partnership Against Terrorism (C-TPAT)

3.13. C-TPAT is a voluntary public-private partnership programme which recognizes that CBP can provide the highest level of cargo security only through close cooperation with the principal stakeholders of the supply chain. Established in 2001, it was codified into law by the Security and Accountability for Every Port Act of 2006.<sup>9</sup> Through this programme, CBP asks businesses to ensure the integrity of their security practices, and communicate and verify the security guidelines of their business partners within the supply chain. Businesses<sup>10</sup> that apply to C-TPAT are reviewed, and if the review is favourable, receive Tier I certification status. Thereafter, Tier II may be achieved after physical examination of a company's supply chain and minimum security measures. A third level, Tier III, exists for those importer partners that show a sustained commitment beyond minimum security and have exceeded the programme's requirements and applied best practices. The advantages of participating in the C-TPAT programme include a reduction of risk score that results in fewer CBP inspections, and eligibility for expedited treatment and processing. As of June 2014, there were more than 10,732 C-TPAT certified companies, resulting in over 25,160 total validations, and accounting for around 54.1% of total merchandise imports into the United States by value.

#### **Question 13**

*What is the current status of the pilot programs under the Importer Self-Assessment Program (ISA) i.e. the Importer Self-Assessment-Product Safety Pilot, and the Customs Broker Importer Self-Assessment Pre-Certification (Broker ISA PC) test?*

**RESPONSE: The ISA PC pilot is designed to provide an additional avenue for participation for those small and medium sized enterprises who may not have the resources or expertise to apply for ISA. With ISA PC, eligible applicants will be approved for the**

**program in 90 to 120 days rather than 9 to 18 months. The ISA-Product Safety Pilot has been ongoing since October 2008. This partnership extends to include Consumer Product Safety Commission (CPSC) requirements for the company to maintain a high level of product safety compliance and thus realize efficiencies associated with CPSC processing.**

**2.1.1 Trade promotion authority**

*2.5 Procedures set out in the Trade Act of 1974 and its predecessor have been used for consultations and approvals of most multilateral and reciprocal trade agreements entered into by the United States in recent years. Following its establishment, TPA was renewed regularly, except during 1995-2002, and more recently since it lapsed in 2007.*

**Question 14**

*The Trade Promotion Authority (TPA) remains lapsed since 2007, even though the U.S. is currently engaging in trade negotiations most notably the Trans-Pacific Partnership, Transatlantic Trade and Investment Partnership and Trade in Services Agreement. With the absence of the TPA, what is the impact to the U.S. ongoing trade negotiations especially in convincing the negotiating partners who very much aware that Congress will make the final decision in ratifying concluded talks?*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation. As the Administration works with Congress on TPA, we will continue to advance bilateral, plurilateral and multilateral negotiations.**

**3.2.5 Export finance, insurance, guarantees**

**3.2.5.1 Export-Import Bank (Ex-Im Bank)**

*3.121. The Ex-Im Bank is an independent government agency, and serves as the official export credit agency of the United States. It is self-financed in the sense that its fees and services charged, cover its operating costs. However Congress sets a limit on the Bank's activities per the appropriations process.<sup>113</sup> In its last reauthorization in 2012, Congress set its lending authority limit to US\$100 billion, rising to US\$140 billion in FY2014.*

**Question 15**

*The U.S. Ex-Im Bank Congressional authorization expired on 30 September 2014 and will no longer be able to extend new loan guarantees to U.S. exporters, importers and traders. Is U.S. Ex-Im Bank will disappear and what would be the impact of non-reauthorization to the on going negotiations at the U.S. and China-led International Working Group on Export Credits (IWG) which aims to establish a robust international export credit guidelines?*

**RESPONSE: The Ex-Im Bank's charter was reauthorized by Congress in September 2014. The new date of expiration is June 30, 2015.**

**MEXICO****Informe de la Secretaría**

**Summary, párrafo 4 (Pág. 10).** En la sección "Summary' de la página 10, el párrafo 4 señala lo siguiente: "The United States remained the world's largest single recipient of foreign direct investment, although inflows have declined over the last two years. In order to counteract this trend, the government maintains or continues to develop programmes to promote foreign investment. The 2011 SelectUSA programme continues to serve as the centralized hub to attract and retain investment, and the 2012 "Make it in America" programme is designed to accelerate insourcing, i.e. bring back investments and jobs."

Pregunta 1: México desea conocer si este programa es consistente con el Acuerdo sobre las medidas en materia de inversiones relacionadas con el comercio.

**RESPONSE:** The Make it in America program was a one-time program, carried out in 2012, to identify innovative projects focused on increasing investment and employment. Further information is available at [www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge](http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge)"

***Summary, paragraph 11 (Page 11).***

2: Could you please elaborate on the process that is followed to implement the review of regulatory practices referred in this paragraph?

**RESPONSE:** Information regarding the process to revise Circular A-119 can be found online: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-11/pdf/2014-02891.pdf>.

**Sumary and 4.2.1.2 Recent developments, párrafos 13 y 4.75 (Pág. 11 y 119).** En el párrafo 13 del resumen se indica: "The services sector continues to play an important role in the U.S. economy, and several services sectors underwent reforms during the review period. A number of enhanced prudential standards on financial services have been established, including on liquidity, risk management, and capital, to strengthen the supervision and regulation of financial institutions. Under the new rules, foreign banks with U.S. assets of at least US\$50 billion are required to establish intermediate holding companies for their U.S. financial operations and to meet, with some exceptions, the same capital, liquidity, and other standards as U.S. bank holding companies of comparable size. Domestic banks will need to comply by 1 January 2015, and foreign banks will be required to do so by 1 July 2016 U.S. financial firms in general have strengthened their position over the last few years. Nonetheless, more progress is needed in some areas, including on "too big to fail" banks, which receive an implicit subsidy of about US\$70 billion."

Por otro lado, el párrafo 4.75 de la sección 4.2 de Servicios, en la página 119, indica "4.75. The recent financial crisis revealed the need to implement financial regulatory reforms to address critical gaps and weaknesses within the U.S. financial system. On 21 July 2010, the "Dodd-Frank Act'83 was signed into law, instituting the most sweeping set of reforms to the financial regulatory system since the Great Depression.

Pregunta 3: ¿Cuál ha sido el impacto más significativo para los inversionistas (tanto positivos como negativos) como resultado de las medidas mencionadas?

**RESPONSE:** Please see the "Financial Stability Oversight Council 2014 Annual Report"; (<http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf>)

**Summary and 4.2.2.3 Policy actions, párrafos 14 y 4.94 (Pág. 11 y 125).** El párrafo 14. del resumen, en la página 11, se indica: "During the review period, the United States eliminated the International Settlements Policy in order to modernize its international telephony rules, further lower the price for international calls, and increase competition.

El párrafo 4.94. de la sección 4.2 sobre servicios, en la página 125, se indica: "The FCC has also taken measures to reform and modernize the universal service and intercarrier compensation systems to make available affordable voice and broadband service, both fixed and mobile.

Pregunta 4: ¿Se tienen previsto algún plan de Comunicación de los resultados positivos en materia de competencia o algún medio para difundir las experiencias más exitosas del sector?

**RESPONSE:** The FCC publishes a range of reports on the state of competition in the communications market. Examples, all available at <http://www.fcc.gov/reports> include:

- Internet Access Services Report
- Measuring Broadband America
- Local Telephone Competition
- Mobile Wireless Competition Report.

**Summary and 4.2.4.1 Statistical overview, Párrafos 16 & 4.118 (Pág. 12 y 138).** En el párrafo 16 del resumen se indica: "The United States is by far the largest market for health services with total spending of over US\$2.5 trillion in 2010. Private spending was about US\$1.2 trillion, and per capita spending approximately US\$8,000. The health insurance market is also the largest in the world as it ensures and finances a proportionally much larger share of the health expenditures than in other developed countries where public social security systems dominate.

El párrafo 4.118. en la página 138, se indica: "The world's largest health organizations are located in the United States and most of them are private, in contrast to those in Other countries where there are often limits for the scope of private economic activity in the sector. Further, eight of the world's ten largest private healthcare companies are American."

Pregunta 5: Deseamos conocer si EEUU ha llevado a cabo alguna evaluación sobre el impacto que pudiera generar la portabilidad del sistema público de seguros médicos (Medicare) hacia otros países.

**RESPONSE: No impact assessments have been undertaken to transfer Medicare to other countries.**

**Summary, Párrafo 17 (Pág. 12).** El párrafo 17 del resumen, en la página 12, se indica: "The U.S. audiovisual industry is the largest in the world, with revenues (2011) of about US\$46 billion for the motion picture production and distribution segment, US\$161 billion for the television segment (including broadcast television stations, cable TV, satellite TV, and online video distribution), US\$18 billion for the radio segment, and US\$8 billion for the music segment (record production and distribution). Exports largely exceed imports, as do outward foreign affiliate sales (sales by U.S. subsidiaries established abroad) -compared to inward foreign trade affiliates sales. The trade relevant aspect of audiovisual services is fairly stable and the only major development during the review period was the relaxation by the Federal Communication Commission (FCC) of the foreign ownership policy scheduled under the GATS and FTA commitments."

Pregunta 6: México reconoce la gran competitividad de los servicios audiovisuales en EEUU. Deseamos conocer ¿cuál es el subsector con mayores subsidios a nivel nacional? y ¿qué Estados proporcionan los mayores subsidios a la industria audiovisual y en qué subsectores se concentran?

**RESPONSE: The largest direct support by the federal government for audiovisual services is funding for the Corporation for Public Broadcasting; most of the funding supports local public radio and public television stations and their programming. Support for the audiovisual sector at the state level is generally focused on non-discriminatory tax-credit incentive programs to attract television and film production to the state; New York, Louisiana, Georgia, and Florida have operated the largest tax-credit programs in recent years.**

#### **2.1.1 Trade promotion authority, párrafo 2.6. (Pág. 25)**

7: Con respecto a la propuesta para volver a autorizar el TPA en 2014, ¿Dicha propuesta incluye algunas disposiciones ambientales relacionadas con el Cambio Climático y su política comercial? ¿Se incluyen disposiciones relativas a la transición hacia una economía estadounidense baja en emisiones?

**RESPONSE: The Administration welcomed the introduction of draft TPA legislation in 2014. For more information on the TPA bill introduced in 2014, please refer to text of the bill (<http://www.gpo.gov>).**

#### **2.1.1 Trade promotion authority, 2.4. y 2.6 (Pág. 25)**

8: Con respecto a la propuesta para volver a autorizar el TPA en 2014, ¿Dicha propuesta incluye disposiciones en materia laboral de OIT plus?

**RESPONSE: The Administration welcomed the introduction of draft TPA legislation in 2014. For more information on the TPA bill introduced in 2014, please refer to text of the bill <http://www.gpo.gov>.**

**2.1.1 Trade promotion authority, 2.6 (Pág. 25)**

9: ¿Cuáles son las dos mayores negociaciones regionales que se pretenden concluir?

**RESPONSE: The United States is currently negotiating a number of bilateral, plurilateral and multilateral trade agreements. We expect to make significant progress on these negotiations in the coming year. As with any negotiation, the substance of the negotiations will ultimately dictate the timing of concluding an agreement.**

**2.1.3.2 Task Force on Wildlife Trafficking, 2.11. (Pág. 28-29):**

10: Con respecto al fortalecimiento de la aplicación de las leyes y la aplicación de los acuerdos internacionales en materia de vida silvestre, ¿Se tiene previsto el fortalecimiento para la aplicación de acuerdos internacionales relativos a la Biodiversidad, tales como el Convenio sobre la Diversidad Biológica? ¿Los tratados de libre comercio futuros a que refieren tienen previsto mecanismos de cooperación ambiental en materia de Biodiversidad?

**RESPONSE: The U.S. government remains committed to biodiversity conservation, both at home and abroad, and will continue to participate as an observer in the Convention on Biological Diversity.**

**2.1.3.3 Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, 2.12. (Pág. 29):**

11: ¿Los esfuerzos a que refieren consideran la reformulación de su actual política en material de subsidios a la pesca?

**RESPONSE: The United States has long been a leader and advocate in support of disciplines on harmful fisheries subsidies in the WTO and in other fora. The United States remains committed to securing an ambitious result on fisheries subsidies and stands ready to continue this work in the WTO and other fora.**

**2.3.1 Participation in the WTO, párrafo 2.18. (Pág. 30):**

12: Con respecto a la iniciativa señalada en este punto, ¿Cómo considera EE.UU. la compatibilidad de este proceso en el que participa a la luz del papel que asume en el foro multilateral de la OMC para este mismo tema?

**RESPONSE: The United States sees no conflict between the EGA negotiations and the CTE-SS' work to liberalize trade in environmental goods. The recently launched EGA negotiations present a unique opportunity to add impetus and energy to the multilateral trading system. The EGA is being negotiated by a group of WTO Members committed to liberalization in this sector, but the benefits will accrue to all WTO Members, as the participants plan to eliminate tariffs on agreed products on an MFN basis. By eliminating tariffs on a broad set of environmental technologies, including those already endorsed by APEC Leaders, WTO Members can improve access to these technologies globally, thus lowering the cost of environmental protection, while unlocking opportunity for our exporters and spurring innovation in green technologies.**

**2.3.1 Participation in WTO, párrafo 2.19 (Pág. 30)**

13: Se menciona un "record de notificaciones", ¿Cuántas notificaciones en materia de TBT realizó Estados Unidos? Se describen en el curso del documento 269 notificaciones en 213, pero no se describen las que van a la fecha en 2014

**RESPONSE: The United States submitted 170 WTO TBT notifications from 1 January 2014 to 8 December 2014.**

**Párrafo 2.12 (Pág. 29)**

14: ¿Cuáles han sido los mecanismos de cooperación y ayuda con otros países para combatir la pesca INDNR y la forma de acceder a éstos? ¿Cuáles han sido los avances en el desarrollo de los programas integrados para combatir la pesca INDNR contemplados por el Memorándum y sus principales lineamientos?

**RESPONSE:** The Task Force is providing its recommendations to the President in December 2014. The recommendations will be published in the *Federal Register* with an opportunity for public comment. Upon receiving guidance from the President on the recommendations, the Task Force will begin its implementation of the recommendations and, within one year, will report to the President on its progress. Capacity building activities and opportunities are one of the elements for possible inclusion in the recommendations that the Task Force is considering. Through the Magnuson-Stevens Fishery Conservation and Management Act and other authorities, the National Marine Fisheries Service engages in international cooperation and assistance, with particular emphasis on efforts to combat IUU fishing, mitigate bycatch of protected living marine resources, and conserve sharks. One purpose is to assist nations that are identified under the High Seas Driftnet Fishing Moratorium Protection Act, so that they may better address the activities for which they were identified, including IUU fishing. Information regarding IUU measures is available online at: <http://www.nmfs.noaa.gov/ia>.

**2.4 Investment Flows and Regime, párrafo 2.44 (pág. 37).** En el párrafo 2.44 del apartado 2.4 *Investment Flows and Regime* en la sección sobre *TRADE AND INVESTMENT REGIME*, página 37, se señala lo siguiente: "During the review period, the United States remained the world's largest single recipient of foreign direct investment, however, inflows have declined since 2012 reflecting the general trend of historically low FDI inflows to developed countries.<sup>42</sup> Investment inflows fluctuated broadly year to year, often in relation to economic growth. After recovering from the economic downturn in 2009, investment inflows climbed in 2010 and 2011, but fell in 2012 and 2013. Sources of FDI are generally highly concentrated among highly industrialised countries, the United Kingdom and Switzerland are the largest contributors. Investment inflows from emerging economies remain relatively small.

Pregunta 15: ¿Se están considerando medidas complementarias a mediano plazo que se estén considerando para incrementar los niveles de inversión?

**RESPONSE:** As the Secretariat's Report notes, the United States remains the single largest recipient of foreign direct investment in the world. The United States' attraction as an investment destination is a result of, among other things, a large and lucrative consumer market; a competitive investment and business climate; a highly educated and productive workforce; and a research and intellectual property environment that spurs innovation. The United States is building upon past successes in attracting inward investment by continuing to develop and promote the SelectUSA program, the United States' first coordinated effort to actively recruit businesses to bring investment to the U.S. In 2013, President Obama expanded and enhanced this program by, among other things, enhancing coordination with regional, state, and local economic development organizations; expanding outreach to prospective investors from economies with the largest potential for investment into the United States; and creating a single point-of-contact for investors ready to invest in the United States.

**2.4.1 Investment agreements, párrafos 2.46 & 2.47 (pág. 37).** En el párrafo 2.46, subapartado 2.4.1 *Investment agreements* ubicado en el apartado sobre *Investment Flows and Regime* de la sección *TRADE AND INVESTMENT REGIME*, página 37, se señala "The United States has used international investment agreements as tool to encourage foreign direct investment. The agreements are in the form of trade and investment framework agreements (TIFAs), bilateral investment treaties (BITs), and FTAs that contain investment provisions (Table 2.2). TIFAs are generally the first step in establishing stronger trade and investment links with a country; there are currently 50 in place with individual or country groups." Posteriormente el párrafo 2.47 indica "BI Ts have typically been at the core of U.S. reciprocal binding agreements on investment".

Pregunta 16: Deseamos conocer cuál es el criterio principal además del incremento de la inversión para considerar una negociación de un Acuerdo Bilateral de Inversión (BIT, por sus siglas en inglés) con un país específico

**RESPONSE:** The aims of the U.S. BIT program are to protect investment abroad in countries where investor rights are not already protected through existing agreements; encourage the adoption of market-oriented policies that treat private investment in an open, transparent, and non-discriminatory manner; and support the development of international law standards consistent with these objectives. The United States selects

**BIT negotiating partners based on a variety of factors relating to these and other policy objectives.**

**2.4.1 Investment agreements, párrafo 2.47 (pág. 37).** El mismo párrafo 2.47 continúa:"...The U.S. has negotiated BITS on a model framework, and in 2012, the Administration released a new model BIT, which contains key provisions on national and MFN treatment, the minimum standard of treatment, expropriation, transfers, and performance requirements, as well as provisions protecting the right of investors to engage senior managers of their choosing, and two sections on dispute settlement.

Pregunta 17: ¿Qué tan frecuentemente considera EE.UU. revisar el modelo de texto de sus BITS? ¿Cuáles son los tiempos de consulta pública después de cada revisión?

**RESPONSE:** The U.S. model BIT has been reviewed and revised at periodic intervals throughout the 30-year history of the U.S. BIT program. The most recent review was initiated by the Obama Administration in February 2009, a review intended to ensure that the model BIT was consistent with the public interest and the Administration's overall economic agenda. The review entailed extensive public and stakeholder consultation, including the solicitation of written public comments; a public meeting; recommendations from advisory committees representing the views of labor, environmental and public interest organizations and the academic, business, and legal communities; consultations with the Congress; and consultations with representatives of U.S. state and local governments. The Administration announced the conclusion of its review in April 2012.

**3.1.1.1.2 Border Interagency Executive Council (BIEC), párrafos 3.7. y 3.8 (Pág. 43):** 18: Con respecto al establecimiento y funcionamiento del BIEC, ¿Cuál es el papel de la EPA en el BIEC?

**RESPONSE:** Since the establishment of the BIEC, EPA has been a key stakeholder in the development of policies and processes to improve interagency review of electronic trade data transmitted through the Automated Commercial Environment (ACE). EPA has been preparing for the electronic filing of trade data with the help of CBP for the past few years. Through EPA's sharing of experiences and providing technical expertise with the BIEC, partnering government agencies are able to better understand the process to successfully execute its electronic processing plans for ACE in the near future.

**3.1.7.1 Anti-dumping and countervailing duties, paragraph 3.64 (Page 61).**

19: Paragraph 3.64 states that in late 2013 changes for anti-dumping investigations were made. Such changes regard the selection of respondents in administrative review proceedings, by applying a statistically valid sampling method to select respondents. Can the referred sampling method be further explained?

**RESPONSE:** Further explanation about changes to the U.S. Department of Commerce's methodology for respondent selection in certain antidumping proceedings can be found at 78 Fed. Reg. 65,963 (Nov. 4, 2013) (<http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>).

**3.1.7.2 Sunset reviews, paragraph 3.72 (Page 65).**

20: According to Paragraph 3.72, there has been a significant trend with fewer anti-dumping and countervailing duty orders being revoked after review investigations. What elements could be considered to justify this trend?

**RESPONSE:** In determining whether revocation of a countervailing duty order or an antidumping order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the U.S. International Trade Commission (USITC) considers the factors set out in U.S. law at 19 U.S.C. §1675a(a). In determining whether revocation of a countervailing duty order or antidumping duty order 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 U.S. Department of Commerce (Commerce) considers the factors set out in U.S. law at 19 U.S.C. §§1675a(b) and (c), respectively. The determinations in each sunset review conducted by the USITC and Commerce are case-specific. The results for all sunset reviews can be found on the USITC's website (<http://pubapps2.usitc.gov/sunset/>). From this website Mexico can

**obtain, on a case-by-case basis, information about the rationale for either the continuation or termination of a countervailing duty or an antidumping duty order.**

**3.1.7.2 Sunset reviews, paragraph 3.72 (Page 65).**

21: Paragraph 3.63 states that the U.S. continued to use trade remedies, with a considerable rise of such measures in 2013. Both anti-dumping and countervailing duty investigations increased significantly during 2013 [Paragraphs 3.67 and 3.69], while the revocation of anti-dumping and countervailing duty orders after reviews decreased sharply [from about 50% in 2007/8 to only 10% in 2013/14 (Paragraph 3.72)]. Can these figures be explained?

**RESPONSE:** The United States administers its trade remedy laws in accordance with the applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.

See also response to Question 20 above.

**3.1.8 Technical regulations and standards, párrafo 3.75 (Pág. 66).**

22: ¿Cuáles son los cambios en el rol del gobierno federal dentro de las actividades de normalización y evaluación de la conformidad?

**RESPONSE:** As the Secretariat report notes, "In the period under review, no major changes were made to U.S. regulatory policy. However, regulatory practices are currently under review with respect to the participation of federal regulators in the development and use of standards, and in conformity assessment activities." Information regarding the process to revise OMB Circular A-119 can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-11/pdf/2014-02891.pdf>.

**3.1.8 Technical regulations and standards, paragraph 3.75 (Page 66)**

23: How was the participation of federal regulators in the ongoing review of regulatory practices referred in this paragraph

**RESPONSE:** U.S. government agencies, as well as other interested parties, were provided an opportunity to submit comments on the proposed revisions to OMB Circular A-119.

**3.1.8 Technical regulations and standards, (Pág. 66)**

24: ¿A qué portal web se puede acceder para consultar los reglamentos técnicos y distintas clases de estándares que Estados Unidos expide, en el caso de que algún representante de un sector económico quisiera identificarlos?

**RESPONSE:** The Standards Incorporated by Reference (SIBR) Database includes the voluntary consensus standards, government unique standards, private industry standards, and international standards referenced in the Code of Federal Regulations (CFR). Please see: <https://standards.gov/sibr/query/>.

**3.1.8 Technical regulations and standards, (Pág. 66)**

25: Independientemente de las notificaciones ¿cuántos reglamentos técnicos se crearon y publicaron? ¿Respecto al TPR anterior hubo un aumento o una disminución?

**RESPONSE:** Executive Order 12866, "Regulatory Planning and Review," establishes and governs the process under which The Office of Information and Regulatory Review (OIRA) within the Office of Management and Budget reviews agency draft and proposed final regulatory actions. The objectives of the Executive Order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the

**integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. For all significant regulatory actions, the Executive Order requires OIRA review before the actions take effect.**

**Current and historical data on the number of regulations under OIRA review can be found online: <http://www.reginfo.gov/public/do/eoHistoricReport>.**

**3.1.8 Technical regulations and standards, párrafo 3.76 (Pág. 66)**

*26: Se hace mención las distintas clasificaciones de estándares por parte de Estados Unidos, ¿cómo se define cada una de ellas y cuáles son sus principales características?*

**RESPONSE: The definitions of the various terms are contained in Section 4 of Circular A-119, which can be found online: [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).**

**3.1.8 Technical regulations and standards, paragraph 3.76 (Page 66)**

*27: Could you give us more information on the consensus referring to this paragraph and the process on how they became mandatory these provisions?*

**RESPONSE: Section 6 of Circular A-119 states that "All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." This means when choosing to mandate a standard, Federal agencies should first look to voluntary standards developed through a consensus based process. Paragraph 6.a.2 specifies "impractical" as including "circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard."**

**3.1.8 Technical regulations and standards, párrafo 3.77 (Pág. 67)**

*28: Respecto a la Circular A-119, tomando en consideración que el periodo de comentarios se cerró el 12 de mayo de 2014 ¿Cuándo se va a notificar la Revisión final de dicha Circular?*

**RESPONSE: The United States will notify the revised circular to the WTO when it is finalized.**

**3.1.8 Technical regulations and standards, paragraph 3.78 (Page 67)**

*29: Executive Order 12866 (Regulatory Planning and Review) directs federal agencies to follow certain principles in planning, developing, and reviewing federal regulations, and describes the role of the Office of Information and Regulatory Affairs (OIRA) within the OMB in the rule-making process. All "significant" regulatory actions by federal agencies must be reviewed by OIRA before publication and, to this end, agencies must submit the text of the draft regulatory action to OIRA along with, inter alia, an assessment of the potential costs and benefits of the regulatory action. In addition, agencies must prepare a regulatory impact analysis (RIA) for each regulation that OIRA or the agency designates as "economically significant" with an impact on the economy of over US\$100 million in at least one year. The regulatory impact analysis provides a more in-depth cost-benefit analysis of feasible regulatory alternatives. - On this subject, it would be important to clarify what share of total regulations does this cover. There is also a concern on regulations issued by other bodies or agencies that may not be subject to this process, in order to verify if there is a mechanism in place to detect possible impacts on trade for rules not covered by the OIRA, and to give information about which agencies are subject to Executive Order 12866 and which are exempt from the described process. Also, to verify if there exists a mechanism for rules without "economically significant" impact on the economy, but that could be relevant as trade measures.*

**RESPONSE: In 2013, the Office of Information and Regulatory Affairs in OMB conducted 105 reviews of economically significant rules. Historical data for previous years can be found here: <http://www.reginfo.gov/public/do/eoCountsSearchInit?action=init>.**

**The centralized review portions of EO 12866 do not apply to the statutorily designated independent regulatory commissions identified in the Paperwork Reduction Act. Nevertheless, the U.S. TBT Inquiry Point reviews all proposed measures from all Federal agencies on a daily basis and notifies proposed technical regulations and conformity assessment procedures to the WTO.**

***3.1.8 Technical regulations and standards, paragraph 3.80 (Page 67).***

30: The United States submitted 269 TBT notifications in 2013 (248 in 2012)69, including sub-federal measures notified under Article 3.2 of the TBT Agreement (Table A2.2). The United States was the only WTO Member to notify at the local government level during the review period, with 11 sub-federal notifications submitted in 2013, mainly relating to environmental protection. The federal regulatory agencies with greatest number of TBT notifications related to international trade include: the Department of Energy (DOE), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), Department of Transportation (DOT), Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), and the Federal Trade Commission (FTC). The National Institute of Standards and Technology is the United States' enquiry point and notification authority under the TBT Agreement and responds to Members' requests for documents and information within two days, and usually within one day, according to the authorities. Comments received or inquiries for clarification of technical details in a notified measure are transmitted by the enquiry point to the relevant U.S. regulatory agency for reply as soon as possible. - On this, it would be helpful if they could describe what is the mechanism in place for notifications at the local governments and how it's working.

**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.**

***3.1.8 Technical regulations and standards, párrafo 3.80. (Pág. 67):***

31: Con respecto a las notificaciones a nivel de gobiernos locales ¿Cuáles han sido los retos del proceso de coordinación?

**RESPONSE: U.S. Inquiry Point staff has been reduced in the last few years due to reductions in the budget, so there are fewer staff available to handle the work. However, Inquiry Point staff continue to regularly review a proprietary database of state regulations identified for potential notification, and the Inquiry Point communicates the possible notifications to USTR for review and approval to send to the WTO.**

***3.1.8 Technical regulations and standards, párrafo 3.83 (Pág. 68)***

32: Para llevar a cabo la evaluación de la conformidad, Estados Unidos utiliza a entes públicos y privados. Sin embargo, no es claro quién los acredita

**RESPONSE: As the Secretariat report notes, "The United States relies on a broad range of approaches to conformity assessment, depending on the sector (supplier's declaration of conformity, third-party testing or certification, etc.). Accreditation programmes are operated by all levels of government and the private sector, and frequently rely on private-sector conformity assessment bodies." In other words, the procedures for accreditation of conformity assessment bodies will vary, depending on the particular standard or technical regulation.**

The National Institute for Standards and Technology (NIST), under the National Technology Transfer and Advancement Act, is responsible for working with U.S. government agencies to coordinate conformity assessment activities, with private sector conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity. OMB Circular A-119 *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* provides additional guidance to agencies regarding conformity assessment, including directing the Secretary of Commerce to issues guidance to the agencies to improve coordination on conformity assessment. NIST has published *Guidance on Federal Conformity Assessment Activities*, which can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2000-08-10/pdf/00-20262.pdf>.

***3.1.8 Technical regulations and standards, párrafo 3.84 (Pág. 68)***

33: ¿Los Acuerdos de Reconocimiento Mutuo (ARM) que suscribe Estados Unidos contemplan: público-público, privado-privado, mixtos?

**RESPONSE:** It is unclear what is meant by this question. With respect to certain government-to-government MRAs to which the United States is a party, accreditation bodies may be private sector bodies.

**3.1.8 Technical regulations and standards, párrafo 3.85 (Pág. 68)**

34: ¿Para fomentar la cooperación regulatoria Estados Unidos firma ARM en qué sectores?

**RESPONSE:** Information on the individual MRAs and the sectors covered can be found here: <http://qsi.nist.gov/global/index.cfm/L1-4/L2-16/A-89>.

**3.1.9.1 Food and Drug Administration, párrafo 3.86 (Pág. 69)**

35: Paragraph 3.86 refers to the responsibilities of the Food and Drug Administration (FDA). Could it be described the process followed by such Administration in notifying the proposed and/or final SPS measures in accordance to the transparency obligations under the WTO SPS Agreement? In which stage of the process the notification to the WTO is made?

**RESPONSE:** The U.S. Food and Drug Administration (FDA) followed the WTO notification process to ensure transparency under Article 7 of the SPS Agreement. As explained in paragraph 3.88, between January 2013 and January 2014, the FDA published for public comment seven proposed regulations to implement some of the key elements of the FSMA.<sup>16</sup> WTO notifications were made for the proposed rules with accompanying addenda to extend the comment periods beyond the original 90-day comment periods. The proposed regulations address produce safety<sup>17</sup>, preventive food controls<sup>18</sup>, foreign supplier verification programme<sup>19</sup>, accreditation of third-party auditors<sup>20</sup>, preventive controls in the animal feed supply<sup>21</sup>, protection against intentional adulteration of food<sup>22</sup>, and sanitary transportation of food. See footnote at paragraph 3.88 for listing of WTO notifications. Supplemental notices of proposed rulemaking were published on September 19, 2014, for four proposed rules (produce safety, preventive controls for human food, preventive controls for animal food, and foreign supplier verification), and WTO addenda notified a 90-day comment period, closing December 15, 2014.<sup>23</sup> The regulatory drafting process is ongoing. FDA is currently working on finalizing the proposed rules as directed by FSMA. The WTO will be notified upon the finalization of the rules.

**3.1.9.3 Animal and Plant Health Inspection Service, 3.92 (Pág. 70)**

36: Existen productos regulados por el APHIS que tienen restringida su importación a Estados Unidos, ¿Cuál es la lista detallada de estos productos agrícolas?

**RESPONSE:** APHIS Veterinary Services (VS) 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 VS veterinary permit is needed for materials derived from animals or exposed to animal-source materials. Materials which 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. Exceptions to this requirement are human and non-human primate tissues, serum, and blood. Various other animal materials which require a permit include dairy products (except butter and cheese), and meat products (e.g., meat pies, prepared foods) from countries with livestock diseases exotic to the United States. A detailed list of products that may or may not need a permit is available on the public USDA website.

**3.1.9.3 Animal and Plant Health Inspection Service, paragraph 3.92 (Page 70).**

<sup>16</sup> FDA online information. Viewed at: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/>.

<sup>17</sup> WTO document G/SPS/N/USA/2503, 10 January 2013.

<sup>18</sup> WTO document G/SPS/N/USA/2502, 10 January 2013.

<sup>19</sup> WTO document G/SPS/N/USA/2569, 30 July 2013.

<sup>20</sup> WTO document G/SPS/N/USA/2570, 30 July 2013.

<sup>21</sup> WTO document G/SPS/N/USA/2593, 30 October 2013.

<sup>22</sup> WTO document G/SPS/N/USA/2610, 13 January 2014.

<sup>23</sup> WTO document G/SPS/N/USA/2631, 10 February 2014.

**37:** Paragraph 3.92 states that the Animal and Plant Health Inspection Service (APHIS) regulates the import of live plants and animals, and that a number of APHIS-regulated products are regulated by FSIS as well. Which products are regulated by both agencies (APHIS and FSIS)?

**RESPONSE:** FSIS is the U.S. public health and food safety agency responsible for ensuring that the production of meat, poultry, and processed egg products is safe, wholesome and accurately labeled, while APHIS has the mission of protecting animal and plant life and health. They each have different requirements that reflect their different missions. Animal materials which are subject to APHIS import requirements include meat products (e.g., meat pies, prepared foods) from countries with livestock diseases exotic to the United States. If these same products are intended for human consumption, they will be regulated by the FSIS.

**3.1.9.3 Animal and Plant Health Inspection Service, paragraph 3.93 (Page 70).**

**38:** Paragraph 3.93 states that the BSE Comprehensive Rule allows APHIS to conduct its own risk assessment regarding the import of some previously restricted bovine products. Where can more information about APHIS risk assessment procedures be found?

**RESPONSE:** APHIS' regulations in title 9 of the Code of Federal Regulations, subchapter D, govern the exportation and importation of animals (including poultry) and animal products from and into the United States. On December 4, 2013, new BSE-related import regulations, including risk assessment procedures, were published in the U.S. Federal Register, publicly available electronically on the internet. This rule was effective March 4, 2014. The contents of the rule can be found at 78 FR 72979 -73008 (30 pages). See: <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0010>.

**3.1.9.4 Environmental Protection Agency, paragraph 3.94 (Page 70).**

**39:** Paragraph 3.94 mentions that the EPA is responsible for registering pesticides for use in the United States. Where can we find a comprehensive and updated registry of such pesticides?

**RESPONSE:** The Pesticide Product Information System (PPIS) is the website that contains information concerning all pesticide products registered in the United States. The files located in this download area are presented in a format that enables interested parties to access them using a variety of database and spreadsheet software. The site can be accessed at the following URL: <http://www.epa.gov/pesticides/PPISdata/>. These files are updated weekly.

**3.3.2 Subsidies and other government assistance, Table 3.15 "Federal subsidy programmes, 2012" (Pág. 81)**

**40:** Se solicita información específica sobre la descripción y tipo de subsidios que se otorgan a la madera y sus productos (lumber and timber).

**RESPONSE:** See page 35-37 of the United States notification (G/SCM/N/253/USA).

**3.3.3 Competition policy, paragraph 3.146 (Page 81).**

**41:** How do the Federal Trade Commission (FTC), and the Antitrust Division of the Department of Justice (DOJ); ensure the enforcement the federal antitrust laws? What mechanisms do they have for the enforcement of the relevant Acts?

1.

**2.RESPONSE:** The FTC developed a brief overview of its investigative and law enforcement, available at <http://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>, which outlines its investigative authority (See §I) and its antitrust enforcement authority (See §II.B).

Detailed answers to Mexico's general question can be found, *inter alia*, in the United States Department of Justice, Antitrust Division's publicly available Antitrust Division Manual, and in particular Chapters I.A-B, IIA & D, and VII.A of the Manual; see the link to the Manual.<sup>24</sup>

**3.3.3 Competition policy, paragraph 3.148 (Page 82).**

---

<sup>24</sup> <http://www.justice.gov/atr/public/divisionmanual/index.html>.

**42:** Paragraph 3.148 states that certain practices are considered violations *per se* according to U.S. law and practice, and subject to criminal investigations as well as civil lawsuits. Can you further explain how, or according to what criterion is it defined whether such violations undergo a criminal or a civil prosecution? Can both processes be carried out simultaneously?

**RESPONSE:** The answers to this additional general question can also be found, *inter alia*, in the Antitrust Division's Antitrust Division Manual, in particular, its Chapter III.C.1. See the link identified above.

**3.3.5.1 Overview, párrafo 3.166 (Pág. 85).**

**43:** En relación con las cifras citadas, en particular sobre el 30% de las compras federales que no fueron realizadas por el Departamento de Defensa, puede Estados Unidos indicar cuál fue el monto aproximado de compras que se realizaron bajo la cobertura de tratados internacionales?

**RESPONSE:** Statistics on the procurement covered by the GPA is included in the statistics that the United States submits to the WTO Committee on Government Procurement.

**3.3.5.1 Overview, párrafo 3.167 (Pág. 85).**

**44:** Por favor aclare qué se entiende, para efectos del impuesto fiscal, por "foreign entities". ¿Este concepto incluye o se aplica exclusivamente a proveedores extranjeros?

**RESPONSE:** The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

**3.3.5.1 Overview, párrafo 3.168 (Pág. 85).**

**45:** Por favor explique las consideraciones por las que la Ley de Acuerdos Comerciales de 1979 permite al Presidente otorgar excepciones a los requerimientos discriminatorios de compras con respecto a compras cubiertas por el ACP y Acuerdos de Libre Comercio, en lugar de incorporar una medida sistemática que excluya de esos requisitos a todas las compras cubiertas por dichos acuerdos

**RESPONSE:** Under the Trade Agreements Act of 1979, Congress granted the President authority to waive discriminatory purchasing requirements for eligible products from designated countries (19 USC § 2511(a)). GPA and FTA members are designated countries under the Trade Agreements Act (19 U.S.C. §§ 2511(b), 2518). The U.S. Trade Representative has waived the Buy American Act requirements consistent with U.S. international obligations.

**3.3.5.2 Procedures, párrafo 3.176 (Pág. 86).**

**46:** ¿Existe alguna limitación a la política de considerar "required sources" cuando las compras, por sus características, están cubiertas por tratados?

**RESPONSE:** When use of a required source involves a procurement action covered under U.S. government procurement market access obligations, then that procurement is open to the eligible goods, services, and suppliers of other parties consistent with those obligations.

**3.3.5.2 Procedures, párrafo 3.178 (Pág. 87).**

**47:** ¿Existe un monto o porcentaje que deba tomarse como referencia cuando los contratos de construcción deben incluir el plan de subcontratación a pequeñas empresas?

**RESPONSE:** There is no government-wide minimum percentage that must be subcontracted to small businesses for each construction contract awarded.

**3.3.5.2 Procedures, párrafo 3.181 (Pág. 87).**

**48:** ¿Cuáles son las principales causas de protesta, es decir, acciones que ocurren antes de que el contrato sea otorgado, que se han registrado en la Government Accountability Office y cuáles en la Court of Appeals for the Federal Circuit?

**RESPONSE: The United States does not maintain statistics of the most common bases alleged when filing a challenge to a procurement action.**

*Tabla T3.23 (Pág 93).*

49: Por favor describa la protección a las indicaciones geográficas prevista en la Ley Lanham de 1946, mencionada en la tabla T3.23.

**RESPONSE: The Lanham Act of 1946 is the operative trademark law in the United States. GIs are protected under the trademark system. Registered GIs are protected against subsequent applications and uses of confusingly similar designations.**

**3.3.6.3 The patent system, párrafo 3.204 (Pág. 95).**

50: ¿También se estaría considerando la introducción de medidas para evitar "litigios frívolos" en materia de protección de datos de productos farmacéuticos?

**RESPONSE: The United States has proposed several ways to address "frivolous litigation," including a proposed rule on transparency to ensure that records of patent ownership are accurate and up to date, and a crowdsourcing initiative to expand ways for identifying prior art relevant to determining the novelty of claimed inventions. These initiatives are not industry-specific.**

**3.3.6.3 The patent system, párrafo 3.204 (Pág. 95).**

51: Como complemento del párrafo 3.204, ¿puede comentar cuál es la relevancia de las industrias de medicamentos genéricos en la economía de los estados Unidos? ¿Qué disposiciones incluye el marco regulatorio en relación con las necesidades particulares de información y acceso a la tecnología por parte de estas industrias?

**RESPONSE: The United States does not have the requested statistics in regards to the generic medicines industry.**

**3.3.6.3 The patent system, párrafo 3.205 (Pág. 95).**

52: Describir las iniciativas en el marco del "Patent for Humanity Program" relativas a la reducción de precios de medicamentos.

**RESPONSE: Patents for Humanity is a voluntary program that recognizes excellence in using patented technologies to help the less fortunate. Financial considerations are explicitly excluded from the evaluation criteria, which focus on the real-world impact a technology makes on improving lives. Two of the 2013 Patents for Humanity award recipients, Gilead Sciences and the University of California Berkeley, developed innovative ways to lower the costs of certain HIV and malaria medicines. More information about their efforts can be found on the USPTO website at [http://www.uspto.gov/patents/init\\_events/patents\\_for\\_humanity/awards2013.jsp](http://www.uspto.gov/patents/init_events/patents_for_humanity/awards2013.jsp).**

**The USPTO recognizes that different models can be effective for addressing humanitarian issues and does not require any particular funding model for participation in the program.**

**3.3.6.5 Copyright, párrafo 3.208 (b) y 3.209 (pág 96).**

53: ¿Puede describir cuáles son las medidas que se están considerando en las mesas redondas para mejorar el sistema Notice & Takedown?

**RESPONSE: In the Department of Commerce's Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy and in a subsequent request for public comments, the Department stated its intention to establish an open multistakeholder forum aimed at improving the technical day-to-day operation of the notice and takedown system for removing infringing content from the Internet under the Digital Millennium Copyright Act (DMCA) which was enacted into in 1998. The goal of the forum is to provide a collaborative forum through which all interested stakeholders could identify best practices and/or produce voluntary agreements for improving the operation of the DMCA notice and takedown system by the end of 2014. The goal of this process is not to identify ways to change the law, but rather to determine how the operation of the existing system can be improved within the existing legal framework. The multistakeholder forum has met five times in public session and has**

established a working group to focus on reaching consensus on specific issues selected by the forum. The next public meeting of the multistakeholder forum is scheduled for December 18. Documentation and information pertaining to this process can be found at the following website: <http://www.uspto.gov/ip/global/copyrights/index.jsp>

**3.3.6.5 Copyright, párrafo 3.211 (a) (pág 97).**

54: ¿Cuáles son los sistemas de solución de controversias alternativos a los que se hacer referencia?

**RESPONSE:** The U.S. Copyright Office's 2013 report Copyright Small Claims recommended that Congress consider the creation of an alternative forum that will enable copyright owners to pursue small infringement matters and related claims arising under the Copyright Act. In light of the existing constitutional landscape and the challenges of the current federal system, the most promising option to address small copyright claims would be a streamlined adjudication process in which parties would participate by consent. A potential home for such a system would be within the U.S. Copyright Office.

**3.3.6.5 Copyright, párrafo 3.214 (pág 98). Párrafo 3.214.**

55: Describir sistema de licencias estatutarias para la retransmisión de señales de radiodifusión. ¿Cómo se relaciona dicho sistema con los derechos previstos en favor de los organismos de radiodifusión y de los titulares de derechos de autor previstos en el artículo 14.3 del Acuerdo sobre los ADPIC?

**RESPONSE:** There are three statutory licenses in the U.S. Copyright Act pertaining to the retransmission of broadcast signals:

- **Section 111.** The Section 111 license permits a cable operator to retransmit both local and distant radio and television signals to its subscribers who pay a fee for such service. The purpose of Section 111 is to permit cable systems to carry distant broadcast signals while compensating copyright owners for the public performance of their works carried therein, without the transaction costs associated with marketplace negotiations for the carriage of copyrighted programs. Section 111 allows cable operators to complement the carriage of local broadcast signals with distant signal programming that is generally unavailable in local television markets. The cable statutory license covers the retransmission of all broadcast station signals, although a royalty payment is generally only required for the carriage of distant broadcast signals. To be eligible for cable statutory license, cable operators must file Statements of Account with the U.S. Copyright Office every six months along with the appropriate royalty payment for the carriage of distant broadcast signals.
- **Section 119.** The Section 119 license permits a satellite carrier to retransmit distant television signals (but not radio signals) to its subscribers for private home viewing and to commercial establishments. The purpose of the Section 119 license is to clear the public performance rights of copyrighted works contained in a broadcast signal so that a satellite carrier could offer non-network station (formerly "superstations") to a home dish owner anywhere in the United States and network programming to a household that could not receive adequate over-the-air signals from local network affiliates (i.e., "unserved households"). To be eligible for Section 119 license, satellite carriers must file Statements of Account with the U.S. Copyright Office every six months along with the appropriate royalty payment for the carriage of distant broadcast signals.
- **Section 122.** The Section 122 statutory license permits satellite carriers to retransmit local television signals into the stations' local market. This "local-into-local" license is contingent upon the satellite carrier complying with the rules, regulations, and authorizations established by the Federal Communications Commission governing the carriage of television broadcast signals and is directly tied to Section 338 of the Communications Act which requires satellite carriers to carry every broadcast signal in a local market if it carries at least one broadcast signal under the license. The principal purpose of

**Section 122 is to provide local broadcast television programming to satellite subscribers in their local markets. The secondary purpose of Section 122 is to promote competition between satellite carriers and cable operators by permitting a parallel array of local television programming. The Section 122 is, except in very limited circumstances, a royalty-free license.**

**Related Communications Act provisions:** A cable operator is generally required to obtain the consent of local and distant commercial broadcast stations, under Section 325 of the Communications Act, before retransmitting such signals. A satellite carrier is required to obtain the consent of only local commercial television stations, under Section 325, before retransmitting such signals. A local commercial broadcast station may opt to be carried by cable operators under the must carry provisions of Section 614 of the Act or be carried by satellite carriers under "carry-one carry-all" provisions found in Section 338 of the Communications Act, instead of under the retransmission consent provisions of Section 325. Noncommercial television stations only have must carry rights and cannot invoke retransmission consent under Section 325 of the Communications Act. The FCC has the jurisdiction to enforce the must carry provisions and broadcasters may resort to the courts to enforce retransmission consent agreements (although the FCC has a policymaking function for retransmission consent).

**The U.S. is not a party to the Rome Convention and does not protect broadcasters under a neighboring rights regime, so the first sentence of TRIPS Article 14.3 is inapplicable here. Instead, broadcast stations are protected through various provisions of the Communications Act and the FCC's rules and regulations, as explained above. With regard to the second part of Article 14.3, which does apply in this instance, the statutory licensing systems in place under the Copyright Act are permitted through the three-step test.**

**Informe de EE.UU.**

**4.1 WTO Agreements and Initiatives, párrafo 4.2 (Pág. 11)**

**56:** Se menciona un rol activo en las negociaciones del "Information Technology Agreement (ITA)", ¿en qué consistió la aportación de Estados Unidos a la negociación?

**RESPONSE:** The United States was one of the six founding members of the current negotiations and is working actively to finalize a balanced and commercially significant ITA agreement that eliminates tariffs on a meaningful product list in the shortest timeframe possible.

**4.1 WTO Agreements and Initiatives, párrafo 4.3 (Pág. 11-12)**

**57:** ¿De qué manera se han abordado en Estados Unidos las decisiones de Bali? (a pesar del bloqueo de ciertos países) ¿Cuál es la estrategia para que Estados Unidos impulse el TFA?

**RESPONSE:** The United States supports the full implementation of all of the Bali agreements. We supported trade facilitation reforms throughout the negotiations, and will continue to do so to promote effective implementation of the agreement. We now look forward to engaging with other Members, at all levels of development, to ensure that we reach the prescribed threshold for the TFA to enter into force as soon as feasible. The United States also looks forward to continuing its efforts to extend bilateral assistance in connection with implementation of the TFA.

**4.2 Regional Initiatives, paragraph 4.10 (Page 13).**

**58:** What legislative implications will the US' commitments have in this agreement? When do you estimate that the chapter of regulatory coherence will be implemented?

**RESPONSE:** The TPP agreement is still being negotiated among all 12 Parties, including the United States and Mexico. Once the negotiation is concluded, the Administration will work closely with Congress on all legislative measures necessary for its approval and entry into force, including related to any regulatory issues.

**4.2.1 North American Free Trade Agreement, párrafo 4.15 (Pág. 13)**

**59:** ¿Cuáles han sido los resultados concretos en materia forestal y cuáles han sido los mecanismos de coordinación, así como los montos de inversión en México, de parte de Estados Unidos y Canadá, durante al menos los 2 últimos años?

**RESPONSE:** The United States has successfully partnered with Mexico to address forestry and illegal logging-related matters. For example, almost half of USAID's Global Climate Change Program in Mexico, US\$70 million over five years, focuses on specific mitigation efforts in the forestry, land-use, and land-use change sectors in support of the Reducing Emissions from Deforestation and Forest Degradation (REDD+) program. Through the U.S. Fish and Wildlife Service, the United States has supported Mexico's efforts to protect and conserve forests, including a forest that is a critical habitat for monarch butterflies. The WWF, an environmental NGO, has also supported Mexico's efforts to protect this forest. These joint efforts have resulted in reduced levels of illegal logging in this forest. The United States looks forward to continuing to collaborate and coordinate with Mexico to address forestry and illegal logging issues through appropriate bilateral, regional, and multilateral mechanisms, including the APEC Experts Group on Illegal Logging and Associated Trade and the International Tropical Timber Organization.

#### **4.2.3 Asia-Pacific Economic Cooperation Forum, paragraph 4.25 (14).**

**60:** Do you consider that activities in the field, in the framework of APEC have helped strengthen the implementation of good regulatory practices of member economies? Is there any mechanism for monitoring and evaluation to measure these impacts?

**RESPONSE:** APEC's continued focus on strengthening the implementation of good regulatory practices, particularly regarding conducting public consultations, ensuring the internal coordination or regulatory work, and assessing the impact of regulations, is producing tangible progress. APEC provides a regular forum for its members to learn from one and other on the dynamic progress they are making in their domestic regulatory processes in each of these areas. In 2014, APEC endorsed a new set of voluntary steps its economies could take to improve their public consultations through information technology and the Internet ('APEC Actions on Public Consultations on Proposed Regulations in the Internet Era'). In 2015, APEC will undertake further capacity building efforts to assist economies with implementing these actions. To measure the impacts of its members' efforts to strengthen the implementation of good regulatory practices, in 2015 APEC will update the Baseline Study on Good Regulatory Practices in APEC Member Economies and place a particular focus on public consultations.

#### **4.3.5 United States – Israel Free Trade Agreement, párrafo 4.57 (Pág. 19)**

**61:** ¿Qué mecanismo existe en Estados Unidos para dar trazabilidad a los informes de los laboratorios y la expedición de certificados? ¿Existe un record integrado a nivel federal/estatal?

**RESPONSE:** Implementation of the telecommunications mutual recognition agreement (MRA) began earlier this year. In March 2014, the National Institute of Standards and Technology (NIST) MRA Program Office began accepting applications from qualified U.S. testing laboratories seeking to be designated by NIST and recognized by the State of Israel under the terms of the MRA. As of 12 December 2014, 11 laboratories had been designated as conformity assessment bodies for Phase I of the MRA. The list of those laboratories can be found online: [http://gsi.nist.gov/global/docs/cabs/Israel\\_Phase\\_I.html](http://gsi.nist.gov/global/docs/cabs/Israel_Phase_I.html).

The MRA text does not include specific provisions that relate to the tracking of test reports or certificates issued by the designated conformity assessment bodies. However, regulatory schemes of individual countries participating in MRAs may require conformity assessment bodies or manufacturers/importers to input conformity assessment results as a condition of market access. For example, in the United States, telecommunication certification bodies recognized by the Federal Communications Commission (FCC) under the MRAs are required to upload the certification and supporting documents into a publicly available system for products subject to certification. However, for products subject to approval using a Supplier's Declaration of Conformity, the FCC does not have a system of tracking test reports.

**4.3.11 United States – Peru Trade Promotion Agreement / 6 Trade and The Environment**, 62: se hace referencia general a varios esfuerzos realizados por el gobierno de Estados Unidos dirigidos a combatir la tala y comercio ilegal de productos forestales, incluyendo lo relativo a su participación en el Grupo de Expertos en Tala Ilegal y Comercio Asociado en el seno de la APEC (página 26), así como iniciativas bilaterales, como en el caso del gobierno de Perú (sección 4.3.11, pág. 22); se solicita información sobre las acciones y resultados concernientes a la aplicación de la enmienda de la Lacey Act, la cual prohíbe el comercio de productos ilegales de madera y papel en los Estados Unidos, imponiendo obligaciones a los compradores de ese país para que realicen la "debida diligencia" para asegurar la legal procedencia de los productos forestales que importan.

**RESPONSE: The Lacey Act is an important tool in U.S. efforts to combat illegal logging and wildlife trafficking. General information regarding the Lacey Act is available on the website of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service:** [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth?1dmy&urle=wcm%3apath%3a%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_plant\\_health%2Fsa\\_import%2Fsa\\_lacey\\_act%2Fct\\_lacey\\_act](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth?1dmy&urle=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_plant_health%2Fsa_import%2Fsa_lacey_act%2Fct_lacey_act).

**Information regarding investigations and prosecutions under the Lacey Act is available on the websites of the Department of Justice (<http://www.justice.gov/enrd/News.html>) and the U.S. Fish and Wildlife Service (<http://www.fws.gov/news/>).**

**5 Trade-related Capacity Building Initiatives, párrafo 5.17 (Pág. 25)**

63: ¿Cuál es el presupuesto anual de Standards Alliance?

**RESPONSE: U.S. government funding for the Standards Alliance comes from the budget of the U.S. Agency for International Development (USAID). Information on USAID's budget can be found online:** <http://www.usaid.gov/results-and-data/progress-data/agency-financial-report>.

**6 TRADE AND THE ENVIRONMENT, párrafo 6.1 (Pág. 26)**

64: ¿Cuáles han sido los resultados en materia de combate a la tala ilegal y el comercio asociado, en el marco del TLCAN para el caso México?

**RESPONSE: See the response to #59.**

**6 TRADE AND THE ENVIRONMENT, párrafo 6.3 (Pág. 26)**

65: ¿Cuáles han sido los mecanismos de cooperación y ayuda con otros países para combatir la pesca INDNR y la forma de acceder a éstos? ¿Cuáles han sido los avances en el desarrollo de los programas integrados para combatir la pesca INDNR contemplados por el Memorándum y sus principales lineamientos?

**RESPONSE: The Task Force is providing its recommendations to the President in December 2014. The recommendations will be published in the Federal Register with an opportunity for public comment. Upon receiving guidance from the President on the recommendations, the Task Force will begin its implementation of the recommendations and, within one year, will report to the President on its progress. Capacity building activities and opportunities are one of the elements for possible inclusion in the recommendations that the Task Force is considering. Through the Magnuson-Stevens Fishery Conservation and Management Act and other authorities, the National Marine Fisheries Service engages in international cooperation and assistance, with particular emphasis on efforts to combat IUU fishing, mitigate bycatch of protected living marine resources, and conserve sharks. One purpose is to assist nations that are identified under the High Seas Driftnet Fishing Moratorium Protection Act, so that they may better address the activities for which they were identified, including IUU fishing. Information regarding IUU measures is available online at:** [http://www.nmfs.noaa.gov/ia/iuu/iuu\\_overview.html](http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html).

---

## NEW ZEALAND

### ***REPORT BY THE WTO SECRETARIAT (WT/TPR/S/307)***

#### **2 TRADE POLICY AND INVESTMENT REGIMES**

##### **(II) The Committee on Foreign Investment in the United States** *WT/TPR/S/307, section 2.4.3.1, page 39, para 2.54*

Section 2.4.3.1, paragraph 2.54 states that "In addition to receiving a gradual increase in notices, CFIUS investigations increase from 35 in 2010, to 40 in 2011, and 45 in 2012. A record number of notices (20) were withdrawn after an investigation was launched in 2012".

##### Question 1

*Given overall FDI inflows have decreased overall in the United States, what has accounted for the gradual increase in the number of CFIUS notices, including a significant number of withdrawals?*

**RESPONSE: The United States has an open investment policy. We recognize that it is vital to economic growth, to job creation, and to productivity.**

The United States consistently ranks at the top of most major indicators for its attractive business and investment climate. The United States ranks: #1 in A.T. Kearney's Foreign Direct Investment Confidence Index; and #4 in the World Bank's "Ease of Doing Business" rankings. These rankings are reflected by investment statistics: from 2007 through 2013, the United States received more FDI than any other country. The FDI flow into the United States in 2013 – US\$187.5 billion – was 34% higher than the flow into any other country.

The number of filings over time and per country is available in CFIUS's 2012 Annual Report. <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/2013%20CFIUS%20Annual%20Report%20PUBLIC.pdf>. There was a significant decline in the number of notices of covered transactions from 2008 to 2009 and then increases in the number of notices each year since then. This trend indicates a general correlation between the number of notices and macroeconomic conditions. As we state in our annual report, parties may seek to withdraw for commercial reasons unrelated to CFIUS review, to obtain additional time to respond to CFIUS questions, or in light of CFIUS's national security concerns with the transaction.

#### **3 TRADE POLICY AND PRACTICES BY MEASURE**

##### **(III) Animal Health and Plant Health Inspection Service** *WT/TPR/S/307, section 3.1.9.3, page 70, paras 3.92/3.93*

Section 3.1.9.3, paragraph 3.93 notes that on 29 May 2013, the OIE upgraded the U.S. risk classification for bovine spongiform. On 4 March 2014, a new APHIS regulation (BSE Comprehensive Rule) entered into force bringing U.S. import requirements generally into line with the OIE's criteria for classifying regions for BSE risk status (negligible, controlled, and undetermined risk).

##### Question 2

*Could the United States please clarify why under the BSE Comprehensive Rule APHIS now requires a paper certificate to accompany all consignments of beef exported to the U.S. (irrespective of the BSE status of the exporting country) when the Food Safety and Inspection Service, has recently implemented a final rule that no longer requires exporting countries to provide paper certificates (with all certification provided by the exporting country electronically)?*

**RESPONSE: APHIS currently requires a paper certificate (animal health certificate) endorsed by the Veterinary Authorities of an exporting country to ensure full compliance with U.S. animal health import requirements as codified in its regulations to prevent the introduction of BSE into the United States. APHIS is undergoing a review of the possibility of accepting electronic certifications.**

**(III) The National Export Initiative (NEI) and NEI/NEXT**

WT/TPR/S/307, section 3.2.4.2, page 76, para 3.117

Section 3.2.4.2, para 3.117, notes that while exports have grown significantly since 2009, the NEI programme will not meet its stated goal of doubling exports in five years.

**Question 3**

What are the factors that have prevented the NEI from meeting this goal, and what lessons learned and amendments have been made to the successor programme NEI/NEXT to make further improvements to the U.S. export environment?

**RESPONSE: We did not reach the President's goal of doubling exports under the NEI – in part because of unexpectedly strong global economic headwinds and macroeconomic factors outside our control.**

Feedback from customer surveys on the NEI and focus groups across the country – reaching more than 6,000 clients and partners – showed that U.S. companies are well-positioned to capitalize on growing opportunities around the world and offered suggestions on how to improve upon the NEI. NEI/NEXT is a new customer service-driven strategy with improved information resources that will help American businesses capitalize on existing and new opportunities to sell Made-in-America goods and services abroad. NEI/NEXT is focused on improving data useful to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help.

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

WT/TPR/S/307, section 3.3.2, page 80, para 3.140 and table 3.15

Section 3.3.2, para 3.140, notes that the agriculture and energy sectors remain the largest recipients of subsidies in the form of grants, tax concessions, loan guarantees and direct payments with section 3.3.2 para 3.139 adding that the magnitude of government assistance has generally decreased since the previous review. New Zealand welcomes U.S. efforts to champion fossil fuel subsidy reform internationally in the G20, APEC and other fora.

**Question 4**

Could the United States clarify to what extent has domestic fossil fuel subsidies contributed to the overall reduction of energy and fuel subsidies?

**RESPONSE: The bulk of the reduction in reported energy and fuel subsidies is due to the expiration of the Alcohol Fuels Credit and the Biodiesel and Renewable Diesel Credit. Both credits expired on December 31, 2011. The tax incentive under the Alcohol Fuels Credit fell from US\$7,020 million in fiscal year 2011 to US\$3,680 million in fiscal year 2012. The tax incentive under the Biodiesel and Renewable Diesel Credit fell from US\$780 million in fiscal year 2011 to US\$90 million in fiscal year 2012.**

**Question 5**

Could the U.S. provide an update on the Administration's plans to further reduce and reform its programme of domestic fossil fuel subsidies?

**RESPONSE: In its 2014 submission to the G-20, the United States identified eleven tax provisions that constitute inefficient fossil fuel subsidies. The President has proposed eliminating these tax provisions annually in his budget since 2009. However, Congress must act to eliminate these tax provisions, and has so far has taken no action. Also, the United States and China are currently undertaking a peer review within the G-20 framework to identify their inefficient fossil fuel subsidies.**

**(III) Government procurement**

*WT/TPR/S/307, section 3.3.5, page 85, para 3.167*

*Section 3.3.5, para 3.167, notes that the U.S. "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 6**

*Could the U.S. please clarify the present status of the new measure, and why it discriminates against foreign, as distinct from domestic, procurement?*

**RESPONSE: The effective date of the statute 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.**

**Question 7**

*Could the U.S. please clarify whether it is only the final supplier that the new excise tax applies to?*

**RESPONSE: The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.**

**Question 8**

*Could the U.S. please clarify what constitutes a "foreign entity" is and what an "international procurement agreement" is?*

**RESPONSE: The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.**

**(IV) Trade policies by sector**

*WT/TPR/S/307, section 3.3.2, pages 80-81, Table 3.15*

*Section 3.3.2, pages 80-81, Table 3.15, notes that the US' latest subsidies notification on federal and sub-federal programmes was submitted in May 2014. The Secretariat's report notes that the magnitude of government assistances has decreased since the previous review. Table 3.15 shows that the U.S. reported federal subsidies for fisheries of US\$65.9 million.*

*New Zealand appreciates the reporting of the United States' programmes affecting fisheries under the SCM Agreement in the context of the 2012 Rio+20 commitment to further improve the transparency and reporting of existing fisheries subsidies programmes through the WTO. We view this as an important contribution to the Doha mandate "to clarify and improve WTO disciplines on fisheries subsidies.*

**Question 9**

*In terms of the Fisheries Finance Programme notified in G/SCM/N/253/USA, can the United States:*

- a) *Identify the fisheries affected by the programme, by geographical area (e.g. territorial sea, EEZ, high seas), and the species affected by the programme (e.g. both target and bycatch species).*

**RESPONSE: The Fisheries Finance Program benefits the EEZ geographic area generally. In 2014, this was limited to the U.S. mainland and Alaska (no loans were made for Hawaii or Western Pacific borrowers).**

- b) *Clarify the current status of the programme, how long it is anticipated that the programme will be in place, and how the budget will change over the life of the programme?*

**RESPONSE:** The current status of the program is "ongoing." This is a stable program which increased in funding by US\$41 million in 2014. It is anticipated that the program will not increase further in the next year. We note that the US\$41 million increase in the program represents the additional amount of loans that can be provided under the program. The lending rate under this program is generally above the government's cost of funds. The program has historically been self-financing.

- c) Comment on the extent to which the programme provides support for the reduction of overcapacity and overfishing.

**RESPONSE:** The program provides economic stability to fishers and fishing communities, but will not provide loans in fisheries that are deemed overfished or subject to overfishing. By requiring adherence to sustainable fishing requirements and facilitating quota share programs, the fisheries finance program supports the reduction of overcapacity and overfishing.

**(IV) Trade Policies by Sector**

WT/TPR/S/307, section 4.1.1.2.6, p109, paras 4.29-4.30

Section 4.1.1.2.6, paras 4.29-4.30 notes that implementation of the Margin Protection Program (MPP) for Dairy Producers began on 2 September 2014 and understand the enrolment period for the last four months of 2014 and for the 2015 year has been extended to 5 December 2014. The annual cost of the programme is estimated to be between US\$30 to US\$190 million.

Question 10

- a) Can the United States provide the percentage of dairy farmers who have enrolled in MPP to date?

**RESPONSE:** As of November 26, 2014 about 14% of dairy farmers had enrolled in MPP for calendar year 2015. Enrollment is open until December 19, 2014.

- b) Of those enrolled farmers, what percentage have enrolled at the different margin coverage levels (US\$4/cwt through to US\$8/cwt)?

**RESPONSE:** About 44% of enrolled producers have elected coverage above US\$4/cwt for 2015 so far, but no data is available yet on individual coverage levels.

- c) A farmer can choose the percentage of their milk production history level they want covered. What is the average percentage of production history covered?

**RESPONSE:** No data is available on selected coverage percentage at this time.

- d) Has the United States considered and can it comment on whether MPP provides a disincentive for a dairy farmer to increase production, due to MPP not covering growth above that of the national average?

**RESPONSE:** MPP is viewed as a risk-reduction tool for dairy farmers. The program provides payments on a percentage of the historical production of a producer and any increase in an individual producer's production will not affect the level of payment received. Therefore, United States does not see a basis for the suggestion that MPP would provide incentives or disincentives with respect to changes in individual producers' production.

- e) Can the United States comment on how it will categorise payments under MPP, e.g. Amber or Green box, and what is the rationale for this categorisation?

**RESPONSE:** The United States has not made any official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of this program as part of its official domestic support notification.

## NIGERIA

### A. Measures affecting trade and investment

#### Sanitary and Phytosanitary requirements

##### 1. Animal and Plant Health Inspection Service (APHIS): page 70, paragraph 3.92 and 3.93 of Secretariat Report.

On the 29<sup>th</sup> May 2013, the Office International des Epizooties (OIE) or World Organization for Animal Health (OIE) upgraded the U.S. risk classification, while on the 4<sup>th</sup> March, 2014, a new APHIS regulation came into force allowing the U.S. to conduct its own risk assessment.

#### Questions

a) Over the years, Nigeria has been exporting snails (HS code 0307.6000.00) into US, however, in 2014; these snails were confiscated and destroyed upon entry into the U.S. Could the U.S. explain in detail, the APHIS and Food Safety and Inspection Service (FSIS) import requirement for live plants, grain, oilseed and horticultural products; live animals (including embryos, semen, ova), animal product as well as its decision to ban Nigerian snail, which Nigeria was previously allowed to import into the United States?

**RESPONSE:** FSIS is the U.S. public health agency responsible for the food safety regulatory oversight of domestically and imported meat, poultry, and processed egg products to ensure they are safe, wholesome and accurately labeled. FSIS has no regulatory oversight relative to the import of Nigerian-origin live snails.

APHIS regulates giant African snails (GAS) as a plant pest and imports are prohibited. Import requirements for live plants, grain, oilseed and horticultural products can be 7 CFR 300-399; live animals and animal products can be found in 9 CFR subchapter D parts 91-99.

Information regarding GAS regulations can be found at the following web address:

[http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth/sa Domestic pests and diseases/sa pests and diseases/?ut/p/a1/vVPJdoIwFP2WLrrERGaWOFRw6Hg8CpuBCLEIkESPdWvb-C4a0W7aTbJG27evS8vIAZrEJf4yDIsGS9x0dixjaYvgd4fQD2cTMYDGD4\\_zV-d2VSHC0sIRB0JM-s- HDiB6YzhxCarg7D0SAYOd4CwtC-hV-BGMRJKSuZqwhXORMo4aWkpUQF1zWuT49QYMOPNdrw5CBaqyqwiucUFzJvHSnfUSFZqiq1CYTLFKVMUCzoBfD3ZStEpaCyKNWQiyCNZJCVzMJ0TXP9XSN4L7rOVg3jdS-yIRXlg\\_vknmi0W1CVyfbhA40kSLpXC0xtsHHH1VP73h9vV4MF5m6FstcY-WGg3X3g7Tx39wgYtv9PvbVPDQT8CXB-i8HQonNCk7Up1nNQOycg6\\_VW0PKL4nhKoE13dCa1r2cC8XsIFKFwnWS95pjL-NHUO2Wv51rnLT\\_PdxcaVrE9GedQ-A\\_fw0GWsA!!/?1dm&urle=wcm%3apath%3a%2Faphis\\_content\\_library%2Fsa our focus%2Fsa plant health%2Fsa domestic pests and diseases%2Fsa pests and diseases%2Fsa mollusks%2Fct giant african snail home.](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth/sa Domestic pests and diseases/sa pests and diseases/?ut/p/a1/vVPJdoIwFP2WLrrERGaWOFRw6Hg8CpuBCLEIkESPdWvb-C4a0W7aTbJG27evS8vIAZrEJf4yDIsGS9x0dixjaYvgd4fQD2cTMYDGD4_zV-d2VSHC0sIRB0JM-s- HDiB6YzhxCarg7D0SAYOd4CwtC-hV-BGMRJKSuZqwhXORMo4aWkpUQF1zWuT49QYMOPNdrw5CBaqyqwiucUFzJvHSnfUSFZqiq1CYTLFKVMUCzoBfD3ZStEpaCyKNWQiyCNZJCVzMJ0TXP9XSN4L7rOVg3jdS-yIRXlg_vknmi0W1CVyfbhA40kSLpXC0xtsHHH1VP73h9vV4MF5m6FstcY-WGg3X3g7Tx39wgYtv9PvbVPDQT8CXB-i8HQonNCk7Up1nNQOycg6_VW0PKL4nhKoE13dCa1r2cC8XsIFKFwnWS95pjL-NHUO2Wv51rnLT_PdxcaVrE9GedQ-A_fw0GWsA!!/?1dm&urle=wcm%3apath%3a%2Faphis_content_library%2Fsa our focus%2Fsa plant health%2Fsa domestic pests and diseases%2Fsa pests and diseases%2Fsa mollusks%2Fct giant african snail home.)

b) Did the U.S. consult with its trading partners on the new FSIS and APHIS import requirements?

**RESPONSE:** The BSE comprehensive rule was proposed, finalized and implemented by USDA's Animal and Plant Health Inspection Service (APHIS). The public (including all trading partners) was given an opportunity to comment on the proposed rule. The comment period opened on March 16, 2012 and closed on June 14, 2012. APHIS also notified the proposed rule on BSE to the WTO on 30 March 2012 in document G/SPS/N/USA/2340. APHIS subsequently reviewed and considered all comments and published a final rule on December 4, 2013. This final rule became effective on March 4, 2014. The contents of the final rule can be found at 78 FR 72979 -73008. This rule brings U.S. import requirements into alignment with World Organization for Animal Health (OIE) guidelines with respect to BSE.

**FSIS did not have regulatory jurisdiction over the development of this APHIS rule or consultations with foreign countries about its content.**

c) Was there a grace period set aside in the new regulation that allows United States trading partners to adjust to this regulation?

**RESPONSE:** Trading partners had a three-month period (December 4, 2013 – March 4, 2014) prior to the entry into force of the final rule. Additionally, APHIS granted a 60 day transitional period after March 4, 2014 to allow trading partners to amend their current export certificates for bovine products so as to not disrupt trade.

**NORWAY***Questions related to the Report by the Secretariat***3 TRADE POLICIES AND PRACTICES BY MEASURE****3.3 Measures Affecting Production and Trade****3.3.5 Government procurement**

*The Buy American Act of 1933 favours United States' producers by requiring U.S. produced components to exceed 50% in all manufactured goods in U.S. federal contracts. In recent years, there has been an expansion of Buy American policies at the state levels, where at least 64 Buy American bills were introduced in 24 states over the past two years. Although the various bills have different requirements and specificities, their shared purpose and effect is to distort trade by giving United States' producers an advantage at the expense of foreign producers and U.S. taxpayers. How will the U.S. Federal Government ensure compliance to its commitments to public procurement agreements when separate Buy American policies are proliferating at state level?*

**QUESTION 1:** *Are there any Federal initiatives or processes to reconcile regulations at the state level with those of the U.S. Federal Government and its commitments to the WTO GPA and other public procurement regimes?*

**RESPONSE:** *The United States acts consistently with all of its GPA obligations. It takes seriously any allegations of it failing to meet certain obligations. The United States welcomes an open and constructive dialogue with its trading partners about specific concerns. Consistent with its obligations, the United States waives requirements attached to the Buy American Act for all federal procurements covered under the GPA.*

**With respect to State-level measures, each U.S. state maintains its own procurement system independent of the Federal Government procurement system. For those U.S. states subject to government procurement commitments under U.S. international obligations, the Office of the U.S. Trade Representative engages with appropriate State officials regarding specific issues raised by our trading partners.**

**4 TRADE POLICIES BY SECTOR****4.2 Services****4.2.5.3 Policy Actions (regarding exports of American LNG and maritime transportation)**

*The report by the Secretariat lists various policy actions that support the maritime transport sector in the United States (4.2.5.3 Policy Actions - pg.144). It is stated that the United States gives certain preferences for using domestically flagged vessels transporting goods. In light of the increased shale gas production, the United States may become a major exporter of LNG. We are aware of voices in the U.S. Congress for new bills that would provide preference to LNG exports on U.S. flagged vessels. We are quite concerned about this approach on international maritime transport.*

**QUESTION 2:** *If the United States should adopt such a policy on LNG export, would you consider this to be in line with U.S. commitments in the WTO, in particular the standstill commitment contained in Decision on Maritime Transport Services adopted by the Council for Trade in Services on 28 June 1996 (S/L/24)?*

**RESPONSE:** *The United States cannot speculate on the trade implications of legislation that has yet to be drafted.*

**Fisheries subsidies**

*The United States has played a vital role in the international campaign against harmful fisheries subsidies for over a decade. Norway, the United States and a number of other countries have worked collectively in the WTO as the 'Friends of Fish' group towards improving disciplines on fisheries subsidies, including through prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing. In June this year, the United States Department of Commerce published an Advance Notice for comments on a proposed change to its Fisheries*

*Finance Programme (FFP). If adopted, the FFP would be able to financially support fishing vessel constructions and refurbishment that may lead to increased fishing capacity.*

*QUESTION 3: How does this proposal match up with past U.S. declared policy? We would appreciate information from the United States on further developments on this programme.*

**RESPONSE:** The United States has long been committed to disciplining harmful fisheries subsidies and our policy with respect to this issue has not changed. The National Oceanic and Atmospheric Administration (NOAA) at the Department of Commerce is considering modifications to the FFP with this policy in mind. NOAA solicited public comment on the Advance Notice of Proposed Rulemaking it issued in June 2014, and will again solicit public comment in connection with any Notice of Proposed Rulemaking regarding the FFP. Information regarding the rulemaking is available online at <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0062-0006>. We look forward to continuing to work with Norway and other Friends of Fish in the WTO to discipline harmful fisheries subsidies that contribute to overfishing and overcapacity.

**PAKISTAN**

1. Could U.S. please indicate that in the Cotton Stacked Income Insurance program, how much of the premium of the insurance will be paid by the government?

**RESPONSE:** The premium subsidy for Stacked Income Protection (STAX) is 80%.

2. Is this correct that U.S. food stamp scheme does not distinguish between the locally produced food and the imported food?

**RESPONSE:** That is correct.

3. How does the U.S. relate its new Farm Bill with the disciplines in Rev-4?

**RESPONSE:** Rev. 4 has no legal standing. It has no relationship to U.S. farm programs or U.S. WTO obligations.

The United States initially proposed that it would liberalize its agricultural policies as part of a broader reform in a Doha context. If and when WTO members are prepared to negotiate seriously about meaningful reforms, in particular market access opening that has proven so difficult, the United States will be prepared to do its part.

4. When would U.S. GSP scheme be renewed? Would there be any change in the product coverage?

**RESPONSE:** The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.

The GSP Annual Review process provides an opportunity for interested parties to request the addition of specific, non-prohibited products to eligibility for duty-free treatment under GSP. In view of the July 31, 2013 expiration of GSP's authorization, the 2013 Annual Review, launched shortly prior to GSP's expiration, was suspended. Congressional action would be required in order to add to GSP any products, such as most apparel products, that are currently prohibited by law from duty-free treatment under GSP.

5. Is it true that the U.S. is considering amending its current fisheries policy to introduce the U.S. Fisheries Financing Program that has a subsidy component? U.S. is requested to offer comments and to provide details of this program.

**RESPONSE:** The Fisheries Finance Program (FFP) is still under review. The National Oceanic and Atmospheric Administration (NOAA) at the Department of Commerce solicited public comment on the Advance Notice of Proposed Rulemaking it issued in June 2014, and will again solicit public comment in connection with any Notice of Proposed Rulemaking regarding the FFP. Information regarding the rulemaking is available online at <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0062-0006>. NOAA anticipates that the program will apply only in fisheries where total allowable catch is controlled through fisheries quotas. Loans will not be provided in fisheries that are deemed overfished or subject to overfishing. The US\$41 million increase in the program represents the additional amount of loans that can be provided under the program. The lending rate under this program is generally above the government's cost of funds. The program has historically been self-financing.

6. The Secretariat Report notes that U.S. financial firms in general have strengthened their position over the last few years. Nonetheless, more progress is needed in some areas, including on "too big to fail" banks, which receive an implicit subsidy of about US\$70 billion. Can the U.S. outline in what manner it is removing this "implicit subsidy" and in what time frame?

**RESPONSE:** See the 2011 FSOC Study & Recommendations Regarding Concentration Limits on Large Financial Companies, which notes that Dodd-Frank "establishes a

financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's consolidated liabilities would exceed 10% of the aggregate consolidated liabilities of all financial companies...The financial sector's concentration limit should help reduce the prospects for any increase in implicit subsidy for the nation's largest financial firms." Additional details are available at: <http://www.treasury.gov/initiatives/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf>.

7. The Secretariat Report also points out that there has been some reporting of "in-sourcing", i.e. the homecoming of U.S. manufacturing, adding that "However, the authorities expressed doubts regarding a genuine in-sourcing move in the United States as capital stock in manufacturing has not increased in a decade." Does the U.S. Mission share this assessment, and if so, how will the scale of "homecoming of U.S. manufacturing" be enhanced?

**RESPONSE:** It is still too early to determine whether in-sourcing has occurred to a large extent. The United States is an attractive destination for investment. It has a highly competitive workforce, an innovative environment, strong and transparent rule of law, and a growing energy sector. U.S. manufacturing production has benefited as companies look to make production closer to the customer.

8. Secure Freight Initiative (SFI) has been scaled back in recent years, from pilot operations in six foreign ports to only one foreign port currently, in Pakistan. Which are the other five foreign ports, and on what criteria SFI is continued?

**RESPONSE:** The other five ports in which CBP has run SFI pilot operations were Puerto Cortes, Honduras; Southampton, United Kingdom; Busan, Korea; Hong Kong; and Salalah, Oman. These ports have reverted back to CSI risk-based targeting operations and the only location in which there is complete scanning now is in Qasim, Pakistan. The decision to cease scanning at the other ports was based on the balance between the benefits that such scanning conferred and the costs to administer the program.

**PARAGUAY*****Preguntas en relación con el informe de la Secretaría (WT/TPR/S/307)******Pregunta 1******2.3.2.2 Sistema Generalizado de Preferencias (SGP) Pag 36***

*El SGP de los Estados Unidos, su principal programa mundial de preferencias para los países en desarrollo y los PMA, quedó sin efecto el 31 de julio de 2013. Desde entonces, importantes sectores de la economía paraguaya han quedado sin posibilidades de exportar a ese país, lo cual ha afectado considerablemente el crecimiento del sector, con directas implicancias en la producción nacional y el empleo.*

*Por lo tanto, se consulta sobre las posibilidades de una próxima re-implementación del SGP; y si las mismas contaría con retroactivo, o serían ampliados a otros productos?*

**RESPONSE: The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.**

**In the past, when Congress acted to extend the program, it did so retroactively to the expiration of the program, thereby allowing importers to seek refunds of duties paid. However, it is not known whether Congress will make any future reauthorization of GSP retroactive.**

**The GSP Annual Review process provides an opportunity for interested parties to request the addition of specific, non-prohibited products to eligibility for duty-free treatment under GSP. In view of the July 31, 2013 expiration of GSP's authorization, the 2013 Annual**

**Review, launched shortly prior to GSP's expiration, was suspended. Congressional action would be required in order to add to GSP any products, such as most apparel products, that are currently prohibited by law from duty-free treatment under GSP.**

**PERU****Documento WT/TPR/S/307**

Sobre la base de lo señalado en el documento WT/TPR/G/307 del 11 de noviembre de 2014, el Perú tiene las siguientes preguntas:

**Pregunta 1:****3. Políticas y prácticas comerciales, por medidas****3.1. Medidas que afectan directamente a las importaciones****3.1.1. Procedimientos y requisitos aduaneros****3.1.1.3 Zonas Francas****Párrafo 3.23**

Con relación a la aprobación de nuevos reglamentos para zonas francas en 2012, podría Estados Unidos indicar:

- De qué manera se simplificó el procedimiento de solicitud (cuáles eran los requisitos/procedimientos antes de dichos reglamentos y cuáles son los nuevos requisitos/procedimientos).
- En cuánto se redujo el tiempo necesario para establecer una zona franca.
- Qué impacto ha tenido la medida en el establecimiento de zonas francas (en términos de incremento del número de zonas francas o actividades manufactureras en ellas)

**RESPONSE: The primary change in the 2012 regulations decreased the time required to review a company's request for production authority within a FTZ. In the prior regulations this type of application required a 12-month review, which has been reduced to a 120-day process for most requests. In addition, through both the regulations and previous changes adopted by the FTZ Board, the processing time needed for a company's site to receive FTZ designation has been significantly reduced from 10 months to as little as 30 days. The processing time reductions were accomplished through a full reassessment of the procedures needed and information required for each type of request, with previous requirements eliminated or reduced wherever possible. Essentially, the reductions in processing time for production within a FTZ resulted in a vastly simplified review for the majority of cases, while still allowing for a more detailed review where warranted by the circumstances.**

The FTZ Board's reassessment of its procedures in 2012 was intended in part to better meet the needs of business in the United States. Statistics from 2012 and 2013, with record numbers of cases reviewed by the FTZ Board, indicate that there was a demand from the business community for simplified access to the FTZ program. However, due to the range of factors that enter into companies' location decisions, it is not practicable to try to assess the degree to which access to FTZs contributes to individual companies' location decisions.

**Pregunta 2:****3. Políticas y prácticas comerciales, por medidas****3.1. Medidas que afectan directamente a las importaciones****3.1.7 Medidas antidumping, compensatorias y de salvaguardia****3.1.7.1 Medidas antidumping y compensatorias****Párrafo 3.64:**

¿Podría Estados Unidos explicar qué implica que el Departamento de Comercio dejará de considerar a las economías no de mercado en el marco de los procedimientos antidumping como exportadoras condicionalmente? ¿Cuáles son dichas economías de no mercado en el marco de los procedimientos antidumping?

**RESPONSE: This change in practice involves the discontinuation of the conditional review of the nonmarket economy entity in antidumping nonmarket economy cases.**

Now, if an interested party wants Commerce to conduct such a review, it must request a review of the entity in accordance with Commerce's regulations. More detailed information regarding these changes in practice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>.

**The U.S. Department of Commerce considers the following countries to be non-market economy countries: Armenia, the Republic of Azerbaijan, Belarus, the People's Republic of China, Georgia, the Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, Uzbekistan, and the Socialist Republic of Vietnam.**

**3. Políticas y prácticas comerciales, por medidas**

- 3.1. Medidas que afectan directamente a las importaciones**
- 3.1.7 Medidas antidumping, compensatorias y de salvaguardia**
- 3.1.7.1 Salvaguardias**

**Párrafo 3.73:**

**Pregunta 3:**

¿Estados Unidos ha abierto alguna investigación con arreglo a las disposiciones de salvaguardia de sus acuerdos de libre comercio (incluyendo salvaguardia textil)? ¿Alguna de dichas investigaciones ha concluido con la imposición de medidas?

**RESPONSE: During the period under review, the United States has not initiated any safeguard investigations under an FTA-provided transitional safeguard mechanism.**

**Documento WT/TPR/G/307**

Sobre la base de lo señalado en el documento WT/TPR/G/307 del 11 de noviembre de 2014, el Perú tiene los siguientes comentarios:

**4. EVOLUCIÓN DE LA POLÍTICA COMERCIAL DESDE 2012**

- 4.3) Acuerdos e iniciativas comerciales bilaterales**
- 4.3.11) Acuerdo de Promoción Comercial entre los Estados Unidos y el Perú**

**Párrafo 4.77:**

**Comentario 1:**

"El Acuerdo también estableció el Subcomité del Sector Forestal Estados Unidos-Perú y el Consejo de Asuntos Ambientales (CAA). El Subcomité sirve de foro para que las Partes intercambien opiniones y comparten información sobre cualquier asunto que surja en relación con el Anexo sobre el manejo del sector forestal del Acuerdo y, por conducto del Consejo, los Estados Unidos y el Perú han mantenido un diálogo fluido sobre la aplicación de las obligaciones ambientales en virtud del capítulo del Acuerdo relativo al medio ambiente y del Anexo sobre el manejo del sector forestal (...)".

Complementando el párrafo 4.77, el Perú desea resaltar que en el Capítulo de Medio Ambiente del APC Perú-EEUU (específicamente en el numeral 16 del Anexo 18.3.4 Anexo sobre el manejo del sector forestal) se establece la creación de un Subcomité de Manejo del Sector Forestal, que tiene como propósito proporcionar un foro para que las Partes intercambien opiniones e información sobre cualquier asunto derivado del citado Anexo. El Subcomité de Manejo del Sector Forestal está supeditado tanto al Comité de Comercio de Mercancías como al Consejo de Asuntos Ambientales.

Asimismo, de acuerdo al art. 18.6 del APC Perú-EEUU, por medio del cual se estableció el Consejo de Asuntos Ambientales (Consejo), se establece que dicho Consejo tiene como parte de sus funciones: considerar y discutir la implementación del Capítulo de Medio Ambiente del APC Perú-EEUU.

**Comentario 2:**

"(...) En enero de 2013, las Partes convinieron en un plan de acción de cinco puntos para fortalecer la aplicación del Anexo sobre el manejo del sector forestal y promover las actividades de reforma del sector forestal emprendidas por el Perú. En el plan de acción se establece un conjunto específico de medidas que debe adoptar el Perú para hacer frente a problemas concretos de su sector forestal, entre ellas la aplicación de medidas de lucha contra la corrupción, la mejora de los sistemas para rastrear y verificar la cadena de custodia de las exportaciones de madera, garantizar procedimientos penales y administrativos oportunos para los delitos e infracciones relacionados con el sector forestal y fortalecer la elaboración de planes anuales precisos de operaciones para los productores de madera".

Para mayor precisión, el Perú considera conveniente agregar que en enero de 2013, las Partes emitieron un Comunicado Conjunto de las reuniones sostenidas respecto a la Gestión del Sector Forestal. En dicho comunicado conjunto el Gobierno de los EE.UU. destacó con reconocimiento las mejoras significativas mostradas por Perú en el fortalecimiento del manejo del sector forestal desde la entrada en vigencia del APC. Ambos Gobiernos identificaron un conjunto de acciones objetivo que el Perú emprendería para abordar retos específicos con un compromiso de parte de EE.UU. de apoyar los esfuerzos del Perú para emprender tales acciones a través de programas de cooperación y fortalecimiento de capacidades.

Las acciones que se indican en el Comunicado Conjunto Perú-EEUU (enero 2013), para abordar retos específicos que subsisten en el sector forestal peruano están referidas a: 1) fortalecer las inspecciones físicas de caoba de hoja ancha y cedro español contenida en los POAs antes de su aprobación, 2) fortalecer el desarrollo e implementación precisa de los POAs, 3) asegurar procedimientos criminales y administrativos oportunos para sancionar la infracción a la legislación forestal y de fauna silvestre, 4) mejorar los sistemas para rastrear y verificar la cadena de custodia de las exportaciones de madera de caoba de hoja ancha y cedro español; y 5) fortalecer la implementación del plan nacional anticorrupción del sector forestal y de fauna silvestre.

El Comunicado Conjunto de enero de 2013 se encuentra disponible en la página web:

[http://www.acuerdoscomerciales.gob.pe/index.php?option=com\\_content&view=category&layout=blog&id=56&Itemid=79](http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=56&Itemid=79)

**4. EVOLUCIÓN DE LA POLÍTICA COMERCIAL DESDE 2012****4.3) Acuerdos e iniciativas comerciales bilaterales****4.3.11) Acuerdo de Promoción Comercial entre los Estados Unidos y el Perú****Párrafo 4.78:**

"En abril de 2013 se reunieron en Lima (Perú) el Subcomité del Sector Forestal y la Comisión de Cooperación Ambiental. La Comisión se ocupa de examinar la aplicación del Acuerdo de Cooperación Ambiental entre los Estados Unidos y el Perú, cuyo objetivo es la mejora de la cooperación ambiental y la creación de capacidad entre los Estados Unidos y el Perú. El Subcomité del Sector Forestal examinó los progresos realizados en el marco del Anexo sobre el manejo del sector forestal, incluido el desarrollo de un prototipo de sistema de información que rastreará y verificará la cadena de custodia de la madera obtenida en los bosques del Perú. En junio de 2013, el Consejo de Cooperación Ambiental se reunió para examinar los progresos realizados en la aplicación de los compromisos en el marco del capítulo relativo al medio ambiente y la Comisión de Cooperación Ambiental examinó la ejecución de actividades de cooperación ambiental. Las Partes celebraron una sesión pública en relación con esas reuniones (...)".

**Comentario 3:**

A fin de utilizar los términos establecidos en el APC Perú-Estados Unidos y asegurar la consistencia de las afirmaciones, el Perú desea precisar que el Acuerdo de Cooperación Ambiental (ACA) Perú-EEUU, en su artículo III establece la creación de una Comisión de Cooperación Ambiental, que tiene entre sus funciones fijar las prioridades para las actividades cooperativas; así como examinar y evaluar las actividades cooperativas. Asimismo, en el artículo I del citado Acuerdo, se

establece que el objetivo del ACA, es establecer un marco para incrementar la cooperación ambiental bilateral y/o regional entre las Partes, con el fin de proteger, mejorar y preservar el medio ambiente, incluida la conservación y el uso sostenible de sus recursos naturales.

**Comentario 4:**

Para mayor precisión sobre el desarrollo de las reuniones de abril y junio de 2013, se puede acceder a los Comunicados Conjuntos disponibles en la página web: [http://www.acuerdoscomerciales.gob.pe/index.php?option=com\\_content&view=category&layout=blog&id=56&Itemid=79](http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=56&Itemid=79).

**Comentario 5:**

"...En agosto de 2014, funcionarios del USTR, la Agencia de Protección del Medio Ambiente y el Departamento de Estado viajaron al Perú para dialogar con funcionarios del Gobierno peruano y grupos de la sociedad civil sobre las modificaciones de la legislación peruana promulgadas recientemente..."

Perú considera que no se debería hacer referencia a las actividades de agosto de 2014 en este párrafo ya que la reunión a la que se refiere el mismo, constituye una reunión informal no enmarcada en los mecanismos establecidos en el Capítulo de Medio Ambiente, ni el Capítulo Laboral del APC Perú-EEUU, al igual que otras reuniones sostenidas anteriormente. Asimismo, la reunión sostenida por funcionarios de EEUU en agosto de 2014 con grupos de la sociedad civil, no corresponde al marco de los mecanismos establecidos en el capítulo de Medio Ambiente, ni el Capítulo Laboral del APC Perú-EEUU.

**Comentario 6:**

"...Los Estados Unidos siguen colaborando estrechamente con el Perú para analizar los cambios y vigilarán su aplicación a la luz de los compromisos ambientales y laborales contraídos por el Perú en el Acuerdo de Promoción Comercial."

Para mayor precisión, de acuerdo los artículos 17.5 y 18.6 del APC Perú-EEUU, las Partes a través del Consejo de Asuntos Ambientales y el Consejo de Asuntos Laborales considerarán y discutirán la implementación del Capítulo de Medio Ambiente y del Capítulo Laboral de APC Perú-EEUU; incluyendo los mecanismos de cooperación orientados a apoyar la implementación de dichos Capítulos.

## THE RUSSIAN FEDERATION

**Part 1: Questions on the U.S. Government Report WT/TPR/G/307**

**3 Openness and accountability: building support for trade**

**Tier II: The Policy Advisory Committees**

**3.12, page 10**

Members of the five policy advisory committees are appointed by USTR or in conjunction with other Cabinet officers. The Intergovernmental Policy Advisory Committee on Trade (IGPAC), the Trade and Environment Policy Advisory Committee (TEPAC), and the Trade Advisory Committee on Africa (TACA) are appointed and managed by USTR. The Agricultural Policy Advisory Committee for Trade (APAC) is managed jointly with the Department of Agriculture and the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) is managed jointly with the Department of Labor. Each committee provides advice based upon the perspective of its specific area and its members are chosen to represent the diversity of interests in those areas.

**Question 1:**

Please, provide further information on the activities of the Agricultural Policy Advisory Committee for Trade (APAC), the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), the Intergovernmental Policy Advisory Committee on Trade (IGPAC) and the Trade and Environment Policy Advisory Committee (TEPAC). We would appreciate more info on their competence, functions, and other related information. Please, specify the websites of the said Committees?

**RESPONSE; This information is available online at the following sites:**

**APAC charter:** [http://www.fas.usda.gov/sites/development/files/2013-08/2011\\_apac\\_charter.pdf](http://www.fas.usda.gov/sites/development/files/2013-08/2011_apac_charter.pdf)

**APAC website:** <http://www.fas.usda.gov/agricultural-policy-advisory-committee-apac>.

**LAC charter:** <http://www.ustr.gov/sites/default/files/LACCharter2012.pdf>

**LAC website:** <https://ustr.gov/about-us/advisory-committees/labor-advisory-committee-lac>

**IGPAC charter:** <https://ustr.gov/sites/default/files/040414%20IGPAC%20Charter%20MF%20signed.pdf>

**IGPAC website:** <https://ustr.gov/about-us/advisory-committees/intergovernmental-policy-advisory-committee-igpac>

**TEPAC charter:** <https://ustr.gov/sites/default/files/1979%20TEPAC%20Charter%20for%202013.pdf>

**TEPAC website:** <https://ustr.gov/about-us/advisory-committees/trade-and-environment-policy-advisory-committee-tepac>

**Part 2: Questions on the WTO Secretariat Report WT/TPR/S/307**

**Summary, page 10**

It is mentioned that the FDA Food Safety Modernization Act, a major reform of legislation on food safety and the safety of animal feed, entered into force in 2011, and the FDA is in the process of developing the regulations to implement some of the key elements of this new law.

**Question 2:**

Please, clarify in which areas the U.S. expects to develop implementation the regulations for FDA Food Safety Modernization Act. What changes are expected in the activity and functions of the FDA?

**RESPONSE: Key elements of FSMA can be divided into five key areas: (1) preventive controls, (2) inspection and compliance, (3) imported food safety, (4) response to food safety issues, and (5) enhanced partnerships. FDA is developing policies in each of these**

**areas to implement the law. FDA has issued several proposed rules as part of this effort, including: Preventive Controls for Human Food, Preventive Controls for Animal Food, Produce Safety Standards, Foreign Supplier Verification Program, Accreditation of Third Party Auditors, Sanitary Transport of Food and Feed, and Intentional Contamination. FDA is currently working on finalizing these proposals as well as drafting other proposed rules, as directed by FSMA. FDA will be undertaking new activities in the areas covered by the new FSMA rules to implement and operationalize those rules and as appropriate, making them public.**

**Summary, page 10**

*The Summary of the WTO Secretariat Report indicates that "[t]he recent boom in shale oil and gas production in the United States has affected various aspects of the economy".*

**Question 3:**

*Please, describe the system of government support of the sector of shale oil and gas production in the United States. In particular, what subsidies affecting shale oil and gas production have been granted by the United States? Please, describe these subsidies, if any, in detail, including their mechanisms of submission, recipients and volumes. Please indicate all tax policy support measures directly or indirectly related to the development of the shale oil and gas production in the United States.*

**RESPONSE: There is no "system of government support" for shale oil and gas production in the United States. There are programs that support the oil and gas sector more generally. These programs have been notified (see, G/SCM/N/253/USA).**

**2.1.3 New developments**

**2.1.3.1 Interagency Trade Enforcement Center**

**Page 28**

*"2.9. In early 2012 the United States established 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 enforcement of U.S. trade rights.*

*The mission of ITEC is:*

*(a) to be the primary forum for federal agencies to coordinate enforcement of U.S. rights; (b) to assist in the exchange of information related to potential violations; and (c) to conduct outreach for greater participation in the identification and elimination of foreign trade barriers. ITEC is established within USTR and involves coordination among the Departments of State, the Treasury, Justice, Agriculture, Commerce, Homeland Security, and the Office of the Director of National Intelligence."*

**Question 4:**

*Please provide further information on the activities of the Interagency Trade Enforcement Center (ITEC), its functions, structure, and other related information on the ITEC. Is the ITEC engaged in enforcement of the obligations of the U.S. under international trade and investment agreements, including the WTO, within the U.S. territory and the territory of particular States?*

**RESPONSE: Consistent with Executive Order 13601, ITEC has assembled staff from numerous government agencies with varied expertise. ITEC monitors trade developments and our trading partners' adherence to international trade obligations, investigates and develops issues for potential trade cases; supports enforcement-related negotiations and ongoing disputes; and evaluates post-dispute compliance actions.**

**As directed by the Executive Order, ITEC's mission is to strengthen and coordinate enforcement of U.S. trade rights under international trade agreements. ITEC seeks to help ensure that our trading partners play by WTO rules and abide by their obligations, including commitments to maintain open markets on a non-discriminatory basis and to follow rules-based procedures in a transparent way. Personnel from contributing agencies form a team of experts who help to increase engagement with foreign trade partners at the WTO and in other international fora. ITEC seeks to expand interagency collaboration and the sharing of information and expertise as it relates to enforcement of international trade agreements. Per the Executive Order, ITEC's mission does not extend to consideration of the obligations of the United States under international trade**

**or investment agreements. However, other functions within USTR and other government agencies review U.S. policies for consistency with international trade obligations.**

**2.3 Trade Agreements and Arrangements**

**2.3.2.2 Generalized System of Preferences, page 35**

"The United States GSP, its main global programme for preferences for developing and least developed countries, expired on 31 July 2013. Therefore, imports that benefited from GSP provisions are subject to MFN tariffs as of 1 August 2013. However, GSP-eligible imports from AGOA beneficiary countries continue to receive eligible GSP duty-free treatment."

**Question5:**

The United States has many programs like AGOA, CBERA, ATPA granting tariff preferences to developing and least developed countries. However, the United States' GSP programme expired on 31 July 2013. Does the United States have an intention to elaborate a new GSP programme for developing and least developed countries? Where the comprehensive and exhaustive information on preferential treatment accorded to developing and least developed countries can be found?

**RESPONSE: With respect to GSP, the first priority is reauthorization of the program. Once that has been accomplished, the Administration looks forward to consulting with Congress on possible reforms to the GSP program to take into account evolving global trade relations, including the growing competitiveness of many emerging market GSP beneficiaries.**

The USTR Annual Report provides information and updates on all U.S. trade preference programs. The most recent report can be found here: <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2014>. Additional program-specific information about these programs can be found on the USTR web site: <http://www.usrt.gov/trade-topics/trade-development/preference-programs>.

**3.1.4.1 Nomenclature**

**Paragraph 3.33, page 49**

"The HTSUS follows the WCO's Harmonized System nomenclature for Chapters 1 to 97. Two additional chapters, 98 and 99, contain special provisions on classification, temporary legislation, temporary modifications, or additional import restrictions."

**Question 6:**

Shall the goods be classified under Chapters 98 or 99 in addition to the chapters 1 – 97, or they are to be classified under these two chapters only? What are the criteria to classify the goods under these two additional Chapters?

**RESPONSE: Because the United States uses the Harmonized System as the basis of its tariff schedule, goods are classified in the provisions of chapters 1 through 97. Chapters 98 and 99 provide specific duty treatment or quantitative limits for particular goods, but do not reclassify the goods in question. The treatment under these two chapters involves, for example, certain named products covered by statutes (such as temporary tariff remissions or the African Growth and Opportunity Act) or by free trade agreement commitments, or those entered by particular importers (such as nonprofit institutions under the Florence Agreement). Importers report both the classification number from chapters 1-97 and the chapter 98 or 99 number to claim the tariff treatment set forth in these two chapters.**

**Paragraph 3.35, page 50**

"The United States implemented other nomenclature changes to the HTSUS in 2011 relating to footwear; these have still not been notified to the WTO for modification of the WTO schedule."

**3.1.4.3 Bindings****Paragraph 3.40, page 52**

"U.S. WTO tariff commitments, as contained in Schedule XX, were last updated in 2011 after approval of the HS2002 nomenclature changes. However, a number of changes to the HTSUS have not yet been notified to the WTO as a change to Schedule XX. These include the third and fourth revisions to the pharmaceutical coverage, Chapter notes, and Article XXVIII tobacco renegotiations."

**Question 7:**

The WTO Secretariat Report (paragraphs 3.35 and 3.40) points that the United States has not yet notified some applied tariff nomenclature changes. When does the United States intend to notify these changes to the WTO?

**RESPONSE:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the footwear nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The footwear changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm).

Specifically, the full text of the Presidential Proclamation regarding the footwear changes is published in the Federal Register, available at the following website: [http://www.usitc.gov/tariff\\_affairs/hts\\_documents/PP8742.pdf](http://www.usitc.gov/tariff_affairs/hts_documents/PP8742.pdf).

**3 Trade policies and practices by measure****3.1.7 Anti-dumping, countervailing and safeguards measures****Paragraphs 3.64 and 3.65, page 61**

Paragraphs 3.64 and 3.65 refer to some changes of the U.S. approach towards the so-called "non-market economy" methodologies in anti-dumping investigations. In 2002, the United States acknowledged "market economy" status of the Russian Federation. But, despite this fact the United States currently applies six long lasting prohibitive anti-dumping measures on imports from the Russian Federation of certain steel, chemical and uranium products which were calculated on the basis of the "non-market economy" methodology and, consequently, by no means relate to the current import prices. The U.S. anti-dumping legislation provides for extension of anti-dumping measures without recalculation of the dumping margin during the sunset review. In result, the anti-dumping measures introduced before 2002 and which are going soon to celebrate their twentieth or even thirtieth anniversaries are still in place, time after time extended following the sunset reviews. Administrative reviews give little use to make these prohibitive anti-dumping measures less restrictive and more adequate to the current conditions because these extremely burdensome proceedings should be carried out on the yearly basis. Given all that, it seems that the U.S. anti-dumping legislation and practice are primarily aimed at endless continuation of the measures that were once imposed and do not reflect anymore the real economic conditions.

**Question 8:**

Could the United States explain how the dumping margins determined dozens of years ago on the basis of the so-called "non-market economy" methodology may be relevant to offset alleged current dumping? Could the United States provide the rationale why the dumping margin once calculated on the basis of the "non-market economy" methodology is presumed to be relevant for all the period of application of the measure irrespective of changed economic and legal conditions, where the exporters which actually do not sell on dumped prices should prove every year that the actual dumping margin is less than the applied duty?

**RESPONSE:** The United States disagrees with Russia's characterization of the U.S. administrative review process and U.S. legislation and practice. The antidumping duty margins raised in the question were the last time that any interested party had requested a review of the antidumping duties in effect. Under the Antidumping Agreement and U.S. law, interested parties are given an opportunity to request an administrative review of an antidumping duty measure. If an interested party has an

**interest in having a margin of dumping re-examined by the U.S. Department of Commerce, it should ask Commerce to do so in accordance with Commerce's regulations.**

**Paragraph 3.66, page 61**

**1. Paragraph 3.66 states that in 2010-2014 there was a tendency where "remedies with respect to developed countries decreased". Nevertheless, some steps by the United States lead to the opposite. The United States applies an anti-dumping measure on Russian ammonium nitrate and products thereof which are basically fertilizers commercially used by agricultural producers. Recently the U.S. authority in its product scope determination stated that ammonium sulfate nitrate was also subject to the measure because the Russian product was an "ammonium nitrate product". The crucial question is that Article 1 of the Anti-Dumping Agreement explicitly states that the anti-dumping measure shall be applied only pursuant to investigations conducted in accordance with the Agreement. However, it appears that the United States has never made an appropriate investigation of imports of ammonium sulfate nitrate, thus imposing an anti-dumping duty in the volume of 254% on the product that has never been investigated. It is clear from the text of the Anti-Dumping Agreement that the anti-dumping measure should be applied to imports of the "product" which was "under consideration" during the investigation. In addition, throughout the whole investigation the "product under consideration" should remain consistent, or in other words, the same. Its changes affect anti-dumping determinations, especially normal value calculation and injury assessment."**

**Question 9:**

*Could the United States inform whether the imports of products comprising predominantly double salts of ammonia, such as ammonium sulfate nitrate, have ever been the "product under consideration" during the relevant anti-dumping proceedings? Please specify whether the United States considers ammonium sulfate nitrate to be "like" ammonium nitrate and products thereof? Is the United States of the view that the said product scope determination is without prejudice to or should not have affected the normal value, injury and other determinations during the relevant proceedings? If the answer is positive, please explain, why?*

**RESPONSE: On August 6, 2013, the U.S. Department of Commerce (Commerce) found that a fertilizer product known as NS 30:7 is covered by the scope of the antidumping duty order on solid fertilizer grade ammonia nitrate from the Russian Federation. This product is comprised of a combination of ammonium nitrate, ammonium sulfate, and double salts of ammonium sulfate nitrate. That said, Commerce's NS 30:7 scope finding does not address the question of whether products other than NS 30:7 that may contain ammonium sulfate nitrate are also within the scope of this antidumping duty order. Finally, under U.S. law, the U.S. International Trade Commission exercises the authority to make "like product" findings within the context of injury determinations.**

**2. We refer to the same paragraph 3.66, which states that in 2010-2014 there was a tendency where "remedies with respect to developed countries decreased". Nevertheless, it seems that the number of trade remedy measures of the United States against Russian goods remains constant and may even increase.**

**Question 10:**

*Could the United States explain the reasons for such tendency in remedies with respect to developed countries? What kind of actions should the Russian Federation or Russian exporters undertake in order to facilitate the decrease and to prevent the increase of the anti-dumping duties on Russian products?*

**RESPONSE: The United States administers its trade remedy laws in accordance with applicable WTO agreements. Antidumping duty investigations are initiated in response to petitions filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped imports, and material injury caused by such imports have been found, the United States will impose an antidumping duty measure.**

**Interested parties are welcome to submit data, comments, or other information in accordance with U.S. Department of Commerce's or U.S. International Trade Commission's submission requirements for a particular investigation or review.**

**Paragraphs 3.67 and 3.68, pages 62-63**

*Paragraphs 3.67 and 3.68 state that in 2013 there was a significant increase in anti-dumping investigations: 39 new investigations were initiated. In terms of product groups 35 investigations were launched in the metals sector, 33 of them relating to steel products. This increase looks to be of a systemic nature.*

**Question 11:**

*Could the United States explain what the basic economic reasons of such tendency are? Which economic factors and indices considered by the investigating authority in these investigations have been determinative when the material injury to the domestic industry has been found?*

**RESPONSE: The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. Consequently, when the number of petitions satisfying the criteria for initiation increases, the number of initiations will increase.**

**In making its injury determination, the U.S. International Trade Commission's analysis is consistent with the requirements of the Antidumping Agreement or the Subsidies and Countervailing Measures Agreement, as applicable, and U.S. laws. No one factor taken into consideration is considered more determinative than another, but rather the evidence in the administrative record is viewed as a whole.**

**3.1.9 Sanitary and Phytosanitary requirements**

**Paragraph 3.87, page 69**

*"The FDA Food Safety Modernization Act (FSMA), a major reform of legislation on food safety and the safety of animal feed under the responsibility of the FDA, entered into force on 4 January 2011."*

**Question 12:**

*In accordance with the Food Safety Modernization Act (FSMA) in 2014 exporters must renew their registration. How does the U.S. ensure that the FSMA does not impose unnecessary burden on an exporter of food products through re-registration every two years?*

**RESPONSE: The owner, operator, or agent in charge of a domestic or foreign facility that is engaged in the manufacturing/processing, packing, or holding of food for consumption in the United States, unless the facility qualifies for an exemption, is responsible for complying with FDA's food facility registration requirements. If an individual is only an exporter, he or she is not required to register with FDA. FDA's food facility registration requirements apply to domestic facilities as well as foreign facilities. FDA has information on its website, accessible worldwide, to assist facilities in complying with FDA's food facility registration requirements: <http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/default.htm>.**

**3.1.9.2 Food Safety and Inspection Service**

**3.91. page 69**

*"The Food Safety and Inspection Service (FSIS) of the USDA is responsible, inter alia, for ensuring the safety and accurate labelling of meat, poultry, and processed egg products, including imports. The FSIS is also responsible for recognizing foreign regulatory systems as providing a level of protection for these commodities equivalent to that provided in the United States. The United States has recognized 35 countries with meat, poultry, and/or egg inspection systems equivalent to its own. According to the authorities, these are not equivalence agreements but rather recognitions by the FSIS. In December 2012, the FDA reached its first such arrangement with the Ministry for Primary Industries of New Zealand, whereby the participants recognize their food safety systems as comparable to each other. This Food Safety Systems Recognition*

*Arrangement does not grant New Zealand and the United States any additional access to each other's markets. There are no major new developments regarding FSIS import requirements since the last Review of the United States."*

**Question 13:**

*Could you please clarify the criteria for recognition of foreign regulatory systems as equivalent systems in the United States for meat, poultry and processed egg products? What is the procedure for recognition for equivalency?*

**RESPONSE: FSIS may recognize the inspection system of another country provided that the information obtained from a questionnaire, a technical review of the country's inspection system, and an on-site audit reveal that the country's inspection system satisfies FSIS regulatory objectives. FSIS has made an equivalence determination for the meat, poultry and processed egg products inspection systems of many countries. FSIS recognition of a trading partner with respect to its inspection system for such products enables that country to certify establishments that are eligible to export that product to the United States.**

**3.3 Measures Affecting Production and Trade**

**Paragraph 3.3.1, page 79**

*"The American Taxpayer Relief Act of 2012 signed into law in January 2013 further extended the 50% first-year bonus depreciation for qualified property acquired and placed in service from 1 January 2013 through 31 December 2013. It also provided one-year extensions for several tax credits, including: credit for alternative-fuel vehicle refuelling property; alternative fuels excise tax credits; extension and modification of cellulosic biofuel producer credit; incentives for biodiesel and renewable diesel; and special allowance for cellulosic biofuel plant property."*

**Question 14:**

*It is our understanding that there are the federal and sub-federal programs providing incentives such as capital subsidies, tax credits, etc. to alternative fuels, renewable energy and energy-efficient equipment suppliers. Could the U.S. please specify how these programs comply with Article 3 of Agreement on Subsidies and Countervailing measures (ASCM)?*

**RESPONSE: WTO Members are permitted to provide subsidies so long as they are not "prohibited" or cause "adverse effects" to the trade interests of other Members, as defined under the Agreement on Subsidies and Countervailing Measures. U.S. incentive programs are consistent with the WTO obligations of the United States.**

**3.3.2 Subsidies and other government assistance**

**Paragraphs 3.139, 3.140, page 80**

*We refer to the following programs of state support provided in the United States to the renewable energy products:*

- 1) Michigan: Renewable Energy Credits under the Clean, Renewable, and Efficient Energy Act (Public Act 295)
- 2) California: Los Angeles Department of Water and Power (LADWP) - Solar Photovoltaic Incentive Program
- 3) California : Self Generation Incentive Program (SGIP)
- 4) Texas: Austin Energy

**Question 15:**

These subsidy programs have not been notified by the United States in accordance with the provisions of the ASCM. Is the United States in a position that these support programs do not constitute "subsidies" within the meaning of this term as provided for in the ASCM? If yes, why? If not, does the United States intend to comply with the transparency commitments and notify these programs, *inter alia* providing the amounts of these subsidies? It appears that in accordance with the legal acts establishing these support programs some of the incentives are conditioned upon local content requirements. Does the United States intend to bring these programs into compliance with its commitments under the ASCM. If yes, what is intended to be done and when? If no, why?

**RESPONSE:** India submitted requests for information from the United States in the TRIMS and Subsidies Committees with respect to the aforementioned programs (see, G/TRIMS/W/117; G/SCM/Q2/USA/59). The United States replied to these questions (see, G/TRIMS/W/129/Rev.1; G/SCM/Q2/USA/61).

**Paragraph 3.3.4 State trading, state-owned enterprises**

**Point 3.165, page 84**

It is mentioned that the United States has two main formal structures in which the federal government is involved, for public policy reasons, in generally private sector activities; these are government corporations and government-sponsored enterprises (GSEs). In addition, the Federal Government has established a number of financial institutions for public policy purposes. These "quasi-governmental entities" referred to as government-sponsored enterprises (GSEs) are private corporations with nationwide lending power; they are structured and regulated by the government in order to enhance their ability to borrow money. Their securities are not backed by the full faith or credit of the U.S. Government, but they receive certain special privileges or, as in the case of Fannie Mae and Freddie Mac, receive federal assistance as a result of the financial crisis.

**Question 16:**

To what extent are they sponsored and regulated by the Government? What specific budgetary allocations form the fund of «quasi-governmental entities»? What subsidies and privileges do they receive? What functions does the Agricultural Mortgage Corporation execute? What agricultural directions do the mortgage funds fulfill? How does this assistance relate to the government support measures?

**RESPONSE:** Government corporations (e.g., Overseas Private Investment Corporation) are revenue generating enterprises that are legally distinct but operated by the federal government.

In comparison, government sponsored enterprises (e.g., Federal Home Loan Mortgage Corporation – Freddie Mac) are privately held corporations with public purposes created by the U.S. Congress.

The laws and regulations that are applicable to either government corporations or government sponsored enterprises vary depending on the entity. The funding provided for each of these entities, to the extent applicable, varies from entity to entity. Further information regarding the budget for these entities can be found at: <http://www.omb.gov>.

Further information regarding the Agricultural Mortgage Corporation (Farmer Mac) can be found at: <https://www.farmermac.com>.

**Paragraph 3.3.6 Intellectual property rights**

**Point 3.195., page 92**

"Fastest growth in downloads reportedly came from the United States, Brazil, the Russian Federation, the Republic of Korea, and India, while growth in revenues was greatest for Japan, the United States, the Republic of Korea, Germany, and the United Kingdom, with growth in Indonesia, Mexico and Turkey also noteworthy."

**Question 17:**

Could the United States provide more precise information on the statistics and its source for the mentioned growth in downloads reportedly came from Russia?

**RESPONSE: The Secretariat's Report does not provide a citation for this sentence. The Secretariat will be in the best position to provide the citation on which it relied for this statement.**

**Paragraph 3.3.6.3 The patent system**

**Point 3.200., page 94**

"The overall strategic goal of the Department of Commerce Strategic Plan for 2014-18 is to expand the U.S. economy and fostering U.S. job growth through increased exports and inward foreign investment. It identified a role for the USPTO in helping build the capacity of U.S. regional economies to accelerate the production of value-added goods and services, strengthening the digital economy, and accelerating the growth of innovation-intensive economic sectors by building public and private capacity to invent, improve, and commercialize new products and services, as well as promoting enhanced IP protection abroad. The USPTO's own strategic plan for 2014-18 sets out three goals for this period: optimize patent quality and timeliness; optimize trademark quality and timeliness; and provide domestic and global leadership to improve IP policy, protection, and enforcement."

**Question 18:**

The patent law in the U.S. requires disclosing to the USPTO all relevant prior art known to the applicants by means of an Information Disclosure Statement. For each document to be disclosed in an IDS that is not in the English language, a translation into the English language must be submitted. Another concern which causes inconvenience and additional expense in a U.S. design application is the requirement for drawings to be black and white (excluding gray scale and colored). Does the U.S. plan to reduce these burdens for non-U.S. applicants?

**RESPONSE: The duty of disclosure under U.S. law helps to ensure that effective examination of patent application is performed by requiring known relevant prior art be submitted and thereby placed before the examiner that is making a determination as to whether the application should be allowed to issue as a patent. Further, this requirement also ensures that inventors and those otherwise involved in prosecution do not "hide" relevant prior art that may be material to the patentability of the application.**

**The USPTO has drawing requirements that help ensure the subject matter sought for protection as an industrial design is clearly conveyed and what the design is will be clearly understood. While line drawings are an encouraged manner of depicting the design in an application, applicants can file photographs or computer generated images assuming these images satisfy the requirements for patentability. However, because of the nature of these figures, these types of filings (compared to those with black and white line drawings) more frequently have degradations in drawing quality or other similar issues that result in these figures not satisfying the written description requirement which as a result can prevent rights from being granted.**

**Paragraph 3.3.6 Intellectual property rights**

**Point 3.204., page 95**

"During the review period, the Administration announced a series of initiatives to build on the AIA reforms with a view to improving the patent system foster innovation and to protect innovators from what was termed "frivolous litigation"."

**Question 19:**

Please elaborate on the mentioned initiatives to use crowd sourcing techniques and resources for identifying prior art relevant to determining the novelty of claimed inventions.

**RESPONSE: The USPTO held a roundtable on crowdsourcing on April 10, 2014 in Alexandria, VA and December 2, 2014 in New York City, NY to solicit public opinions regarding the use of crowdsourcing and third-party preissuance submissions to identify relevant prior art and enhance the quality of examination as well as the quality of issued**

patents. Members of the public were invited to participate. For more information about both events, please see [http://www.uspto.gov/patents/init\\_events/crowd\\_sourcing\\_roundtable\\_04-2014.jsp](http://www.uspto.gov/patents/init_events/crowd_sourcing_roundtable_04-2014.jsp) and [http://www.uspto.gov/patents/init\\_events/crowd\\_sourcing\\_roundtable\\_20141202.jsp](http://www.uspto.gov/patents/init_events/crowd_sourcing_roundtable_20141202.jsp). For more information about third party preissuance submissions, please see [http://www.uspto.gov/aia\\_implementation/faqs-preissuance-submissions.jsp](http://www.uspto.gov/aia_implementation/faqs-preissuance-submissions.jsp).

**Paragraph 3.213, page 97**

"The Copyright Office is also engaged in additional work on issues related to copyright registration, a review of the copyright recordation system, an inquiry into technological updates, and associated regulatory rulemakings."

**Question 20:**

The U.S. Copyright Office is engaged in additional work on issues related to copyright registration. As we know, according to the U.S. legislation, the U.S. Copyright office provides registration of copyright for works. What kind of advantages the registration (deposit) of works in the U.S. provides for foreign authors? Could you please clarify whether the mandatory registration for the works of foreign authors is required in the U.S. with the aim to protect its property rights and personal non-property rights. How the works of foreign authors which have not been registered in The U.S. Copyright office are protected in US?

**RESPONSE: Copyright registration with the U.S. Copyright Office is not a requirement for protection, but there are several advantages to registration, including creating a public record of the copyright claim.** Section 410 of the 1976 Copyright Act establishes that if made before or within five years of publication, registration will establish *prima facie* evidence in court of the validity of the copyright and the facts stated in the certificate. Further, according to Section 412, a timely registration will make statutory damages and attorney's fees available to the owner in court actions. Registration also allows the owner to record the registration with the U.S. Customs Service for protection against the importation of infringing copies into the United States.

Although Section 410 of the Act makes copyright registration a prerequisite for civil infringement actions, this only applies to United States works. Accordingly there is no mandatory registration requirement for the works of foreign authors, and their copyrights are protected in the United States to the same extent as domestic authors' rights.

**Paragraph 3.3.6.7 IP enforcement, page 100**

"The Special 301 Out-of-Cycle Review of Notorious Markets for 2013 identified specific markets around the world that were assessed as causing particular economic harm to U.S. businesses and workers, through IP infringement."

**Question 21:**

If available, could the U.S. provide certain estimates of the particular economic harm to U.S. businesses and workers by each notorious market?

**RESPONSE: The United States developed the Special 301 Out-of-Cycle Review of Notorious Markets for 2013 under the auspices of the annual Special 301 process, taking into account public comments solicited by USTR through the *Federal Register* and the input of other Federal agencies. The List identifies marketplaces that have been the subject of enforcement actions or that may merit further investigation for possible IPR infringements. These markets have been selected for inclusion both because they exemplify concerns about trademark counterfeiting and copyright piracy on a global basis and because the scale and popularity of these marketplaces can cause economic harm to U.S. and other IPR holders. They may also pose health and safety risks to consumers as well as provide inadequate safeguards for consumer privacy and security. The submissions provided in response to the request for comments solicited through the *Federal Register* are available at [www.regulations.gov](http://www.regulations.gov), which provides a search function. Such submissions may include data regarding economic harm.**

**Paragraph 3.3.6.7 IP enforcement 3.221., page 100**

"Separately, in 2013 the IPEC launched an interagency review of the exclusion orders pertaining to intellectual property issued by U.S. Customs and Border Protection and the ITC under Section 337, including a request for submissions from the public. The review was announced as "directed at strengthening the procedures and practices used during enforcement of exclusion orders pertaining to intellectual property." An interagency working group would review procedures used "to evaluate the scope of exclusion orders and work to ensure the process and criteria utilized during exclusion order enforcement activities are transparent, effective, and efficient."

**Question 22:**

*The U.S. Government Accountability Office in its report on enforcement of exclusion orders pertaining to intellectual property by the U.S. Customs and Border Protection (CBP) published on November 19, 2014 recommended CBP inter alia to routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them. According to CBP, it is not mandated to identify potentially outdated orders and request that U.S. International Trade Commission rescind them. Does the U.S. consider a possibility to authorize CBP to identify potentially outdated exclusion orders to strengthen their efficiency?*

**RESPONSE: Once an exclusion order becomes final, 19 U.S.C. §1337(k)(1) provides that it shall remain in effect until the ITC determines, and notifies CBP, that the conditions which led to the exclusion no longer exist.**

**Pursuant to ITC regulations, "any person" may notify the ITC of changed conditions of law or fact that would warrant rescission of an exclusion order. See 19 C.F.R. §210.76(a)(1). The term "any person" would include CBP, therefore no additional authority in this regard would be needed for CBP to notify the ITC of changed circumstances.**

**4 Trade policies by sector****4.1 Agriculture****4.1.1 Agricultural Act of 2014****Overview, page 101**

*"As it is mentioned in the Secretariat's report the United States will spend around 80% of outlays on nutrition programs. We see also in the USA notifications for last years that almost 90% of all green box measures are spent on to the Supplement Nutrition Assistance Program and Child Nutrition Programs and these amounts are steadily increased within last years. If we take the U.S. notification of the year 2011 we will see, that the Domestic Food Aid measures count for 27% share of the total value of agricultural production (US\$103151 million for food aid versus US\$380780 million of the total value of production)."*

**Question 23:**

*We do know that green box measures have no trade-distorting impact, are not limited and are not to be reduced. But still we have doubts that such a considerable amount of budgetary outlays on two programs has no distorting impact on trade. Could you please comment on this?*

**RESPONSE: Both the Supplemental Nutrition Assistance Program (SNAP) and the Child Nutrition Programs (CNP) provide support to low-income and/or vulnerable populations by providing assistance for food purchases at the retail level. Both programs meet the eligibility and administrative requirements for exempt domestic food assistance.**

*Para 4.9-4.1.1.2 of the Secretariat Report. Giving details on the 2014 Farm Bill and analizing of the Price Loss Coverage (PLC) and The Agriculture Risk Coverage, the Secretariat speaks about potential increase in trade and production distortions of certain new measures. How would you asses and treat this types programs? In what part of the domestic support tables you are placing them?*

**RESPONSE: The PLC and ARC programs are paid on historical production without reference to current production, removing the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.**

**The United States has made no official determination of WTO classification of any programs established in the 2014 Farm Bill. The United States will notify the classification of these programs as part of its official domestic support notification.**

**The USTR Annual Report provides information and updates on all U.S. trade preference programs. The most recent report can be found here: <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2014>. Additional program-specific information about these programs can be found on the USTR web site: <http://www.ustr.gov/trade-topics/trade-development/preference-programs>.**

### **3.1.6.3 Sanctions, controls, or special procedures**

#### **Page 60**

**3.59. The United States maintains a number of sanctions against certain countries, for various reasons, some of which impose trade restrictions. While the majority of sanctions do not have trade provisions, some have direct provisions on goods or services. A variety of trade sanctions remain in place for Cuba, Iran, North Korea, Sudan, and Syria.**

#### **Questions:**

*As it mentioned in the Secretariat's report the United States maintains a number of sanctions against certain countries. The questions below relate to the following legal acts adopted by the United States:*

*Executives orders of the President of the U.S. of 6th, 17th and 20th March 2014 (hereafter Executives orders).*

*Act "Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014" of 3 April 2014;*

*Rule of Department of commerce Bureau of Industry and Security of 16 April 2014;*

*Rule of Department of commerce Bureau of Industry and Security of 1 May 2014;*

*Rule of Department of commerce Bureau of Industry and Security of 1 May 2014;*

*Rule of Department of the treasury Office of Foreign Assets Control of 8 May 2014;*

*Notice of Department of the treasury Office of Foreign Assets Control of 30 May 2014;*

*Rule of Department of Commerce Bureau of Industry and Security of 22 July 2014;*

*Rule of Department of commerce Bureau of Industry and Security of 6 August 2014;*

*Notice of Department of the treasury Office of Foreign Assets Control of 7 August 2014;*

*Guidance of Department of the treasury Office of Foreign Assets Control of 14 August 2014;*

*and other related acts of the United States.*

#### **Question 24**

*1. In accordance with the said Executive orders all property and interests in property that are in the United States, that thereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including foreign branch) of the persons determined by the Treasury of the United States, including persons of the Russian Federation, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.*

*Please explain the nature of this measure and rational behind it.*

**RESPONSE:** The nature of Executive Orders 13660 (March 6, 2014), 13661 (March 19, 2014) and 13662 (March 24, 2014) are explained in those documents. These measures were imposed in response to the actions and policies of the Russian government with respect to Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

*Please explain the criteria used for the inclusion of certain Russian natural and legal persons on the List of persons to which this measure is applied.*

**RESPONSE:** The criteria for inclusion of certain natural and legal persons, regardless of nationality, are set forth in Executive Orders 13660 (March 6, 2014), 13661 (March 19, 2014) and 13662 (March 24, 2014).

*This measure is applied only in respect of Russian services suppliers, to this extent, please explain, how this measure complies with the requirements of GATS Article II.*

**RESPONSE:** The factual predicate for this question is incorrect. The measures apply to persons, irrespective of nationality, that engage in activities that undermine Ukraine's democracy and threaten its peace, security, stability, sovereignty, and territorial integrity. The measure does not apply only to Russian service suppliers. For example, we have also designated a number of Ukrainian persons.

*The measure prohibits the commercial presence of Russian services suppliers included on the List within the territory of the U.S. to supply services in the sectors in which the U.S. has undertaken specific commitments, to this extent, please explain, how this measure complies with the requirements of GATS Articles XVI and XVII.*

*Please indicate the provision of the WTO Agreement that justifies this measure.*

**RESPONSE:** With respect to these questions, the United States carefully considered its WTO obligations before adopting these measures. These measures comply with those obligations.

**Question 25:**

2. The Executive order of 20<sup>th</sup> March contains an illustrative list of sectors of the economy of the Russian Federation, the operators of which are subjected to the mentioned restrictions. Among others they contain: financial services, energy, mining and engineering.

*Please explain the nature of this measure and rational behind it.*

**RESPONSE:** The nature of Executive Orders 13660 (March 6, 2014), 13661 (March 19, 2014) and 13662 (March 24, 2014) are explained in those documents. These measures were imposed in response to the actions and policies of the Russian government with respect to Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

*Please explain the criteria used for listing these particular services sectors to be subject to the restrictions.*

**RESPONSE:** The sectors identified in Executive Order No. 13662 are key sectors of the Russian economy that are implicated in Russia's actions with respect to Ukraine.

*Taking into account that the U.S. has undertaken specific commitments in these sectors, please explain, how this measure complies with the GATS Articles XVI and XVII.*

*Please indicate the provision of the WTO Agreement that justifies this measure.*

**RESPONSE:** With respect to these questions, the United States carefully considered its WTO obligations before adopting these measures. These measures comply with those obligations.

**Question 26:**

3. Acts mentioned in paragraph 1 prohibit business dealings with certain natural and legal persons, including those of the Russian Federation; prohibit correspondent relations with certain Russian financial institutions; prohibits transactions connected with debentures with subjects of Russian financial sector; prohibit holding shares in capital subject of such restrictions. By applying any of these measures, the U.S. fails not to impose restrictions on international transfers and payments for current transactions relating to their specific commitments.

*Please explain the nature of this measure and rational behind it.*

**RESPONSE:** The nature of Executive Orders 13660 (March 6, 2014), 13661 (March 19, 2014) and 13662 (March 24, 2014) are explained in those documents. These measures were imposed in response to the actions and policies of the Russian government with respect to Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

*Taking into account that the USA has undertaken specific commitments in a number of sectors, please explain, how this measure complies with the GATS Articles XI, XVI and XVII when applied to the services sector where the U.S. has undertaken specific commitments?*

*Please indicate the provision of the WTO Agreement that justifies this measure.*

**RESPONSE: With respect to these questions, the United States carefully considered its WTO obligations before adopting these measures. These measures comply with those obligations.**

**Question 27:**

*4. The USA imposes certain measures affecting also trade in goods between the Russian Federation and the USA, in particular, though not exclusively, the restrictions on exports of certain goods to the Russian Federation, as well as transit of such goods through the territory of the U.S. when destined to the territory of the Russian Federation.*

*Please explain the nature of this measure and rational behind it.*

**RESPONSE: The nature of Executive Orders 13660 (March 6, 2014), 13661 (March 19, 2014) and 13662 (March 24, 2014) are explained in those documents. These measures were imposed in response to the actions and policies of the Russian government with respect to Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.**

*This measure is applied only in respect of goods destined to the territory of the Russian Federation, please explain how this measure complies with GATT Article I.*

*This measure is a restriction on transit of certain goods from the territory of the U.S. when they are destined to the territory of the Russian Federation; please explain how this measure complies with GATT Article V.*

*This measure is a restriction on exports of certain goods from the territory of the U.S., please explain how this measure complies with GATT Article XI.*

*Please indicate the provision of the WTO Agreement that justifies this measure.*

**RESPONSE: With respect to these questions, the United States carefully considered its WTO obligations before adopting these measures. These measures comply with those obligations.**

**Question 28:**

*In respect of all measures mentioned above:*

*Does the U.S. apply measures that are similar to any of the measures described above in respect of any other WTO Member? If yes, please explain the reasons for applying such measures to other WTO Members and indicate legal acts according to which such measures are applied?*

**RESPONSE: The United States carefully considered its WTO obligations before adopting any similar measures against other WTO Members. These measures comply with those obligations.**

*Were all of the mentioned measures of the USA referred to above notified to the WTO? If no, please explain, why?*

**RESPONSE: The United States considers that none of the notification obligations under the WTO Agreement require notification of these measures.**

**SAUDI ARABIA, KINGDOM OF**

*Secretariat Report (WT/TPR/S/307)*

**4. TRADE POLICIES BY SECTOR**

**(4.2) SERVICES**

**(4.2.1) Financial Services**

*Paragraph 73 states:*

*"Bank consolidation and asset concentration are long-term industry trends and have become particularly acute among top-tier U.S. banks in the aftermath of the financial crisis. The assets of the U.S. banking system are dominated by the eight largest banks (designated as global systemically-important financial institutions, or "G-SIFIs"), followed by a tier of large regional banks with over US\$250 billion in assets. JP Morgan Chase is the largest commercial bank in terms of worldwide assets (about US\$2.5 trillion as of 1Q2014) 80, followed by Bank of America (US\$2.1 trillion), Citigroup (US\$1.9 trillion), and Wells Fargo (US\$1.5 trillion)".*

*Q. Is there any explicit action for "Too-Big-To-Fail" banks that can help avoid a systemic risk to global financial system?*

**RESPONSE: Please see Secretary Lew's speech of December 2013, available at:  
<http://www.treasury.gov/press-center/press-releases/Pages/jl2232.aspx>.**

**SINGAPORE*****QUESTIONS REGARDING THE SECRETARIAT REPORT******III TRADE POLICIES AND PRACTICES BY MEASURE******QUESTIONS:******3.1 Measures Directly Affecting Imports******Page 42 (Para 3.2)***

Question 1. We note that the U.S. Department of Homeland Security is responsible for facilitating trade and enforcement, both security and trade related, at U.S. ports of entry. We would like to understand how its federal agencies collaborate and coordinate trade enforcement activities. What are the types of trade enforcement activities carried out by the Border Interagency Executive Council (BIEC) and through the International Trade Data System (ITDS)?

**RESPONSE:** The U.S. Government agencies that have authorities over imports have memorandums of understanding that allow for the sharing of data. This sharing will be facilitated by the ITDS system, and will enable the agencies to receive data in a timely manner and conduct risk analysis. In addition, these agencies have joined together logically in the Commercial Targeting and Analysis center (CTAC). In the CTAC, the agencies work together to form national operations and identify specific targets for enforcement.

***Page 43 (Para 3.5)***

Question 2. We note that all import and export cargo manifest data will have to be submitted through the Automated Commercial Environment (ACE) as of 1 May 2015. Will the Importer Security Filing be done through ACE as well, and will there be any costs associated for traders to adopt the ACE system?

**RESPONSE:** Combined transmission of ISF and cargo release data will be allowed for filers participating in the ACE Cargo Release test. There may be one-time programming costs to adopt the new ACE formats.

***Page 43 (Para 3.8)***

Question 3. We note that one of the BIEC's objectives is to encourage other countries to develop single-window systems to facilitate the sharing of data. What type of data does the U.S. envisage will be shared (declarations data, risk analysis results, etc.)? We also note that the BIEC has been tasked to identify opportunities to streamline federal government systems as a means of improving supply chain management processes. Has the BIEC identified any such opportunity, and if so, could the BIEC provide some examples of the initiatives undertaken thus far?

**RESPONSE:** An increasing number of countries have either implemented or are working towards implementing their own single window systems. In order to facilitate the sharing of relevant data across government systems, and ease the reporting burden on traders who must comply with the requirements of each national single window system, the United States is encouraging trading parties to move towards full use of the World Customs Organization (WCO) Data Model. The current U.S. data model uses the National Information Exchange Model (NIEM) standard, which is compliant with the WCO data model; however, the U.S. does not use the WCO data model at this time. Analysis is underway to determine the best fit methodology and timing for converting U.S. to the WCO data model.

Further, the United States has undertaken specific trade data harmonization efforts with Canada and Mexico. As part of the Beyond the Border Action Plan, the United States and Canada have agreed to harmonized, common advance data elements, and have conducted a comparison of entry, release, and PGA data requirements. The United States

and Canada also committed to developing separate, national single-window systems; Canada continues to make progress on its Single Window Initiative, and the United States is working towards a December 2016 completion date for ITDS. With the full implementation of single window systems in both countries, Canada and the United States will consider additional opportunities to utilize electronic data and automated capabilities to facilitate trade while enhancing security.

**As part of the 21st Century Border initiative with Mexico, Mexico and the United States are working to harmonize rail manifest data elements to create a single message set compatible with the filing requirements of both countries. Other advanced data requirements will be considered once the work to harmonize rail manifest data is complete.**

**Page 44 (Para 3.9)**

*Question 4. We note that one of the Customs and Border Protection (CBP)'s trade facilitating measures concerns advance rulings. An importer may request an advance ruling or similar legal decision to have assurance of how the product will be treated by customs upon importation. Rulings may be requested by importers, exporters, or anyone having a demonstrable interest. Are the advance rulings binding on the applicant?*

**RESPONSE: Yes. The rulings are binding on both the applicant as well as CBP to the extent that the stated facts in the ruling are met by the applicant at the time of entry of the product into the United States.**

**Page 44 (Para 3.11)**

*Question 5. We note that one of the objectives of the Simplified Entry Pilot project to expedite treatment of imports arriving by air transport is to enhance security. With the reduction in data elements required, how has the U.S. achieved this objective? Is the pilot open to all companies or only selected traders? What would such a selection process entail?*

**RESPONSE: The ACE Cargo Release (formerly known as "Simplified Entry") Pilot provides importers with the opportunity to file a streamlined set of data early in the import process. Entry filers can also update the entry information until the point that the conveyance arrives. Using such information, CBP can efficiently target shipment information much earlier in the supply chain ensuring that the goods are not held for issues that could have been resolved pre-loading. CBP can send a release message earlier in the process when appropriate and if additional data is required, filers can resolve issues before the plane departs for the United States, or during transit, resulting in fewer goods potentially being held at arrival into the United States. Cargo Release also streamlines the electronic transmission for the filer, and assists importers in finalizing cargo logistics.**

**The ACE Cargo Release Pilot is open to all importers and brokers who meet the eligibility criteria for participation. To be eligible for participation, the applicant must: (1) be a self-filing importer who has the ability to file ACE entry summaries certified for cargo release or a broker who has the ability to file ACE entry summaries certified for cargo release or (2) have demonstrated the intent to file entry summaries in ACE.**

**Page 45 (Para 3.15 & 3.16)**

*Question 6. We note that the Importer Self-Assessment Programme (ISA) is similar to the C-TPAT, which is a voluntary programme that allows importers to assume a higher level of responsibility for monitoring their own compliance. How different the ISA is from C-TPAT in terms of scope and benefits? Does the ISA also include customs compliance components? What are the additional criteria (on top of C-TPAT criteria) that companies need to fulfil to qualify for the ISA? We also note from 3.16 that product safety and brokering are two areas where the private sector is being tasked with greater responsibility. Are there plans for the inclusion of other areas?*

**RESPONSE: The C-TPAT and ISA programs are different in their scope and orientation. ISA limits membership eligibility strictly to importers, whereas C-TPAT candidates may be importers, freight forwarders, manufacturers, customs brokers, and others within the**

**trade industry. ISA focuses on trade compliance/customs compliance considerations. This differs from C-TPAT, which focuses on cargo security. ISA also provides additional incentives over C-TPAT. These incentives focus on post importation activities, such as exemption from focused assessment audit, assignment of a national account manager, and prior disclosure considerations.**

**In order to qualify for ISA, in addition to the standard C-TPAT requirements, an applicant must be a U.S. or Canadian resident importer with at least 2 years of import history.**

**Page 46 (Para 3.18)**

*Question 7. Besides the U.S. Consumer Product Safety Commission (CPSC) and U.S. Food and Drug Administration (FDA), are there plans for any other agency to come on-board the Trusted Trader Program? Does the U.S. envisage that participants in the Trusted Trade Program have to be existing participants in the C-TPAT and ISA programmes to qualify? As the ultimate goal is to unify and replace the C-TPAT and ISA programmes, will there then be different "tiers" for companies wishing to only participate in one of these programmes?*

**RESPONSE: There are plans for additional agencies to participate in the Trusted Trader Program to further achieve interagency participation. At this time, Trusted Trader Program participants must be C-TPAT certified.**

**The Trusted Trader will not replace the C-TPAT program as there are entities in C-TPAT that would continue to benefit from its Trade Compliance incentives. The Trusted Trade Program will however continue to require C-TPAT as a pre-requisite to Trusted Trader.**

**Page 47 (Para 3.22 & 3.23)**

*Question 8. We note that the Foreign Trade Zones (FTZs) Board, which supervises and oversees the U.S. FTZ system, has established new regulations for FTZs. What were the key regulations introduced in 2012 that pertain to FTZ controls and documentation? Could the U.S. also elaborate on what it means by "less information is required for the paperwork"? We also note that "[m]anufacturing accounts for over 75% of zone activity". Besides manufacturing, what are the other activities allowed in the FTZs? What are the control measures imposed on manufacturers and users of FTZs by FTZ authorities?*

**RESPONSE: In 2012, the FTZ Board revised its regulations. The primary change in the 2012 regulations decreased the time required to review a company's request for production authority within a FTZ. In the prior regulations this type of application required a 12-month review, which has been reduced to a 120-day process for most requests. In addition, through both the 2012 regulations and previous changes adopted by the FTZ Board, the processing time needed for a company's site to receive FTZ designation has been significantly reduced from 10 months to as little as 30 days. The processing time reductions were accomplished through a full reassessment of the procedures needed and information required for each type of request, with previous requirements eliminated or reduced wherever possible. Essentially, the reductions in processing time for production within a FTZ resulted in a vast simplification for the majority of cases that present no issues while still allowing for a more detailed review where warranted by the circumstances.**

**In addition to manufacturing activity, general warehouse and distribution activity is permitted within U.S. FTZs. Specifically, the FTZ Act (19 USC 81(c)) states that merchandise may "be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured."**

**A U.S. FTZ is a physical location that must be designated by the FTZ Board. If a company intends to conduct manufacturing or processing activity within the zone, specific FTZ Board approval for that activity is also required. After FTZ Board approval, FTZ activity takes place under the direct oversight of U.S. Customs and Border Protection (CBP). Prior to allowing the use of FTZ procedures, CBP reviews the physical security of a**

**company's facility and its inventory control procedures. All merchandise brought into a zone must be approved by CBP and the facility remains open to inspection at all times. Merchandise leaving a zone is subject to standard CBP entry, export or in-bond procedures.**

**Page 70 (Para 3.96)**

*Question 9. We note that the CBP requires export data to be filed electronically via the Automated Export System (AES) prior to the departure of the cargo. We understand that participants in the post-departure filing programme may file their electronic submissions of the Electronic Export Information in AES up to five calendar days after the departure of the conveyance. How can an exporter qualify for the "post-departure filing programme"?*

**RESPONSE: The post-departure filing program is no longer accepting new applicants. CBP anticipates replacing the program with a new system that will mandate submission of limited data prior to departure, and submission of the remaining data post departure.**

**Page 74 (Para 3.108 to 3.111)**

*Question 10. We understand that the Export Control Review (ECR) Initiative has been ongoing since 2009. What is the timeline for the completion of the ECR? Also, which are the designated "single export control" and "primary enforcement coordination" agencies in the new export control system?*

**RESPONSE: Commerce expects to complete the revision of the control categories in 2015.**

**Page 69-70 (Para 3.91)**

*Question 11. Could the U.S. provide more information on its arrangement with the Ministry for Primary Industries of New Zealand, whereby the participants recognize their food safety systems as comparable to each other?*

**RESPONSE: The Food Safety Systems Recognition Arrangement is between the New Zealand Ministry for Primary Industries (MPI) and the United States Food and Drug Administration (FDA) to safeguard public health and to ensure the safety and integrity of foods traded between the United States and New Zealand. A systems recognition assessment was undertaken with respect to the operation of the food control systems in effect in each country as well as more in-depth reviews of the regulatory systems in place for commodities of higher regulatory interest such as dairy products, and seafood (including shellfish). For more information on systems recognition see <http://www.fda.gov/food/internationalinteragencycoordination/ucm367400.htm>.**

**Page 77 (Para 3.120)**

*Question 12. We understand that the U.S. Trade and Development Agency (USTDA) provides grant funding for early project planning activities such as feasibility studies, pilot projects, and technical assistance to introduce foreign grantees to U.S. technologies. We would like to request for further details of the "grant funding for early project planning activities" by the USTDA, specifically:*

- (i) Who is eligible to apply for such funding;

**RESPONSE: Foreign project sponsors, from both the public and private sectors, in USTDA eligible countries (developing and middle-income economies based on World Bank standard) are able to apply for grant funding. Additionally, U.S. companies that have identified a foreign project sponsor in a USTDA eligible country to partner with may submit a joint sole-source proposal.**

(ii) *What is the qualifying criteria;*

**RESPONSE:** When evaluating project proposals, USTDA uses the following basic criteria:

- The project must be a development priority of the Project Sponsor and country where the project is located and have the endorsement of the U.S. Embassy in that nation;
- The project must be likely to receive implementation financing; and
- The project must represent an opportunity for sales of U.S. goods and services.

(iii) *What activities/costs are covered by such funding;*

**RESPONSE:** USTDA funding covers the cost of labor and other expenses related to the costs of conducting a project planning study.

(iv) *Whether the export of U.S. goods and services for pilot projects are covered by such funding;*

**RESPONSE:** USTDA funding does not cover the cost of U.S. exports.

(v) *How much funding is awarded to each grantee? If it differs for each grantee, how does the USTDA determine the amount of funding awarded and is there a cap on the amount of funding provided to each grantee?*

**RESPONSE:** The amount of funding awarded to each grantee varies depending on the project and level of effort required to complete the work. The funding amount awarded is based upon a thorough analysis of the proposal submitted to USTDA. The activities that USTDA has funded are listed in the Agency's Annual Report (<http://www.ustda.gov/pubs/annualreport/2013/>), which provides a range of funding per project.

*Page 80 (Para 3.134)*

Question 13. We understand that there are state-level legislatures focused on providing investment incentives to businesses through grants, tax credits, loans, and corporate income tax abatement with the aim of promoting, *inter alia*, job creation (New Jersey, Oregon), clean technology (New Mexico, Wyoming), and development activities (Colorado). Could the U.S. provide more information on the impact of these state-level investment incentives, in particular those on job creation in the U.S. (in the case of New Jersey, Oregon)? Are these investment incentives granted to companies contingent upon job creation conditions? If so, could the U.S. provide further details of the job creation conditions that are tied to these investment incentives?

**RESPONSE:** Please see the latest subsidy notification of the United States (G/SCM/N/253/USA).

*Page 85 (Para 3.167)*

Question 14. We understand that the U.S. passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for purchases of goods and services. What was the policy intent behind the 2% federal excise tax on foreign entities receiving payments for the U.S. federal government's purchases of goods and services? We also note that the regulatory changes to implement the law have not yet been finalised, and would like to know when is this law expected to be in effect.

**RESPONSE:** The legislation was passed by the U.S. Congress and the legislative history does not indicate the policy intent behind the 2% federal excise tax.

The effective date of the statute was the date of its enactment, January 2, 2011. The U.S. Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations and cannot yet specify when these regulations will be finalized.

**SOUTH AFRICA*****REPORT BY THE SECRETARIAT (WT/TPR/S/307)******3.1.1.1 Trade facilitation measures******3.1.1.1.1 Single window (pg. 43)***

*Question 1: South Africa (SA) takes note that the USA has been working toward establishing a single-window for a number of years. If work on the International Trade Data System (ITDS) is expected to be completed by December 2016, will the USA be in a position to make a commitment to establish a single window, as is set out in the Trade Facilitation Agreement (TFA) that was agreed upon in Bali in 2013?*

**RESPONSE:** As a developed country, once the United States has notified the WTO of its intention to implement the Agreement, the United States will be bound by all of the commitments of the Agreement contained therein. As noted in the report, the United States has already begun extensive work on our single window system, the International Trade Data System (ITDS), which we expect to be operational in December 2016.

***3.1.1.1.3. Advance rulings (pg. 44)***

*Question 2: Can the USA explain what would constitute 'a demonstrable interest'?*

**RESPONSE:** The term a "demonstrable interest" allows any party with an interest in a question or transaction to apply for an advance ruling. The term is meant to allow more than principals such as an importer, exporter, or producer to apply for advance rulings. For example, sureties, carriers, freight forwarders, brokers, and manufacturers may apply.

The use of that term a "demonstrable interest" is meant to act as a catch-all allowing any parties with an interest in a question or transaction to apply for an advance ruling. The term is meant to allow more than principle parties such as an importer, exporter, or producer to apply for advance rulings for example, sureties, carriers, freight forwarders, brokers, and manufacturers.

*Question 3: Are advance rulings publishable under the U.S. Customs and Border Protection (CBP)?*

**RESPONSE:** Yes, advance rulings are published on the Customs Rulings On-line Search Systems (CROSS) found on the CBP website at <http://rulings.cbp.gov/>.

*Question 4: SA takes note of how rulings are submitted in the USA (by letter if it's a ruling on valuation and electronically if its classification or tariff). Going forward does the USA foresee that the submission of advance rulings will continue to be submitted differently or will the USA be working toward submitting all advance rulings in the same manner?*

**RESPONSE:** While a new Erulings template has become available for a number of different advance rulings subject matters, already beyond just tariff classification, all advance rulings may be submitted in writing. The premise behind Erulings is that some advance rulings do not require samples therefore the requests may be posed electronically. CBP is constantly evaluating ways to allow more electronic communication and generate greater efficiency.

***3.1.1.1.5.4. Trusted Trader Program Test (pg. 46)***

*Question 5: With respect to the Trusted Trader Program Test that the USA introduced in June this year, with the aim to unify and replace the C-TPAT and the ISA programmes, how does the Trusted Trader Program differ from the Authorised Operators provided for under the TFA concluded in Bali in 2013?*

**RESPONSE: CBP programs and its operations are fully compliant, and deliver the benefits and outcomes contained in the WTO TFA commitments on Authorized Operators.**

*Question 6: Is the eligibility criterion for the Trusted Trader Program informed by international standards such as those applicable to the WCO's Authorised Operators?*

**RESPONSE: The United States is very involved in helping to create, utilize, and work in compliance with WCO instruments especially the WCO SAFE FRAMEWORK package including the WCO AEO program recommendations and best practices.**

*Question 7: Does the USA have or envisage having a plan that introduces an expedited release of goods especially in regard to goods entering by way of air cargo?*

**RESPONSE: The United States already allows for the electronic submission of all manifests and entry materials, and has achieved release of goods through all modes of transportation in an efficient and expedited manner. In most cases release occurs in just moments.**

### **3.1.6. Import prohibitions, restrictions and licensing (pg.56)**

#### **3.1.6.1. Prohibitions and restrictions**

*Question 8: Can the USA explain what the reasons for restricting or prohibiting imports other than on the ground of the National Strategy for Combating Wildlife Trafficking?*

**RESPONSE: To address declining elephant populations and combat illegal trade in African elephant ivory, the African Elephant Conservation Act provides for prohibitions on certain imports of ivory and ivory products. Under the Lacey Act it is also unlawful to import, export, transport, sell, receive, acquire, or purchase wildlife, fish, or plants that are taken, possessed, transported, or sold in violation of relevant U.S. or foreign laws.**

*Question 9: Can the USA share with us a list of products affected by the imports restrictions or prohibitions on the period under review?*

**RESPONSE: We refer Members to Table 3.6 and the website listed in footnote 48 of the Secretariat report (<http://www.cbp.gov/travel/international-visitors/kbyg/prohibited-restricted>). Additional information is available in the United States' 2014 WTO Notification on Quantitative Restrictions (G/MA/QR/N/USA/2).**

## **4.2 Services**

### **Financial services**

#### **Part 4 Trade Policies by Sector: 4.2.1 Financial services: paragraph 4.79, page 122**

The Secretariat Report notes that the 'Emergency Economic Stabilization Act of 2008 (EESA) provided budgetary authorization of up to US\$700 billion to respond to the financial crisis'. It highlights that foreign institutions, 'established and regulated in the United States were, in principle, eligible for relief'.

*Question 10: Would the United States clarify whether foreign institutions were in fact eligible for the relief?*

**RESPONSE: Yes, after initially limiting covered institutions to financial institutions in the U.S., the language was widened to include any financial institution "having significant operations" in the United States. <http://www.gpo.gov/fdsys/pkg/PLAW-110publ343/html/PLAW-110publ343.htm>. The term "financial institution" means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.**

*Question 11: Would the United States clarify whether any foreign institutions received relief under this Act?*

**RESPONSE:** Please refer to: U.S. Department of the Treasury's Troubled Asset Relief Program Monthly Report to Congress, available at: <http://www.treasury.gov/initiatives/financial-stability/reports/Documents/October%202014%20Monthly%20Report%20to%20Congress.pdf>; U.S. Department of the Treasury's Troubled Asset Relief Program: Two Year Retrospective, available at: [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)

*Question 12: Would the U.S. clarify whether there were any differences in the application of the terms and conditions for such relief between domestic and foreign institutions?*

**RESPONSE:** Please see the response to Question 10.

**SWITZERLAND***Report by the Secretariat*

**1. ECONOMIC ENVIRONMENT**  
**1.2 Recent Economic Developments**

*Question 1: In para. 1.6, the Secretariat's report refers to private consumption being invigorated by rising house prices, among other factors. Also, para 1.7 refers to private consumption growth being below pre-crisis levels, but also mentions a recent, noticeable revival of consumer debt. We are not sure whether the report considers rising consumer debt as a desirable development (to foster private consumption and thereby GDP growth) or as a potential risk to the sustainability of the financial system and economic stability in the medium to long-run. We would be therefore be interested in the views of the United States on this point.*

**RESPONSE:** Since the end of the recession, households have continued deleveraging and increasing savings. The personal savings rate was just under 5% in 2013, up from the 2.5% reached in 2005. Total liabilities as a share of disposable income have fallen back to their 2003 level. Also, thanks to lower levels of debt and low interest rates, the household debt service ratio has trended down from a high of 13.2% (pre-recession) to historically low levels through the 2<sup>nd</sup> quarter of 2014. With household liabilities lower, there is potential for higher consumer spending and for some consumers to utilize the credit market again.

*Question 2*

*In para. 1.8, the Secretariat's report notes that regarding the labor market, the reduction in unemployment has been impressive, with the unemployment rate falling below pre-crisis levels (6%) for the first time in September 2014. Nevertheless, labor force participation remains low at 63%, clearly below pre-crisis levels (66%). This is certainly of concern and needs to be taken into account when evaluating unemployment figures. The U.S. Government report refers for its part, in para 2.11, to reduced labor force participation but does not elaborate. We would be interested in the U.S. Government's opinion regarding the economic implications of reduced labor force participation and possible policy responses this may require.*

**RESPONSE:** The bulk of the decline in labor force participation from its peak is due to long-forecast trends attributable to the retirement of the baby boomers. A substantial component is due to typical cyclical factors, in which participation declines in downturns. The aging of the population will continue to push the rate downward, however, the recovering economy will tend to push in the other direction. White House CEA analysis finds that an important residual remains after accounting for aging trends and cyclical factors. The evolution of this residual, some of which is due to greater educational attainment depressing participation for young workers, will also contribute to participation rates going forward. While the unemployment rate, at 5.8 percent, is very close to what many consider to be its structural value of 5.4 percent, and the short term unemployment rate is below its pre-recession average, other indicators such as those working part time for economic reasons, and those marginally attached to the labor force, remain elevated and point to slack in the economy. For a discussion of the causes and implications of the U.S. labor force participation rate, as well as a discussion of potential policy responses, please see [http://www.whitehouse.gov/sites/default/files/docs/labor\\_force\\_participation\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/labor_force_participation_report.pdf)

**2. TRADE AND INVESTMENT POLICY FRAMEWORK**

**2.1 General Framework**

**2.1.1 Trade promotion authority, paragraph 2.6. :**

*Question 3:*

*Para. 2.6 of the Secretariat's report highlights the importance of obtaining the Trade promotion authority (TPA) to take current free trade agreement negotiations further. It also notes that a proposal to reauthorize TPA was introduced in Congress in 2014, but to date no legislation has yet*

*been approved. Could the United States provide some information about a possible calendar for Congress to pass TPA? Is there any possibility of moving TPA before the next Congress convenes?*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.**

### **2.3 Trade Agreements and Arrangements**

#### **2.3.2 Regional and preferential agreements**

##### **2.3.2.1 Reciprocal trade agreements**

###### **Question 4**

*Para. 2.21 of the Secretariat's report refers to the negotiations between the U.S. and the European Union (TTIP), just mentioning that they have not been concluded at this time. Could the United States provide some information about the current status of the negotiations for a TTIP? What are the biggest challenges and what were the most difficult areas and issues so far? Also, officially, the two parties announced their intention to conclude their negotiations by the end of 2015. Is this calendar still relevant? The negotiations take place between the United States and the European Union. How do the United States see the possibility for third countries to join the TTIP once negotiations will be concluded?*

**RESPONSE: The United States and the European Union have had seven rounds of negotiations since the Transatlantic Trade and Investment Partnership was launched in July 2013. Both sides are committed to achieving significant progress in 2015.**

**We have been keeping interested trading partners apprised of the general progress of the negotiations. However, we have no plans to involve third countries at this time.**

###### **Question 5**

*In para. 2.24, the Secretariat's report notes that three factual presentations involving the United States have not yet been considered under the Transparency Mechanism for Regional Trade Agreements due to the lack of comments from one or both of the parties concerned. To our knowledge, one remains pending, namely the draft factual presentation concerning the US-Colombia FTA, sent in 2012, due to the lack of comments from the United States. Could the United States explain why it has so far not been in a position to react to the draft Factual Presentation concerning the US-Colombia FTA? When does the United States expect to be able to provide its comments so that the factual presentation for this FTA can be examined in the CRTA?*

**RESPONSE: We are concluding our review of the U.S.-Colombia draft Factual Presentation and expect to provide comments to Colombia and the Secretariat soon. The United States looks forward to the transparency reviews of the U.S.-Colombia FTA, the Dominican Republic-Central America-United States FTA (CAFTA-DR) and the U.S.-Bahrain FTA as soon as mutually possible for our FTA partners in 2015.**

##### **2.3.2.2 Unilateral preferential regimes**

###### **Question 6**

*In para. 2.25, the Secretariat's report indicates that the United States continued to provide unilateral preferences to a number of countries or territories during the review period, although some programs are in decline, have expired, or are undergoing review. Chart 2.4 of the Secretariat's report shows a steep erosion of unilateral preferences: either taken altogether or within each category, imports with unilateral preferences have fallen by 50% since 2008. And the trend has been pursued since then, with the expiration of the GSP and the ATPA/ATPDEA on 31 July 2013. Could the United States indicate the reasons for this to happen and what the consequences were on import sourcing in the United States?*

**RESPONSE: The decrease in total U.S. imports under unilateral preference programs in recent years is attributable to a number of factors, but above all to the decrease in the U.S. demand for, and the international price of, petroleum products. This factor alone accounted for about 85% of the decrease. The second most significant factor was the removal of a number of beneficiary countries from eligibility for U.S. unilateral preference programs following the entry into force of their respective free trade agreements with the United States, for example, Colombia and Peru, which previously received benefits under both GSP and ATPA, and Panama and Costa Rica, which received**

**benefits under both GSP and CBERA/CBTPA, instead received preferential market access in line with the negotiated FTAs. Taken together, these two factors more than accounted for the overall decline in U.S. imports under AGOA, GSP, ATPA, and CBERA/CBTPA between 2008 and 2012 (the last full year in which GSP and ATPA/ATPDEA were authorized).**

*Also, could the U.S. Government indicate whether it intends to revitalize the GSP and if so, by when?*

**RESPONSE: The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.**

*Furthermore, what are the views of the U.S. Government regarding longer GSP application periods, as is now the case in the EU and Switzerland? Long, clear horizons are beneficial for producers and exporters in making their investment and business decisions. On the contrary, import regimes in need of frequent and sometimes erratic political confirmations are of a lesser use.*

**RESPONSE: The U.S. Congress sets the term length for GSP authorization and, over the last 20 years, has generally renewed the program for periods of one to five years. The most recent legislation to renew GSP, introduced in July 2013, would have extended the program through September 2015. Any prospective longer term or permanent renewal of GSP would have to take into account implications on the federal budget because U.S. law requires that foregone tariff revenue under GSP be offset by corresponding revenue increases or spending reductions.**

**Question 7**

*With respect to the AGOA (paras. 2.27-2.31), which provides a very important scheme for exporters from the poorest continent, could the U.S. Government indicate whether it has reflected on the possibility of granting special preferences to imports from LDCs on the continent, in order to counterbalance the advantages offered to (relatively rich) oil exporters. Also and somewhat urgently, what are the U.S. Government's plans for the future of this scheme, due to expire in September 2015?*

**RESPONSE: The AGOA program provides duty-free treatment for goods from AGOA beneficiary countries, including the LDCs, in order to encourage their exports under the program. The Administration is currently working with the United States Congress on renewal of the AGOA program and possible modifications to the program that will improve its implementation and utilization.**

**2.4 Investment Flows and Regime**

**Question 8**

*In para. 2.49, the Secretariat's report states that the SelectUSA program supports states and cities to attract and compete for job-creating investment. Para. 2.50 describes that the first investment summit brought together foreign investors, government officials, U.S. companies and economic development organizations. Foreign investors who want to do greenfield investments might be interested in meeting representatives of the federal states. Could the United States explain how the SelectUSA program coordinates between the states when they offer certain possibilities to investors and how does the program ensure that the attracted investment will be job-creating?*

**RESPONSE: SelectUSA coordinates with states in a variety of ways in performing its role of facilitating business investment in the United States. This includes partnering with state and local governments to provide investors with a single point of entry for information to and serve as ombudsman and national advocate for investment in the United States; assisting state and local governments, at their request, to address regulatory barriers for domestic and foreign firms wanting to invest in the United States; and coordinating across federal agencies to provide services that supplement state, regional and local resources to attract, retain and expand business investment in the United States.**

**Question 9**

*In para. 2.54, the Secretariat's report explains that 20 notices were withdrawn after CFIUS launched an investigation in 2012 and that subsequently some were re-filed while others were abandoned. Could the United States explain how many cases were re-filed and how many cases were withdrawn to put them in relation to the 114 cases submitted?*

**RESPONSE:** The CFIUS annual report, statutes, executive orders, regulations, are available at [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

**As we state in our annual report, "In 2012, CFIUS approved the withdrawal of 22 notices. The parties withdrew two notices during the 30-day review period and 20 notices after the commencement of the 45-day investigation period. In 10 cases, parties re-filed in 2012, and CFIUS concluded action in those cases. In two cases, the parties re-filed in 2013. In the remaining cases, the parties abandoned the transaction for commercial reasons or in light of CFIUS's national security concerns."**

**Question 10**

*In para. 2.56, and in table 2.4, the Secretariat's report informs that few formal barriers to FDI are in place in the United States and cite the source (CRS publications RL33103, 17 June). Could the United States indicate where an overview of the restrictions on the sub-federal level can be found and how those restrictions relate to the restrictions on the federal level?*

**RESPONSE:** U.S. state and local governments maintain laws and regulations that may affect the operations of investments located in their territories. State laws outside the areas of real estate, banking, and insurance (in which Congress has specifically delegated regulatory authority to the states) generally apply equally to all persons residing in a state and to all companies or other entities doing business in its territory. Most differences in the treatment of domestic and foreign investors at the state or local level are minor and can frequently be eliminated through incorporation in a particular state or locality. A few U.S. states restrict foreign ownership of land. The U.S. GATS schedule provides detail on such measures.

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

#### **3.1 Measures Directly Affecting Imports**

- 3.1.1 Customs procedures and requirements
- 3.1.1.2 Import security initiatives
- 3.1.1.2.2 Secure Freight Initiative (SFI)

**Question 11**

The Secure Freight Initiative (SFI) aims at scanning 100% of maritime cargo containers destined to the United States. **Para 3.20** of the Secretariat's report lists a number of obstacles to implement the SFI, such as a negative impact on trade capacity and the flow of cargo. In a letter to members of the U.S. Congress from May 2014, the Secretary of the Department of Homeland Security (DHS) noted "that DHS's ability to fully comply with this unfunded mandate of 100% scanning, even in long term, is highly improbable, hugely expensive, and in our judgment, not the best use of taxpayer resources to meet this country's port security and homeland security needs." Will the U.S. government maintain its goal of scanning 100% of U.S.-bound maritime cargo in light of the above?

**RESPONSE:** The deadline has been extended until at least May 5, 2016, 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.

#### 3.1.4 Tariffs

##### 3.1.4.1 Nomenclature

**Question 12**

According to **para. 3.32** of the Secretariat's report, "the USITC launched an investigation in late 2012 to propose certain modifications, including on Chapter 37." Could the United States indicate what has been the result of the investigation and which modifications have been made?

**RESPONSE:** Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the U.S. International Trade Commission conducted an investigation and sought public comment on the proposed changes. No requests for changes to the Commission's recommendation were received. The required Congressional layover period has been completed. The omitted HTS provisions are expected to be proclaimed by the President by the end of 2014, and it is expected that the effective date of these modifications will be February 3, 2012, the date on which the other 2012 changes to the Harmonized System were reflected in the HTS by Presidential Proclamation 8771. No change in duty treatment would result upon the implementation of the omitted provisions.

*Question 13*

According to para. 3.35 of the Secretariat's report, "the United States implemented other nomenclature changes to the HTSUS in 2011 relating to footwear<sup>25</sup>; these have still not been notified to the WTO for modification of the WTO schedule." Could the United States indicate when it intends to notify those changes to the WTO?

**RESPONSE:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the footwear nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The footwear changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm), specifically: [http://www.usitc.gov/tariff\\_affairs/documents/proclamation8742october31-2011-implement1205-8.pdf](http://www.usitc.gov/tariff_affairs/documents/proclamation8742october31-2011-implement1205-8.pdf) is the full text of the Presidential Proclamation regarding the footwear changes, as published in the Federal Register.

3.1.4.3 Bindings

*Question 14*

According to para. 3.40 of the Secretariat's report, a number of changes to the HTSUS, in particular the third and fourth pharmaceutical revision have not yet been notified to the WTO. This is important in order to keep the Schedule as up to date as possible. Could the United States indicate whether it intends to comply with this notification requirement in the coming months?

**RESPONSE:** The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm).

Specifically, the full text of the Presidential Proclamation regarding the footwear changes, as published in the Federal Register can be viewed at the following website: [http://www.usitc.gov/tariff\\_affairs/documents/proclamation8742october31-2011-implement1205-8.pdf](http://www.usitc.gov/tariff_affairs/documents/proclamation8742october31-2011-implement1205-8.pdf)

3.1.5 Other charges affecting imports

3.1.5.2 Excise taxes

*Question 15*

According to para. 3.51 of the Secretariat's report, "Excise tax rates on air transportation were revised during the review period". Could the United States provide more details on the nature of the revision and what has been modified?

---

<sup>25</sup> Proclamation 8742 of 31 October 2011.

**RESPONSE:** The nominal amount of the tax on the use of international travel facilities is adjusted annually with inflation, although in real terms the tax burden is static. For further information, refer to the following online sites: <http://www.irs.gov/pub/irs-prior/p510--2012.pdf>; [http://www.faa.gov/about/office\\_org/headquarters\\_offices/apa/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf](http://www.faa.gov/about/office_org/headquarters_offices/apa/aatf/media/14.1.17ExciseTaxStructureCalendar2014.pdf)

### 3.1.7 Anti-dumping, countervailing, and safeguard measures

#### 3.1.7.1 Anti-dumping and countervailing duties

##### Question 16

In para. 3.66, the Secretariat's report notes that the United States had 294 anti-dumping and countervailing measures in place at the end of 2013, an increase of 18% since 2010. Also, in para. 3.72, the Secretariat's report indicates that there has been a significant trend with fewer orders being revoked. While in 2007-2008, approximately half of all orders were revoked, in 2013-14, about 90% of reviews resulted in the continuation of the remedy. Could the United States indicate the reasons why such an overwhelming number of reviews conducted recently resulted in the continuation of remedies, which, as a consequence, caused a rapid increase in the number of remedies in place? Also, does the United States consider that maintaining trade remedies on such a large scale and sometimes for decades is an appropriate policy to facilitate the structural adjustment of the U.S. economy in the face of the new challenges brought about by globalization? Furthermore, are the needs of global value chains specifically taken into account when decisions are made to impose trade remedies on imports they may require, and how is this being done? Finally, how does the United States reconcile the objectives of the strong competition policy that it advocates with an increasing use of anti-dumping or countervailing duties which is reducing competition on the domestic market?

**RESPONSE:** The United States administers its trade remedy laws in accordance with WTO rules. Antidumping and countervailing duty investigations are initiated in response to petitions filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether those dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by such imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable. The decision whether to continue or revoke such a measure is based on whether dumping/subsidization and material injury would be likely to continue or recur if the measure is removed. No other factors are taken into consideration before imposing an antidumping/countervailing duty measure.

### 3.1.6 Import prohibitions, restrictions, and licensing

#### 3.1.6.1 Prohibitions and restrictions

##### Question 17

According to table 3.6 of the Secretariat's report, imports of dairy products are subject to requirements of the Food and Drug Administration and the Department of Agriculture. Could the United States elaborate on the nature of said requirements? What is the procedure to ensure compliance?

**RESPONSE:** The FDA is the federal agency responsible for the safety of dairy foods imported into the United States. Dairy products entering the United States are subject to the Federal Food Drug and Cosmetic Act, Public Health Service Act and FDA regulations. Imported milk and cream must also meet the requirements of the Federal Import Milk Act (FIMA). FIMA requires a permit for milk and cream (including sweetened condensed milk) imported into the United States. For information please visit:

- FIMA:  
<http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074571.htm>

- **Milk Safety:**  
<http://www.fda.gov/forfederalstateandlocalofficials/partnershipscontracts/ucm303972.htm>
- **Pasteurized Milk Ordinance:**  
<http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/milk/ucm2007968.htm>

**USDA manages the dairy import licensing program. Imports under most U.S. WTO dairy tariff-rate quotas (TRQs) require licenses issued under a program administered by the USDA FAS Import Programs and Export Reporting Division. Among the requirements to be eligible for licenses are to meet certain import quantity requirements in the previous year and submit an application by the deadline. There are also other requirements. Procedures to ensure compliance with the regulation can be found at:**

- **Dairy Import Licensing, 7 CFR Part 6:** [http://www.ecfr.gov/cgi-bin/text-idx?SID=c99afdf57912b84164627d9e5a10343&tpl=/ecfrbrowse/Title07/7cfr6\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=c99afdf57912b84164627d9e5a10343&tpl=/ecfrbrowse/Title07/7cfr6_main_02.tpl)

### 3.1.6.2 Import licensing

#### Question 18

In relation to **para. 3.58**: When the trade policy of the United States was last reviewed in 2012, Switzerland asked about low quota fill rates for several types of cheese. On this occasion, the U.S. stated that "the dairy import licensing regulations contains several mechanisms that provide incentives to fill the quotas" and that "any importer who does not fill at least 85% of any license amount becomes ineligible for that same license (type of cheese and country) the following year".

However the incentives mentioned do not seem to be working. The United States' most recent notification concerning imports under tariff quotas (G/AG/N/USA/94) shows no significant improvement in quota fill rates. In which specific ways do the United States intend to improve upon this situation, especially in light of the Bali Understanding on tariff rate quota administration? When can substantive increases in quota fill rates be expected?

**RESPONSE: The United States has no current plans to unilaterally change its tariff-rate quotas. To further liberalize markets and bolster transparency, the United States is committed to and encourages the implementation of the Bali Ministerial Understanding on Tariff Rate Quota Administration.**

#### Question 19

The Secretariat's report mentions in **para. 3.58** that since February 2013 a review of the Dairy Import Licensing Program is underway, including the methodology for issuing licenses. Could the United States give an update on this process? Do the United States expect fill rates to increase with the adaptation of the legal basis? Through which specific mechanisms?

**RESPONSE: Any notice related to the dairy import licensing rule-making process will be published in the Federal Register.**

### 3.1.9 Sanitary and phytosanitary requirements

#### 3.1.9.1 Food and Drug Administration

#### Question 20

With respect to what is said in **para. 3.88** of the Secretariat's report, we would have the following comments and questions: We seek clarification about the additional requirements for monitoring, data storage and notification practices for recognized accreditation bodies and accredited auditors. In particular, we are concerned about the U.S. FDA's intention to access records of such bodies. We would like the United States to clarify why the notification of conditions that pose serious risks to public health, together with all relevant information, is not sufficient. In our view, permanent full access to records for the U.S. FDA questions the value of accreditation bodies and accredited auditors' accreditation to the U.S. FDA. Could the United States indicate to which CODEX or OIE standard this requirement corresponds, as in our opinion neither CAC/GL 19-1995 nor CAC/GL 25-1997 envisage such access?

**RESPONSE:** The U.S. Food and Drug Administration (FDA) is working on a draft model accreditation standards guidance document, which will clarify the qualifications for auditors to become accredited under FDA's program for Accreditation of Third Party Auditors/Certification Bodies. FDA will make this document available for public comment before it is finalized. This document may help to inform trading partners' understandings and views of the practical functioning of requirements for third party auditors and certification bodies.

*Question 21*

*With regard to the revisions, could the United States clarify to what extent 'flexibility provisions' as envisaged in certain revisions can be applied? For example, can trading partners with a positive record profit from such provisions? In particular, can such provisions reduce the amount of 'on-site-visits', and what are the conditions to reduce such inspections? Will the United States apply system audits, as foreseen in the relevant international standards, i.e. Codex Alimentarius? Could the United States indicate by how much the number of inspections may decline as a result of the accreditations of accreditation bodies and accredited auditors?*

**RESPONSE:** Under the Foreign Supplier Verification Program proposed rule, the importation of food from a foreign supplier in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable to that of the United States or that FDA has determined to be equivalent to that of the United States would be subject to modified requirements (assuming the food is within the scope of the relevant official recognition or equivalency determination). The modified requirements are that the importer would be required to determine and document whether the foreign supplier of the food is in good compliance standing with the food safety authority of the country in which the foreign supplier is located.

*Question 22*

*With respect to para. 3.90 of the Secretariat's report, could the United States indicate whether a regulatory impact analysis (RIA) was performed on the effect of the additional fees on international trade? If this is the case, could the United States share the RIA with WTO members and clarify what results the RIA produced including a rationale for introducing new fees compared with less trade restrictive measures?*

**RESPONSE:** The RIAs completed by FDA pursuant to its authority under FSMA are publicly available at [www.fda.gov/fsma](http://www.fda.gov/fsma). As to the re-inspection fees in particular, we note that FDA has not collected any reinspection fees to date and that FDA's authority to collect re-inspection fees applies equally to domestic (U.S.) and foreign facilities.

**3.1.9.2 Food Safety and Inspection Service**

*Question 23*

*With respect to para. 3.93, the Secretariat's report notes that the United States brought its import requirements into line with the OIE's criteria for BSE risk status. However, APHIS reserves the right to conduct its own risk assessment. If an exporting country has the OIE risk status 'negligible', could the United States indicate whether APHIS would still conduct a risk assessment or whether it does accept the OIE status and consequentially allow imports of bovine products from that country? Could the United States indicate what are the conditions for a country with OIE risk status 'negligible' to be exempted from such additional requirements?*

**RESPONSE:** The BSE Comprehensive Rule went into effect in March 2014. This rule laid out the process by which either APHIS could concur with OIE designations of BSE risk status or conduct a separate risk assessment if requested by a country. To date, no country has requested a separate risk assessment, therefore none have been completed. APHIS has concurred with all of the OIE designations as adopted during the May 2013 General Session, and is evaluating the OIE designations adopted during the May 2014 General Session.

*Question 24*

*More generally speaking, the United States participates in the OIE consensus-based decision process for the official recognition of a disease status. In this process, OIE Member Countries are offered a 60 day period to comment on the OIE Scientific Commission's proposal for an upgraded*

risk status of an OIE Member Country. Moreover, questions can first be referred to the applicant Member Country concerned, which is requested to provide clarification to the Member Country soliciting information, with copy to the OIE Headquarters. Given this inclusive, transparent, and comprehensive assessment, could the United States indicate why it does not endorse the OIE risk status and adjust its import requirements accordingly? In particular, could the United States indicate what the rationale is behind the conduct of additional risk assessments?

**RESPONSE:** The United States would note that the BSE Comprehensive Rule went into effect in March 2014. This rule laid out the process by which either APHIS could concur with OIE designations of BSE risk status or conduct a separate risk assessment if requested by a country. To date, no country has requested a separate risk assessment, therefore none have been completed. APHIS has concurred with all of the OIE designations as adopted during the May 2013 General Session, and is evaluating the OIE designations adopted during the May 2014 General Session.

### 3.3 Measures Affecting Production and Trade

#### 3.3.3 Competition policy

##### Question 25

According to para. 3.154 of the Secretariat's report, the main changes in the competition policy framework are made through agency guidance, court, and administrative proceedings. Could the United States please name a few of important and recent changes, if any?

**RESPONSE.** The U.S. competition agencies' Horizontal Merger Guidelines are an excellent example of important guidance. These guidelines, discussed in detail in the 2013 U.S. Trade Policy Review Record of Meeting,<sup>26</sup> recently updated the agencies' 1992 guidelines and provide clarity with regard to merger review analysis to better assist the business community and, in particular, parties to mergers and acquisitions. More recently, in 2013, the United States competition authorities made certain changes, *inter alia*, to the Premerger Notification Rules, and to the Justice Department Antitrust Division's "carve-out" practice regarding corporate plea agreements. These changes are detailed in the 2013 Annual Report of the United States to the OECD Competition Committee.<sup>27</sup> The 2013 Annual Report also describes major investigatory and litigation developments in the competition ("antitrust") area, including two important U.S. Supreme Court decisions on antitrust issues: *FTC v. Phoebe Putney Health System, Inc*<sup>28</sup> (in which the Supreme Court unanimously ruled that the state action immunity doctrine did not immunize the parties, one of which was owned by a local government authority, from the federal antitrust laws), and *FTC v. Actavis*<sup>29</sup> (holding that an agreement to settle patent-related litigation was not immune from antitrust liability and that antitrust challenges to such agreements should be decided using a "rule of reason" analysis).

In 2014, the agencies issued a statement on sharing of cyber-security information,<sup>30</sup> and the Antitrust Division announced a new procedure for modifying or terminating old case settlements.<sup>31</sup> More complete information on the agencies' enforcement and competition advocacy work, which play a critical role in the U.S. competition policy framework, is available at [www.ftc.gov](http://www.ftc.gov) and [www.usdoj.gov](http://www.usdoj.gov).

#### 3.3.5 Government procurement

##### Question 26

In para. 3.168, the Secretariat's report refers to the Trade Agreement Act of 1979 allowing the President to waive the discriminatory purchasing requirements of the Buy America Act (BAA) with respect to procurements covered by the GPA and FTAs. Could the United States indicate what is the motivation of the authority given to the President to issue such a waiver since the entities at

<sup>26</sup> See WT/TPR/M/275/Add.1, Record of Meeting Addendum, 15 March 2013.

<sup>27</sup> See [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/AR\\_\(2014\)24&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/AR_(2014)24&docLanguage=En).

<sup>28</sup> 133 S.Ct. 1003 (2013). See the 2013 U.S. Annual Report *supra*, at p. 6.

<sup>29</sup> 133 S.Ct. 2223 (2013). See the 2013 U.S. Annual Report *supra*, at p. 5.

<sup>30</sup> See press release at <http://www.justice.gov/atr/public/speeches/305029.pdf>.

<sup>31</sup> See press release at [http://www.justice.gov/atr/public/press\\_releases/2014/304744.htm](http://www.justice.gov/atr/public/press_releases/2014/304744.htm).

federal and local levels have, according the U.S. commitments under the GPA, the legal obligation to grant, at least to Members of the GPA, non-discriminatory treatment for acquisitions covered by the GPA? Are there conditions which have to be fulfilled by a Member of the GPA or by a supplier located in a country of the GPA in order to benefit from the President's waiver? If yes, what are these conditions?

**RESPONSE:** Under the Trade Agreements Act of 1979, Congress granted the President authority to waive discriminatory purchasing requirements for eligible products from designated countries (19 USC § 2511(a)). GPA members are designated countries under the Trade Agreements Act (19 U.S.C. §§ 2511(b), 2518). The President delegated this waiver authority to the U.S. Trade Representative (Executive Order No. 12,260, Dec. 31, 1980, as amended). The U.S. Trade Representative has waived the Buy American Act requirements consistent with U.S. obligations under the GPA for eligible products from GPA member economies. No additional waiver is required for eligible products from GPA member economies.

Question 27

*In para. 3.168 and para. 3.169, the Secretariat's report informs that the Federal Acquisition Regulation (FAR) remains the primary regulatory tool for the handling of government procurement at federal level but also that many agencies and departments may issue or maintain specific procurement regulations. Also, according to the Secretariat's report, the legal procurement framework has not changed substantially since 2012. Could the United States share their experience regarding the way the text related commitments of the revised GPA - which foresee a number of new mandatory commitments – are being implemented in the national legislation of the U.S. at the federal as well as at the local levels? Which were the U.S. procurement regulation(s) which had to be revised at the federal and the local levels in the light of the new commitments of the revised GPA of March 31, 2014.*

**RESPONSE:** The United States formally implemented the Protocol Amending the Agreement on Government Procurement (revised GPA) through the publication of a notice in the Federal Register Notice on Monday, March 17 2014 (78 Fed. Reg. 14,776, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-17/pdf/2014-05719.pdf>). No additional implementation actions were necessary.

Question 28

*Regarding para. 3.183 of the Secretariat's report, how can the United States ensure that entities at the local and federal levels implement the GPA commitments on covered procurement and do not simply follow the Buy American Act provisions?*

**RESPONSE:** The Buy American Act applies only to Federal procurements of goods. As noted in the response to Question 26 above, the U.S. Trade Representative has waived the Buy American Act requirements consistent with U.S. obligations under the GPA for eligible products from GPA member economies. This obligation is reflected in Federal Acquisition Regulation § 25.402.

**With respect to the states, each U.S. state maintains its own procurement system independent of the Federal Government procurement system. For those U.S. states subject to government procurement commitments under U.S. international obligations, the Office of the U.S. Trade Representative engages with appropriate State officials regarding specific issues raised by our trading partners.**

#### 4 TRADE POLICIES BY SECTOR

##### 4.1 Agriculture

###### 4.1.1 Agricultural Act of 2014

###### 4.1.1.1 Overview

Question 29

*In para 4.9 of the Secretariat's report it is stated that "the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions". What is the United States' assessment on this matter? Are there measures being taken to prevent such an outcome? If agricultural commodity prices*

*decreased to lower levels, what would be the highest amount of government spending the US-Government expects? Is a capping of the payments envisaged in such a case?*

**RESPONSE:** A number of program changes occurred in the 2014 Farm Bill. As was the case under the 2008 Farm Bill, these new programs are paid on historical base acres without reference to current production to remove the incentives that lead to surplus production. Because producers cannot increase their payments as a result of current planting decisions, plantings would be based on market incentives.

**The 2014 Farm Bill does not place any specific limits on expenditures. However, the United States expects the 2014 Farm Bill to remain within the United States' WTO commitments. Moreover, the 2014 Farm Bill, like previous Farm Bills, contains a "circuit breaker" that gives the Secretary of Agriculture the authority to ensure the United States does not exceed its commitments.**

#### 4.1.1.2 Title I (Commodities)

##### 4.1.1.2.6 Dairy

###### Question 30

*With regard to the new Dairy Product Donation Program, the Secretariat's Report states in para. 4.31 that the suspension of purchases conducted under this program is triggered by levels in dairy production margin, as well as domestic and world market prices for cheddar cheese and SMP. Could the United States indicate the specific trigger levels that would lead to suspension of purchases conducted under the Dairy Product Donation Program? Is the suspension triggered immediately after such levels are reached?*

**RESPONSE:** USDA will calculate the actual dairy production margin using the national "all-milk price" minus the national "average feed cost." The term "all-milk price" is defined in the 2014 Farm Bill to mean the average price received, per cwt of milk, by dairy operations for all milk sold to plants and dealers in the United States, as determined by USDA. The term "average feed cost" is defined to mean the average cost of feed used by a dairy operation to produce a cwt of milk using the sum of:

- 1.0728 times the price of corn per bushel;
- 0.00735 times the price of soybean meal per ton; and
- 0.0137 times the price of alfalfa hay per ton.

**U.S. Price and World Market Price Differential -** The price differential determination (which requires a comparison of U.S. prices and world prices) will use foreign and domestic price data, published by the Agricultural Marketing Service (AMS). The 2014 Farm Bill specifies that USDA is required to calculate the differential between U.S. prices and world prices for cheddar cheese and nonfat dry milk (NDM).

**Purchases will cease at the end of the month in which it is determined that:**

- The actual dairy production margin for the previous month is above US\$4 per cwt;
- Purchases have taken place for three consecutive months;
- U.S. cheddar or NDM price exceeds world prices by 5% if the actual dairy production margin is at or below US\$4 but above US\$3;
- or U.S. cheddar or NDM price exceeds world prices by 7%, if the margin is US\$3 or less.

#### 4.1.1.4 Title III (Trade)

##### 4.1.1.4.1 Food Aid

###### Question 31

*According to para. 4.44 of the Secretariat's Report a minimum of 15% of non-emergency food aid is required to be monetized by U.S. law. Could the U.S. explain the reason for this requirement? How is commercial displacement in local markets through monetization prevented? Are there any changes in this regard envisaged in the future? Namely is the U.S. considering shifting away from in-kind food aid as others have done in the past?*

**RESPONSE:** The 15% minimum for monetization applies only to the Office of Food for Peace's non-emergency development food aid programs. In Fiscal Year 2014, USAID's Office of Food for Peace utilized monetization in just one country, Bangladesh. Prior to making any new non-emergency contribution that may involve monetization, USAID conducts a Bellmon Estimation Studies for Title II (USAID-BEST) analysis to assess the impact of potential food aid program on the country's local economy. The Bellmon Amendment requires that donations of U.S. food assistance avoid harming local markets in recipient countries.

**In 2010, the Emergency Food Assistance Program through the International Disaster Assistance account was created and provides cash for food assistance. Changes in the Agricultural Act of 2014 allowed a portion of Title II resources to be used for food vouchers, cash transfers and local and regional procurement.**

#### 4.1.1.4.2 Export credit guarantees

##### Question 32

*Para. 4.47 of the Secretariat's Report states that the 2014 Farm Bill reduced the maximum loan guarantee term under GSM-102 from three to two years. Keeping in mind the Bali Ministerial declaration on export competition, what further steps are envisaged to reduce the trade distorting effects of GSM-102?*

**RESPONSE: We are not aware of any data showing that the GSM-102 program is trade-distorting.**

#### 4.1.2 Agricultural tariffs and tariff rate quotas

##### Question 33

*In para. 4.66, the Secretariat's Report indicates that "price-based safeguards are invoked automatically on a shipment-by-shipment basis". Could the U.S. provide an explanation as to why it applies price-based SSGs to very small quantities? What is the rationale behind applying price-based SSGs in the case of products with already low in-quota trade (as is the case for various types of cheese)?*

**RESPONSE: The United States automatically applies price-based special safeguards (SSGs) on all products that were subject to tariffification 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. The quantity-based SSG is not automatically applied and requires a decision by the U.S. Government to apply when the trigger is met.**

---

## THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

### **PART I: REGARDING THE SECRETARIAT REPORT (WT/TPR/S/307)**

#### **1 ECONOMIC ENVIRONMENT**

##### **1.1 Main features of the economy**

###### **Page 14 (Para 1.9)**

After a decade of sluggish performance, the manufacturing sector has become an important aspect of U.S. economic recovery. Over 700,000 jobs have been created in the sector since 2010. However, these still represent a small proportion of overall job growth. Several factors contributed to that favourable economic context, and there has been some reporting of "in-sourcing", i.e. the homecoming of U.S. manufacturing. Soaring transportation costs, induced by rising oil prices have made production-close-to-customer more advantageous. The recent shale oil and gas development and low energy prices have also contributed to lowering production costs in the manufacturing sector. Other factors, such as increasing labour costs in some developing countries, the depreciating U.S. dollar, and the highly competitive workforce in the United States, have also played a crucial role in the recent recovery in manufacturing. However, the authorities expressed doubts regarding a genuine in-sourcing move in the United States as capital stock in manufacturing has not increased in a decade.

###### **Question 1:**

In recent years, the Obama administration has been making efforts to revitalize American manufacturing and bring jobs back to the US. Could the U.S. please elaborate further on the policies, incentives and measures implemented, their outcomes so far, and the implications for U.S. trading partners and regional supply chains?

**RESPONSE:** The administration has been working with industry and academia to help revitalize the U.S. manufacturing sector focusing on both education and investment initiatives (enabling innovation, securing the talent pipeline, and improving the business climate). <http://www.whitehouse.gov/the-press-office/2014/10/27/fact-sheet-president-obama-announces-new-actions-further-strengthen-us-m>.

In addition the Administration's trade policy aims to advance and defend the interests of American manufacturers and their workers by expanding export opportunities through increased market access and strengthening enforcement of trade rules. The United States remains open to trade in manufactured goods with trading partners and global supply chains.

#### **2 TRADE AND INVESTMENT REGIME**

##### **2.1 General framework**

###### **2.1.1 Trade Promotion Authority**

###### **Page 25 (Para 2.6)**

Recently, the President highlighted the importance of obtaining TPA authority in 2013 and 2014, given the two major regional negotiations which the United States intends to conclude or make significant progress on. A proposal to reauthorize TPA was introduced in the Congress in 2014, but to date no legislation has been approved.

Question 2: Please elaborate further on the Administration's plans for pushing through the legislation to grant trade promotion authority (TPA). Has there been any progress in reviewing the proposed TPA bill? Will the U.S. government be re-introducing a TPA bill in the 114th Congress?

**RESPONSE:** The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.

Question 3: What are the prospects for a TPA bill being passed in the first half of 2015?

**RESPONSE:** The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.

*Question 4. If Congress does not grant the Executive Branch TPA, what would be the effect on the US' progress on negotiating and signing free trade agreements?*

**RESPONSE: The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation. As the Administration works with Congress on TPA, we will continue to advance bilateral, plurilateral and multilateral negotiations.**

#### **2.1.2 Role of the private sector and other stakeholders**

##### **Page 26 (Para 2.8)**

*While the trade committees have remained relatively static in recent times, USTR has authority, pursuant to Section 135 of the Trade Act of 1974, to establish policy advisory committees. In February 2014, USTR proposed a new trade advisory committee covering public interest issues. This proposal, including its scope and purpose, is currently under consideration pending review and evaluation of public comments.*

*Question 5. Could the U.S. please describe the rationale and objectives for establishing the new trade advisory committee covering public interest issues?*

**RESPONSE: The purpose, scope, composition and creation of a new advisory committee is still under review.**

*Question 6. What public interest issues will be addressed by this Committee?*

**RESPONSE: The purpose, scope, composition and creation of a new advisory committee is still under review.**

*Question 7. Which public interest issues drew the most attention and discussion during the comment period from February to March 2014?*

**RESPONSE: Public comments received can be viewed at: <http://www.regulations.gov/#!documentDetail;D=USTR-2014-0005-0001>.**

#### **2.2 Trade policy objectives**

##### **Page 29 (Para 2.14)**

*A number of trade priorities identified for 2013-14 included initiatives at the national, multilateral, bilateral, and regional levels: to continue progress towards the National Export Initiative (NEI) goals; to advance and conclude the Trans-Pacific Partnership (TPP) agreement; launch and advance the Transatlantic Trade and Investment Partnership (T-TIP) agreement; lead creative and effective efforts at the WTO to open markets, enforce rules, and combat protectionism; advance negotiations including with respect to services, environmental goods, and information technology products; etc. ...*

*Question 8. Please elaborate further on the results of the National Export Initiative (NEI), and the future prospects for the NEI.*

**RESPONSE: We did not reach the President's goal of doubling exports under the NEI – in part because of unexpectedly strong global economic headwinds and macroeconomic factors outside our control. Despite that, we remain committed to the objectives of the NEI/NEXT initiative.**

**Feedback from customer surveys on the NEI and focus groups across the country – reaching more than 6,000 clients and partners – showed that U.S. companies are well-positioned to capitalize on growing opportunities around the world and offered suggestions on how to improve upon the NEI. NEI/NEXT is a new customer service-driven strategy with improved information resources that will help American businesses capitalize on existing and new opportunities to sell Made-in-America goods and services abroad. NEI/NEXT is focused on improving data of use to exporters, providing information on specific export opportunities, working more closely with financing organizations and service providers to expand access to export-related resources, and**

**partnering with states and communities to empower local export efforts and make it easier for small businesses to understand where to go for help.**

*Question 9. The TPP negotiations are not expected to be concluded by the end of this year. How does the U.S. view the future prospects for these negotiations?*

**RESPONSE:** TPP leaders met in November 2014, noted the significant progress that ministers and negotiators had made in recent months in narrowing gaps on the TPP agreement, and stated that the end of the negotiation was coming into focus. All TPP parties are working to conclude the negotiation as soon as possible, so that each country can start to enjoy the agreement's benefits.

*Question 10. The U.S. is putting considerable emphasis on the TPP and TTIP negotiations, but some U.S. domestic groups appear quite concerned about issues such as agriculture market access, IPR, labour and the environment in the TPP, as well as the issue of investor-state dispute settlement (ISDS) in the TTIP. How has the U.S. government been communicating with the stakeholders on these contentious issues? Given the resource-intensive nature of engagement in these two major agreements, will negotiating both agreements simultaneously result in less progress being made on each than would be achieved if they were negotiated separately?*

**RESPONSE:** Stakeholder input is critical to the shaping of U.S. trade policy and positions. For TPP and T-TIP, U.S. negotiators consult regularly with stakeholders on our positions both through our established advisory system as well as on an ad hoc basis. Negotiators also meet with stakeholders before, during, and after the negotiating rounds. Recognizing the resource-intensive nature of negotiations, we have separate teams tasked to TPP and T-TIP, and sufficient resources to conduct both negotiations concurrently.

#### **2.4 Investment Flows and Regime**

##### **Page 37 (Para 2.44)**

*During the review period, the United States remained the world's largest single recipient of foreign direct investment, however, inflows have declined since 2012 reflecting the general trend of historically low FDI inflows to developed countries. Investment inflows fluctuated broadly year to year, often in relation to economic growth. After recovering from the economic downturn in 2009, investment inflows climbed in 2010 and 2011, but fell in 2012 and 2013. Sources of FDI are generally highly concentrated among highly industrialised countries, the United Kingdom and Switzerland are the largest contributors. Investment inflows from emerging economies remain relatively small. In terms of sectors, manufacturing has the largest share with 45%, followed by wholesale trade (11%), mining (11%), and non-bank holding companies (11%).*

*Question 11. What are the promotion efforts, aside from those mentioned in para. 2.4.2 of the Report, that the U.S. is making to encourage a greater volume of investment inflows, specifically from emerging economies?*

**RESPONSE:** The United States is building upon past successes in attracting inward investment by continuing to develop and promote the SelectUSA program, the United States' first coordinated effort to actively recruit businesses to bring investment to the U.S. In 2013, President Obama expanded and enhanced this program by, among other things, enhancing coordination with regional, state, and local economic development organizations; expanding outreach to prospective investors from economies with the largest potential for investment into the United States; and creating a single point-of-contact for investors ready to invest in the United States. Information about these enhancements to the SelectUSA program is available at <http://www.whitehouse.gov/the-press-office/2013/10/31/president-obama-announce-first-ever-federal-effort-attract-job-creating->, and information about the program itself is available at <http://selectusa.commerce.gov>.

#### **2.4.1 Investment agreements**

**Page 37 (Para 2.47)**

Bilateral Investment Treaties (BITs) have typically been at the core of U.S. reciprocal binding agreements on investment. The U.S. has negotiated BITs on a model framework, and in 2012, the Administration released a new model BIT, which contains key provisions on national and MFN treatment, the minimum standard of treatment, expropriation, transfers, and performance requirements, as well as provisions protecting the right of investors to engage senior managers of their choosing, and two sections on dispute settlement.

*Question 12. How does the U.S. launch negotiations for signing BITs with other countries? Please provide details of the internal review and approval process? What are the main factors taken into consideration?*

**RESPONSE:** The aims of the U.S. BIT program are to protect investment abroad in countries where investor rights are not already protected through existing agreements; encourage the adoption of market-oriented policies that treat private investment in an open, transparent, and non-discriminatory manner; and support the development of international law standards consistent with these objectives. The United States selects BIT negotiating partners based on a variety of factors relating to these and other policy objectives.

*Question 13. Does the U.S. require the review and approval of Congress in order to sign a BIT? What are the statutory grounds for BITs being passed through Congress? Is it purely because of the US's federal structure, or are there other reasons?*

**RESPONSE:** The requirements for review and approval of U.S. international agreements vary depending upon the nature of the specific agreement. U.S. treaties, for example, are made with the advice and consent of the United States Senate, expressed through an affirmative vote of two-thirds of Senators present.

*Question 14. The U.S. government recently announced its intention to continue to pursue BIT negotiations with mainland China. In addition, the two parties are committed to report periodically to their respective leaders on the status of the negotiations, with a first report following the exchange of proposed "negative lists" early in 2015. How does the U.S. government evaluate the future prospects for concluding negotiations on a BIT with mainland China?*

**RESPONSE:** The United States is committed to pursuing a high-standard and comprehensive BIT with China that embodies the principles of non-discrimination, fairness, openness, and transparency, and we are actively working to advance the negotiations to ensure they are achieving these objectives.

**Page 37 (Para 2.48)**

No new BITs were negotiated or entered into force during the review period. The United States does not have BITs with many of the emerging economies, which continue to be growing in importance as concerns investment flows. Nevertheless, the United States has concluded an increasing number of FTAs during the last ten years with investment chapters that generally have the same provisions as BITs.

*Question 15. Could the U.S. please elaborate further on its future trade policy regarding BIAs and FTAs? Will the U.S. have a preference for negotiating investment chapters within FTAs with its trading partners, or will it favour the double-track route of negotiating both BITs and FTAs?*

**RESPONSE:** The United States continues to negotiate both free trade agreements with investment chapters and stand-alone bilateral investment treaties.

**Page 38 (Table 2.2 The Investment Agreements Framework)**

*Question 16. Is Table 2.2 intended to be a complete list of the U.S. TIFA counterparts up to the year 2012? If so, it seems we have been inadvertently omitted from the list. On 19 September, 1994, we signed a TIFA agreement with the U.S. named the Agreement Between AIT and CCNA*

*Concerning a Framework of Principles and Procedures for Consultations Regarding Trade and Investment.*

**RESPONSE:** We note, as pointed out by Chinese Taipei, that Table 2.2 drafted by the WTO Secretariat does not include the Agreement Between the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) Concerning a Framework of Principles and Procedures for Consultations Regarding Trade and Investment which established a Council on Trade and Investment. Under this agreement, which was signed on 19 September 1994, officials from the Office of the United States Trade Representative serve as AIT's advisors and negotiators. We suggest that the Secretariat amend Table 2.2 to reflect this fact.

#### **2.4.3 Investment regulations and restrictions**

##### **2.4.3.1 The Committee on Foreign Investment in the United States (CFIUS)**

###### ***Page 39 (Para 2.52)***

CFIUS continues to review "covered" foreign investment transactions to determine whether the transaction threatens national security. A covered foreign investment transaction is one where a merger, acquisition, or takeover results in foreign control of a person engaged in interstate commerce in the United States. CFIUS considers whether the foreign entity is controlled by a foreign government or if the investment would give control of critical infrastructure. If CFIUS perceives a potential national security risk, the President can prohibit the transaction. There have been no changes to the law or regulations since the last amendments in 2008.

Question 17. Has the U.S. enacted any new reforms in its review of merger and acquisition transactions involving foreign investment?

Question 18. What is the definition of "national security" under the Foreign Investment and National Security Act (FINSA)?

**RESPONSE TO 17 & 18:** 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).

### **3 TRADE POLICIES AND PRACTICES BY MEASURE**

#### **3.1 Measures Directly Affecting Imports**

##### **3.1.1 Customs procedures and requirements**

###### **3.1.1.1 Trade facilitation measures**

###### **3.1.1.1.5 Trusted Trader Program**

###### **3.1.1.1.5.4 Trusted Trader Program Test**

###### ***Page 46 (Para 3.18 Box 3.1)***

- CBP will exempt (Trusted Trader Program) test participants from random non-intrusive inspections.

Question 19. Would the U.S. consider exempting test participants from random physical examinations? If not, could it please elaborate further on the reasons?

**RESPONSE:** At this time, CBP is not considering exempting participants from random physical examinations. Trusted Trader participants receive reduced targeting/examination risk scores which include a reduced examination rate and 'front of the line' benefits for cargo that is subject to exams.

#### **3.1.7 Anti-dumping, countervailing, and safeguard measures**

##### **3.1.7.1 Anti-dumping and countervailing duties**

###### ***Page 62 (Para 3.67)***

U.S. anti-dumping investigations have generally been below historic levels in recent years, with the exception of 2013, when there was a significant increase in investigations. Some

39 investigations were initiated in 2013, compared to an average in the other 4 years of 2010-14 of 9 per year.

**Page 65 (Para 3.69)**

The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated. Asian countries, in particular China, were the most affected with countervailing duty investigations.

Question 20. Once anti-dumping and countervailing duty investigations are initiated, there is an immediate impact on industry. We are concerned that if the determination to initiate an investigation and the determination of the causal link between injury and dumping or subsidy are too loosely connected, the trade remedy measures will distort normal trade. Could the U.S. please explain the reasons for the surge in the number of anti-dumping and countervailing duty investigations initiated in 2013? What is the ratio between the number of investigations initiated and the number of final determinations resulting in the imposition of anti-dumping and countervailing duties?

**RESPONSE:** The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether those dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exist and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by those imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.

The United States does not organize its statistics regarding antidumping duty or countervailing duty investigations in the form Chinese Taipei is requesting. However, further information about the initiation of investigations and subsequent final determinations, if any, can be found at: <http://trade.gov/enforcement/index.asp>.

Question 21. We are also concerned about the long length of time some anti-dumping measures continue to be applied to certain products. Could the U.S. please advise what percentage of sunset reviews during the TPR period resulted in the termination of anti-dumping duties?

**RESPONSE:** Approximately 15% of the sunset reviews concluded during the TPR period (July 2012 – June 2014) resulted in the termination of antidumping duty orders.

**3.1.9 Sanitary and phytosanitary requirements**

**3.1.9.1 Food and Drug Administration**

**Page 69 (Para 3.88)**

Between January 2013 and January 2014, the FDA published for public comment seven proposed regulations to implement some of the key elements of the FSMA. The proposed regulations address produce safety, preventive food controls, foreign supplier verification programme, accreditation of third-party auditors, preventive controls in the animal feed supply, protection against intentional adulteration of food, and sanitary transportation of food. The regulatory drafting process is ongoing. Prior to the issuance of the final rules, the FDA has announced that it will issue revisions for several of the previously published proposed regulations and interested stakeholders will have an opportunity to provide comments.

Question 22. What is the current progress and timeframe on issuing FSMA-related regulations (especially regarding standards for the handling of produce, and the accreditation of third-party auditors and foreign supplier verification programmes)?

**RESPONSE:** FDA issued supplemental proposed rules for Produce Safety and for Foreign Supplier Verification Programs on September 29, 2014. These supplemental proposals include revisions from the original proposed rules. The public was invited to comment on

**these until December 15, 2014. FDA staff are currently working on final rules for Produce Safety, Foreign Supplier Verification Programs, and Accreditation of Third-Party Auditors. FDA is under consent decree to issue these three final rules by October 31, 2015.**

### **3.1.9.3 Animal and Plant Health Inspection Service**

#### **Page 70 (Para 3.92)**

The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for regulations to protect against the introduction of plant and animal diseases and pests. To this end, APHIS regulates imports of live plants; grain, oilseed and horticultural products; live animals (including embryos, semen, ova), animal products, and research and exhibition animals. A number of APHIS-regulated products are also regulated by FSIS; in those instances imports must comply with both APHIS and FSIS requirements. For example, certain animal products may be subject to import restrictions by APHIS due to disease risks, and once those risks are mitigated, the products may be subject to FSIS requirements.

Question 23. Could the U.S. please explain how its transparency obligation under the SPS Agreement for animal and plant quarantine measures is implemented, especially with regard to notification of the application for market access for agricultural products by trading partners, and sanitary and phytosanitary measures applied at the port of entry?

**RESPONSE: APHIS works with the U.S. Government's National Notification Authority, managed by USDA's Foreign Agricultural Service to notify its proposed SPS regulations and proposed amendments to existing SPS regulations that may have a significant effect on trade of other Members.**

### **3.3 MEASURES AFFECTING PRODUCTION AND TRADE**

#### **3.3.6 Intellectual property rights**

#### **Page 93 (Table 3.23 Summary of intellectual property protection in the United States, May 2014)**

Question 24. According to the above-mentioned Summary of IP protection in the U.S., the duration of patents on industrial designs is "14 years from date of grant". However, in the Patent Law Treaties Implementation Act (PLTIA), effective 18 December 2013, the duration of design patents has been extended to 15 years. It would be appreciated if the U.S. could please explain this discrepancy, and confirm the exact duration of a design patent in the United States?

**RESPONSE: The Patent Law Treaties Implementation Act (PLTIA) does in fact have provisions which change the term of a design patent in the United States from 14 to 15 years "from date of grant." The PLTIA has two titles, Title I pertaining to the Hague Agreement Concerning the International Registration of Industrial Designs, and Title II pertaining to the Patent Law Treaty Implementation. These Titles have different provisions with respect to when they take effect. Title II relating to the Patent Law Treaty (PLT) is already in effect, however, Title I has yet to take effect. As set forth in the PLTIA, the amendments made by Title I (Hague) will take effect "the date of entry into force of the treaty with respect to the United States." Simply stated, Title I of the PLTIA will take effect the same date the Geneva Act of the Hague Agreement takes effect with respect to the United States. Until that date, the term of a patent on industrial designs remains 14 years from the date of grant.**

#### **3.3.6.4 Trade secret protection**

#### **Page 95 (Para 3.207)**

The Administration issued a Strategy on Mitigating the Theft of U.S. Trade Secrets in 2013.<sup>174</sup> The strategy lays out a series of steps to curb the theft of trade secrets, including diplomatic efforts to protect trade secrets overseas, voluntary best practices by private industry, enhanced domestic law enforcement operations, improved domestic legislation, and public awareness and stakeholder outreach.

*Question 25. Does the U.S. trade secrets protection regime allow prosecutors to utilize wiretapping in the process of collecting evidence?*

**RESPONSE:** Yes, federal law authorizes federal investigators to apply for, and federal courts to issue, orders authorizing the interception of wire or electronic communications, as part of a criminal investigation of trade secret theft. See 18 U.S.C. § 2516, which lists predicate offenses for the investigation of which an interception order may be sought, and which includes chapter 90 of Title 18 (covering theft of trade secrets).

*Question 26. Following on from the previous question, are wiretapping methods allowed for cases of trade secrets violation that take place outside U.S. borders? If so, could the U.S. please provide a reference to the relevant legislation?*

**RESPONSE:** The Economic Espionage Act authorizes criminal prosecutions for violations that include conduct committed outside the territory of the United States under some circumstances (if the criminal act was committed by a United States person or any of the criminal conduct took place within the United States). See 18 U.S.C. §1837. In investigating such cases, U.S. law enforcement is authorized to seek court orders authorizing interceptions of wire or electronic communications. Where a U.S. criminal investigation requires interception of communications that may only be acquired abroad, the Department of Justice works within the existing framework of Mutual Legal Assistance Treaties and other cooperation agreements to obtain the assistance of foreign law enforcement authorities in obtaining such evidence.

### *3.3.6.5 Copyright*

#### **Page 98 (Para 3.215)**

*The challenges of copyright in the online environment have led to continued litigation with significant implications for the publishing industry, including foreign holders of copyright.*

*Question 27. To prevent cyber copyright infringement, the U.S. Digital Millennium Copyright Act (DMCA) established several requirements. Could the U.S. please elaborate further on how Internet service providers are encouraged or required to work closely with copyright holder and stakeholder groups in notifying P2P copyright violators? Which party is responsible for notifying the violators - the U.S. Patent & Trade Office (USPTO), Internet service providers, or the copyright holders?*

**RESPONSE:** The DMCA establishes obligations that internet service providers (ISPs) must fulfill in order to limit their liability for the potentially infringing actions of their users. The exact obligations of the ISP depend on the specific activity the ISP is engaged in, for example whether it is operating as a mere conduit to simply provide access to the internet, storing/hosting files on its service, or linking users to online locations. Under Section 512(a), ISPs acting as mere conduits to provide access to the internet, including access used for illegal peer-to-peer file sharing, are not obligated under the law to send notices to subscribers even if a rights holder sends the ISP a notice of infringement. These ISPs are, however, obligated to adopt and reasonably implement policies addressing repeat infringers, including policies that provide for termination of the subscriber under appropriate circumstances. In addition to the formal requirements of the DMCA, a number of major rights holders and ISPs are also working together on a voluntary basis to reduce infringing P2P file transfers through notifications to persons identified as P2P violators and education. More information about these voluntary programs is available at <http://judiciary.house.gov/index.cfm/hearings?ID=9128B02A-B78B-CE14-877E-19251774C37>.

*Question 28. Who assumes the financial costs of the notification process - the copyright holders, the Internet service providers, or the USPTO?*

**RESPONSE: Each party bears its own costs.**

*Question 29. Textbook piracy is also a form of online piracy. Does the U.S. have any legislation regarding this issue? Are violators subject to criminal penalties? Are police allowed to enter campuses to inspect and search for cases of textbook piracy?*

**RESPONSE:** U.S. laws do not specifically address textbook piracy as a separate type of piracy. The copying and distribution of a textbook without a license to do so is handled the same as illegal copying of any other copyrighted work, such as movies, music and software. See 17 U.S.C. §101 *et seq.* This is true for both criminal and civil matters. Textbooks posted online are subject to the Notice and Takedown process set out in the Digital Millennium Copyright Act (DMCA), as are other copyrighted works. For textbooks shared through P2P networks, see Question 27, above. Section 106 of the 1976 U.S. Copyright Act provides copyright holders with a set of six exclusive rights. Section 506 of the Act makes it a criminal offense for an individual to willfully infringe a copyright for the purposes of commercial advantage or private financial gain; to reproduce or distribute, including electronically, a copy of a work whose retail value is more than US\$1,000 during any 180-day period; or with knowledge that a work was intended for commercial distribution, distributing the work by making it available on a computer network accessible to members of the public. Criminal penalties for such infringements are set out in 18 U.S.C. § 2319. Law enforcement may enter physical locations to search for infringing materials, but only if the search is consistent with the due process rights of the party to be searched, including presenting evidence to a judge and obtaining that judge's permission

*Question 30. Does the U.S. have problems with copyright infringement involving media boxes? What are the regulations and legislation dealing with this particular kind of copyright infringement?*

**RESPONSE:** The term "media box" is used to refer to a wide range of technologies, including "set-top" boxes and "over-the-top" boxes that enable users to stream content, including to televisions and mobile devices. Media boxes may be used for non-infringing purposes or may be designed and marketed specifically to enable infringement. The 2014 Special 301 Report recognized, for the first time, the emergence of "media box piracy" as a concern for U.S. rights holders in China (including Hong Kong), Indonesia, Malaysia, Chinese Taipei, Thailand, and Vietnam. The devices reported in rights holder submissions to the U.S. Government are specifically manufactured or advertised as enabling access to infringing materials. Some of the devices described by rights holders incorporate storage and are sold to customers with pre-loaded infringing content. Other devices enable users to circumvent technological protection measures, for example by decrypting without authorization encrypted pay television programming. These devices may also be formatted to provide easy access to remote online sources of unauthorized entertainment content or enable users to employ direct download sites to obtain infringing content. Rights holders have not reported similar concerns in the U.S. market, and there are no specific laws or regulations in the United States dealing with this type of infringement. Therefore, any infringement of copyright through a media box would be addressed through the civil or criminal provisions for copyright infringement or unauthorized circumvention of technological protection measures under the United States Copyright Act, as outlined in the response to Question 29, above.

*Question 31. Does the U.S. government consider all media boxes to be proof of copyright infringement, or are they evaluated on a case-by-case basis, so that only those containing illegal piracy software are considered illegal? And, given that this kind of copyright infringement often takes place across multiple countries, could the U.S. please describe how it works with other countries to solve these issues and prosecute cross-border copyright violators?*

**RESPONSE:** A wide range of devices are capable of playing or displaying digital media content stored locally or streamed over the Internet. Although some media devices may be used to commit or facilitate copyright infringement, such devices are not per se illegal under U.S. law, nor does possession or use of such a device demonstrate intent to infringe. In some cases, the use or sale of devices designed or marketed for use in circumventing technological measures intended to protect copyrighted material may violate the Digital Millennium Copyright Act (17 U.S.C. §§1201 *et seq.*)

The United States has a vibrant market for legitimate streaming content and the devices that enable such authorized streaming. Many broadcasters, cable and satellite television providers, film studios, licensed online streaming services, and other content providers have established specific channels that permit access to their content through these

devices, often on a paid subscription or pay-per-view basis. To date, the United States Government is not aware of any U.S. civil or criminal cases brought against manufacturers or distributors of the types of media boxes that have raised concerns in East Asia. However, previous U.S. courts examining devices and technologies that allegedly enable copyright infringement have done so based upon the facts of the specific case at hand. U.S. law enforcement officials have a number of formal and informal means to cooperate on cross-border intellectual property infringement cases.

**With regard to prosecution of cross-border IP crime, where United States investigators become aware of criminal infringement that involves conduct in another country, we generally seek to work with law enforcement officials in that country (through Mutual Legal Assistance Treaties or other cooperative arrangements) to share information, cooperate on identifying and locating targets, collecting evidence, interdicting criminal activity, and criminally prosecuting those responsible, as appropriate.**

### **3.3.6.7 IP enforcement**

#### **Page 99 (Para 3.220)**

*The Food and Drug Administration (FDA) was given authority to destroy counterfeit or adulterated drugs imported in small packages, and to require pharmaceutical manufacturers to report when a drug they manufacture has been found to be counterfeited or stolen (to address the sale of counterfeit goods and reducing online piracy).*

*Question 32. Could the U.S. please provide further details of its legislative regime regarding patent linkage? Please also describe the role of the U.S. FDA in these matters?*

**RESPONSE:** Under the U.S. patent linkage system, the originator is required to list all relevant patents and their expiration dates, which in the United States are compiled in the Orange Book. Today the Orange Book is available on line. When a generic manufacturer wishes to seek marketing approval based on the findings of safety and efficacy demonstrated by the originator's clinical trial and other data, that manufacturer is obligated to check the Orange Book and determine whether there are any listed patents covering the product.

A generic manufacturer that wishes to market its product must certify to the U.S. FDA that the compound or formula for which it is seeking marketing approval either does not have any listed patents, that the generic manufacturer does not intend to market the product until after the expiration of any listed patents, or that the product will not infringe the relevant patents or the patents are invalid or unenforceable. This last option, the so-called "paragraph IV" certification, requires the generic applicant to inform the originator, and the originator can choose to contest this certification by bringing a civil infringement suit.

## **4 TRADE POLICIES BY SECTORS**

### **4.2 Services**

#### **4.2.1 Financial services**

##### **4.2.1.2 Recent developments**

#### **Page 121 (Para 4.76)**

*On 18 February 2014, the Federal Reserve approved a final rule establishing a number of enhanced prudential standards, including liquidity, risk management, and capital to strengthen the supervision and regulation of U.S. banks with assets of at least US\$50 billion, as well as U.S. operations of foreign banks that have more than US\$50 billion in non-agency U.S. assets.*

*Question 33. The FED is developing a single lending limit under the framework of the final rules. Since foreign banks in the U.S. are subject to the final rules, and our single lending limit rule exempts banks' lending to the government and interbank lending, we wonder whether the U.S. rules will exempt these two kinds of lending?*

**RESPONSE:** Details are available in the final rule, available at: "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations" Final Rule, Federal Reserve System, 12 CFR Part 252 [Regulation YY; Docket No. 1438],

**Federal Register, Vol. 79, No. 59 / Thursday, March 27, 2014 / Rules and Regulations.**  
<http://www.gpo.gov/fdsys/pkg/FR-2014-03-27/html/2014-05699.htm>.

Question 34. However, if these two kinds of lending are not exempted, we would like to suggest that banks with limited U.S. operations should be exempted from the rules in order to prevent a negative impact on the interbank lending of these relatively small foreign banks. What is the US' reaction to this suggestion?

**RESPONSE: This rule is final.**

**4.2.2 Telecom**

**4.2.2.2 Legal and institutional framework**

**Pages 124 - 125 (Para 4.90)**

Section 310 of the Communications Act, restricts granting of a common carrier wireless licence to foreign governments, as well as to any non-U.S. citizens or corporations, or any corporation with more than 20% foreign ownership. However, under its statutory "forbearance" authority, the Federal Communications Commission (FCC) has determined that it will not apply the 20% limit to the class of common carrier wireless licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the FCC determines, upon the filing of a petition for declaratory ruling by the licensee, that the particular foreign investment is consistent with the public interest. In addition, where a common carrier wireless licensee is controlled by a U.S.-organized parent company, Section 310 allows foreign individuals, corporations, or governments to own and vote 25% of the U.S. parent's capital stock. In all cases, whether an applicant is domestic or foreign, the FCC is authorized to attach conditions to a licence, or to deny a licence, if it finds it is in the public interest to do so.

US regulations also stipulate that foreign individuals, corporations or governments are permitted to own up to 25% of the U.S. parent's capital stock directly and indirectly. Furthermore, without violating the public interests of the U.S. and on a case-by-case basis, the FCC may relax the limitation to 25% and raise the proportion of foreign ownership up to 100% (ref: footnote 119 in the Secretariat report).

Question 35. How does the FCC calculate the proportion of foreign ownership? As a specific example, please explain how the FCC reviews foreign investment in the US's common carrier wireless licence? In addition, has the FCC ever rejected a case in which an investment would exceed the 25% foreign ownership ceiling? If so, what reasons were given by the FCC for the rejection?

**RESPONSE: Details on how foreign ownership is calculated can be found at 47 C.F.R 1.992. Specific examples can be found in any order approving foreign ownership of a wireless license. A recent example is here: <https://apps.fcc.gov/edocs/public/attachmatch/DA-13-384A1.pdf>. The FCC has never denied an application to exceed the 25% foreign ownership ceiling.**

Question 36. Besides the FCC, do any other governmental institutions also undertake reviews of foreign investments in the U.S. telecommunications industry? If so, could the U.S. please describe the review process?

**RESPONSE: Depending on the case, a review of a license application may involve any of the following: the Department of State, the Department of Defense, the Department of Homeland Security, the Department of Justice, and the Office of the United States Trade Representative. These agencies all have the opportunity (but not the obligation) to comment on any pending application, based on their agency-specific interests.**

**4.2.2.3 Policy actions**

**Pages 127 and 128 (Paras 4.95 and 4.96)**

In December 2010, the FCC issued a Report and Order (FCC 10-201) to adopt open internet rules. The FCC prohibited fixed broadband providers from unreasonably discriminating in transmitting lawful network traffic and from blocking lawful content, applications, and services. The FCC also imposed more limited anti-blocking rules on mobile broadband providers, and required both fixed

and mobile broadband providers to disclose their network management practices. In September 2011, Verizon appealed the FCC's Open Internet Order. In January 2014, the U. S. Court of Appeals for the District of Columbia Circuit overturned the FCC's blocking and discriminations rules for the internet, but also upheld the FCC's authority to adopt open Internet rules under section 706 of the Telecommunications Act.

In response to the Court's decision, on 15 May 2014 the FCC proposed new Open Internet rules, so as to enhance the existing transparency requirement, reinstate the no-blocking rule with certain clarifications, and require fixed (and potentially mobile) broadband providers to ensure that their practices are commercially reasonable. The FCC also sought comment on whether it should adopt legal presumptions that certain practices by broadband providers are commercially unreasonable, including with respect to prioritization of traffic from affiliated services. The FCC sought public comment on these proposed rules and on alternative proposals to protect the open Internet, including those that would regulate broadband providers as common carriers under certain circumstances. The deadline for submitting initial comments was 15 July 2014, and replies to those comments were due on 15 September 2014. New Open Internet rules are expected to be adopted by the end of 2014.

Question 37. Have there been any further developments since the public comments on the FCC's proposed new internet rules were compiled and what was the main reaction in terms of public opinion? Moreover, after the experiences of the court decision and the public comment on its new proposals, what is the FCC's position on the subject of network neutrality, and what direction is it likely to take in the future?

**RESPONSE: As this is an open proceeding, it would be premature to conclude what the FCC's position might be.**

## **PART II: REGARDING THE GOVERNMENT REPORT (WT/TPR/G/307)**

### **4. TRADE POLICY DEVELOPMENTS SINCE 2012**

#### **4.2 Regional Initiatives**

##### **Page 12 (Para 4.9)**

During the period of this review, the United States and its TPP partners – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam – made substantial progress toward completing the Trans-Pacific Partnership Agreement (TPP), a high-standard, 12 country Asia-Pacific trade and investment agreement. The TPP will advance U.S. economic interests with the fastest growing region of the world and expand U.S. exports, which are critical to U.S. economic growth and supporting and retaining high-paying, high-quality jobs in the United States, while creating a platform for economic integration across the Asia-Pacific region.

Question 38. The TPP is seen by the U.S. government as a platform for economic integration across the Asia-Pacific region. At the same time, the formation of a free trade area across the Asia-Pacific region (the FTAAP) has long been a goal of the APEC member economies. Could the U.S. government please elaborate further on how the TPP will contribute to achieving the FTAAP goal, in particular by pointing to where the TPP trade agenda complements or enhances trade-related initiatives proposed in the APEC forum?

**RESPONSE: The United States supports the goal that APEC members have endorsed of a Free Trade Area of the Asia-Pacific (FTAAP), and have further supported the APEC members' vision that FTAAP can be achieved through multiple pathways. With our Trans-Pacific Partnership (TPP) partners, we are developing TPP as a regional agreement that could be expanded in the future to include other regional economies that are prepared to meet its ambitious standards. We view TPP as a high-standard pathway to FTAAP, recognizing that ambitious and comprehensive agreements are more likely to generate the greatest economic benefits for participants. TPP members have built on the work of APEC in many areas, including on regulatory issues, small- and medium-sized enterprises, trade facilitation, and other areas.**

**ADDITIONAL QUESTIONS FROM THE SEPARATE  
CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU**

**PART I: REGARDING THE SECRETARIAT REPORT (WT/TPR/S/307)**

**4 TRADE POLICIES BY SECTOR**

**4.1 AGRICULTURE**

**4.1.1 AGRICULTURAL ACT OF 2014**

**Page 103-104 (Table 4.1)**

According to Table 4.1 Overview of main programme changes in the 2014 Farm Bill, crop insurance amendments include new subsidized insurance programmes: supplemental coverage option (SCO) and stacked income protection plan for producers of upland cotton (STAX).

Question(s):

1. Regarding Table 4.1 Overview of main programme changes in the 2014 Farm Bill, could the U.S. please elaborate on the amendments of crop insurance plans and the anticipated benefits?

**RESPONSE: Information on Supplemental Coverage Option (SCO), Stacked Income Protection Plan (STAX), and other Farm Bill amendments affecting crop insurance is available on the Risk Management Agency's website at <http://www.rma.usda.gov/news/currentissues/farmbill/index.html>.** The main benefit of SCO and STAX coverage is that they provides producers an option to purchase subsidized area-based insurance coverage for a portion of the expected market value of their crops, and is generally based on the deductible of an underlying policy.

**PART II: REGARDING THE GOVERNMENT REPORT (WT/TPR/G/307)**

**4. TRADE POLICY DEVELOPMENTS SINCE 2012**

**4.2 REGIONAL INITIATIVES**

**Page 12 (Para 4.9)**

During the period of this review, the United States and its TPP partners – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam – made substantial progress toward completing the Trans-Pacific Partnership Agreement (TPP), a high-standard, 12 country Asia-Pacific trade and investment agreement. The TPP will advance U.S. economic interests with the fastest growing region of the world and expand U.S. exports, which are critical to U.S. economic growth and supporting and retaining high-paying, high-quality jobs in the United States, while creating a platform for economic integration across the Asia-Pacific region.

Question(s):

2. Would the U.S. please explain the standards it applies when discussing whether to accept new members with other TPP members? Chinese Taipei would be the sixth largest trading economy if accepted to the TPP. With its undeniable economic size, Chinese Taipei's entrance would be in line with the objectives of the above-mentioned "advancing U.S. economic interests with the fastest growing region of the world and expanding U.S. exports, which are critical to U.S. economic growth and supporting and retaining high-paying, high-quality jobs in the United States."

**RESPONSE: TPP is being developed by the current partners as a potential platform for further Asia-Pacific regional economic integration, and TPP membership has expanded from seven partners at the negotiation's launch to 12 now. Decisions about accepting new candidates into TPP are made on a consensus basis by all current TPP partners. The United States looks at any candidate's demonstrated readiness to take on TPP's ambitious trade and investment commitments and address bilateral issues, as well as its track record on living up to existing trade and investment commitments. Right now, the 12 TPP partners are focused on concluding the negotiations to create the TPP.**

**THAILAND****QUESTIONS REGARDING THE SECRETARIAT REPORT**  
**3. TRADE POLICIES AND PRACTICES BY MEASURE****Page 29 (paragraph 2.12)**

**Question 1:** As explained in the Report, the United States will continue to promote its policy of legally and sustainably caught and accurately labeled seafood, and will assist foreign nations in building capacity to combat IUU fishing and seafood fraud. Could the United States provide further details on such policy in particular how to deal with seafood fraud as well as on the capacity building program to assist foreign nations in combating IUU fishing and seafood fraud?

**RESPONSE:** The Task Force is providing its recommendations to the President in December 2014. The recommendations will be published in the *Federal Register* with an opportunity for public comment. Upon receiving guidance from the President on the recommendations, the Task Force will begin its implementation of the recommendations and, within one year, will report to the President on its progress. Capacity building activities and opportunities are one of the elements for possible inclusion in the recommendations that the Task Force is considering. Through the Magnuson-Stevens Fishery Conservation and Management Act and other authorities, the National Marine Fisheries Service engages in international cooperation and assistance, with particular emphasis on efforts to combat IUU fishing, mitigate bycatch of protected living marine resources, and conserve sharks. One purpose is to assist nations that are identified under the High Seas Driftnet Fishing Moratorium Protection Act, so that they may better address the activities for which they were identified, including IUU fishing. Information regarding IUU measures is available online at: [http://www.nmfs.noaa.gov/ia/iuu/iuu\\_overview.html](http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html).

**Page 39 (paragraph 2.51)**

**Question 2:** With regard to the "Make it in America" programme, Thailand would appreciate it if the U.S. could clarify whether the one-time or three-year grant award is conditional upon the employment of American citizens and how to apply such programme in compliance with the US' commitments in various FTAs with regard to the provision on Prohibition of Performance Requirements, particularly prohibition of domestic content measures.

**RESPONSE:** The Make it in America program was a one-time program, carried out in 2012, to identify innovative projects focused on increasing investment and employment. Further information is available at [www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge](http://www.commerce.gov/news/fact-sheets/2012/09/25/fact-sheet-make-it-america-challenge). The winning projects are described at <http://www.eda.gov/challenges/MakeItInAmerica/winners.htm>. Information about the SelectUSA program is available at <http://selectusa.commerce.gov>. The SelectUSA website contains a searchable database of over 70 different federal incentive programs designed to encourage business investment across a range of sectors (<http://selectusa.commerce.gov/investment-incentives>).

**Page 39 (paragraph 2.52)**

**Question 3:** Thailand would like to ask the U.S. the following questions:

(1) What are the criteria set for transactions that may fall within the scope of "covered" foreign investment transactions to be determined by the Committee on Foreign Investment in the United States (CFIUS)?

**RESPONSE:** The rules governing the CFIUS process are set forth in section 721; in Executive Order 11858, as amended most recently by Executive Order 13456 of January 23, 2008 ("Executive Order 11858"); and in regulations found at 31 CFR part 800, as amended most recently by the Final Rule published at 73 FR 70702 (Nov. 21, 2008) ("Regulations"). These provisions establish CFIUS and provide the President and CFIUS with the authority to review any "covered transaction," defined in the Regulations as "any transaction that is proposed or pending after August 23, 1988, by or with any foreign person, which could result in control of a U.S. business by a foreign person."

(2) Is there any Thai investment that falls under such scope?

**RESPONSE:** The number of filings per country in 2012 is available in CFIUS's 2012 Annual Report. <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/2013%20CFIUS%20Annual%20Report%20PUBLIC.pdf>.

(3) Could the U.S. share with Thailand its guidelines for the determination of whether a transaction threatens the 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).

*Page 85 (paragraph 3.167)*

**Question 4:** With regard to the US's government procurement, we have the following questions:

- (1) Would the United States estimate the timing of finalizing the regulatory changes to implement the above-mentioned law?

**RESPONSE:** The effective date of the statute 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.

(2) Would the United States elaborate further whether such new legislation is to create a 2% federal excise tax to be applied only to all foreign suppliers of goods and services receiving payments for purchasing of goods and services from the federal governments under the government procurement contracts? Is there any federal excise tax on foreign suppliers of goods and services receiving payments under the normal course of trade?

**RESPONSE:** The U.S Internal Revenue Service and the U.S. Treasury Department are in the process of drafting regulations. The United States is unable to provide details about the administration or interpretation of the legislation prior to the publication of these regulations.

(3) Please elaborate the term and definition of "international procurement agreement"

**RESPONSE:** The effective date of the statute 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.

(4) Has, in history, the U.S. federal government awarded procurement contracts to foreign suppliers of goods and services, including construction services, where their government is neither a party to the WTO GPA nor to an international procurement agreement with the U.S.? Please specify.

**RESPONSE:** Yes. Exceptions exist to the purchasing restrictions under the Buy American Act (see paragraph 3.183 and associated footnote 143) and the Trade Agreements Act. Contract awards are searchable in the Federal Procurement Data System (FPDS) at [www.fpds.gov](http://www.fpds.gov).

*Pages 86-87 (paragraphs 3.174-3.182)*

**Question 5:** Has any international procurement agreement been waived from the bidding procedures regulated under the Federal Acquisition Regulation (FAR)? Please clarify.

**RESPONSE:** The Federal Acquisition Regulation (FAR) incorporates U.S. obligations for Federal procurements covered under international agreements, so compliance with the FAR is not waived for such procurements. See FAR subpart 25.4.

***Page 87 (paragraph 3.184)***

**Question 6:** (1) Would the United States please elaborate "eligible products" covered under the WTO GPA, some relevant FTAs, and for LDCs that have been waived from the Buy American Act?

**RESPONSE:** Eligible products are those covered by the United States under the WTO GPA and Free Trade Agreements (FAR 25.403(a)). Least Developed Countries end products are eligible products for procurements covered by the United States under the GPA (FAR 25.404).

(2) Does "some relevant FTAs" mean all FTAs incorporating the government procurement provisions? If not, please explain.

**RESPONSE:** Yes. "Some FTAs" means those FTAs that include government procurement market access obligations.

***Pages 88-89 (paragraph 3.187 and Table 3.22)******Question 7:***

(1) Do we understand correctly that all thresholds in all trade agreements, including the WTO GPA, are subject to revision(s) by the USTR approximately every two years?

**RESPONSE:** The WTO Committee on Government Procurement adopted GPA/1 on March 5, 1996 providing for notice every two years of threshold figures in national currencies. Each U.S. free trade agreement with government procurement market access obligations addresses the frequency and formula for any adjustment of the relevant thresholds. The agreements generally provide for thresholds to be adjusted every two years consistent with the timing of the WTO GPA notifications. The next adjustments are schedule for December 2015 and will be published in the Federal Register by USTR.

(2) What are the grounds for consideration of such revision?

**RESPONSE:** Market access commitment thresholds under the WTO GPA are denominated in IMF Special Drawing Rights (SDRs). WTO Committee on Government Procurement document GPA/1 addresses how to calculate the threshold figures in national currencies. The relevant U.S. free trade agreements also specify the formula for adjustments to the thresholds.

*Table 3.22 has shown thresholds for the application of trade agreements:*

(3) Are these trade agreements only agreements incorporating the government procurement provision?

**RESPONSE:** Table 3.22 reflects U.S. FTAs that include government procurement market access obligations.

(4) Thailand has noted that some thresholds for "supply and services contracts" under certain FTAs are less than these thresholds under the WTO GPA. However, it is different for construction contract. Thresholds for construction contract under particular FTAs, namely Bahrain FTA, NAFTA and Oman FTA are higher than thresholds under the WTO GPA and other FTAs. Would the United States clarify why these FTA parties receive less favorable than other WTO GPA parties for the construction contract?

**RESPONSE:** The higher construction thresholds under U.S.-Bahrain FTA, NAFTA and U.S.-Oman FTA reflect the mutually agreed levels of market access coverage.

***Page 89 (paragraph 3.188)******Question 8:***

(1) Would the United States please specify the list of "some 37 states participat[ing] in the GPA" as portrayed under the paragraph?

(2) Do these states, which participate in the WTO GPA, also participate in international procurement agreements? Please specify.

**RESPONSE:** Information on the United States coverage schedule under the revised GPA can be located on the WTO webpage

([http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_app\\_agree\\_e.htm#revisedGPA](http://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm#revisedGPA)). Information on the United States coverage schedule under Free Trade Agreements can be found on the webpage of the Office of the U.S. Trade Representative ([www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations](http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations)).

**Page 110 (paragraph 4.31)**

**Question 9:** Thailand would like to seek clarification on the following points;

- (1) Whether the U.S. Government has donation limits on a single category of dairy products under the Dairy Product Donation Program.

**RESPONSE:** There are no specific limits on donations, although USDA dairy product purchase quantities may have to be limited to meet the 2014 Farm Bill's immediate distribution requirement. According to Sec. 1431e(1) of the Farm Bill, "...The Secretary of Agriculture shall distribute, but not store, the dairy products purchased under the dairy product donation program..."

- (2) Whether the Dairy Product Donation Program implementation would possibly create significant market distortions in global dairy supply chain.

**RESPONSE:** Time limits for purchases under the Dairy Product Donation Program (DPDP) and domestic price and international price difference limits ensure that any impact on the global dairy supply chain would be insignificant in comparison to global production and trade.

**DPDP purchases will cease at the end of the month in which it is determined that:**

- The actual dairy production margin for the previous month is above US\$4 per cwt;
- Purchases have taken place for three consecutive months;
- U.S. cheddar or NDM price exceeds world prices by 5% if the actual dairy production margin is at or below US\$4 but above US\$3; or
- U.S. cheddar or NDM price exceeds world prices by 7 percent, if the margin is US\$3 or less.

**Page 116 (paragraph 4.65)**

**Question 10:**

- (1) Could the United States please explain why most tariff rate quotas were under-filled?

**RESPONSE:** The fill rates for U.S. tariff quotas are driven by market conditions. This can lead to fill rates varying significantly from one tariff quota to another and from year to year. With regards to the 2012 notification, most of the tariff rate quotas with very low fill rates are administered on a first come, first-served basis.

- (2) What measures will be taken for improvement?

**RESPONSE:** To further liberalize markets and bolster transparency, the United States is committed to and encourages the implementation of the Bali Ministerial Understanding on Tariff-Rate Quota Administration.

**Pages 124-125 (paragraph 4.90)**

**Question 11:** What are the FCC's criteria in considering whether a corporation meets the basic needs for "the public interest" as indicated in the last sentence of the paragraph?

**RESPONSE:** Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act.

**Page 134 (paragraph 4.106)**

**Question 12:** Please provide clarification why, in practice, the measures indicated in the paragraph would apply only to Canada?

**RESPONSE: Canada is the only WTO Member we are aware of that discriminates in this manner.**

**Pages 134-135 (paragraph 4.111)**

**Question 13:**

(1) Please provide clear definitions and illustrations for "directly or indirectly controlled" (any other corporation of which more than 25% of the capital stock is owned or voted by aliens, foreign governments or foreign corporations).

**RESPONSE:** "Directly or indirectly controlled" means controlled by the foreign-established company, or by a subsidiary that company established in the United States. To hold such a license, the foreign company needs to create another corporate layer in the United States (e.g. a holding company) to effectuate its holding of a license. Through such a structure, however, 100% control, all flowing through to the foreign company, can be achieved.

(2) What are the FCC's criteria in considering whether or not to allow higher levels of foreign ownership in controlling U.S. parent companies to meet certain standard for the public interest on this matter?

**RESPONSE:** The answer is the same as with question 11 above. The public interest standard for granting common carrier wireless licenses to companies with foreign ownership that would exceed the limits in the Communications Act has not changed for WTO investors. Following the WTO conclusion of negotiations on basic telecommunications and adoption of the Fourth Protocol, the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member countries in common carrier licensees does not pose competitive concerns in the U.S. market. The FCC continues to apply that presumption. The FCC also continues to consider, as part of its public interest analysis, any national security, law enforcement, foreign policy or trade policy concerns that may be raised by proposed foreign investment that would exceed the limits of the Communications Act.

**Page 140 (paragraph 4.130)**

**Question 14:** Please provide specific laws and regulations concerning a needs-based quantitative limit specified in the paragraph.

**RESPONSE:** A description of U.S. state "certificate-of-need ("CON") programs and links to relevant laws and regulations can be found at <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>.

The U.S. healthcare industry is largely open to foreign investment as shown by inward foreign affiliates trade statistics, i.e. on sales of subsidiaries of foreign-owned companies with inward flows being fourfold the outward flows and by the fact that seven out of the ten largest private equity deals in global healthcare in 2011 were targeting U.S. companies. This attraction prevails despite the fact, recognized by the authorities themselves<sup>32</sup>, that it can be challenging for foreign firms to enter the U.S. market due to state level regulations and licensing requirements, as well as difficulties qualifying for reimbursement from third parties.

The United States is the world's leading destination for foreign healthcare workers. It hosts the largest number of foreign healthcare workers in absolute terms although foreign professionals make up a larger share of the workforce in many European countries. In 2010, demand for physicians exceeded supply by 13,700 physicians and 22% of the physicians operating in the United States graduated from foreign medical schools.<sup>33</sup> As a result of the healthcare reform and the additional demand it will entail, it is expected that the supply-demand gap for physicians will widen in the coming years.

---

<sup>32</sup> This statement is excerpted from pages 4-16. See U.S. International Trade Commission (2013b).

<sup>33</sup> Outside the United States and Canada. See U.S. International Trade Commission (2013b).

**As a consequence, foreign caregivers are allowed to practice in the United States under specific programmes, for instance a visa-waiver program, which allows U.S. trained international medical graduates to stay in the United States if they practice in a medically-underserved area for three years. To date, 9,000 physicians have worked under this program.**

**Page 141 (paragraphs 4.132-4.133)**

**Question 15:** Thailand would like to inquire about the following issues;

(1) Whether the U.S. Government has a policy to amend the relevant regulations of healthcare industry in order to facilitate and promote foreign investment in this field in the future.

**RESPONSE:** As the Secretariat noted, the United States warmly welcomes foreign investment in the health care sector, just as it does in all other sectors. The market for investment in health care is largely open. We are unaware of plans to change any regulations for this purpose.

(2) The possibility of Thailand being informed of the U.S. government's long term policy on solving the under-supply of physicians in the U.S. particularly any foreseeable future plans on introducing Mutual Recognition Arrangement (MRA) between the U.S. and any countries.

**RESPONSE:** The following provides an overview of the programs that enable health care providers from foreign countries to receive training or provide clinical care in the United States.

**Training**

The Department of State's Exchange Visitor Program (EVP), provides non-immigrant visas for individuals to participate in academic or training exchange programs. Students and various professions including physicians are eligible for the EVP. More information can be found at <http://j1visa.state.gov>.

**Clinical Care**

In order to provide care in the United States, a foreign educated or trained physician must be licensed in a U.S. State (in addition to holding an appropriate visa).

To be licensed, a foreign physician must complete a U.S. residency program, as well as U.S. Medical Licensing Examination (USMLE) Steps 1, 2, &3. To compete for a residency position, all foreign-trained physicians (including U.S. citizens & permanent residents trained abroad) must be certified by Educational Commission for Foreign Medical Graduates (ECFMG).

Most foreign physicians enter U.S. Residencies on the J-1 (training) visa; the 2-year post training foreign residency requirement of the J-1 visa may be waived in return for an agreement to work for 3 years in an underserved area.

We are not aware of plans by U.S. licensing authorities to introduce Mutual Recognition Arrangement (MRA).

***QUESTIONS REGARDING THE REPORT BY THE GOVERNMENT***

**Page 26 (paragraph 6.2)**

**Question 16:**

(1) What is the relationship between the EGA initiative and the negotiations on the elimination of tariffs and non tariff barriers on environmental goods and services (EGS) under the CTE?

**RESPONSE:** The United States sees no conflict between the EGA negotiations and the CTE-SS' work to liberalize trade in environmental goods. The recently launched EGA negotiations present a unique opportunity to add impetus and energy to the multilateral trading system. The EGA is being negotiated by a group of WTO Members committed to liberalization in this sector, but the benefits will accrue to all WTO Members, as the participants plan to eliminate tariffs on agreed products on an MFN basis.

(2) *Have the U.S. and 13 other WTO members, under the EGA negotiations, agreed on definitions, criteria, or ways to define "Environmental Goods"?*

**RESPONSE: The EGA participants are building on the list of environmental goods endorsed by APEC Leaders by exploring a broad range of additional products.**

(3) *Have the U.S. and 13 other WTO members, under the EGA negotiations, agreed on the procedure to follow in case of revising the initially agreed list of environmental goods in the future?*

**RESPONSE: EGA participants have committed to explore a future oriented agreement able to address other issues in the sector and to respond to changes in technologies in the years to come. These discussions are ongoing.**

(4) *Please provide information on the work that the U.S. has done or has been doing under the CTE on the relationship between the WTO rules and multilateral environment agreements (MEAs).*

**RESPONSE: The United States has been an active participant in both the WTO Committee on Trade and Environment (CTE) and Committee on Trade and Environment in Special Session (CTESS) since their inception. With regard to the former, the United States has continually emphasized the importance of capacity-building and information sharing among Members to meet key trade and environmental objectives.**

*Pages 26-27 (paragraphs 6.3-6.4)*

**Question 17:**

(1) *Please clarify (1.1) whether these measures would affect international trade, and if so (1.2) what approach will be adopted to ensure that the cooperation between the U.S. and partner countries to apply measures which tackle environmental problems are consistent with the WTO rule .*

(2) *Specifically, it would be useful to clarify how to ascertain that these measures would not (2.1) be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, and (2.2) constitute a disguised restriction on international trade.*

**RESPONSE: The United States strives to ensure that its trade and environmental policies and measures are mutually supportive, and that measures to protect the environment are implemented in a manner consistent with international trade obligations.**

## THAILAND (ADDITIONAL QUESTIONS)

### QUESTIONS REGARDING THE SECRETARIAT REPORT

#### **2. TRADE AND INVESTMENT REGIME**

##### **Page 39 (paragraph 2.50)**

**Question 18:** It is mentioned that SelectUSA "does not offer direct incentives but provides a link to federal government programmes offering incentives to businesses." In this regard, Thailand would like to seek clarification on the following points:

- (1) What are the incentives which the federal government as well as the government authorities in each state offers to foreign direct investment "to attract and retain investment"?
- (2) What are the eligibility criteria and procedures in an application for these incentives?

**RESPONSE:** The SelectUSA website contains a detailed and searchable database of Federal Government programs and incentives for businesses: <http://selectusa.commerce.gov/investment-incentives>. The database provides summary information about these programs and incentives, as well as links to websites where more detailed information about each program, including eligibility criteria and application procedures, can be found.

##### **Page 39 (paragraph 2.51)**

**Question 19:** What are the criteria, qualifications, and/or conditions of a project applying for the grant awards? For example, is there a condition of foreign shareholding restriction?

**RESPONSE:** The criteria, qualifications, or conditions for application for particular business programs or incentives may vary depending on the program. Detailed information about Federal Government programs and incentives, including eligibility criteria and application procedures, is available through the SelectUSA website: <http://selectusa.commerce.gov/investment-incentives>.

##### **Page 39 (paragraph 2.52)**

**Question 20:** Thailand would like to ask the U.S. the additional following questions on CFIUS:

- (1) What is the procedure for CFIUS in investigating "covered foreign investment transactions"?
- (2) Which sectors are the targets for such investigation?
- (3) What is the ground for the President to prohibit such transaction? Are there other grounds than national security? Has any Thai "covered transaction" been investigated in the past?

**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 the CFIUS statute, executive order, regulation, and in the guidance document noted above, all of which are available at: [www.treasury.gov/cfius](http://www.treasury.gov/cfius).

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

##### **Page 89 (paragraph 3.189)**

**Question 21:** Thailand would like to seek further clarification on the following points:

- (1) What is the definition of "IP-intensive industries"?
- (2) What type of businesses falls under the "IP-intensive industries"?
- (3) Could the U.S. elaborate on the types of IP-related jobs that are mentioned in the paragraph?

**RESPONSE:** Regarding the definition of "IP-intensive industries" used in the report cited by the Secretariat, the report states that it "...employs USPTO administrative data to

identify the industries that most intensively use the protection offered by patents and trademarks. For copyrights, the report identifies the set of industries primarily responsible for both the creation and production of copyrighted materials. The report then uses standard statistical methods to identify which American industries are the most patent-, trademark-, and copyright-intensive, and defines this subset of industries as 'IP-intensive'".

Regarding the type of businesses that constitute "IP-intensive industries," Section II of the report cited by the Secretariat provides extensive analysis with respect to patent-, trademark, and copyright-intensive industries in the United States. For example, Table 1 of the report lists patent intensity by industry, Table 6 lists trademark-intensive industries, Table 9 lists copyright-intensive industries, and Table 10 lists IP-intensive industries.

Regarding the types of IP-related jobs discussed in the report, Section III provides a detailed assessment of contributions of IP-intensive industries to the U.S. economy, including with respect to employment. The report explains that its review covers payroll jobs (or wage and salary workers), as well as the self-employed and unpaid family workers. The report does an in-depth assessment of the types of jobs associated with patent-, trademark-, and copyright-intensive industries in the United States.

#### 4. **TRADE POLICIES BY SECTOR**

##### **Pages 124-125 (paragraph 4.90)**

**Question 22:** Thailand would like to know that in the case that the FCC does not apply the 20% foreign ownership limitation, is there any other limitation on foreign ownership in the telecom sector? If so, please provide details.

**RESPONSE:** Section 310(b)(4) of the Communications Act establishes a 25% benchmark for investment by foreign individuals, governments, and other foreign-organized entities in U.S.-organized entities that directly or indirectly control a U.S. common carrier radio licensee. A foreign individual, government, or other foreign-organized entity may own, directly or indirectly, more than 25% (and up to 100%) of the stock of a U.S.-organized entity that, in turn, holds a controlling interest in a common carrier licensee, unless the Commission finds that the public interest will be served by refusing to permit such ownership. The Commission applies the same public interest criteria in reviewing foreign ownership that would exceed the 20% and 25% limits in Sections 310(b)(3) and 310(b)(4), respectively. (See attached Section 310(b)(3) and Section 310(b)(4) ownership diagrams.)

We also note that Section 310(a) of the Communications Act prohibits a foreign government or its representative from holding a radio license in its own right. In addition, Sections 310(b)(1) and 310(b)(2) prohibit any foreign individual or its representative, and any foreign-organized corporation, respectively, from holding a common carrier radio license in its own right. Apart from services based on the use of wireless spectrum, there are no statutory foreign ownership limitations in the telecommunications sector.

##### **Page 133 (paragraph 4.104)**

**Question 23:** Thailand would like to seek clarification on the following points:

- (1) What is the difference between radio and television service (2.D.c)" and "radio and television transmission services (2.D.d)"?

**RESPONSE:** The United States followed the W.120 in scheduling its service commitments, and the distinction Thailand is querying is implicit in that classification system: the W.120 distinguishes between services relating to radio and TV programming, and the transmission of such programming. The distinction is also explicit in the CPC references indicated in the W.120 (although the United States did not rely on these in making its commitments.).

(2) Please explain about the definitions of "officer" and "directors" in this context, i.e. the last sentence of the quoted text.

**RESPONSE:** Section 310 of the Communications Act of 1934, that formed the basis of the U.S. 1994 GATS commitments, was amended in 1996. It no longer refers to either "officers" or "directors."

## OTHER QUESTIONS

### Question 24: Intellectual property rights - Patent

Regarding the USPTO's aim in reducing the period of patent registration from 33.9 months in 2012, 27.8 months in 2014 and 20 months in 2019, Thailand would appreciate it if the U.S. could provide further details as follows:

- (1) The process/procedure methods to accelerate the patent registration.
- (2) The statistics of patent examiners relating to the applications received per year.
- (3) The USPTO's future plan to increase the number of patent examiners.

**RESPONSE:** The USPTO has moved from a one-track patent examination process to a multitrack process by adopting procedures and initiatives that incentivize abandoning applications that are not important to applicants, accelerating critical technologies, and exploring other incentive and accelerated examination options. Specific initiatives include Quick Path Information Disclosure Statement pilot program, the After Final Consideration Pilot 2.0, and Track One Prioritized Examination program.

The requested statistics are as follows:

Year	2011	2012	2013	2014
Applications (including RCEs)	537,171	565,566	601,464	618,330
Examiners at End-of-Year (Utility, Plants, Re-Issue, Designs)	6,780	7,935	8,051	8,611

The USPTO plans to hire 1,000 examiners in Fiscal Year 2015 (October 1, 2014 – September 30, 2015). After FY2015, the USPO anticipates it will be able to scale down hiring efforts and focus primarily on replacing attritions to maintain an optimal examination capacity and working level inventory.

### Question 25: Intellectual property rights - Trademark

(1) As the U.S. trade policy review report does not specifically mention the development or measures concerning trademark, it would be appreciated if the U.S. could elaborate more on the success of the extension of trademark protection to scent marks and provide the statistics thereof.

(2) Does the infringement of trademark in the U.S. which is not the infringement found at the border, tend to increase or decrease? What is the cause of such a trend?

**RESPONSE:** The United States has a broad definition as to what may be eligible for trademark protection. Section 45 of the Trademark Act (15 U.S.C. §1127) states that any word, name, symbol, or device, (or any combination thereof) used to identify and distinguish goods or services and to indicate their source is capable of being protected as a trademark. Thus, a scent, if it is proven to function as an indicator of source, may be protected as a trademark. The U.S. believes that applicants are in the best position to develop and choose a sign to identify and distinguish their own goods and services from others. Any limitation, such as a requirement that a sign to be visually perceptible, merely limits the types of eligible subject matter that may be protected as a trademark and, therefore limits businesses from selecting these types of non-traditional marks (i.e., scents) to identify their goods or services. Thirty one trademark applications have

**been received with nine proceeding to registration and three currently pending final disposition.**

**The United States does not keep statistics on the rates of trademark infringement claims filed in federal and state courts or on rates of infringement found in such cases, so is not in a position to indicate whether rates are increasing or decreasing.**

**Question 26: Technical regulations and standards**

Referring to the TBT Committee meeting in November 2014, Thailand expressed its concerns on Notification G/TBT/N/USA/916 regarding Tire Identification and Recordkeeping which proposed to increase the plant codes from 2 to 3 digits and require a blank space 50 mm after the tire identification number (TIN).

In this regard, Thailand would like the U.S. to review the requirements proposed. Moreover, Thailand would like to be updated on the progress and/or outcome of the mentioned Notification. Any advice on the development and provision of related text or document would be appreciated.

**RESPONSE: On 24 July 2014, The National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. NHTSA proposed two amendments to the Tire Identification Number (TIN), which must appear on virtually all new and retreaded motor vehicle tires sold in the United States, and which plays an important role in identifying which tires are subject to recall and remedy campaigns for safety defects and noncompliances.**

The comment period has closed, and NHTSA is currently evaluating the comments received, including those submitted by the Government of Thailand. All of the comments can be viewed at: <http://www.regulations.gov/#!docketDetail;D=NHTSA-2014-0084>. NHTSA is carefully considering all comments as it works to develop the final rule. Therefore, NHTSA cannot provide a determination at this time on the issues raised by Thailand or any other entity that submitted comments. These issues, and many others, will be addressed when the final rule is published, including a comprehensive response to comments the agency received. Thailand is welcome to submit additional questions to NHTSA using the contact points identified in the hyperlink above.

---

## TRINIDAD AND TOBAGO

***Report by United States (WT/TPR/G/307)***

***SECTION 1: The United States in the Global Trading System***

- (a) Paragraph 1.6 (page 4): *The report indicated that the U.S. will continue vigilant trade enforcement efforts at the WTO, while also monitoring and enforcing commitments in our bilateral, plurilateral, and regional trade agreements, to maintain a level playing field and uphold the rule of law.*

**Question 1:** *What new legislative measures have been put in place to uphold outstanding rulings of the WTO Dispute Settlement Body in areas where the U.S. was found to be in violation of the Intellectual Property Agreement?*

**RESPONSE:** *Several bills have been introduced in the U.S. Congress in relation to the DSB recommendations and rulings in United States - Section 211 of the Omnibus Appropriations Act of 1998 (WT/DS176). In prior meetings of the DSB, the United States described the status of each of these bills.*

- (b) Paragraph 2.11 (Page 6): *"Although the labor market continues to improve, the recovery is not yet complete. Even with the recent declines, the unemployment rate remains above the estimates of its longer-run level. Labor force participation also appears to be weaker than expected based on changing demographics and the level of unemployment."*

**Question 2:** *What innovative measures will the U.S. implement to further reduce the unemployment rate and encourage labour force participation?*

**RESPONSE:** *The bulk of the decline in labor force participation from its peak is due to long-forecast trends attributable to the retirement of the baby boomers. A substantial component is due to typical cyclical factors, in which participation declines in downturns. The aging of the population will continue to push the rate downward, however, the recovering economy will tend to push in the other direction. White House CEA analysis finds that an important residual remains after accounting for aging trends and cyclical factors. The evolution of this residual, some of which is due to greater educational attainment depressing participation for young workers, will also contribute to participation rates going forward. While the unemployment rate, at 5.8 percent, is very close to what many consider to be its structural value of 5.4 percent, and the short term unemployment rate is below its pre-recession average, other indicators such as those working part time for economic reasons, and those marginally attached to the labor force, remain elevated and point to slack in the economy. For a discussion of the causes and implications of the U.S. labor force participation rate, as well as a discussion of potential policy responses, please see [http://www.whitehouse.gov/sites/default/files/docs/labor\\_force\\_participation\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/labor_force_participation_report.pdf).*

- (c) Paragraph 4.10 (Page 13): *"In addition, the TPP will cover cross-cutting issues not included in previous trade agreements, such as regulatory coherence."*

**Question 3:** *The pursuit of regulatory coherence is quite noble and ambitious, given the number of TPP partners. What priority activities or hurdles must the U.S. address to achieve this objective?*

**RESPONSE:** *In the Trans-Pacific Partnership (TPP) agreement, regulatory coherence refers to the use of good regulatory practices in the process of developing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy measures, as well as to efforts across government to enhance regulatory cooperation to further these objectives and promote trade, growth and employment. The United States has a well-established domestic system in place designed to achieve regulatory coherence, with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) and its work with*

**U.S. Government agencies at its core. We believe improving the coherence of TPP regulatory systems in TPP partners will make trade and investment across the region more seamless and deepen regional economic integration.**

*Report by the World Trade Organization (WTO) Secretariat (WT/TPR/S/307)*

**SECTION 2: Trade and Investment Regime**

**(2.3.3) Other Agreements and Arrangements**

**(2.3.3.1) Anti-counterfeiting Trade Agreement**

**Question 4:**

- (a) Paragraph 2.43 (page 37): When does the U.S. intend to implement the Anti-Counterfeiting Trade Agreement?

**RESPONSE: ACTA has not yet entered into force. ACTA is consistent with existing U.S law and changes to U.S. law are not required to implement the agreement.**

**(2.3.2.2.2) Generalized System of Preferences**

**Question 5**

- (a) Paragraph 2.32 (page 35): - The US's GSP programme expired on 31 July 2013, does the U.S. intend to resume this initiative in the near future?

**RESPONSE: The Administration supports Congressional action to reauthorize the GSP program at the earliest opportunity.**

**SECTION 3: Trade Policies and Practices by Measure**

**(3.1.1.1.1) Single Window**

**Question 6**

- (a) Paragraph 3.5 (page 43): The U.S. intends to make mandatory all import and export cargo manifest data to be submitted through Automated Commercial Environment (ACE) by 1 May 2015.

*Are their provisions in place to assist developing trading partners to become compliant? Will countries unable to meet the 1 May deadline be afforded any flexibility?*

**RESPONSE: The ACE mandatory dates are for trade filers (such as importers), not countries. To enable filers to use ACE by the deadline, CBP has encouraged the adoption of air manifest changes as early as possible to ensure confirmed compliance by May this year. Trade testing is available as of January 3, 2015. The current air manifest technical standards and documentation are also located on <http://www.cbp.gov>.**

**(3.1.4.3) Bindings**

**Question 7**

- (a) Paragraph 3.40 (page 52): The U.S. WTO tariff commitments as contained in Schedule XX were last updated in 2011 after approval of the HS2000 nomenclature changes. However, a number of changes to the HTSUS have not yet been notified to the WTO as a change to Schedule XX.

*Could the U.S. provide more information as to why the WTO has not yet been notified of the change to Schedule XX?*

**RESPONSE: The United States will be notifying the Committee on Market Access of modifications to Schedule XX of the United States to reflect changes to the Harmonized Tariff Schedule of the United States as soon as possible. For further reference, the nomenclature changes from late 2011 will be included in the certification of 2012 nomenclature changes. The changes are shown in the U.S. International Trade Commission website section on HTS modifications: [http://www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm), specifically, the full text of**

**the Presidential Proclamation regarding changes, as published in the Federal Register can be found at: [http://www.usitc.gov/tariff\\_affairs/hts\\_documents/PP8742.pdf](http://www.usitc.gov/tariff_affairs/hts_documents/PP8742.pdf).**

**(3.2.4) Export Support and Promotion**

**(3.2.4.1) Structures**

**(3.2.4.1.1) Trade Promotion Coordinating Committee (TPCC) and National Export Strategy**

**Question 8**

- (a) Paragraph 3.113 (page 75): When will the TPCC issue its report on the annual National Export Strategy?

**RESPONSE: The TPCC Secretariat does not have a specific release date yet, but plans to release the annual National Export Strategy during the first half of 2015.**

**(3.2.4.2) National Export Initiative (NEI) and NEI/NEXT**

- (b) Paragraph 3.118 (Page 76): "...There are five main points: connect more U.S. businesses to global customers, streamline U.S. export services and processes, expand access to finance, promote exports and FDI, and help developing economies improve their business environment to open new markets."

**Question 9:**

- (i) Is the CARICOM Region included in the referenced developing economies?
- (ii) Could the U.S. provide some clarity on how such assistance will be given to developing economies such as Trinidad and Tobago?

**RESPONSE: The NEI/NEXT initiative is not restricted to a defined group of eligible countries, although priority regional focuses include sub-Saharan Africa (through the Doing Business in Africa campaign, [www.trade.gov/dbia](http://www.trade.gov/dbia)), Asia, and Latin America (through the Look South initiative [www.export.gov/looksouth](http://www.export.gov/looksouth)). NEI/NEXT prioritizes existing technical assistance programs, and country eligibility will be decided based on the eligibility requirements of each technical assistance program.**

**One priority in the NEI/NEXT initiative is to provide technical assistance to developing and developed economies to support transparent business climates and a level playing field. This effort prioritizes coordination among several U.S. agencies leading efforts to build trade capacity, including assuring intellectual property protections, addressing corruption and lack of transparency, and harmonizing regulations and standards. Countries can work with the appropriate U.S. agencies to apply for assistance with any of these issues under a number of existing technical assistance programs.**

**SECTION 4: Trade Policies by Sector**

**(4.1) Agriculture**

**(4.1.1.2) Title I (Commodities)**

**(4.1.1.2.1) Elimination of Direct Payments**

- (a) Paragraph 4.12, Table 4.2 (page 105) Support notified under the Green Box has continued to increase in marketing year 2011 as domestic food aid increased. Domestic food aid is by far the biggest item.

**Question 10**

*What was the cause of the continued increase (from last WTO Trade Policy Review period and this current review period) in domestic food aid support under the Green Box?*

**RESPONSE: The increase in domestic food aid was driven by increased program participation and benefits resulting from the economic downturn that began in 2008. In addition, the American Recovery and Reinvestment Act of 2009 (ARRA) authorized increased funding for five USDA-administered nutrition assistance programs: the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);**

the National School Lunch Program; the Food Distribution Program on Indian Reservations; and the Emergency Food Assistance Program. Funds were used for increased benefits for participants, equipment and facilities improvement; emergency food purchases for food banks, food pantries, and soup kitchens; and for assistance to States to help meet increased administrative support and delivery costs of assistance. The greatest growth in expenditures occurred in the SNAP program due to the combination of higher payment levels under ARRA and increased participation resulting from rising unemployment.

**(4.2.5) Maritime Transport**

**(4.2.5.2) Institutional and Legal Framework**

- (a) Paragraph 4.144 (Page 143): Trinidad and Tobago has specific interest in the maritime sector and has identified it as one of the priority service sectors in its Strategic Plan 2011-15. Trinidad and Tobago is also interested in the Repair and Maintenance of Vessels particularly for its service providers to gain access to the U.S. market. Based on the

*Secretariat's review of the United States Trade Policy it was highlighted that for maritime transport no commitment under the GATS were undertaken, and no offers were tabled with respect to maritime transport in the U.S. services offer of the Doha Development Agenda.*

**Question 11:**

*Is there any intention by the U.S. to make liberalization commitments in the Maritime sector?*

**RESPONSE: The TPR is not a negotiating forum. Requests made in the context of the DDA services negotiations should be taken up in that forum.**

**Question 12:**

**General Question**

- (a) Was the Role of the Broker Initiative (stated in 2012 WTO trade Policy Review period) implemented?

**RESPONSE: The Role of the Broker Initiative is still being reviewed, and changes related to it have not yet been implemented.**

**TURKEY**

*The Secretariat Report*

**2.1.1 Trade promotion authority, pp. 25, para. 2.4**

Question 1: As far as we know, Trade Promotion Authority (TPA) allows the executive branch to select the countries with which to conduct trade negotiations based on the parameters outlined by the aforementioned Authority. However, can TPA be granted for a specific country or set of countries? In short, once the TPA is in place does that mean the executive branch can negotiate trade agreements with any country without any restrictions?

**RESPONSE:** Trade Promotion Authority legislation may vary on substance, scope, and procedures. The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation that would spell out such parameters.

**2.1.1 Trade promotion authority, pp. 25, para. 2.6**

Question 2: It is mentioned in the report that "Recently, the President highlighted the importance of obtaining TPA authority in 2013 and 2014, given the two major regional negotiations which the United States intends to conclude or make significant progress on. A proposal to reauthorize TPA was introduced in the Congress in 2014, but to date no legislation has been approved."

Could you please give a legislative update on TPA?

**RESPONSE:** The Administration is working closely with the United States Congress to pass bipartisan Trade Promotion Authority (TPA) legislation.

**2.1.2 Role of the private sector and other stakeholders, pp. 26, para. 2.7**

It is mentioned in the report that "The United States has a long history of involving the private sector in trade policy advice. In 1974, a USTR-led trade advisory committee system was created, to enable public- and private-sector input in the formulation and implementation of U.S. trade policies".

Question 3: As the concerns of small and large sized entrepreneurs show difference, could you kindly explain which criteria are used to choose private sector participant of trade advisory committee?

**RESPONSE:** Every applicant is evaluated based on the membership criteria for the committee to which they applied. Committees are continuously evaluated to ensure balance and that a wide range of views are represented.

**2.3.2.2 Unilateral preferential regimes, para. 2.25 and 2.26, pp.32**

It is mentioned in the report that "2.25. The United States continued to provide unilateral preferences to a number of countries or territories during the review period, although some programmes are in decline, have expired, or are undergoing review. The programmes are not mutually exclusive and some developing and least developed countries are eligible to participate in more than one programme (Table A2.3). In particular, there is overlap in the GSP and AGOA, with trade figures under each programme often changing year-to-year as traders choose one preference program over another

2.26. The product coverage of the programmes is not identical, nor are other aspects, such as rules of origin or textile provisions. In terms of tariff coverage, preferences granted to Caribbean countries and those granted under GSP are nearly identical, with the greatest product coverage. AGOA builds on GSP by providing AGOA beneficiaries (all are GSP beneficiaries) with additional product coverage, most notably for textile and footwear products. The ATPA has expired, but when it was in force ATPA coverage was built upon the GSP benefits that the ATPA countries also enjoyed. Generally, the least preferential coverage is given for textiles and apparel, which has traditionally been an import-sensitive industry for the United States."

Question 4: Because of its complexity and overlapping content, does the U.S. Government have any foresight about changes on its unilateral preferential system?

**RESPONSE:** The Administration continues to work with the U.S. Congress on possible changes to the African Growth and Opportunity Act (AGOA), including potential expansion of product coverage. With respect to GSP, the first priority is reauthorization of the program. Once that has been accomplished, the Administration looks forward to consulting with Congress on possible reforms to the GSP program to take into account evolving global trade relations, including the growing competitiveness of many emerging market GSP beneficiaries.

**2.3.2.2 Generalized System of Preferences (GSP), pp. 35, para. 2.32**

*It is mentioned in the report that "The United States' GSP, its main global programme for preferences for developing and least developed countries, expired on 31 July 2013. Therefore, imports that benefited from GSP provisions are subject to MFN tariffs as of 1 August 2013."*

**QUESTION 5:** Could you please give a legislative update on GSP? Does the U.S. Government intend to maintain its practice of applying the GSP retroactively?

**RESPONSE:** The Administration fully supports the economic development objectives of the U.S. Generalized System of Preferences (GSP) program and continues to support reauthorization of the program by the U.S. Congress at the earliest opportunity.

**In the past, when Congress acted to extend the program, it did so retroactively to the expiration of the program, thereby allowing importers to seek refunds of duties paid. However, it is not known whether Congress will make any future reauthorization of GSP retroactive.**

**2.3.3.1 Anti-counterfeiting Trade Agreement, pp. 37, para. 2.43**

*It is mentioned in the report that "The United States is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), a plurilateral agreement negotiated among 11 trading partners.<sup>41</sup> The ACTA aims to combat infringement of intellectual property rights, in particular piracy and counterfeiting. It provides for enhanced international cooperation, promotion of enforcement practices, and a legal framework for IPR enforcement. Although the agreement was finalized in 2011, it has not yet entered into force. The agreement reportedly does not require any statutory changes to U.S. law."*

**QUESTION 6:** Could U.S. kindly provide information whether are there any effort to put into practice ACTA?

**RESPONSE:** On October 5, 2012, Japan became the first signatory to ACTA to deposit its instrument of acceptance. The United States continues to work with Japan and other negotiating parties to bring the ACTA into force. The ACTA effort, launched in October 2007, brought together a number of like-minded countries prepared to embrace strengthened IPR enforcement and cooperative enforcement practices. ACTA signatories are Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, and the United States. The European Union and 22 EU Member States signed the Agreement in January 2012, but it was not approved by the European Parliament. For signatories, the next step towards bringing the ACTA into force is to deposit instruments of ratification, acceptance, or approval. The ACTA will enter into force for those signatories 30 days following the deposit of the sixth such instrument. The ACTA includes innovative provisions to deepen international cooperation and to promote strong enforcement practices, and will ultimately help sustain American jobs in innovative and creative industries.

**2.4.2 Investment promotion, pp. 39, para. 2.50**

*It is mentioned in the report that "SelectUSA is the federal government's centralized hub to attract and retain investment. In addition to the newly expanded services, it provides information and advocacy to potential investors, in particular counsel and advisory services for investors, ombudsman, problem-solving, investment advocacy promotion, outreach, and investment missions. It does not offer direct incentives but provides a link to federal government programmes offering incentives to businesses. In 2013, it held its first investment summit to bring international investors, government officials, U.S. companies, and economic development organizations together to facilitate foreign investment. SelectUSA is housed in the Department of Commerce with a proposed budget of US\$20 million for FY2014"*

We understand that the SelectUSA Program does not provide any direct incentives to foreign investors, however investors are linked to Federal Government Incentives Programs.

**QUESTION 7:** Could U.S. Delegation kindly give information on the percentage of foreign investors who invested in the U.S. via SelectUSA Program? What is the corresponding rate for those benefited from federal incentives?

**RESPONSE:** While percentage data are not available, SelectUSA has assisted over 1,000 companies in the past year with investment-related inquiries, and has assisted in facilitating over US\$18 billion in investment since the start of the program. The SelectUSA website contains a searchable database of over 70 different federal incentive programs designed to encourage business investment across a range of sectors (<http://selectusa.commerce.gov/investment-incentives>).

### **3.1.7 Anti-Dumping, countervailing and safeguard measures**

pg. 62 and 65, par. 3.67 and 3.69 In the Secretariat Report, leading creative and effective efforts at the WTO to open markets and combating protectionism are identified among the trade priorities for 2013-14 of the U.S. The report also touches on the remarkably increased numbers of AD and CVD investigations initiated against imports to protect the U.S. domestic industry in 2013 compared to previous years.

**QUESTION 8:** Against this background, could the U.S. give information regarding the reasons of considerable increase of its AD and CVD investigations initiated in 2013?

**RESPONSE:** The United States disagrees with Turkey's characterization as to why antidumping and countervailing measures are imposed. The United States administers its trade remedy laws in accordance with applicable WTO agreements. An antidumping or a countervailing duty investigation is initiated in response to a petition filed by a U.S. industry. The decision to impose an antidumping measure is based on a factual determination of whether dumping exists and whether dumped imports have caused, or threaten to cause, material injury to a domestic industry. The decision to impose a countervailing duty measure is based on a factual determination of whether countervailable subsidies exists and whether such subsidized imports have caused, or threaten to cause, material injury to a domestic industry. Where dumped/subsidized imports, and material injury caused by those imports have been found, the United States will impose an antidumping or countervailing duty measure, as applicable.

### **3.1.9.3 Animal and Plant Health Inspection Service, pp. 70, para. 3.92**

It is mentioned in the report that "The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for regulations to protect against the introduction of plant and animal diseases and pests. To this end, APHIS regulates imports of live plants; grain, oilseed and horticultural products; live animals (including embryos, semen, ova), animal products, and research and exhibition animals."

**QUESTION 9:** Does the U.S. Government plan to strengthen the institutional capacity of APHIS, as the processing of import permits take quite long times?

**RESPONSE:** APHIS issues permits for the import, transit and release of regulated animals, animal products, veterinary biologics, plants, plant products, pests, organisms, soil, and genetically engineered organisms. APHIS has established an electronic, web-based system that allows users to submit import permit applications, track applications, and receive copies of their permits.

### **3.2.4.2 National Export Initiative (NEI) and NEI/NEXT, pp. 76, para. 3.118**

It is mentioned in the report that "3.118. In May 2014, the Administration launched NEI/NEXT as the successor of the NEI. It builds on the principles of the NEI and lessons learned from NEI customer surveys, and provides a strategic framework to continue export growth. There are five main points: connect more U.S. businesses to global customers, streamline U.S. export services and processes, expand access to finance, promote exports and FDI, and help developing economies improve their business environment to open new markets. NEI/NEXT is a long-term project to help U.S. companies reach their export potential and create and support American jobs."

**QUESTION 10:** Taking into consideration that, NEI/NEXT aims also to help developing economies in improving their business environment to open new markets, among others, could U.S. Delegation provide information on possible actions ever taken to that regard?

**RESPONSE:** The U.S. government helps developing countries improve their economic policy environment so that the private sector can spur growth. MCC programs are focus on economic growth and USAID has a long history partnering with countries to improve the investment climate for small and medium enterprises. Some recent examples include:

- USAID supported Mozambique's introduction of a court-supervised reorganization procedure for resolving insolvency and strengthening creditors' rights.
- In Kosovo, USAID worked with the government to reduce construction permit fees and introduce phased inspections for construction, making it easier for companies to acquire construction permits.
- In Jamaica, USAID supported the government in establishing more predictable and consistent tax collection procedures for businesses
- In Mexico, USAID trained judges & lawyers on best commercial and contract practices, role of mediation, and alternative dispute resolution mechanisms.
- In Pakistan, USAID provided technical assistance and equipment to enable real-time automated processing and reconciliation of export and import documents, thereby increasing expediency.

**USAID Press Releases:** (specific examples of reforms we supported captured in the World Bank Doing Business reports)

[www.usaid.gov/news-information/press-releases/oct-29-2014-usaid-support-top-reformers-highlighted-world-bank-group-doing](http://www.usaid.gov/news-information/press-releases/oct-29-2014-usaid-support-top-reformers-highlighted-world-bank-group-doing)  
[www.usaid.gov/news-information/press-releases/oct-31-2013-usaid-supports-reforming-governments-doing-business-2014](http://www.usaid.gov/news-information/press-releases/oct-31-2013-usaid-supports-reforming-governments-doing-business-2014)

**MCC Information:** <http://www.mcc.gov/>

**3.3.2 Subsidies and other government assistance, pp. 80, para. 3.138, 3.139 and 3.140**  
In the Secretariat Report, the following paragraphs explain the latest developments on subsidies:  
3.138. According to the authorities, there is no overarching, legal framework governing subsidies in the United States. Rather, various subsidy programmes are in place at the federal level, pursuant to legislation or government programmes under many executive branch agencies.  
3.139. The latest subsidies notification to the WTO on federal and sub-federal programmes, submitted in May 2014, contained statistical information up to 2012. The magnitude of government assistance has decreased since the previous review (Table 3.15). 3.140. In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients. In the latest notification to the WTO on federal and sub-federal subsidies (G/SCM/N/253/USA, 9 May 2014), the amount of sub-federal subsidies is not specified.

**QUESTION 11:** Could the U.S. provide information or estimates on the amount of sub-federal subsidies that agriculture and energy sectors benefited in recent years? Is there any scheme to reduce the amount of subsidies being channeled to those sectors?

**RESPONSE:** While the subsidy amount information provided in the most recent notification of the United States may not be comprehensive for each of the over 600 programs notified at the sub-federal level, information on the subsidy amounts at the sub-federal level are indeed provided. For example, the subsidy amount under Alabama's Certified Capital Companies (CAPCO) states as follows: "US\$200 million is allocated among 12 CAPCO funds; each CAPCO fund may loan up to 15% of its allocation to a single project and multiple CAPCOs may invest in the same single project." The subsidy amount under Iowa's Ethanol Infrastructure Cost-Share Program states: "The program will provide for a maximum of US\$325,000 annually." The subsidy amount for North Dakota's Agricultural Commodity Processing Facility Investment Tax Credit states: "The credit is equal to 30% of the investment, up to a maximum credit of US\$50,000 per year. A taxpayer is allowed no more than US\$250,000 in credits for all tax years. An unused credit may be carried forward up to ten years." Nonetheless, the United States

**recognizes that detailed information for some sub-federal programs is lacking. The next subsidy notification of the United States will seek to address this issue.**

**4.2.1.2 Recent developments, pp. 120, para. 4.75, (c)**

**QUESTION 12:** *It is mentioned in the Secretariat Report that "the Securities and Exchange Commission (SEC) proposed new draft rules by the middle of 2011, but so far no final rules have been adopted". Regarding this draft, could the U.S. Government explain the reasons behind this delay about adoption of the additional rules?*

**RESPONSE:** SEC adopted a final rule governing Nationally Recognized Statistical Rating Organizations (NRSRO) on August 27, 2014. This rule is effective November 14, 2014, except for certain amendments which are effective June 15, 2015. The final rule can be found at: <http://www.sec.gov/rules/final/2014/34-72936.pdf>.

**4.2.1.3 Other policy actions, pp. 122, para 4.81**

**QUESTION 13:** *In the Secretariat Report, it is clearly stated that there is a need of improvement of financial system, especially on the issue of "shadow banking". Could the U.S. Government clarify whether there is any plan to this end?*

**Response:** The United States has made significant progress in addressing potential systemic risks to financial stability emanating from the shadow banking system. The Dodd-Frank Act has led to a stronger, better regulated, and more resilient financial system. The Dodd-Frank Act also gave the Financial Stability Oversight Council ("the Council") the ability to expand the regulatory perimeter to subject certain nonbank financial companies that could pose a threat to U.S. financial stability to Federal Reserve supervision and enhanced prudential standards.

New policy measures are also in place or being developed to address the risks posed by shadow banking activities, including money market funds (MMFs), the tri-party repo market, and hedge funds. In July 2014, the SEC approved final rules to reform MMFs. The final rules, combined with initiatives undertaken in 2010, are intended to reduce MMFs' vulnerability to investor runs, particularly in times of stress, as well as increase transparency to investors. U.S. banks have reduced their reliance on short-term funding and have largely shifted to secured funding transactions with higher quality collateral. The U.S. has made substantial progress in reducing intraday credit exposure and reforming collateral practices in the tri-party repo market. The United States has taken steps to enhance oversight of hedge funds. Most hedge fund advisers are now required to register and to file comprehensive portfolio risk information with U.S. regulators, making it among the most stringent reporting regimes in the G-20.

**4.2.4.2.2.3 Applied regime, pp. 141, para 4.132**

**QUESTION 14:** *According to paragraph 4.132, state-level regulations and licensing requirements, and also hardships for reimbursement from third parties become challenging for foreign investment to enter the healthcare industry. Regarding this paragraph, could the U.S. Government kindly explain why the eagerness in attracting foreign investment is given up and what are the reasons behind that?*

**RESPONSE:** The United States warmly welcomes foreign investment in the health care sector, just as it does in all other sectors. Far from stating that the U.S. has given up its open investment policy in this sector, the Secretariat's report notes that notwithstanding certain inherent difficulties with the U.S. federal system of regulation, "[t]he U.S. healthcare industry is largely open to foreign investment as shown by inward foreign affiliates trade statistics, i.e. on sales of subsidiaries of foreign-owned companies with inward flows being fourfold the outward flows and by the fact that seven out of the ten largest private equity deals in global healthcare in 2011 were targeting U.S. companies."

#### **THE GOVERNMENT REPORT**

**2.4 Nominal Savings/ Investment, pp.6, para. 2.9**

"U.S. gross investment increased by US\$367 billion between 2011 and 2013, 60% the

*increase in U.S. gross saving. With levels of U.S. saving growing faster than domestic investment, a decline in net inflows of capital occurred, from US\$461 billion in 2011 to US\$454 billion in 2012, and US\$401 billion in 2013."*

**QUESTION 15:** Could the U.S. kindly provide information on the reasons of the decline in net capital inflows especially in the year 2013?

**RESPONSE:** A major source of the increased saving was the reduction in the Federal government budget deficit. In addition, the moderate, but sustained, growth of the economy held down the need for additional investment since the rate of capacity utilization remained below its long-term average.

#### **4.2.3 Asia-Pacific Economic Cooperation Forum, pp. 14, para. 4.21**

*It is mentioned in the report that "Since it was founded in 1989, the Asia-Pacific Economic Cooperation (APEC) forum has been instrumental in promoting regional and global trade and investment and is central to our efforts to achieve a seamless economy in the Asia-Pacific region that will expand opportunities for U.S. exporters, services providers, and workers, providing greater economic growth across the region."*

**QUESTION 16:** Could you provide more information on recent developments over the course of the 22nd APEC Economic Leaders' Meeting as to promoting trade and investment liberalization and facilitation in the APEC region?

**RESPONSE:** 2014 proved to be a successful year for APEC in its efforts to promote trade and investment liberalization and facilitation, as demonstrated by the declaration by APEC Leaders ([http://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014\\_aelm.aspx](http://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm.aspx)) and the statement by APEC Ministers ([http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2014/2014\\_amm.aspx](http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2014/2014_amm.aspx)). The United States accomplished a number of important objectives on trade and investment in APEC in 2014, particularly regarding regulatory transparency, supply chain performance, environmental goods, and electric vehicles (<http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-22nd-annual-apec-economic-leaders-meeting>; <http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-apec-leaders-agree-actions-promote-regional-economic-integrat>).

#### **4.2.5 Engagement with the Middle East and North Africa, pp. 15, para. 4.28**

*It is mentioned in the report that "In 2013, the United States continued to monitor, implement and enforce U.S. FTA's in the region; signed a TIFA with Libya, and sought new opportunities to cooperate more closely with Egypt."*

**QUESTION 17:** Could you please give update on Libya and Egypt initiatives?

**RESPONSE:** The United States has continued to reach out to Egypt to explore ways to increase cooperation on trade-related and investment issues. Two years ago, the United States and Egypt jointly agreed to explore endorsing joint principles on information and communications technologies and investment, respectively. Egypt is now reviewing those documents. The United States traveled to Egypt In April 2014 to explore additional areas in which to cooperate such as standards and IPR, among others. In Libya, little progress has been made in re-opening the Trade and Investment Framework Dialogue given the complex political situation on the ground.

#### **4.2.6 Managing and deepening U.S.-EU trade, pp. 15, para. 4.31**

*It is mentioned in the report that "On 17 June 2013, President Obama and EU Leaders announced the launch of negotiations on a Transatlantic Trade and Investment Partnership (T-TIP) agreement. Three negotiating rounds took place in 2013, and both sides have agreed to pursue an ambitious schedule of negotiations in 2014."*

**QUESTION 18:** Considering the U.S. and the EU's existing multilateral trade agreement initiatives, how would you evaluate the possibility of the third countries' involvement to the T-TIP process?

**RESPONSE:** We have been keeping interested trading partners apprised of the general progress of the negotiations. However, we have no plans to involve third countries at this time.

**4.3.4 United States – Colombia Trade Promotion Agreement, pp. 18, para. 4.51**

"The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on 15 May 2012. Two-way goods trade totalled US\$40.0 billion in 2013. The CTPA's central oversight body is the United States-Colombia Free Trade Commission (FTC), comprised of the U.S. Trade Representative and the Colombia Minister of Foreign Trade and Tourism or their designees. In November 2012, the FTC held its inaugural meeting and concluded that the Agreement was functioning smoothly and was already benefiting both countries. In 2013 both Governments worked together to carry out initiatives launched at the November 2012 FTC, such as consideration of accelerating tariff elimination, additional elements of the dispute settlement mechanism, and updating the rules of origin."

**QUESTION 19:** Could the USA kindly provide further information on the additional elements of the dispute settlement mechanism?

**RESPONSE:** The CTPA calls for the establishment of Model Rules of Procedure (Article 21.10); the establishment of a code of conduct for panelists (Article 21.8.1(d)); the establishment of the amount of remuneration that will be paid to panelists (Article 20.1.2(e)); and the establishment of rosters of panelists (Article 21.7).

The text of the CTPA is available at: <http://www.usit.gov/trade-agreements/free-trade-agreements/colombia-fpa/final-text>.

**4.3.6 United States-Jordan Free Trade Agreement, pp. 19, para. 4.58**

It is mentioned in the report that "In addition, the Qualifying Industrial Zones (QIZs), established by the U.S. Congress in 1996, allow products to enter the United States duty free if manufactured in Jordan, Egypt, or the West Bank and Gaza, with a specified amount of Israeli content. The program has succeeded in stimulating significant business cooperation between Jordan and Israel."

**QUESTION 20:** In this regard, are there any plans to extend QIZ program?

**RESPONSE:** The USTR considers requests from eligible countries regarding the program. Most recently, in February 2013, following a request from Israel and Egypt, the USTR liberalized the QIZs in Egypt. Establishment of QIZs in other countries would require action by Congress.

**4.3.6 United States – Jordan Free Trade Agreement, pp. 19, para. 4.60**

"At the October 2012 meeting of the Joint Committee (JC) established under the FTA, the United States and Jordan crafted an action plan outlining concrete steps to boost trade and investment bilaterally, and between Jordan and other countries in the Middle East region. Among its first steps under the action plan during 2013, Jordan endorsed Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services."

**QUESTION 21:** Could the USA kindly give information on the concrete steps for boosting trade and investment bilaterally, and between Jordan and other countries in the Middle East region?

**RESPONSE:** The United States continues to work with Jordan and other countries in the Middle to promote reforms that improve the environment for trade, foster small and medium-sized enterprises and attract investment. The first step in this process was to secure endorsement from Morocco, Jordan, Tunisia, Libya and Egypt on the Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services. Morocco and Jordan have endorsed the two sets of principles, while Egypt and Tunisia are actively reviewing the two texts. The next step is to work with these countries to fully implement the commitments of the WTO Trade Facilitation Agreement, providing technical assistance where able. Additional steps are under consideration at this time.

**5. Trade- Related Capacity Building Initiatives: TCB Initiatives for Africa, pp.25, para.5.16**

"The United States also provides complementary support to the cotton sector through other programs. MCC is implementing or has implemented compacts with Benin, Burkina Faso, Mali, and Senegal. The USDA also provides support to these countries through its Food for Progress program, which encourages development of the agriculture sector and market development. USDA further supports the West African cotton sector through its research and exchange programs, specifically the Borlaug Programs and the Cochran Program."

QUESTION 22: Could United States of America kindly provide details on the Borlaug Programs and the Cochran Program?

**RESPONSE:** The Cochran Fellowship Program provides short-term training in the United States for international participants from middle-income and emerging market countries. Cochran fellows are government officials, farmers, importers, veterinarians, or other agriculturalists in key positions. During their training, the fellows meet with U.S. agribusinesses, attend policy and food safety seminars and receive technical training related to short- and long-term, market development and trade capacity building. The Cochran Fellowship Program aims to increase agricultural trade linkages with the United States and promote food security.

The Norman E. Borlaug International Agricultural Science and Technology Fellowship Program (Borlaug Fellowship Program) promotes food security and economic growth by providing training and collaborative research opportunities to fellows from developing and middle-income countries. Borlaug Fellows are generally scientists, researchers, or policymakers who are in the early or middle stages of their careers. Each Fellow works one-on-one with a mentor at a U.S. university, research center, or government agency, usually for 6-12 weeks. The U.S. mentor will later visit the Fellow's home institution to continue collaboration.

**VIET NAM**

1. *The 2014 Agriculture Act introduces a new subsidized insurance programme (Supplemental Coverage Option) that allows eligible farmers to top up their crop insurance, in order to cover a portion of the deductible of the insurance. As regulated, the new Agriculture Act attempts to address the potential for overcompensation of farmers' actual losses. Does this mean the U.S. intend to subsidize the export of agricultural products?*

**RESPONSE:** Crop insurance coverage does not differentiate between production that is exported versus production retained for domestic consumption, and therefore, does not act as an export subsidy.

2. *Under the new Dairy Product Donation Program, the Commodity Credit Corporation (CCC) is authorized to temporarily purchase dairy products at prevailing market prices for distribution to low-income residents when dairy milk margins are depressed. Could this program potentially cause an increase in trade distortions?*

**RESPONSE:** Time limits for purchases under the Dairy Product Donation Program (DPDP) and domestic price and international price difference limits ensure that any impact on the global dairy supply chain would be insignificant in comparison to global production and trade. For instance, DPDP purchases will cease at the end of the month in which it is determined that:

- The actual dairy production margin for the previous month is above US\$4 per cwt;
  - Purchases have taken place for three consecutive months;
  - U.S. cheddar or NDM price exceeds world prices by 5% if the actual dairy production margin is at or below US\$4 but above US\$3; or
  - U.S. cheddar or NDM price exceeds world prices by 7%, if the margin is US\$3 or less.
3. *We noted that Table 3.15 Federal subsidy programmes, 2012 includes the subsidy amount for textiles around US\$1.7 million. Will this create a barrier for the textiles of the other countries from entering the U.S. market and cause a trade distortions?*

**RESPONSE:** WTO Members are permitted to provide subsidies so long as they are not "prohibited" or cause "adverse effects" to the trade interests of other Members, as defined under the Agreement on Subsidies and Countervailing Measures. U.S. incentive programs are consistent with the WTO obligations of the United States. The one textile program notified by the United States is the Textile/Clothing Technology Corporation Program, which funds the Textile/Clothing Technology Corporation. This Corporation is a non-profit membership organization designed to stimulate economic growth in the U.S. textile and apparel sector. It has programs to demonstrate advanced equipment and techniques, to educate participants in the sector, and to do basic research. Only the basic research element is funded by the federal government through a grant from the U.S. Department of Commerce. The basic research is performed internally by the organization and, in part, by external entities on a contractual basis. The results of the basic research are made available throughout the textile and apparel sector. No production subsidies are provided under this program.

4. *Though the United States does not impose export taxes or duties on exports, it imposes restrictions, licensing requirements, additional controls and prohibitions on a variety of exports for national security and foreign policy reasons. Furthermore, the exporter may have to identify additional factors such as the country of destination, end-use, and foreign person or firm, depending upon the relevant requirements. These restrictions are even tighter than export duties. Could the U.S. clarify the reason for imposing restrictions on natural gas and electric power. What kind of restrictions does the U.S. impose on such items? Will these restrictions be compared to the export duties imposed by some WTO Members on similar items? (crude oil, coal, natural resources).*

**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 are set forth in regulations at 10 CFR 590. DOE must also comply with the National Environmental Policy Act of 1969 (NEPA), which requires consideration of environmental impacts. Further information 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). The U.S. LNG projects that have been approved to date will enable the export of up to 5.7 billion cubic feet per day (bcf/d) of LNG to FTA and non-FTA partners. In addition, DOE has given conditional approval for another 4.9 bcf/d, for a total of 10.6 bcf/d. As a practical matter, the first project to export U.S. LNG is not expected to be operational until late 2015.

For electricity, Presidential permits are required for the construction, connection, operation and/or maintenance of electric transmission lines that cross the U.S. international border. These permits do not restrict the quantity of electricity to be exported. DOE must obtain concurrence from the Secretary of State and the Secretary of Defense before issuing a permit. DOE also authorizes the export of electric energy from the United States. DOE must comply with NEPA with respect to both permits for transmission lines and authorizations to export. Additional information regarding permits and exports with respect to electricity is available at <http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation>.

5. Regarding the change in U.S. Department of Commerce (DOC) practice for selecting mandatory respondents in anti-dumping proceedings, Viet Nam concerns that the new sampling methodology may not ensure the representativeness and would like to seek clarification on how a small sample can be "statistically valid" in its methodology?

**RESPONSE:** Further information regarding the change in practice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>.

A determination regarding respondent selection will be based on the specific facts and circumstances of a particular proceeding; therefore, it would be difficult to respond to the question in the abstract.

6. Will the U.S. issue a clear and complete guideline on how DOC conducts the selection of mandatory respondents and a list of substitutes list in case of uncooperation of initially selected respondents? With regards to the voluntary exporters, is there any possibility of being selected as a substitute by DOC?

**RESPONSE:** Further information regarding the change in practice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-04/html/2013-26266.htm>.

A determination regarding respondent selection will be based on the specific facts and circumstances of a particular proceeding and the basis for the determination will be placed on the administrative record of that proceeding.

7. Could the U.S. explain the need for the "substantially all" (i.e. 85 percent) requirement in the final rule of using market economy input prices in antidumping proceedings concerning NMEs instead of the previous 33% and its concerns regarding the reliability of market prices when the quantity purchased is less than 85 percent? Would the quantity purchased affect the purchase price since DOC typically examines a single respondent, whose purchases of an input are not likely to affect the global price of that input and only the price of certain products may change depending on the quantity of such input that is purchased?

**RESPONSE:** Further information regarding this final rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-02/html/2013-18547.htm>. The analysis regarding whether or not to use market economy input prices will be based on the specific facts and circumstances of a particular proceeding; therefore, it would be difficult to respond to the remaining questions in the abstract.

---