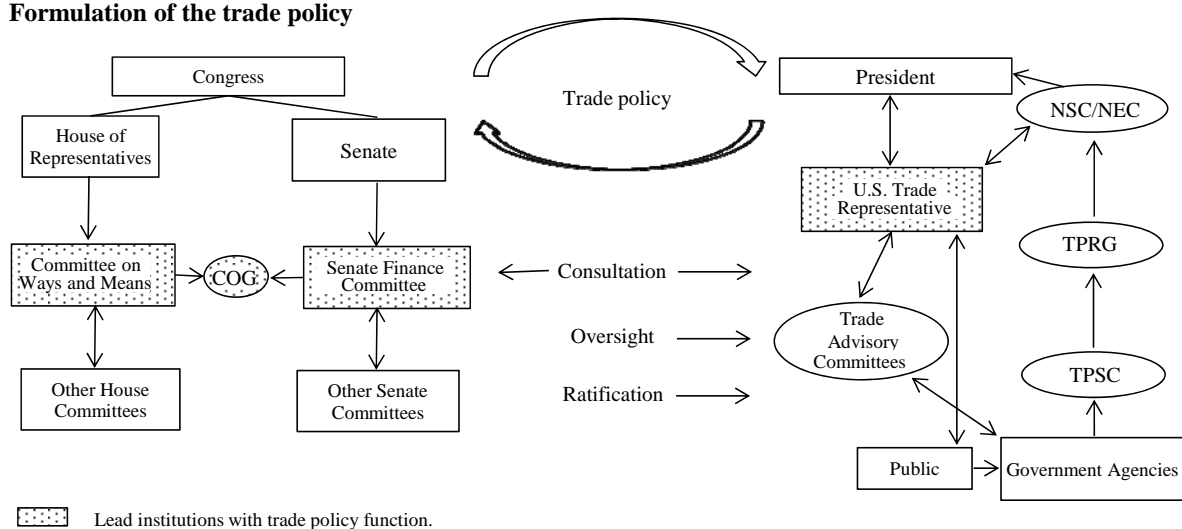


II. TRADE POLICY AND INVESTMENT REGIMES

(1) TRADE POLICY FORMULATION AND FRAMEWORK

1. The U.S. Constitution grants Congress the power to regulate foreign commerce and authority to establish rates of duty. The Executive branch under the President also has certain roles in trade policy. These may include periodic delegation of authority and negotiation of trade agreements, i.e. under special fast-track procedures, which include intensive consultations, followed by eventual approval and implementation by Congress. Thus, both the Congress and the President have roles in developing U.S. trade policy (Chart II.1).

Chart II.1
Formulation of the trade policy



Note: COG: Congressional Oversight Group; NSC/NEC: National Security Council/National Economic Council; TPRG: Trade Policy Review Group; TPSC: Trade Policy Staff Committee.

Source: WTO Secretariat, based on information from the U.S. authorities.

2. On the Congressional side, a number of Congressional bodies or groups have specific trade policy functions. The Trade Act of 2002 established the Congressional Oversight Group (COG), which is authorized to provide advice to the President and USTR on a variety of trade policy matters. For example, it provides direction with respect to negotiating strategies and positions, the development of trade agreements, and compliance and enforcement aspects of trade agreements. Also, the Trade Act of 1974 provides for the House Committee on Ways and Means and the Senate Finance Committee to designate five members each to advise on trade policy and negotiations.¹

3. USTR has primary responsibility for coordinating and developing trade policy for the Executive branch. Under the Trade Expansion Act of 1962, Congress established an interagency trade policy mechanism to assist USTR with the implementation of these responsibilities. The mechanism has three tiers: the National Economic Council located in the White House, the Trade Policy Review Group (TPRG), and the Trade Policy Staff Committee (TPSC), the latter two chaired by USTR. The TPSC and TPRG are composed of 21 members from various government Departments, Councils, Offices, or Agencies, and USTR can invite participation of others when appropriate. The NEC, at the highest level, is chaired by the President and has cabinet level representation.²

¹ Committee on Ways and Means, U.S. House of Representatives (2010).

² USTR (2012b).

4. As part of the reporting and consulting process with Congress, the President is mandated through the Trade Act of 1974 to report annually on the operation of the trade agreements program and the national trade policy agenda. The President's annual Trade Policy Agenda, prepared by USTR, typically sets out the Administration's trade policy priorities for the year. On a broader level, U.S. trade policy is informed by U.S. economic and foreign policies and as such its objective is to enhance national economic welfare.

5. Trade legislation is enacted in the same manner as other laws, through passage by both houses of Congress and approval by the President. For example, the United States implemented the Marrakesh Agreement through the Uruguay Round Agreements Act (URAA) under this procedure.³ During certain periods since 1974, Congress has put in place special "fast track" or "trade promotion authority" procedures under which the Congress commits to vote on trade agreement implementing legislation within a fixed period, and without amendment, once the President submits an implementing bill. The most recent set of these procedures covered trade agreements signed between 2002 and mid-2007.

(2) PARTICIPATION IN THE WORLD TRADE ORGANIZATION

6. According to the U.S. Trade Policy Agenda, the United States is "committed to preserving and enhancing the WTO's irreplaceable role as the primary forum for multilateral trade liberalization, for the development and enforcement of global trade rules, and as a key bulwark against protectionism".⁴ The United States continues to support, participate and pursue trade initiatives and further liberalization through the WTO's multilateral trade framework. Furthermore, the United States is committed to contributing constructively and creatively to the functioning of the WTO, in particular, acknowledging that the WTO Doha Round is at an impasse, it is committed to fresh and credible approaches to new market-opening trade initiatives.⁵

7. As an original Member of the WTO, the United States adheres to all the multilateral agreements and disciplines, and participates in several plurilateral agreements, i.e. the Agreement on Civil Aircraft, Agreement on Government Procurement, and the Information Technology Agreement. The United States has further liberalized certain goods and services sectors, participating in the pharmaceuticals initiative, Uruguay Round zero-for-zero sectorals, and additional commitments on telecommunications and financial services.

8. The United States is active in all aspects of WTO work, including the on-going negotiations, regular Committee work, reporting and monitoring, development aspects, accessions, and in the dispute settlement arena. During 1 January 2010 to 30 June 2012, the United States submitted 22 proposals or communications to the negotiating groups; the majority of these concerned the Negotiating Group on Market Access. During the same period, the United States was a respondent in eight dispute settlement cases, was a complainant in seven cases, and participated as a third party in seven panel proceedings. The United States was involved in seven appeals processes and involved in three implementation or arbitration matters (Table AII.1).

9. The United States also contributes to improving the transparency of the WTO, its trade rules, and creating a clear and effective system by providing information through the WTO notification process and promoting the use of open and transparent meetings and hearings. Of the 11 panels that have permitted open hearings at the request of the parties to the dispute, the United States was involved as a complainant or respondent in 9. Similarly, the United States was an appellant or

³ Public Law 103-465.

⁴ USTR (2012b).

⁵ USTR (2012b).

appellee in 7 of the 8 public hearings that have been held by the Appellate Body. In addition, the United States was a party in both instances where an Arbitrator held open hearings.

10. The United States has made new or updated notifications during the period under review covering a diverse range of WTO disciplines (Table AII.2). However, it appears that some changes or updates to U.S. trade laws or procedures would require updated or amended WTO notifications. In particular, as noted in other parts of this report or in previous Reviews, new notifications are likely necessary in the areas of rectifications and modifications of schedules, preferential rules of origin, quantitative restrictions, and with respect to preference programmes like the GSP.

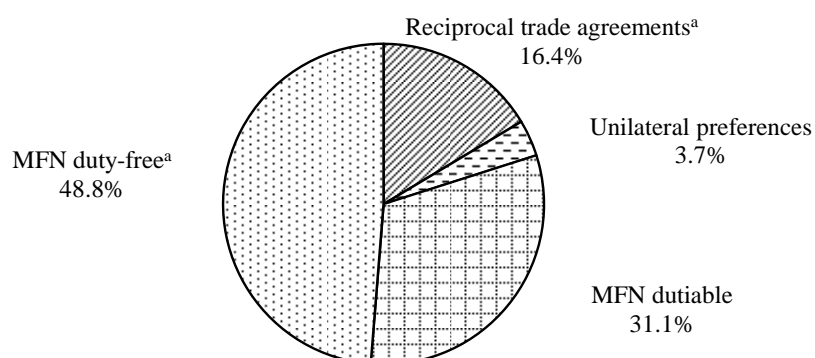
(3) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS

11. Since its last Trade Policy Review, the United States has moved ahead with the legislative approval of three free-trade agreements and the extension of two lapsed preference programmes. To date it has put into effect its trade agreements with the Republic of Korea and Colombia, and is working with Panama to put that agreement into effect. The United States has also extended two preference programmes (Generalized System of Preferences and the Andean Trade Preferences Act that had lapsed). Furthermore, as part of the President's 2012 Trade Policy Agenda, important priorities were announced with respect to concluding a bold and ambitious Trans-Pacific Partnership agreement and building better export markets through regional economic integration.⁶

12. Preferential trade accounts for an important and growing part of U.S. trade. In 2011, 20.1% of U.S. imports were under preferential regimes, reciprocal preferences accounted for 16.4% and unilateral preferences for 3.7% (Chart II.2). While imports under unilateral preference programmes remained flat, at US\$80 billion in 2011 compared to 2010, in part due to the lapse of the GSP and ATPA programmes, reciprocal FTA imports increased 15% in 2011. Compared to similar figures for 2008, a peak year for U.S. trade, FTA preferential imports were 15.8% of the overall import share compared to 16.4% in 2011.

Chart II.2

Imports for consumption, by type of import regime, 2011



a "Reciprocal trade agreements" covers trade benefitting from the RTA, and "MFN duty-free" covers all trade entering at MFN duty-free levels, although the RTA may provide concessions at zero that are already MFN duty-free.

Note: Non-MFN trade statistically rounds to zero.

Source: WTO Secretariat, based on U.S. International Trade Commission (USITC), Trade Data Web.

⁶ USTR (2012b).

(i) **Reciprocal trade agreements**

(a) New agreements with Colombia, the Republic of Korea, and Panama

13. Legislation approving the free-trade agreements with Colombia, the Republic of Korea, and Panama, negotiated and signed during the previous Administration, was enacted by the U.S. Congress and signed into law by the President in October 2011. The United States-Republic of Korea FTA entered into force on 15 March 2012, and the U.S.-Colombia FTA entered into force on 15 May 2012. As of July 2012, the agreement with Panama is not yet in force. As Congress and the current Administration had a number of concerns regarding the agreements, thus the U.S. Administration did not send the agreements to Congress for approval until it considered that the concerns had been adequately addressed. Thus, certain changes or additions have been agreed in the interim, resulting in amendments or new exchanges of letters.

14. The free-trade agreement with Korea is expected have a substantial impact on trade, and longer term impact on GDP and investment, as Korea is the United States' seventh largest trading partner (Table II.1). The effects of the agreements with Colombia and Panama are expected to be much smaller. Most imports from Colombia and Panama already benefit from unilateral preference programmes or MFN duty-free entry, and they rank 25th and 52nd as trading partners. In terms of trade, the Republic of Korea is expected to quickly become the United States' second largest FTA partner after NAFTA.

Table II.1
Economic impact and predictions for the new free-trade agreements

FTA partner	Impact on U.S. merchandise exports to partner	Impact on U.S. merchandise imports from partner	Impact on U.S. services' exports to partner	Impact on U.S. services' imports from partner	Impact on U.S. GDP	Impact on U.S. investment in partner
Colombia	+US\$1.1 billion	+ US\$487 million	Small increase	No measurable effect	+ US\$2.5 billion	Small positive effect
Korea	+ US\$9.7 billion to US\$10.9 billion	+ US\$6.4 billion to US\$6.9 billion	Increase	No substantial impact	+ US\$10.1 billion to 11.9 billion	Could increase substantially
Panama	Small but positive	No significant growth	Small increase	No significant effect	Small	Possible medium and long-term effect

Source: USITC (2006), *U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, Publication 3896, December. Viewed at: <http://www.usitc.gov/publications/332/pub3896.pdf>; USITC (2007), *U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects*, Publication 3949, September. Viewed at: <http://www.usitc.gov/publications/pub3949.pdf>; and USITC (2007), *U.S.-Panama Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, Publication 3948, September. Viewed at: <http://www.usitc.gov/publications/pub3949.pdf>.

15. Detailed analysis of the three new agreements is beyond the scope of this report, but a few prominent points are summarized in Table II.2.

Table II.2
Overview of the new U.S. FTAs, 1 January 2010-30 June 2012

United States and Colombia	
Passage of U.S. legislation / entry into force	21.10.2011 / 15.05.12
Transition to full implementation	Agriculture product tariffs phased out over 15 years Some agriculture TRQs phased out over 19 years Industrial products phased out over 10 years
Main products excluded from liberalization	TRQ on sugar; exemption from national treatment and exception of the export restriction rules for logs
Other measures	Textile safeguard measure; agriculture safeguard measure; sugar compensation mechanism

Table II.2 (cont'd)

U.S. merchandise trade (2011)	Imports: US\$22,390 million, 1% of total U.S. imports Exports: US\$12,830 million, 1% of total U.S. exports
of which preferential imports	US\$3,059 million or 14%
of which MFN duty-free imports ^a	US\$9,150 million or 41%
U.S. commercial services trade (2010)	..
WTO document series	WT/REG314
United States and the Republic of Korea	
Passage of U.S. legislation / entry into force	21.10.2011 / 15.03.2012
Transition to full implementation	Agriculture product tariffs phased out over 23 years TRQ on dairy products phased out over 10 years Industrial products phased out over 10 years
Main products excluded from liberalization	TRQs on most products retained; exemption from national treatment and exception of the export restriction rules for logs
Other measures	Motor vehicle safeguard measure; agriculture safeguard measure; exclusion of imports of the other party when invoking a global safeguard measure
U.S. merchandise trade (2011)	Imports: US\$56,006 million, 2.6% of total U.S. imports Exports: US\$41,311 million, 3.2% of total U.S. exports
of which preferential imports	0
of which MFN duty-free imports ^a	US\$29,552 million or 53%
U.S. commercial services trade (2011)	Imports: US\$8,377 million, 2.1% of total U.S. imports Exports: US\$16,562 million, 2.8% of total U.S. exports
WTO document series	WT/REG311
United States and Panama	
Passage of U.S. legislation / entry into force	21.10.2011 / not yet entered into force
Transition to full implementation	Agriculture product tariffs phased out over 15 years Some agriculture TRQs phased out over 20 years Industrial products phased out over 10 years
Main products excluded from liberalization	TRQ on sugar; exemption from national treatment and exception of the export restriction rules for logs
Other measures	Textile safeguard measure; agriculture safeguard measure; sugar compensation mechanism
U.S. merchandise trade (2011)	Imports: US\$388 million, 0.02% of total U.S. imports Exports: US\$7,802 million, 0.6% of total U.S. exports
of which preferential imports	US\$56 million or 14%
of which MFN duty-free imports ^a	US\$322 million or 83%
U.S. commercial services trade (2010)	..
WTO document series	Not yet notified

.. Not available.

a MFN duty free and other duty free, including product-specific and unilateral preferences.

Source: USTR online information, "Free Trade Agreements". Viewed at: <http://www.ustr.gov/trade-agreements/free-trade-agreements>; WTO documents; and USITC Data Web.

(b) Overview of the other free-trade agreements

16. At the end of 2011, the United States had 11 bilateral or regional free-trade agreements in force with 17 countries, which accounted for 16.4% of total U.S. imports. However, this figure may underestimate the trade, as it only provides for trade that would otherwise be dutiable, it does not account for all imports from the partner country, as MFN duty-free trade is not included. As MFN duty-free trade accounts for nearly 50% of U.S. imports (Chart II.2), it may also be important to analyse these two types of imports in tandem (Table II.3). Clearly the majority of imports from FTA partners receive benefits, with 90% or more of trade entering duty free from partner countries, with the exception of the two most recent free-trade agreements, with Oman and Peru, which entered into force in 2009.

17. United States' FTA trade is dominated by NAFTA partners, which accounted for 91% of total imports under FTAs, and 77% of exports to FTA partners in 2011. For the first time, in 2011,

Mexican imports under NAFTA preferences surpassed Canadian imports. Crude petroleum and passenger motor vehicles were the top imported products from NAFTA partners in 2010 and 2011. The United States maintains a positive trade balance for 8 of its 11 free-trade agreements, although it maintains a significant trade deficit with the NAFTA countries (Table II.3). CAFTA-DR partner countries (Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) and Chile are the next most significant import suppliers, although they account for only 3.3% and 1.6% of preferential imports in 2011 (Table II.3).

Table II.3
Trade under reciprocal trade agreements, 2011
(US\$ million, unless otherwise indicated)

FTA partner(s)	Imports under FTA preferences	Other duty-free imports (MFN duty free, etc.) ^a	% of imports entering duty-free	Total imports from FTA partner(s)	Total exports to FTA partner(s)	Trade balance
Australia	3,034	6,668	95	10,173	25,491	15,318
Bahrain	326	180	98	518	1,166	648
Chile	5,706	3,299	98	9,170	14,498	5,328
Israel	2,661	19,810	98	23,018	8,084	-14,934
Jordan	870	181	99	1,060	1,410	350
Morocco	201	694	90	991	2,842	1,851
Oman	1,526	224	80	2,184	1,369	-815
Peru	3,079	2,213	87	6,059	7,412	1,353
Singapore	1,138	16,952	95	18,982	28,224	9,242
NAFTA	326,548	216,285	94	578,891	393,684	-185,207
Canada	162,733	126,742	92	316,257	233,774	-82,483
Mexico	163,815	89,543	96	262,634	159,910	-102,724
DR-CAFTA	11,912	14,651	95	27,932	28,403	471
Costa Rica	1,367	8,501	98	10,111	5,565	-4,546
Dominican Rep.	2,251	1,727	96	4,152	6,963	2,811
El Salvador	1,913	458	96	2,479	3,167	688
Guatemala	1,829	1,842	89	4,129	5,857	1,728
Honduras	3,270	1,046	97	4,457	5,851	1,394
Nicaragua	1,282	1,077	91	2,604	1,000	-1,604

a MFN duty free and other duty free, including product-specific and unilateral preferences.

Note: U.S. exports that benefit from FTA preferences cannot be determined with the data available.

Source: WTO Secretariat, based on U.S. International Trade Commission (USITC), Trade Data Web.

(ii) Unilateral preferences

18. The United States has a long history of providing non-reciprocal preferential trade treatment to developing countries in order to promote economic growth and development. The preference programmes are either global, i.e. the Generalized System of Preferences, or regional, where the five main preference programmes are the Andean Trade Preference Act (ATPA), the Caribbean Basin Economic Recovery Act (CBERA), the Caribbean Trade Partnership Act (CBTPA), the African Growth and Opportunity Act (AGOA), and the Haitian Opportunity through Partnership Encouragement (HOPE) Act. In addition, the United States gives unilateral preferential treatment to imports from: U.S. insular possessions (U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands); those with Compacts of Free Association (Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau); and from the West Bank and the Gaza Strip.⁷ In order to receive benefits under one or more of the preference programmes, countries have to meet eligibility criteria, which vary by programme, but may include meeting international commitments in worker rights and investment practices, as well as foreign policy objectives such as having an extradition treaty or combating trade in illegal drugs, and other technical criteria such as adhering to rules of origin (Chapter III(1)(iii)(b)).

⁷ Including qualifying industrial zones.

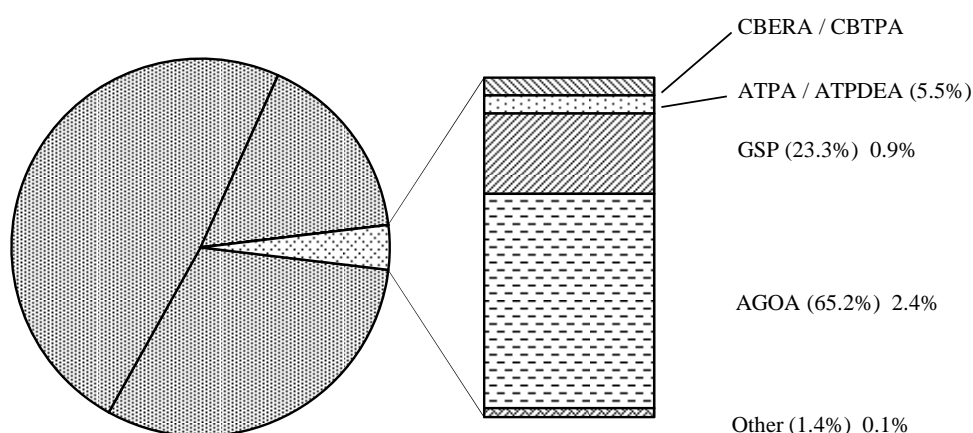
19. The U.S. Congress sets the statutory guidelines for unilateral preference programmes and is responsible for initiating and passing legislation to amend or re-authorize these programmes. During the past two years Congress has held significant policy discussions on prospective reform of some of these programmes, though they have not yet led to any major changes. The legal authority for the GSP and ATPA programmes lapsed on 31 December 2010 and 12 February 2011, respectively. In October 2011, legislation was enacted re-authorizing the two programmes until 31 July 2013.⁸ Congress may consider changes or reforms in the GSP and ATPA programmes when it next takes up renewal of these two programmes, probably in the first half of 2013. According to the President's Trade Policy Agenda, the growing competitiveness of many emerging-market GSP beneficiaries may prompt review and reform of the GSP programme.⁹

20. U.S. preference programmes taken together accounted for 3.7% of U.S. imports in 2011 (Chart II.3), with AGOA accounting for the largest part, at 2.4% of total imports or 65.2% of unilateral preferential imports, followed by GSP with 0.9% of total imports or 23.3% of unilateral preferential imports.¹⁰ The CBERA/CBTPA and ATPA programmes are very small in terms of trade, accounting for 0.2% of total U.S. imports each (Chart II.3). Imports under the GSP and ATPA declined in 2011 compared to 2010, while those under the AGOA and CBERA increased. The decline in ATPA imports can be attributed to the declining number of participants while the decline in GSP appears to be due primarily to the graduation of Equatorial Guinea from GSP and the shifting of imports from one preference programme to another, i.e. imports from Angola moving from GSP to AGOA preferences. In terms of the products benefiting from unilateral preferences, crude petroleum far outpaced any other product in 2010 and 2011, accounting for over two thirds (68% and 66% by value) of all unilateral preferential imports, respectively. Other main imports under the preference programmes were chemical/fuel products and textiles and clothing.

Chart II.3

Unilateral preferences imports, by programme, 2011

(Share of imports)



Note: Percentage in parenthesis represents share in unilateral preferences imports. Percentage not in parenthesis represents share in total imports.

Source: WTO Secretariat, based on U.S. International Trade Commission (USITC), Trade Data Web.

⁸ Upon renewal, the benefits for eligible products were applied retroactively from 1 January 2011.

⁹ USTR (2012b).

¹⁰ Only goods benefitting from the preference programmes; does not include MFN duty-free imports.

(a) Generalized System of Preferences

21. In 2011, the Administration worked with Congress to restore authorisation for the GSP programme. In October 2011, the President signed legislation extending GSP until 31 July 2013, with retroactive effect from 1 January 2011 (Table II.4). Due to the lapse of the programme in 2011, the review of petitions seeking waivers of competitive needs limitations (CNLs)¹¹ was suspended and no actions were taken in 2011 to exclude products from GSP eligibility based on CNLs.¹² USTR launched the 2011 GSP annual review in November 2011. During such annual reviews, USTR and the TPSC consider petitions from interested parties to modify the status of certain GSP beneficiary countries and modify the list of GSP eligible products.¹³

Table II.4
Overview of GSP

Entry into force	1 January 1976
Expiry	31 July 2013
Beneficiaries	<p>Independent countries: Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Bangladesh, Belize, Benin, Bhutan, Plurilateral State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Djibouti, Dominica, East Timor, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Gabon, Gambia, The Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Liberia, Former Yugoslav Republic of Macedonia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Philippines, Russia, Rwanda, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Príncipe, Senegal, Serbia, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tonga, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uruguay, Uzbekistan, Vanuatu, Bolivarian Republic of Venezuela, Yemen, Zambia, Zimbabwe;</p> <p>non-independent countries and territories: Anguilla, British Indian Ocean Territory, Christmas Island (Australia), Cocos (Keeling) Islands, Cook Islands, Falkland Islands (Islas Malvinas), Gibraltar, Heard Island and McDonald Islands, Montserrat, Niue, Norfolk Island, Pitcairn Islands, Saint Helena, Tokelau, Turks and Caicos Islands, British Virgin Islands, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara;</p> <p>least-developed beneficiary developing countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Congo (Kinshasa), Djibouti, East Timor, Ethiopia, The Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tomé and Príncipe, Sierra Leone, the Solomon Islands, Somalia, South Sudan, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Republic of Yemen, Zambia; and</p> <p>certain associations of countries treated as one country for GSP rule-of-origin requirements</p>
Benefits	GSP provides duty-free treatment for 3,509 eight-digit tariff lines for GSP beneficiaries. An additional 1,463 tariff lines are eligible for duty-free treatment when imported from least-developed beneficiary developing countries. Thus, GSP-eligible tariff lines are 51.3% of dutiable MFN tariff lines, or 72.7% when including GSP LDC tariff lines
Exclusions	Many agricultural, textile and apparel, and other import sensitive products are excluded
Top 3	2010 imports (US\$ million)
By country	
Total	22,554
Thailand	3,612
Angola	3,544
India	3,482
Top 3	2011 imports (US\$ million)
By country	
Total	18,539
India	3,736
Thailand	3,720
Brazil	2,059

Table II.4 (cont'd)

¹¹ CNLs are quantitative ceilings on GSP benefits that enter into effect when imports of a GSP-eligible product from a beneficiary country exceed statutorily defined percentages or dollar values. CNLs do not apply to LDCs or AGOA-eligible sub-Saharan African countries.

¹² 76 FR 67530.

¹³ 76 FR 67531.

By product		By product	
Total	22,554	Total	18,539
Crude petroleum	5,433	Silver jewellery	695
Silver jewellery	655	Aluminium alloy plate/sheet/strip	493
Rubber automotive tyres	506	Crude petroleum	481

Note: Trade import data used: "imports for consumption", "customs value", and HTSUS six-digit basis. Beneficiaries as at 30 June 2012.

Source: WTO Secretariat, based on data compiled from USITC DataWeb. Viewed at: <http://dataweb.usitc.gov>; Harmonized Tariff Schedule of the United States (HTSUS) Revision 3, February 2012; USTR (2012) *U.S. Generalized System of Preferences: Guidebook*, April. Viewed at: http://www.ustr.gov/webfm_send/2880; and USTR online information, "GSP by the Numbers". Viewed at: http://www.ustr.gov/webfm_send/3017.

22. In 2011 and continuing into 2012, USTR and the TPSC were reviewing the GSP eligibility of Bangladesh, Georgia, Niger, the Philippines, Sri Lanka, and Uzbekistan, based on issues related to worker rights. A worker rights petition from 2008 concerning Iraq remains pending. Country practices petitions on Lebanon, Russia, and Uzbekistan for IPR issues also remained under review in early 2012. Pursuant to Presidential Proclamation 8788 of 26 March 2012, Argentina's status as a beneficiary under the GSP was suspended for failure to act in good faith in enforcing arbitral awards in favour of U.S. corporations, and the Republic of South Sudan was added as a least-developed beneficiary developing country.¹⁴

23. The United States-Colombia Trade Promotion Agreement entered into force on 15 May 2012. At that time, Colombia ceased to be a GSP beneficiary. Similarly, when the United States-Panama Trade Promotion Agreement enters into force, Panama will cease to be a GSP beneficiary.

(b) African Growth and Opportunity Act (AGOA)

24. By Presidential Proclamation on 28 October 2011, Côte d'Ivoire, Guinea, and Niger were designated as beneficiary sub-Saharan African countries under the AGOA (Table II.5).¹⁵ Furthermore, they were deemed to satisfy the criterion of "lesser developed beneficiary sub-Saharan African country", and thus receive additional benefits under section 112 (c) of AGOA. On 1 January 2011, also by Presidential Proclamation, the Democratic Republic of Congo was removed as a beneficiary.¹⁶

Table II.5
Overview of the AGOA

Entry into force	1 October 2000
Expiry	30 September 2015
Beneficiaries	Republic of Angola, Republic of Benin, Republic of Botswana, Burkina Faso, Republic of Burundi, Republic of Cape Verde, Republic of Cameroon, Republic of Chad, Union of the Comoros, Republic of Congo, Republic of Côte d'Ivoire, Republic of Djibouti, Ethiopia, Gabonese Republic, Republic of The Gambia, Republic of Ghana, Republic of Guinea, Republic of Guinea-Bissau, Republic of Kenya, Kingdom of Lesotho, Republic of Liberia, Republic of Malawi, Republic of Mali, Islamic Republic of Mauritania, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Republic of Niger, Federal Republic of Nigeria, Republic of Rwanda, Democratic Republic of Sao Tome and Principe, Republic of Senegal, Republic of Seychelles, Republic of Sierra Leone, Republic of South Africa, Kingdom of Swaziland, United Republic of Tanzania, Republic of Togo, Republic of Uganda, Republic of Zambia
Benefits	AGOA provides duty-free treatment for 1,738 eight-digit tariff lines, i.e. 25.4% of MFN dutiable tariff lines (exclusive of GSP lines)

Table II.5 (cont'd)

¹⁴ 77 FR 18899.

¹⁵ 76 FR 67035.

¹⁶ President Proclamation 8618 of 21 December 2010.

Exclusions		Import sensitive products subject to TRQs, certain agriculture, flat goods, and iron and steel products	
Top 3	2010 imports (US\$ million)	Top 3	2011 imports (US\$ million)
By country		By country	
Total	38,665	Total	51,883
Nigeria	25,154	Nigeria	31,004
Angola	6,294	Angola	11,534
Congo (Republic of)	1,936	Chad	2,991
By product		By product	
Total	38,665	Total	51,883
Crude petroleum	35,360	Crude petroleum	47,434
Certain motor vehicles	1,471	Certain motor vehicles	1,995
Light petroleum oils	519	Light petroleum oils	801

Note: Trade import data used: "imports for consumption", "customs value", and HTSUS six-digit basis.

Source: WTO Secretariat, based on data compiled from USITC DataWeb. Viewed at: <http://dataweb.usitc.gov>; Harmonized Tariff Schedule of the United States (HTSUS) Revision 3, February 2012; and USTR online information, "Fact Sheet on AGOA". Viewed at: <http://www.ustr.gov/sites/default/files/AGOAFactSheet20202010.pdf>.

25. The AGOA third-country fabric provision, seen as successful in promoting the textile and apparel industry in Africa as well as supporting many jobs, is set to expire on 30 September 2012. The U.S. Congress has introduced legislation in this regard, but it has not been enacted into law at this time.

(c) Caribbean Basin Economic Recovery Act (CBERA) and U.S.-Caribbean Basin Trade Partnership Act (CBTPA), including the HOPE and HELP amendments

26. The HOPE amendments to the CBERA agreement, in 2006 and 2008, provided additional duty-free provisions for Haiti, in particular apparel products. A further amendment in January 2010, known as the HELP amendment further extended more flexible and generous tariff preferences to Haiti by allowing third-country inputs to be used as inputs for Haitian exports under the programme.¹⁷ Upon entry into force of the free-trade agreement with Panama, Panama will cease to be a CBERA/CBTPA beneficiary (Tables II.6 and II.7).

Table II.6
Overview of CBERA

Entry into force	1 January 1984		
Expiry	No statutory expiry		
Beneficiaries	Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Panama, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, British Virgin Islands		
Benefits	CBERA provides preferential or duty-free treatment for 5,498 eight-digit tariff lines, i.e. 80.4% of MFN dutiable tariff lines		
Exclusions	Most textiles and apparel, leather, canned tuna, petroleum and derivatives, certain footwear, certain watches, and over-TRQ agricultural goods		
Top 3	2010 imports (US\$ million)	Top 3	2011 imports (US\$ million)
By country		By country	
Total	1,219	Total	1,739
Trinidad and Tobago	930	Trinidad and Tobago	1,290
Bahamas	99	Jamaica	179
Jamaica	84	Bahamas	124

Table II.6 (cont'd)

¹⁷ Hornbeck (2011).

By product		By product	
Total	1,219	Total	1,739
Methanol	890	Methanol	1,097
Polystyrene	95	Undenatured ethyl alcohol	244
Raw sugar	26	Polystyrene	122

Note: Does not include US\$2 million (2010) and US\$1million (2011) qualifying CBI imports from Puerto Rico. Trade import data used: "imports for consumption", "customs value", and HTSUS six-digit basis. Beneficiaries as at 30 June 2012.

Source: WTO Secretariat, based on data compiled from USITC DataWeb. Viewed at: <http://dataweb.usitc.gov>; Harmonized Tariff Schedule of the United States (HTSUS) Revision 3, February 2012; USTR (2011), *Ninth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act*, 31 December. Viewed at: http://www.ustr.gov/webfm_send/3214; USITC (2011), *Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries: Twentieth Report 2009-10*, Investigation 332-227. Viewed at: <http://www.usitc.gov/publications/332/pub4271.pdf>; and USTR online information, "Caribbean Basin Initiative". Viewed at: <http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi>.

Table II.7
Overview of CBTPA

Entry into force	2 October 2000		
Expiry	30 September 2020		
Beneficiaries	Barbados, Belize, Guyana, Haiti, Jamaica, Panama, Saint Lucia, Trinidad and Tobago		
Benefits	Expanded the coverage of CBERA to cover qualifying apparel products, petroleum and petroleum products, certain tuna, certain footwear, and certain watches and watch parts		
Top 3		Top 3	
2010 imports (US\$ million)		2011 imports (US\$ million)	
By country		By country	
Total	1,671	Total	1,879
Trinidad and Tobago	1,274	Trinidad and Tobago	1,303
Haiti	356	Haiti	461
Belize	38	Belize	110
By product		By product	
Total	1,671	Total	1,879
Crude petroleum	1,249	Crude petroleum	1,274
Cotton T-shirts	204	Cotton sweaters and similar	221
Cotton sweaters and similar	125	Cotton T-shirts	213

Note: Trade import data used: "imports for consumption", "customs value", and HTSUS six-digit basis. Beneficiaries as of 30 June 2012.

Source: WTO Secretariat, based on data compiled from USITC DataWeb. Viewed at: <http://dataweb.usitc.gov>; Harmonized Tariff Schedule of the United States (HTSUS) Revision 3, February 2012; USTR (2011), *Ninth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act*, 31 December. Viewed at: http://www.ustr.gov/webfm_send/3214; USITC (2011), *Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries: Twentieth Report 2009-10*, Investigation 332-227. Viewed at: <http://www.usitc.gov/publications/332/pub4271.pdf>; and USTR online information, "Caribbean Basin Initiative". Viewed at: <http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi>.

(d) Andean Trade Preference Act as amended by the Andean Trade Promotion and Drug Eradication Act (ATPA/ATPDEA)

27. Due primarily to the negotiation of free-trade agreements with countries of ATPA/ATPDEA, the programme has fewer beneficiaries and therefore less trade coverage than in earlier years: Peru's benefits ceased on 1 January 2011 (Table II.8), and those of Colombia on 15 May 2012 as a result of the entry into force of their FTAs. As the Plurilateral State of Bolivia ceased to be eligible for benefits in December 2008, Ecuador is the only current beneficiary of the ATPA/ATPDEA. Three petitions for removal of Ecuador's ATPA benefits remain under review: two worker-rights petitions dating from 2003, and one from 2004 concerning an investment dispute.

Table II.8
Overview of ATPA/ATPDEA

Entry into force	December 1991		
Expiry	31 July 2013		
Beneficiaries	Ecuador (Peru ceased to be a beneficiary on 1 January 2011 and Colombia on 15 May 2012)		
Benefits	ATPA/ATPDEA provides duty-free treatment for 5,354 eight-digit tariff lines, i.e. 78.3% of MFN dutiable tariff lines		
Exclusions	Many textile and apparel articles not otherwise eligible, rum and tafia, tuna in cans, and over TRQ agricultural products		
Top 3	2010 imports (US\$ million)	Top 3	2011 imports (US\$ million)
By country		By country	
Total	14,411	Total	4,385
Colombia	9,473	Colombia	2,675
Ecuador	4,179	Ecuador	1,706
Peru	759	Peru	5
By product		By product	
Total	14,411	Total	4,385
Crude petroleum	11,945	Crude petroleum	3,629
Other distillate and residual fuel oils	331	Other distillate and residual fuel oils	216
Fresh cut roses	314	Fresh cut roses	140

Note: Trade import data used: "imports for consumption", "customs value", and HTSUS six-digit basis. Beneficiaries as at 30 June 2012.

Source: WTO Secretariat, based on data compiled from USITC DataWeb. Viewed at: <http://Dataweb.usitc.gov>; Harmonized Tariff Schedule of the United States (HTSUS) Revision 3 February 2012; USTR (2010), *Fifth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended*, 30 June. Viewed at: <http://www.ustr.gov/sites/default/files/USTR%202010%20ATPA%20Report.pdf>; and Congressional Research Service (14 April).

(e) Other unilateral preferences

28. The United States provides duty-free treatment to eligible imports from U.S. insular possessions, freely associated States (Table II.9), and the West Bank and Gaza Strip (including Qualified Industrial Zones) (Table II.10). Trade data are not available for U.S. trade with U.S. insular possessions (U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands).

Table II.9
Overview of trade with freely associated States

Entry into force	1985		
Expiry	n.a.		
Beneficiaries	Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau		
Benefits	Duty-free treatment to all qualifying products		
Top 3	2010 imports (US\$ million)	Top 3	2011 imports (US\$ million)
By state		By state	
Total	4	Total	7
Marshall Islands	3.2	Marshall Islands	6.7
Fed. States of Micronesia	0.8	Fed. States of Micronesia	0.4
Palau	-	Palau	-
By product		By product	
Total	4	Total	7
Tunas, skipjack, and bonito	3	Tunas, skipjack, and bonito	7
Other fish fillets and fish meat	0.5	Other fish fillets and fish meat	0.2
Basketwork, wickerwork	0.1	Basketwork, wickerwork	0.2

n.a. Not applicable.

- Negligible.

Source: WTO Secretariat, based on data from USITC DataWeb.

Table II.10
Overview of trade with the West Bank, Gaza Strip, and Qualified Industrial Zones

Entry into force	1985		
Expiry	n.a.		
Beneficiaries	West Bank, Gaza Strip, and Qualified Industrial Zones (located between Israel and Jordan, or Israel and Egypt)		
Benefits	Duty-free treatment to all qualifying products		
Top 3	2010 imports (US\$ million)	Top 3	2011 imports (US\$ million)
By area		By area	
Total	1,160	Total	1,108
Egypt	956	Egypt	1,009
Jordan	200	Jordan	95
Gaza Strip	3	Gaza Strip	3
By product		By product	
Total	1,160	Total	1,108
Women's or girls' trousers of cotton	198	Men's or boys' trousers of cotton	209
Men's or boys' trousers of cotton	180	Women's or girls' trousers of cotton	172
Sweaters, pullovers of cotton	106	Sweaters, pullovers of manmade fibers	73

n.a. Not applicable.

Source: WTO Secretariat, based on data compiled from USITC DataWeb.

(4) INVESTMENT AGREEMENTS AND POLICIES

(i) Bilateral investment treaties and framework agreements

29. The United States negotiates bilateral investment treaties (BITs) to provide a framework and detailed provisions to foster or facilitate the flow of investment. In addition to BITs, the United States has significant investment provisions in many of its free-trade agreements, thus extensive coverage in an FTA may replace the need for a BIT. For example, the United States does not have BITs with Canada or Mexico, but the NAFTA (chapter 11) contains investment provisions similar to those in U.S. BITs; this is also the case for a number of other FTA partners. At end-June 2012, the United States had 41 BITs in force.¹⁸ The United States does not have BITs with many of the emerging economies, which have been growing in importance with respect to world investment flows in recent years. Moreover, it is in the process of negotiating with several countries although some negotiations have been on-going for many years, i.e. China and India. A few BITs that have been negotiated, have not entered into force, i.e. Belarus, El Salvador, Haiti, Nicaragua, Russia, and Uzbekistan.

30. The BITs have been traditionally negotiated on the basis of a model that is then applied to the new partners entering into negotiations. The use of BITs and its goals are to:

- protect investment abroad in countries where investors' rights are not already protected through existing agreements (such as modern treaties of friendship, commerce, and navigation, or FTAs);
- open markets to investment, i.e. pre-establishment
- encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and

¹⁸ Department of State online information, "United States Bilateral Investment Treaties". Viewed at: <http://www.state.gov/e/eb/ifa/bit/117402.htm>.

- support the development of international law standards consistent with these objectives.¹⁹

31. In 2009, the Administration launched a review of the 2004 model BIT to update it in order to ensure that it was consistent with the public interest and the Administration's overall economic agenda. The Administration completed the review in April 2012, and announced a new model BIT. The 2012 model has 42 pages (including annexes) and is reported to build upon the previous model by enhancing transparency and public participation; sharpening disciplines that address preferential treatment to state-owned enterprises, including the distortions created by certain indigenous innovation policies; and strengthening protection relating to labour and the environment.²⁰

32. The United States also uses Trade and Investment Framework Agreements (TIFAs) for dialogue on trade and investment issues. Currently, 47 agreements are in force with individual countries or country groups. TIFAs have often been used as the first level of engagement before moving towards a closer trade and investment relationship. According to the 2012 Trade Policy Agenda, the United States intends to pursue more TIFAs in 2012, especially with African and Middle East countries. Furthermore, the United States plans to strengthen engagement on labour rights through the TIFAs in 2012.²¹

(ii) Investment promotion

33. In June 2011, the U.S. Government took steps to facilitate and attract inward FDI into the United States by creating the first government-initiated centralized investment promotion body. The SelectUSA initiative was established²², by Presidential Executive Order, to attract and retain investment in the American economy, with the specific mission to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness. The SelectUSA initiative involves the creation of the Federal Interagency Investment Working Group, to coordinate activities to promote business investment and to respond to specific issues that affect business investment decisions. According to the Executive Order:

- "The Initiative shall coordinate outreach and engagement by the Federal Government to promote the United States as the premier location to operate a business.
- The Initiative shall serve as an ombudsman that facilitates the resolution of issues involving federal programs or activities related to pending investments.
- The Initiative shall provide information to domestic and foreign firms on: the investment climate in the United States; federal programs and incentives available to investors; and State and local economic development organizations.
- The Initiative shall report quarterly to the President through the National Economic Council, the Domestic Policy Council, and the National Security Staff, describing its outreach activities, requests for information received, and efforts to resolve issues."²³

¹⁹ Department of State online information, "Bilateral Investment Treaties and Related Agreements". Viewed at: <http://www.state.gov/e/eb/ift/bit/index.htm>.

²⁰ Department of State (2012).

²¹ USTR (2012b).

²² White House Press Release, "Executive Order 13577: SelectUSA Initiative", 15 June 2011. Viewed at: <http://www.whitehouse.gov/the-press-office/2011/06/15/executive-order-selectusa-initiative>. SelectUSA activities are performed by the U.S. Department of Commerce under its existing appropriations.

²³ White House Press Release, "Executive Order 13577: SelectUSA Initiative", 15 June 2011. Viewed at: <http://www.whitehouse.gov/the-press-office/2011/06/15/executive-order-selectusa-initiative>.

(iii) **Investment regulations and restrictions**

34. The United States' investment regime has been described as open and transparent with few formal encumbrances. For example, there is free movement of capital and profits, and no minimum investment thresholds. However, there remain a number of restrictions to foreign investment in certain areas, and certain information-gathering, monitoring, reporting, and disclosure procedures can also have an impact on foreign investment.

35. According to a 2009 Congressional Research Service report, a number of federal laws or regulations act as barriers or otherwise restrict foreign investment in several areas, i.e. maritime, aircraft, mining, energy, lands, radio communications, banking, and investment company regulations. In addition, in terms of reporting and disclosure, four major federal statutes have an impact on foreign investment. For example, a provision in the Agricultural Foreign Investment Disclosure Act requires foreign persons or an interest by a foreign person in agricultural land to submit a report to the Secretary of Agriculture within a specified timeframe.²⁴

36. The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the national security effects of such transactions. Where CFIUS identifies national security concerns with a transaction that are not adequately and appropriately addressed by other law, CFIUS is authorized to negotiate or impose mitigation measures or, if the risks cannot be mitigated, recommend to the President that he suspend or prohibit the transaction. CFIUS operates essentially on a voluntary basis, but has the authority to initiate a review of any transaction that may raise national security concerns. Between 2009 and 2011, the number of notices received and investigations undertaken by CFIUS have increased steadily (Table II.11), although notices remain below the 2008 pre-recession level.

Table II.11
CFIUS covered transaction notices, withdrawals, and decisions, 2009-11

	No. of notices	Notices withdrawn during review	No. of investigations	Notices withdrawn during investigation	Presidential Decisions
2009	65	5	25	2	0
2010	93	6	35	6	0
2011	111	1	40	5	0

Source: Department of Treasury online information. Viewed at: <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUS%20Stats%202009-2011.pdf>.

37. A separate, but parallel mechanism established through Executive Order is the National Industrial Security Program (NISP) for the protection and safeguarding of classified information that may be released to industry.²⁵ The Department of Defense serves as the Executive Agent and has the lead to issue and update an NISP Operating Manual (NISPOM), to implement standards for industry that are consistent with those established for U.S. government agencies for the protection of classified information. The NISPOM requires evaluation of any foreign ownership, control or influence factors at a U.S. company as part of the determination of eligibility for access to classified information. U.S. companies cleared through the NISP must agree to comply with the NISPOM and be subject to compliance inspections.²⁶

²⁴ Seitzinger (2009).

²⁵ Executive Order 12829.

²⁶ Jackson (2010).

(5) AID-FOR-TRADE

38. The United States is one of the world's largest bilateral contributors to trade capacity building initiatives, and is an active partner in the Aid-for-Trade discussions and initiatives. In late 2010, President Obama released his strategy for development, which was the first initiative of its kind to provide a coherent framework for U.S. development policy, i.e. the Presidential Policy Directive on Global Development.²⁷ In particular, this policy sets out the new strategic context through three pillars:

- a focus on sustainable development outcomes that places a premium on broad-based economic growth, democratic governance, game-changing innovations, and sustainable systems for meeting basic human needs;
- a new operational model that positions the United States to be a more effective partner and to leverage leadership; and
- a modern architecture that elevates development and harnesses development capabilities spread across government in support of common objectives – including a deliberate effort to leverage the engagement of and collaboration with other donors, foundations, the private sector, and NGOs – not just at the project level, but systemically.²⁸

39. In 2010, the U.S. Department of State issued its first Quadrennial Diplomacy and Development Review (QDDR) which, among other things, made an assessment of how the U.S. Agency for International Development (USAID) could become more accountable, efficient, and effective. As a result, there have been a number of changes and a move towards more accountability and delivery of results. An evaluation of USAID's trade capacity building programmes was completed in late 2010. One of the findings of the report showed a statistically significant relationship between USAID trade capacity building (TCB) obligations and developing country exports, indicating that, on a predictive basis, an additional US\$1 of USAID TCB assistance is associated with a US\$42 increase in the value of developing country exports two years later.²⁹

40. One of the developments resulting from the 2010 Directive on Global Development is the establishment of the Partnership for Growth (PFG) initiative. This programme, established in 2011, begins with an analysis of the constraints to growth, followed by the development of joint action plans to address these constraints, and mutual accountability for implementation. To date, PFG programmes have been initiated with El Salvador, Ghana, the Philippines, and Tanzania.³⁰

41. U.S. aid for trade gives countries, including those with low volumes of trade, the training and technical assistance needed to make decisions about the benefits of trade reforms, to implement their obligations to bring certainty to their trade regimes, and to enhance their ability to compete in a global economy.³¹

²⁷ White House Press Release, "Fact Sheet: U.S. Global Development Policy", 22 September 2010. Viewed at: <http://www.whitehouse.gov/the-press-office/2010/09/22/fact-sheet-us-global-development-policy>.

²⁸ USTR (2012b).

²⁹ USAID (2010).

³⁰ Department of State Press Release, "Partnership for Growth", 29 November 2011. Viewed at: <http://www.state.gov/r/pa/prs/ps/2011/11/177887.htm>.

³¹ USTR online information, "Aid for Trade". Viewed at: <http://www.ustr.gov/trade-topics/trade-development/trade-capacity-building/aid-trade>.