IV. TRADE POLICIES BY SECTOR

(1) AGRICULTURE

(i) Agriculture in the United States

1. The United States has one of the largest agriculture sectors in the world with a total value of production of US$372 billion in 2011. It is also the largest agriculture exporting country with exports of US$144.8 billion (WTO definition). Although agriculture represents less than 1% of GDP it is important to the economy generally as it represents 11% of total exports of goods (and 6% of imports) and in some States it is one of the main economic activities with net value added from agriculture equivalent to over 6% of GDP in Iowa, Nebraska, North Dakota, and South Dakota.

2. Over 2010-11, the value of agricultural production continued to increase, mainly due to higher prices, reaching US$372 billion in 2011. Although a wide variety of products are produced, a relatively small number make up over half of production, with maize and soybeans being the principal crops and milk, cattle, and poultry and eggs the main animal products (Table IV.1).

Table IV.1
Value of production, 2007-11
(US$ billion and %)

	2007	2008	2009	2010	2011	% of total for most recent year data available
Total	**311.3**	**318.3**	**284.5**	**334.9**	**372.3**	**100**
Maize for grain	54.7	49.2	46.7	64.6	76.5	21
Soybeans for beans	27.0	29.5	32.1	37.5	35.8	10
Hay	16.8	18.6	14.7	14.7	17.7	5
Wheat	13.3	16.6	10.7	12.8	14.4	4
Cotton	5.7	3.0	3.9	7.3	7.3	2
Milk	35.7	35.1	24.5	31.5	39.7	11
Cattle and calves	36.0	35.6	32.0	37.0	45.2	12
Poultry and eggs	32.2	34.0	31.6	34.7	35.6	10

Source: USDA National Agricultural Statistics Service online information, "National Agricultural Statistics Service: Crop Values Annual Summaries". Viewed at: http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1050; USDA National Agricultural Statistics Service online information, "Quick Stats". Viewed at: http://quickstats.nass.usda.gov/, for cotton and milk; USDA National Agricultural Statistics Service (2011), *2011 Agricultural Statistics Annual*. Viewed at: http://www.nass.usda.gov/Publications/Ag_Statistics/2011/index.asp, for cattle and calves; and USDA National Agricultural Statistics Service online information, "Poultry Production and Value 2012-2009". Viewed at http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1130 for poultry and eggs (includes broilers, eggs, turkeys, and other chickens).

3. The United States is one of the world's main producers of a number of agricultural products; it is the biggest producer of soybeans, maize, beef, chicken, and turkey, the second biggest producer of pig meat, and the third biggest producer of cotton and wheat.[1] For many products, the United States exports a large portion of production (Table IV.2). At the same time, total world production and consumption of agricultural products are increasing faster than in the United States with the result that U.S. market share for many products is declining. For the main commodities, the principal exception for the decline in market share is beef, which has more than doubled its share of exports on the world market since 2006. This increase reflects the re-opening of major beef export markets that had been closed due to the discovery of BSE in December 2003, and the decline in per capita consumption of beef in the United States.

4. Due to its large share in world production, exports, and imports of agricultural products, developments in the United States, including changes to agricultural policies, have an impact on world markets and on agriculture in other countries. As the U.S. agriculture sector is highly

[1] FAOStat database. Viewed at: http://faostat.fao.org/site/291/default.aspx [March 2012].

integrated into world markets, other countries' agricultural trade and production policies also affect U.S. agriculture.

Table IV.2
U.S. and world production and trade of selected commodities, 2006-11
('000 tonnes, unless otherwise indicated)

	Marketing year	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Maize							
Production	United States	267,503	331,177	307,142	332,549	316,165	313,918
	% of World	37.5	41.7	38.4	40.6	38.1	36.3
Exports	United States	53,987	61,913	46,965	50,295	46,599	43,182
	% of World	57.4	62.8	55.6	51.9	51.1	44.7
Wheat							
Production	United States	49,217	55,821	68,016	60,366	60,062	54,413
	% of World	8.3	9.1	10.0	8.8	9.2	7.8
Exports	United States	24,725	34,363	27,635	23,930	35,076	27,216
	% of World	22.1	29.3	19.3	17.6	26.5	18.9
Cotton (480 lb bales)							
Production	United States	21,588	19,207	12,815	12,188	18,104	15,555
	% of World	17.7	16.0	11.9	11.9	15.5	12.6
Exports	United States	12,959	13,634	13,261	12,037	14,376	11,400
	% of World	34.5	34.9	43.6	33.8	39.9	27.7
Soybean, oilseed							
Production	United States	87,001	72,859	80,749	91,417	90,606	83,172
	% of World	36.9	33.2	38.2	35.0	34.3	34.6
Exports	United States	30,386	31,538	34,817	40,798	40,859	35,108
	% of World	42.7	40.2	45.3	43.9	44.1	39.4
	Calendar year	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
Beef and veal							
Production	United States	11,980	12,097	12,163	11,891	12,047	11,997
	% of World	20.8	20.7	20.8	20.8	21.1	21.1
Exports	United States	519	650	905	878	1,043	1,265
	% of World	6.8	8.5	11.8	11.7	13.3	15.5
Poultry meat							
Production	United States	15,930	16,226	16,561	15,935	16,563	16,694
	% of World	24.3	23.3	22.7	21.7	21.3	20.8
Exports	United States	2,361	2,678	3,157	3,093	3,069	3,171
	% of World	35.9	36.3	37.5	37.4	34.7	33.9

Source: USDA Foreign Agricultural Service, Production, Supply and Distribution database. Viewed at: http://www.fas.usda.gov/psdonline/psdQuery.aspx [April 2012].

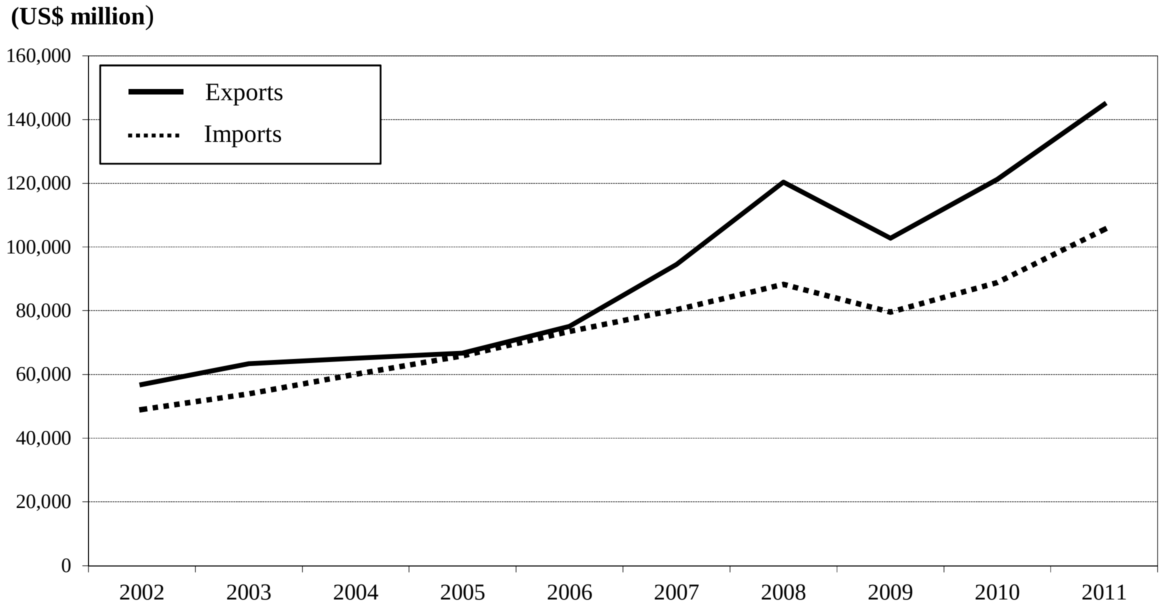
5. The total number of farms in the United States, having fallen for several decades, up to the late 1990s, have been increasing over the past ten years and there are now about 2.2 million. However, this increase is due to more small farms (less than 50 acres or 20 hectares), while consolidation of land and production has continued among larger farms. In 2007, 8% of farms were over 1,000 acres but represented 68% of all land in farms, while 2.5% of farms had sales of over US$1,000,000 but these farms represented 59% of total sales.[2]

6. The vast majority of farms in the United States are family farms and even among corporate farms the vast majority are family-held corporations. As in other developed countries, off-farm income is, in many cases, more important than earnings from farming activities but the opposite is true on the larger farms, where most production takes place. The agriculture sector varies considerably from one State to another with average farm size ranging from over 2,000 acres in Montana, New Mexico, and Wyoming to less than 100 acres in Connecticut, Massachusetts, New Jersey, and Rhode Island.[3]

[2] USDA (2009).
[3] U.S. Census Bureau (2012), Section 17, Agriculture.

7. The United States remains the biggest agriculture exporting country in the world and it has a large and growing agriculture trade surplus: between 2005 and 2011 exports of agriculture products (WTO definition) more than doubled while imports increased by about 60% (Chart IV.1). The increase in the value of exports over the past few years is a result of both increasing quantities exported and rising prices.

Chart IV.1
Exports and imports of agricultural products, 2002-11



Source: **UNSD Comtrade database.**

8. Both exports and imports are broadly based with the top 10 products (HS 2002 four-digit[4]) representing just over half of total exports and one third of imports. As noted above, the structure of exports has changed somewhat over the past few years, as beef exports have increased considerably, although soybeans, maize, wheat, and cotton remain the main exports. There has been some change to the structure of imports, as imports of coffee and sugar have increased more rapidly than other imports (Table IV.3).

9. The main destinations for exports from the United States depend on the product: China is still the main market for U.S. exports of soybeans as it takes over three quarters of the US$17.6 billion soybean exports; exports of other agriculture goods are more widely dispersed, with Japan, Mexico, the Republic of Korea, and China being the main destinations for maize, and Japan, Nigeria, Mexico, and Egypt for wheat.

10. The main sources of imports also vary depending on the product: Brazil and Colombia are the main sources for imports of coffee; France, the United Kingdom, and Mexico for imports of distilled beverages (although the EU as a whole accounts for over 80% of imports); Italy, France, and Australia for wine (the EU accounts for nearly 70%); Mexico and the Netherlands for beer; and Canada, New Zealand, and Australia for meat of bovine animals.

[4] Under the Harmonized System, at the four-digit level, beef is divided between fresh and chilled (0201) and frozen (0202) while other meats are under single headings, such as meat of swine (0203), meat and edible offal of poultry (0207). For the purpose of showing the main imports and exports for the United States both fresh and chilled, and frozen exports have been shown as s single heading in Table IV.3.

Table IV.3
Exports and imports of selected products, 2005-11[a]

			2005	2006	2007	2008	2009	2010	2011
Total exports		**US$ million**	**66,727**	**75,132**	**94,521**	**120,322**	**102,727**	**121,177**	**144,814**
1201	Soybeans	US$ million	6,324	6,923	10,016	15,537	16,476	18,586	17,564
		'000 tonnes	25,658	28,120	29,840	51,278	40,506	42,351	34,311
1005	Maize	US$ million	5,039	7,300	10,100	13,884	9,086	10,110	13,982
		'000 tonnes	45,369	57,886	57,014	71,415	47,813	50,906	45,888
1001	Wheat and meslin	US$ million	4,382	4,230	8,345	11,306	5,380	6,751	11,135
		'000 tonnes	27,179	23,395	32,947	48,613	21,942	27,629	32,790
5201	Cotton	US$ million	3,924	4,503	4,580	4,832	3,387	5,748	8,425
		'000 tonnes	3,400	3,508	3,259	3,798	2,553	2,962	2,774
0802	Other nuts, fresh or dried	US$ million	2,507	2,625	2,776	3,121	3,467	4,164	5,002
		'000 tonnes	562	589	637	608	920	933	1,043
0203[b]	Meat of swine	US$ million	2,063	2,222	2,488	3,789	3,181	3,531	4,687
		'000 tonnes	820	907	966	1,530	1,255	1,241	1,548
0207[b]	Meat and edible offal poultry	US$ million	2,469	2,238	3,260	4,158	3,851	3,825	4,504
		'000 tonnes	2,727	2,814	3,264	3,047	3,738	3,544	3,747
2106	Food preparations not elsewhere specified	US$ million	2,592	3,007	2,974	3,367	3,345	3,686	4,286
		'000 tonnes	532	576	610	806	663	725	806
2207	Undenatured ethyl alcohol 80% or higher; other denatured spirits	US$ million	141	109	396	413	282	915	3,316
		'000 tonnes	167	155	628	-	245	894	3,023
2304	Oil-cake and solid residues, from extraction of soybean oil	US$ million	1,131	1,289	1,685	2,598	3,003	3,103	2,702
		'000 tonnes	5,068	5,976	6,408	11,496	7,678	8,355	6,701
0201 + 0202[b]	Meat of bovine animals fresh and frozen	US$ million	848	1,429	1,897	2,697	2,485	3,397	4,571
		'000 tonnes	206	353	440	271	587	727	884
Total imports		**US$ million**	**65,839**	**73,547**	**80,352**	**88,246**	**79,603**	**88,821**	**105,520**
0901	Coffee	US$ million	2,895	3,220	3,648	4,257	3,872	4,696	7,844
		'000 tonnes	1,261	1,321	1,356	1,586	1,306	1,344	166
2208	Spirits, liqueurs and other spirituous beverages	US$ million	4,487	5,042	5,677	5,615	5,145	5,742	6,399
		'000 tonnes	1,300	512	543	-	707	1,288	210
2204	Wine of fresh grapes	US$ million	3,945	4,370	4,856	4,841	4,190	4,462	5,047
		'000 tonnes	1,527	782	845	-	927	938	421
2203	Beer made from malt	US$ million	3,343	3,880	3,928	3,942	3,564	3,748	3,796
		'000 tonnes	3,941	3,438	3,485	4,372	3,037	3,185	363
1905	Bread, pastry, cakes, biscuits and other bakers' wares	US$ million	1,945	2,188	2,369	2,544	2,525	2,828	3,157
		'000 tonnes	759	803	829	824	817	900	531
0201 + 0202[b]	Meat of bovine animals fresh and frozen	US$ million	3,436	2,915	2,949	2,750	2,471	2,705	2,927
		'000 tonnes	1,077	903	892	636	796	735	656
1701	Sugar and chemically pure sucrose, in solid form	US$ million	926	1,452	917	1,224	1,275	2,084	2,912
		'000 tonnes	2,088	2,919	1,948	2,466	2,511	2,917	353
0803	Bananas	US$ million	1,372	1,471	1,525	1,685	1,899	2,126	2,327
		'000 tonnes	4,089	4,088	4,261	2,532	3,853	4,382	516
0702	Tomatoes, fresh or chilled	US$ million	1,126	1,301	1,283	1,501	1,471	1,880	2,220
		'000 tonnes	952	992	1,071	903	1,190	1,532	208
0709	Other vegetables, fresh or chilled	US$ million	1,529	1,680	1,760	1,796	1,721	2,188	2,209
		'000 tonnes	1,176	1,254	1,326	778	1,422	1,651	511

a Trade volumes in this table are derived from the UNSD Comtrade database and differ from those in Table IV.2, which are taken from USDA Foreign Agriculture Service, Production, Supply, and Distribution database.

b HS headings 0201 (meat of bovine animals, fresh and chilled) and 0202 (meat of bovine animals, frozen) have been added together so that trade in meat of bovine animals is comparable to HS headings 0203 (meat of swine) and 0207 (meat and edible offal of poultry), which both include fresh, chilled, and frozen meat under the same HS heading.

Source: UNSD Comtrade database.

(ii) Agriculture policies

11. There have been no major changes to agriculture policies in the United States since the last Trade Policy Review.[5] The Food, Conservation, and Energy Act of 2008 remains the basis for most agricultural programmes and will remain so until it expires. Some of the provisions of the 2008 Act expire on 30 September 2012, others on 31 December 2012, and others in 2013 at the end of the 2012 crop year. Should the 2008 Act expire without enactment of successor legislation or a temporary extension, farm programmes will revert to the permanent legislation, most of which is in the Agricultural Adjustment Act of 1938, the Agriculture Act of 1949, and the Commodity Credit Corporation Charter Act of 1948.

(a) Trade[6]

Imports

12. The average tariff on imports of agricultural products (WTO definition) into the United States in 2012 was 8.5%, slightly down on the level of two years previously due to increasing commodity prices, which led to lower *ad valorem* equivalents for tariff lines with specific or compound duties. This average is low compared with some other WTO Members and, furthermore, is somewhat over-stated because the United States charges tariffs on the f.o.b. value rather than the c.i.f. value. Tariff rates vary considerably from one tariff line to another and range from zero, for 620 tariff lines, up to 350%, for some tobacco products. The highest tariffs are on tobacco, sugar, peanuts, and dairy products, followed by beef, cotton, and certain horticultural products (such as mushrooms).

13. As reported in its last Review, the United States notifies the Committee on Agriculture of 44 tariff quotas covering 171 tariff lines, mostly for dairy products, sugar products, products containing sugar and/or dairy ingredients and cotton.[7] The most recent notification is for 2010 and 2011.[8] Fill-rates vary significantly from one quota to another and have been particularly low for cotton and high for some dairy and sugar products.

14. The United States has reserved the right to use the Special Agricultural Safeguard (SSG) on 189 tariff lines, mostly dairy products, sugar products, products containing sugar and/or dairy ingredients, and cotton. The volume-based SSG was last used in 2003. However, the price-based safeguard has been applied more frequently. It was used on 48 tariff lines in 2010, and 59 lines in 2009.[9] Whenever an importer declares a price for out-of-quota imports that is below the level where the SSG is applicable, the additional duty is automatically applied. Hence, in many cases the SSG is applied to small quantities such as 4 kg of fresh cheddar cheese or 3 kg of chocolate bars.

Exports

15. The Commodity Credit Corporation (CCC) provides funding for a number of programmes that support exports of agricultural goods from the United States.

16. The Export Credit Guarantee Program (GSM-102) is administered by the Foreign Agricultural Service in conjunction with the Farm Services Agency of USDA. Under the Program, the CCC may provide guarantees for credits from private U.S. banks to approved foreign banks for

[5] WTO document WT/TPR/S/235/Rev.1, 29 October 2010.
[6] SPS measures are discussed in Chapter III(1)(ix).
[7] WTO document WT/TPR/S/235/Rev.1, 29 October 2010.
[8] WTO document G/AG/N/USA/85, 27 June 2012.
[9] WTO documents G/AG/N/USA/74, 16 August 2010; and G/AG/N/USA/81, 29 August 2011.

the purchase of agricultural products by foreign buyers. Currently, no funding is provided to GSM-102 as fees and recoveries on default claim payments exceed losses. For the year ending 30 September 2011, the Export Credit Guarantee Program registered guarantees stood at US$4.1 billion, mostly for exports of wheat, maize, soybeans and soybean products, and cotton.[10]

17. The CCC also has authority to make funding available under the Facility Guarantee Program, for storage, handling, and processing facilities in importing countries on the grounds that these guarantees improve sales of U.S. agricultural products. However, this programme is not currently active.

18. The FAS also administers a number of programmes to promote exports, such as: the Quality Samples Program (through which the CCC funds the provision of product samples to foreign importers); the Market Access Program (the CCC provides funding for some of the costs of marketing and promotional exercises abroad); the Emerging Markets Program (for technical assistance activities that promote exports, such as feasibility studies and specialized training); the Foreign Market Development (Cooperator) Program; and the Technical Assistance for Speciality Crops Program. Total funding available for these programmes for FY 2012 was US$255 million.[11]

19. Under the Dairy Export Incentive Program (DEIP) the CCC may provide subsidies (bonuses) for exports of some dairy products. According to the most recent notification to the WTO Committee on Agriculture, the budgetary outlay for export subsidies under the DEIP in the year ending 30 June 2010 was US$2.1 million for 15,607 tonnes of butter and butteroil and US$0.2 million for 1,691 tonnes of cheese.[12] In July 2010, the USDA announced that, due to prevailing market conditions, it would not be making invitations for offers available but it would continue to monitor market conditions.[13]

(b) Food aid

20. The United States is the world's biggest donor of food aid, delivering over half of total food aid in most years (3.2 million tonnes grain equivalent, nearly 56% of total aid in 2010). About two thirds of aid is for emergencies, a bit less than one third for project aid, and a relatively small amount for programme aid. Since 2006, the structure of aid has changed noticeably as direct transfers have declined while local purchases and triangular purchases have increased (Table IV.4).[14] Furthermore, since 2006, new funding has not been provided for concessional sales as demand has declined and the grant programmes have been considered more appropriate ways to provide aid.[15]

21. Most food aid is provided under Title II of the Food for Peace Act of 2008 (commonly referred to as P.L. 480) with outlays of about US$1.5 billion in 2011. The McGovern-Dole International Food for Education and Child Nutrition Program, and the Food for Progress Act of 1985 also remain in force, with outlays of about US$205 million and US$162 million, respectively,

[10] USDA FAS online information, "Export Credit Guarantee Programs". Viewed at: http://www.fas.usda.gov/excredits/ecgp.asp [May 2012].

[11] USDA (2012), pp. 35-36.

[12] WTO document G/AG/N/USA/82, 13 September 2011.

[13] USDA FAS Press Release 0161-10, "USDA Announces DEIP Allocations for 2010/11", 14 July 2010. Viewed at: http://www.fas.usda.gov/excredits/deip/deip.asp [May 2012].

[14] WFP Food Aid Information System database. Viewed at: http://www.wfp.org/fais/ [May 2012].

[15] House Committee on Agriculture online information, "Submission to House of Representatives Agricultural Program Audit: Examination of Foreign Agriculture and Food Aid Programs". Viewed at: http://agriculture.house.gov/hearings/hearingDetails.aspx?NewsID=1415 [May 2012].

in 2011. The Bill Emerson Humanitarian Trust is a reserve available to meet unanticipated food aid needs. It currently holds about US$311 million in cash reserves and no physical reserves.[16]

Table IV.4
Deliveries of food aid from the United States, 2006-10
(Tonnes)

	2006	2007	2008	2009	2010
Direct transfer	3,496,411	2,574,291	3,161,191	3,125,659	2,851,499
Local purchase	48,393	36,108	100,627	111,175	764,846
Triangular purchase	12,961	10,408	68,655	65,790	39,982

Source: WFP Food Aid Information System database. Viewed at: http://www.wfp.org/fais/ [May 2012].

(c) Domestic support

Domestic food aid

22. For many years, the largest budgetary outlays for programmes operated by the USDA have been under the Supplemental Nutrition Assistance Program (SNAP, formerly called the Food Stamp Program). Outlays for SNAP and other domestic food-aid programmes have been increasing steadily over the past few years, rising from US$45.9 billion in FY 2004 to US$94.9 billion in FY 2010. Most of these funds go towards providing vouchers for purchases of food in retail outlets (including imported as well as domestic products) by people and families with low incomes. About US$0.9 billion is expended for purchase of commodities through the Food and Consumer Services' food programmes for distribution to low-income or other needy people.[17]

Direct payments

23. Over the past few years, most support to producers has been provided through direct payments that are linked to historic planting and yields. Producers with eligible historical production of wheat, maize, sorghum, barley, oats, rice, soybeans and other oilseeds, upland cotton, and peanuts during the base period are eligible for direct payments. Payments are not linked to production or prices, except for some limits to planting fruits, vegetables, and wild rice, although a pilot project has been developed to allow planting of selected vegetables for processing in seven States for the 2009-12 crop years.[18] Since they were introduced in the 2002 Farm Bill, support to producers provided through direct payments has been relatively constant, averaging about US$5 billion per year.[19]

Counter-cyclical payments

24. The counter-cyclical payments programme remains in place and provides for payments to producers with historical production of the same products as direct payments plus some pulses. Payments are linked to current prices but not to current production, and the target prices used to calculate when payments start are set out in the 2008 Farm Bill.[20] In recent years, prices for most of

[16] USDA (2012), pp. 34-38.
[17] WTO document G/AG/N/USA/80, 20 August 2011; and U.S. authorities.
[18] 7 USC 8701, Sec 1107, PL 110-246; and USDA ERS online information, "Farm and Commodity Policy: Program Provisions; Direct Payments". Viewed at: http://www.ers.usda.gov/briefing/farmpolicy/directpayments.htm [April 2012].
[19] USDA ERS (2011), p. 17.
[20] 7 USC 8701, Sec 1104, PL 110-246; and USDA ERS online information, "Farm and Commodity Policy: Program Provisions: Counter-Cyclical Payments". Viewed at: http://www.ers.usda.gov/briefing/farmpolicy/countercyclicalpay.htm [May 2012].

the covered commodities have been above target prices and counter-cyclical payments have fallen from a peak of nearly US$4.8 billion in crop year 2005 to US$17 million (peanuts only) in CY 2010 and no payments anticipated for CY 2011.[21] Farmers with base acres for peanuts and upland cotton have been the most consistent recipients of counter-cyclical payments, while those with base acres for wheat and soybeans have never received any payments since they were introduced in the 2002 Farm Bill.

Marketing assistance loans and loan deficiency payments

25. Marketing assistance loans and loan deficiency payments also remain in place with no changes to the provisions that compensate producers of the commodities covered[22] whenever local prices (or, for cotton and rice, adjusted world prices) fall below the loan rates set out in the 2008 Farm Bill.[23] Under the marketing assistance loans and loan deficiency payments programme, the support may be provided:

- by way of a post-harvest loan to the producer at the loan rate for the particular commodity, which may be repaid either at the loan rate plus interest, by transferring ownership of the product to the Commodity Credit Corporation, or by receiving a benefit equal to the difference between the loan and the market price (a marketing loan gain);

- through a loan deficiency payment equal to the difference between the loan rate and the local market price (except for cotton and rice for which adjusted world prices are used instead of local prices) for each unit of production; or

- up until the 2008 crop year, a producer also had the option of buying a commodity certificate from the USDA, which essentially fixed the marketing loan gain at the difference between the market price (or adjusted world price) and the loan rate for each unit of production. Certificate exchange gains were realized at the end of the loan period.[24, 25]

26. Like counter-cyclical payments, budgetary outlays for loan deficiency payments, marketing loan gains, and certificate exchange gains have fallen as prices have increased, and were about US$1 million (wool only) for crop year 2011.

ACRE programme

27. The ACRE programme remains in operation as an alternative to counter-cyclical payments for producers of cereals, oilseeds, upland cotton, peanuts, and some pulse crops. Under the programme, producers may opt to forgo counter-cyclical payments and accept a 20% reduction in direct payments and a 30% reduction in loan rates in return for payments based on the difference

[21] USDA FSA (2012).

[22] Wheat, maize, grain sorghum, barley, oats, upland cotton, extra-long staple cotton, rice, peanuts, soybeans, other oilseeds, dry peas, lentils, chickpeas, wool, mohair, and honey.

[23] For most commodities, local prices are used for the loan repayment rates, except for cotton and rice where adjusted world prices are used.

[24] Loan periods may start at any time between harvest and: 31 January for mohair, peanuts, and wool; 31 March for barley, canola, crambe, flaxseed, honey, oats, rapeseed, sesame, and wheat; and 31 May for maize, dry peas, extra-long staple cotton, grain sorghum, lentils, mustard seed, rice, safflower, small chickpeas, soybeans, sunflower seeds, and upland cotton. The loan period is up to nine months starting at the beginning of the month after the loan is made.

[25] 7 USC 8701, Sec 1201-1210, 1301-1308, and 1401, PL 110-246; and USDA ERS online information, "Farm and Commodity Policy: Program Provisions; Marketing Assistance Loans and Loan Deficiency Payments". Viewed at: http://www.ers.usda.gov/briefing/farmpolicy/malp.htm [May 2012].

between annual State and farm-level revenues for the commodities covered, and State and farm-level benchmark revenues, both calculated using national prices and State and farm-level yields. The benchmark revenues are calculated using a two-year rolling average of national market prices and a five-year "Olympic" average for State and farm-level yield. Enrolment in ACRE has not increased significantly over the past few years: in 2011, 8.2% of farms were enrolled covering 13.8% of base acres compared to 7.8% of farms and 13.0% of base acres in 2009.[26]

Insurance programmes

28. Insurance coverage is available for over 100 different crops under a wide variety of insurance policies covering production, price and/or revenue risks, under the Federal Crop Insurance Program. Insurance coverage is provided by the private sector at subsidized rates under terms set by the Federal Crop Insurance Corporation and administered by the USDA Risk Management Agency (RMA). Most of the policies available from the RMA are for crops, although livestock policies are available for cattle, pigs, lambs, and milk to insure against declining prices or differences between sale price and feed costs, and policies are available for forage, grazing, and rangelands. The subsidies provided by USDA are on producer premiums paid to private insurance companies for providing the insurance policies, as well as on a portion of the companies' operating costs and underwriting losses. The premium subsidy to producers was US$4.7 billion in CY 2010 and is expected to be about US$7.2 billion for CY 2011.[27] The value of crops protected by insurance also increased, from US$67 billion in 2007 to $114 billion in 2011, representing about 80% of area planted to principal crops.[28]

29. The Supplemental Revenue Assurance Program (SURE) is the largest of five disaster assistance measures financed by the Agricultural Disaster Relief Trust Fund, although it does not cover losses incurred after 30 September 2011. SURE provided assistance to crop producers in counties designated by the Secretary of Agriculture as suffering from a disaster, as well as other counties bordering those directly affected by the event and other counties where losses caused by the weather exceed 50% of revenue. The other four disaster assistance measures cover producers of livestock, livestock forage, trees and nurseries, and honey bees and farm-raised fish. These programmes also do not cover losses incurred after 30 September 2011. Payments under SURE and the other disaster programmes were US$1.9 billion in fiscal year 2010 and are estimated at US$2.2 billion for FY 2011.[29]

Sugar

30. Sugar processors qualify for marketing loans (without provisions for marketing loan gains or loan deficiency payments), and production is supported by other schemes. The sugar programme "uses price supports, domestic marketing allotments, and tariff-rate quotas (TRQs) to influence the amount of sugar available to the U.S. market. The program supports U.S. sugar prices above comparable levels in the world market."[30] Under the marketing loan programme, sugar processors rather than producers may take out loans and they agree to pay the producers at a rate proportional to the loan. To prevent sugar being transferred to the CCC to settle a marketing assistance loan, an

[26] USDA FSA online information, "Direct and Counter-Cyclical Program/ACRE". Viewed at: http://www.fsa.usda.gov/FSA/webapp?area=home&subject=dccp&topic=09cy [May 2012].

[27] USDA Risk Management Agency online information "Costs and Outlays". Viewed at: http://www.rma.usda.gov/aboutrma/budget/cycost2002-11.pdf [July 2012].

[28] USDA (2012), pp. 30-31.

[29] USDA (2012), p. 26.

[30] USDA ERS online information, "Sugar and Sweeteners: Policy". Viewed at: http://www.ers.usda.gov/Briefing/Sugar/Policy.htm [May 2012].

overall allotment quantity is applied, to limit marketing, along with other provisions designed to manage domestic supply commensurate with domestic demand.

Dairy

31. Federal milk marketing orders (FMMOs) set minimum prices that processors or manufacturers are required to pay for fluid milk in the ten regions covered by the system; five other States operate similar systems. The two main elements to the FMMO system are classified pricing, and revenue pooling. Under the federal and some State milk marketing orders, regulated processors must pay a minimum price for Grade A milk according to the class in which it is used. There are four classes (uses): Class I is milk used in all beverage milks; Class II is milk used in fluid cream products, yogurts, or perishable manufactured products (ice cream, cottage cheese, and others); Class III is milk used to produce cheeses; and Class IV for milk used to produce butter and dried milk.

32. Producers participating in the revenue pool receive identical uniform blend prices, with adjustments for butterfat content and location of the plant to which the milk is delivered. Producers are paid a weighted average, or "blend" price for all uses of milk in a particular order or market. Processors pay into or draw out of the pool on the basis of their milk used relative to market average use.

33. Dairy producers also receive direct payments under the Milk Income Loss Contract (MILC) programme which partially compensates producers when the Class I price in the Boston MMO for fluid milk falls below US$16.94 per hundredweight (US$372.53 per tonne), with adjustments for feed costs. Due to the counter-cyclical nature of the programme, spending depends on the FMMO price and feed costs; it reached a high of US$757 million in MY 2007/08[31], and is expected to be less than US$1 million in MY2010/11. In addition to marketing orders and the MILC programme, dairy producers benefit from the Dairy Product Price Support Program (DPPSP), which offers to purchase cheddar cheese, butter, and non-fat dried milk at a guaranteed price. Significant purchases under the DPPSP were last made in 2009.

Other programmes

34. Other domestic support programmes remain in place, including energy programmes (such as the Biomass Crop Assistance Program), credit programmes for loans to farmers, and marketing orders for some horticultural products.[32]

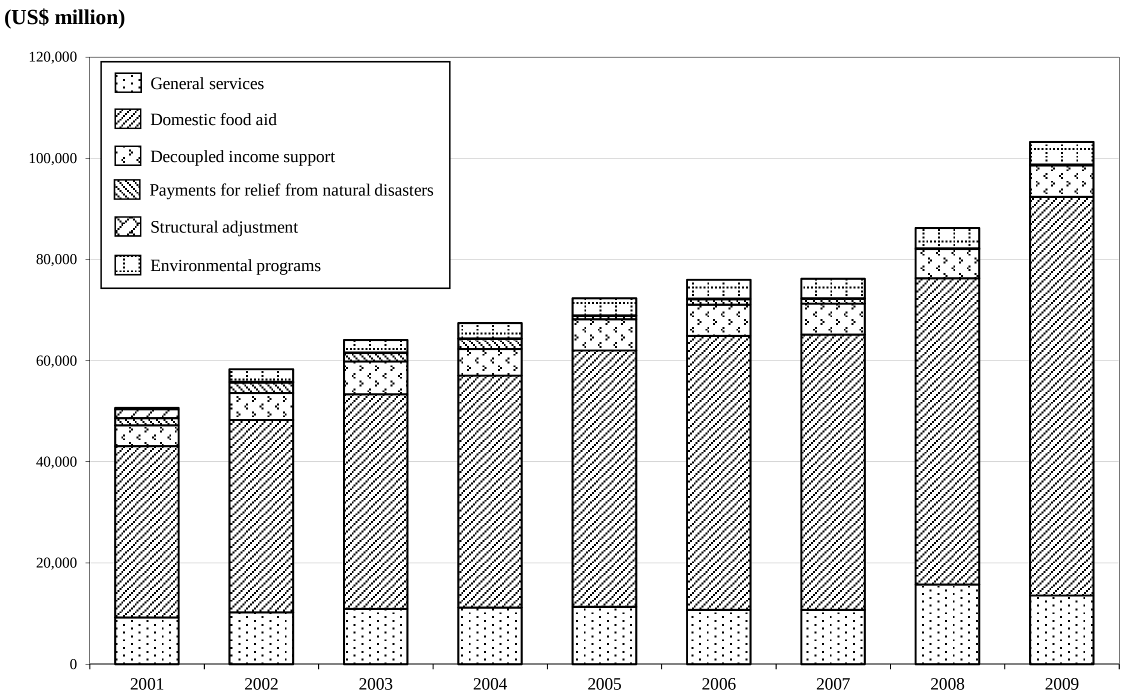
(iii) Levels of support

(a) WTO notifications

35. The most recent notification of domestic support from the United States is for marketing year 2009.[33] This showed that support notified under the Green Box has continued to increase compared with earlier years as domestic food aid, general services, and environmental programmes increased. Domestic food aid is by far the biggest item, taking over three quarters of support notified as Green Box (Chart IV.2).

[31] WTO document G/AG/N/USA/77/Rev.1, 29 August 2011.
[32] WTO document WT/TPR/S/235/Rev.1, 29 October 2010, pp. 87-89.
[33] WTO document G/AG/N/USA/80, 29 August 2011.

Chart IV.2
Green Box support in the United States, 2001-09



Source: **WTO notifications.**

36. The Current Total AMS in the U.S. notifications has continued to decline, falling below US$5 billion for the first time in 2009. However, total support notified under the Amber Box (i.e. including *de minimis* levels) has increased since 2007, rising from US$8.5 billion to US$11.5 billion in 2009. This is due to an increase in support notified as non-product-specific and that has been less than the *de minimis* limit of 5% of the value of production, and, therefore, is not included in the Current Total AMS figure.

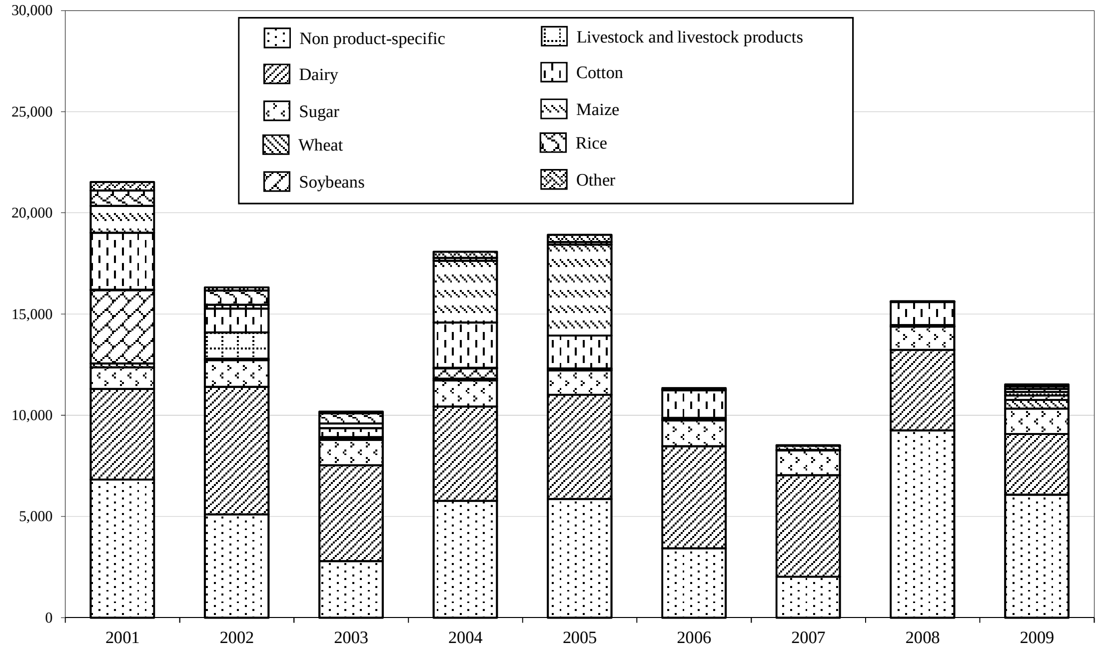
37. High prices have reduced budgetary outlays under marketing assistance loans and loan deficiency payments, and counter-cyclical payments. Spending on these programmes is directly related to market prices and relatively high market prices have greatly reduced spending. On the other hand, support under crop insurance has remained high because premiums (and, therefore, premium subsidies) are tied to prices, which have been high. Support for sugar has remained constant at about US$1.2 billion while support for dairy declined to about US$3 billion (Chart IV.3).[34] The high level of support for these two commodities reflects the market-price support programmes in place and the methodology used to calculate the value of support compared with that used for other commodities.[35]

[34] WTO documents G/AG/N/USA/80 and G/AG/N/USA, 29 August 2011; G/AG/N/USA/77/Rev.1, 29 August 2011; G/AG/N/USA/66, 19 January 2009; and G/AG/N/USA/60/Rev.1 and G/AG/N/USA/51/Rev.1, 28 January 2009.

[35] WTO document WT/TPR/S/235/Rev.1, 29 October 2010, p. 91.

Chart IV.3
Amber Box support in the United States, 2001-09

(US$ million)



Source: **WTO notifications.**

(b) Producer support estimates

38. The OECD has been publishing reviews of agriculture policies in the United States, other OECD countries, and some emerging economies for several years.[36] In these publications, the value of transfers to agricultural producers is measured using the Producer Support Estimate (PSE) and associated indicators. The methodology for calculating these indicators is different from that used to calculate the AMS, and the two sets of data are not compatible or comparable. The methodology used by the OECD is evolving and was revised for the 2007 Monitoring and Evaluation report, resulting in several changes, including the method used to estimate support for specific commodities.[37] The total PSE is "the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or income. It includes market price support, budgetary payments and budget revenue foregone, i.e. gross transfers from consumers and taxpayers to agricultural producers arising from policy measures based on: current output, input use, area planted/animal numbers/receipts/incomes (current, non-current), and non-commodity criteria." Thus, the PSE includes estimates for the value of transfers provided by market access measures, such as tariffs and tariff quotas, as well as input subsides, direct payments to producers that are coupled to prices or production, and direct payments decoupled from prices and production.[38]

39. The trend for the PSE for the United States has been declining, in both absolute terms and relative to gross receipts since 1999, when it was 26% of gross receipts (US$55.7 billion), to 7% of

[36] OECD (2011) and (2009a).
[37] OECD (2007).
[38] OECD (2011).

gross receipts (US$25.6 billion) in 2010 (Table IV.5). A large part of the decline can be attributed to rising prices for agricultural commodities, which have reduced budgetary outlays for some commodities (mostly cereals), and the value of market price support measures for others (mainly sugar and dairy products). At 7% of total receipts from farming, the PSE in the United States is low compared with the OECD as a whole for which it is 18%. However, given the large size of the agriculture sector the absolute amount represents 11% of the total PSE for the OECD as a whole.

Table IV.5
Total producer support estimate and single commodity transfer values for selected commodities, 2002-10
(US$ million or % of gross farm receipts for respective products)

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Producer support estimate									
US$ million	40,332	36,167	43,254	40,626	30,496	33,174	30,477	31,423	25,551
PSE as % gross farm receipts	18	15	16	15	11	10	9	10	7
Single commodity transfers									
Wheat									
US$ million	708	273	353	124	544	493	940	1,521	809
SCT as % gross farm receipts	11	3	5	2	7	4	5	12	6
Maize									
US$ million	1,464	908	316	2,952	4,443	138	-246	2,147	2,168
SCT as % gross farm receipts	7	4	1	11	17	0	0	4	4
Soybeans									
US$ million	302	567	517	-87	-77	152	1,483	1,198	1,074
SCT as % gross farm receipts	2	3	3	-1	0	1	5	4	3
Cotton									
US$ million	1,709	848	2,381	1,741	1,772	207	1,313	252	343
SCT as % gross farm receipts	34	14	35	25	26	4	30	6	5
Milk									
US$ million	8,229	7,226	7,619	5,122	3,257	8,881	8	3,353	568
SCT as % gross farm receipts	40	31	28	19	14	25	0	13	2
Beef and veal									
US$ million	131	0	0	0	0	0	0	0	0
SCT as % gross farm receipts	0	0	0	0	0	0	0	0	0
Refined sugar									
US$ million	1,185	1,327	1,053	896	519	775	562	481	746
SCT as % gross farm receipts	53	60	54	44	21	35	26	19	28

Source: OECD.

40. Although the trend in support for agricultural producers in the United States has been downwards for several years this is not due to a change in agricultural policies but to rising prices, which have reduced price- and revenue-linked payments. These policies continue to offer producers of some commodities guaranteed minimum prices and/or partial compensation should prices or revenues fall below mandated triggers. In addition, there has been an increase in support for insurance, which is notified as non-product-specific support in the notifications to the Committee on Agriculture.

(2) FISHERIES

(i) Fisheries in the United States

41. In 2009, the seafood industry (harvesting, processing, wholesale, and retail) accounted for 0.3% of GDP in the United States. Nevertheless, the United States has one of the biggest fisheries sectors in the world: according to the FAO, in 2010 the capture industry took 4.4 million tonnes or nearly 5% of total world catch, putting the United States fourth after China, Peru, and Indonesia.[39]

[39] FAO Fisheries and Aquaculture Information and Statistics Service database. Viewed at: http://www.fao.org/fishery/statistics/en [March 2012].

42. National data differs from FAO data, although both show similar trends. According to the National Oceanic and Atmospheric Administration (NOAA), total commercial landings in 2010 were 3.7 million tonnes valued at US$4,511 million. Although total commercial landings have been declining in terms of weight, their value has increased as a result of higher prices (Table IV.6).

43. Commercial landings cover a wide range of fish and other products. In value terms, the most important are sea scallops, followed by American lobster, walleye pollock, and sockeye salmon, but together they make up only about one third of the total value of commercial landings (Table IV.6).

Table IV.6
Commercial landings of selected species, 2002-10

		2002	2003	2004	2005	2006	2007	2008	2009	2010
Total commercial landings	'0000 tonnes	4,280	4,312	4,395	4,406	4,302	4,223	3,791	3,656	3,742
	US$ million	3,164	3,346	3,770	3,953	4,041	4,204	4,394	3,927	4,511
Scallop, sea	'000 tonnes	24	25	29	26	27	27	24	26	26
	US$ million	202	229	320	433	385	386	370	376	456
Lobster, American	'000 tonnes	38	33	41	40	42	37	40	46	53
	US$ million	294	284	374	415	395	368	327	310	399
Pollock, Walleye	'000 tonnes	1,516	1,525	1,521	1,547	1,543	1,391	1,032	846	883
	US$ million	204	203	272	307	330	297	323	271	282
Salmon, Pink	'000 tonnes	116	152	135	224	101	208	118	133	169
	US$ million	18	25	31	49	28	70	74	66	127
Salmon, Sockeye	'000 tonnes	62	84	115	120	108	125	102	116	115
	US$ million	77	110	157	187	159	205	176	204	279
Halibut, Pacific	'000 tonnes	37	36	36	35	33	32	30	27	26
	US$ million	137	173	177	177	202	227	217	140	207
Crab, Blue	'000 tonnes	77	75	77	70	74	70	73	79	89
	US$ million	129	133	129	124	114	142	155	157	199
Shrimp, White	'000 tonnes	44	48	57	50	67	52	50	57	48
	US$ million	182	163	203	193	216	204	228	178	201

Source: NOAA Fisheries Service database. Viewed at: http://www.st.nmfs.noaa.gov/st1/commercial/index.html [March 2012].

44. The importance of fishing varies considerably from one State to another and is particularly important in Alaska, which accounted for over one third of the value of commercial landings in 2010. However, the only States in which landings are the equivalent of more than 0.5% of that State's GDP, are Maine (0.7%) and Alaska (3.3%).[40]

45. In 2008, the United States had 20,231 commercial fishing and processing vessels in service with valid certificates of documentation from the United States Coast Guard (USCG), and a total of 77,816 commercial fishing vessels.[41] Reflecting the great variety of species caught, the fishing fleet is diverse in terms of both the size of vessels and the equipment used.

46. The Exclusive Economic Zone (EEZ) of the United States is the largest in the world and covers an area 1.7 times the U.S. landmass. The EEZ covers the area between 3 and 200 nautical miles seaward for nearly all coastal States and other territories under U.S. jurisdiction, except for Texas and the Gulf Coast of Florida where the EEZ extends from 9 to 200 nautical miles off-shore, and Puerto Rico where it is from 12 to 200 nautical miles off-shore.[42] The EEZ covers about eight

[40] WTO Secretariat calculations, based on the value of landings by State (NOAA Fisheries, Office of Science and Technology online information, "Fisheries Statistics". Viewed at: http://www.st.nmfs.noaa.gov/st1/commercial/index.html), and GDP by State (Bureau of Economic Analysis online information, "U.S. Economic Accounts: Regional". Viewed at: http://www.bea.gov/index.htm) [July 2012].

[41] National Transportation Safety Board (2010).

[42] NMFS (2009), p. 4.

large ecosystems, including those around U.S. overseas territories in the Caribbean and the Pacific. These fishing regions cover several climatic zones and many types of fish and other sea products.

47. Inland fisheries are much smaller than marine fishing and mostly comprise landings from the Great Lakes and Mississippi River basin. Total commercial landings for the Great Lakes were 8,725 tonnes in 2009, valued at US$18 million.[43] However, most of the landings and economic benefits in the Great Lakes are from recreational rather than commercial fishing.[44] The aquaculture subsector is small compared with the capture industry, with production valued at US$1,167 million in 2009. Catfish and crawfish are the main products.[45]

48. Recreational fishing is popular in the United States. In 2009, there were about 11 million recreational anglers who spent US$4.5 billion on fishing trips and US$15 billion on durable fishing-related equipment. The most commonly caught species were seatrout, Atlantic croaker and spot, summer flounder, and striped bass.[46] The total harvest for recreational fishing has been falling for several years from a peak in 2003 when 210 million fish were taken compared with 128 million in 2011.[47]

49. Fish processing (of both domestic catch and imported products) was valued at over US$9,021 million in 2010, nearly all of which was edible fish, with only 6% going for industrial use (including bait and animal food). In 2009, processing and wholesale plants employed a total of 59,389 people.[48]

(ii) Trade

50. The United States has a trade deficit in fish and fish products as, in 2010, it exported US$4,753 million and imported US$15,502 million.[49] Imports have grown strongly over the past few years, apart from a decline in 2009 compared with 2008. Shrimps and fish fillets make up over half of all imports with import growth particularly strong for frozen fish fillets, tuna, and Pacific salmon. The main sources of imports are: Thailand, Indonesia, Ecuador, and Viet Nam for shrimps; Chile, Norway, and Canada for fresh fillets; and China, Indonesia, and Viet Nam for frozen fillets.

51. Exports have increased steadily over the past few years and are much more diverse than imports; the top nine products (at HS 2002 six-digit level) make up just over half of total fish exports. The main exports are frozen fish fillets but export growth has been particularly strong for Pacific and sockeye salmon (Table IV.7). The main destinations for the principal exports are the European Union and Canada with considerable quantities sent to China for processing.

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[43] NOAA Fisheries Service database. Viewed at: http://www.st.nmfs.noaa.gov/st1/commercial/index.html [March 2012].

[44] FAO (2005).

[45] NMFS (2011b).

[46] NMFS (2011a), p. 8.

[47] NOAA Fisheries Service online information, "Recreational Fisheries Statistics Queries". Viewed at: http://www.st.nmfs.noaa.gov/st1/recreational/queries/index.html [March 2012].

[48] NMFS (2011b).

[49] For the purposes of this section of the Review, fish products are defined as HS Headings 020840, 03, 051191, 1504, 1603, 1604, 1605, and 230120.

Table IV.7
Trade in fish and fisheries products, 2004-10

HS 2002	Description		2004	2005	2006	2007	2008	2009	2010
Exports									
030420	Fish fillets, frozen	US$ million	293	270	347	424	466	466	445
		'000 tonnes	125	105	111	133	115	132	126
030490	Fish meat other than fillets, frozen	US$ million	375	468	428	345	306	258	350
		'000 tonnes	233	224	207	165	110	101	126
030622	Lobsters, other than frozen	US$ million	300	322	333	329	321	290	345
		'000 tonnes	25	24	27	25	16	22	30
030319	Pacific salmon, frozen	US$ million	115	173	199	247	224	218	296
		'000 tonnes	50	74	72	90	69	80	97
030380	Fish livers and roes, frozen	US$ million	411	463	464	450	370	269	256
		'000 tonnes	46	50	51	57	58	30	27
030379	Fish, n.e.s., frozen	US$ million	315	344	354	240	206	223	229
		'000 tonnes	141	127	130	90	130	83	93
Total exports		**US$ million**	**3,894**	**4,277**	**4,448**	**4,482**	**4,510**	**4,204**	**4,753**
Imports									
030613	Shrimps and prawns, frozen	US$ million	2,953	2,920	3,124	3,104	3,289	2,896	3,379
		'000 tonnes	396	396	418	415	429	407	415
030420	Fish fillets, frozen	US$ million	1,588	1,777	2,093	2,308	2,391	2,441	2,787
		'000 tonnes	391	422	461	482	451	498	540
030410	Fish fillets, fresh	US$ million	950	1,054	1,139	1,281	1,312	1,166	1,176
		'000 tonnes	145	149	131	150	151	123	111
160520	Shrimps and prawns, prepared	US$ million	864	892	1,165	963	981	1,027	1,074
		'000 tonnes	122	136	173	143	144	144	144
160414	Tunas, skipjack, bonito, prepared	US$ million	655	710	734	703	877	798	951
		'000 tonnes	248	254	241	218	261	231	267
030212	Pacific salmon	US$ million	303	365	490	536	529	590	668
		'000 tonnes	62	72	86	87	88	93	99
Total imports		**US$ million**	**11,972**	**12,776**	**14,070**	**14,451**	**14,968**	**13,869**	**15,502**

Source: UNSD Comtrade.

(iii) Fisheries policy

52. The National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce is responsible for fisheries policy for the EEZ and represents the United States in international fora such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the Inter-American Tropical Tuna Commission (IATTC). Individual States are responsible for fisheries managements in State waters (in general, the first three miles off their coasts[50]), and for inland fisheries management for inland waters within their jurisdiction. Fisheries in the Great Lakes are managed by the U.S. States with shorelines on the Great Lakes and by the Canadian province of Ontario through the Great Lakes Fishery Commission.

53. Within NOAA, the National Marine Fisheries Service (NMFS) is responsible for the management, conservation, and protection of living marine resources within the EEZ. The NMFS works with eight Regional Fishery Management Councils[51] to prepare Fishery Management Plans for management of fishery stocks. Members of the Fishery Management Councils are nominated by the State governors in each region and appointed by the Secretary of Commerce.[52] The Magnuson-Stevens Fishery Management and Conservation Act (MSA) sets out the requirements for

[50] Except for Texas and Florida, which have jurisdiction for the first 9 miles off-shore, and Puerto Rico which has jurisdiction for the first 12 miles off-shore.

[51] Each Regional Fishery Management Council corresponds to one of the eight fishery regions: North Pacific, Western Pacific, Gulf of Mexico, Mid-Atlantic, New England, Pacific, South Atlantic, and Caribbean.

[52] NMFS (2009), p. 4.

the ten Fishery Management Plans. In addition, the National Standards for Fishery Conservation and Management guide the development of each management plan to address various issues, such as preventing overfishing, using best available scientific information, equitable distribution of fishing privileges among States and fishermen, bycatch, and safety.

54. The NMFS is also the host for the International Monitoring, Control and Surveillance Network, which seeks to link fisheries enforcement agencies from different countries to reduce illegal, unreported and unregulated (IUU) fishing.

55. Several other federal government agencies are also involved in developing and implementing fisheries policies, including:

- the United States Coast Guard (USCG), which is responsible for protecting the EEZ and enforcing domestic fisheries laws at sea, as well as the requirements of applicable international fisheries agreements;[53]

- the Fish and Wildlife Service (FWS), which through the Fisheries and Habitat Conservation Program and the Fisheries Aquatic Resource Program, provides advice and assistance to federal and sub-federal agencies and programmes on conservation, and supports the federal hatchery system. Along with NOAA, the FWS chairs the Aquatic Nuisance Species Task Force, which develops strategies to identify and reduce the risk of introduction of invasive species and minimize the harmful effects of ones already introduced into U.S. waters;[54] and

- the Marine Mammal Commission, which supports and conducts research and reviews of the conservation and status of marine mammal stocks, and provides advice to the Secretaries of Commerce, Interior, and State on policies and programmes for conservation and protection at both the domestic and international levels.[55]

56. The MSA is the principal legislation on fisheries.[56] It was first passed in 1976 and was amended in the Magnuson-Stevens Reauthorization Act of 2006. The MSA provides the legal basis for the management and conservation of fisheries stocks, including the prohibition of overfishing, the rebuilding of overfished stocks, and the conservation of fish habitats. Other laws that regulate fisheries include: the High Seas Driftnet Fishing Moratorium Protection Act; the Endangered Species Act; the Marine Mammal Protection Act; the National Environmental Policy Act; and the Lacey Act, which prohibits fish and wildlife trafficking and other transactions that violate federal, Native American, tribal or foreign laws.

57. The main focus of fisheries policy is to end overfishing and rebuild stocks based on scientific assessments of stocks and market-based management approaches to conservation. The eight Fishery Management Councils, responsible for fishery management in each region, work with the NMFS to prepare Fishery Management Plans (see above).

58. Under the MSA, the Department of Commerce is required to report annually to Congress on the status of U.S. fisheries. According to the report for 2011, of the 537 stocks and stock complexes subject to fishery management plans, 258 had a known overfishing status and 36 were subject to

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[53] United States Coast Guard online information. Viewed at: http://www.uscg.mil/ [April 2012].

[54] Aquatic Nuisance Species Task Force online information. Viewed at: http://www.anstaskforce.gov/default.php [April 2012].

[55] Marine Mammal Commission online information. Viewed at: http://mmc.gov/index.shtml [April 2012].

[56] 16 U.S.C. 1801.

overfishing (i.e. current harvesting above maximum sustainable yield). Furthermore, 219 had a known overfished status and 45 were overfished (i.e. current population below its potential biomass level). Overall, progress has been made to improve sustainable fishing as 27 stocks have been rebuilt since 2000, and the NMFS's Fish Stock Sustainability Index shows a steady improvement since 2000.[57]

59. The MSA requires that the fisheries management plans establish annual catch limits for all fisheries stocks and all fisheries are to be managed under annual catch limits in 2012. According to one report, a growing number of federally managed fisheries are being managed through exclusive quota programmes and cooperatives, limited-access privilege programmes, and individual fishing quotas.[58] However, the NMFS's focus on ecosystem-based management means that such programmes are unlikely to be the only methods used, and fisheries management tools will depend on many factors.[59]

60. The United States is party to nine regional fishery management organizations for the conservation and management of specific species, control of bycatch, and addressing IUU fishing.[60] The United States has also concluded a number of bilateral and regional agreements on shared stocks with other countries, particularly Canada. Under the South Pacific Tuna Treaty, U.S.-flagged tuna purse seine vessels have access to fisheries in the waters of the 16 other treaty countries (mostly small island nations) in return for which the U.S. tuna industry provides US$3 million each year to the Forum Fisheries Agency and, in association with the Treaty, under an Economic Assistance Agreement between the U.S. Department of State and the Forum, the U.S. Government provides US$18 million into an economic development fund administered by the Forum.[61]

61. Support to the fisheries sector in the United States is provided through a number of programmes at federal and sub-federal levels. Under the National Standards for Fishery Conservation and Management, the measures taken to manage fisheries are required to minimize the adverse economic impacts on fishing communities.[62] In addition, disaster assistance may be provided under the Interjurisdictional Fisheries Act and the MSA in response to a disaster[63], with US$170.4 million in total government financial transfers provided for disaster relief in 2007. The MSA also gives the NMFS the authority to implement a capacity-reduction programme, such as a vessel buyback scheme.[64] However, vessel buyback schemes in 2005-07 did not involve government transfers, with any official loans being repaid at market rates from landing fees.[65]

62. The most recent figures for Government support to the fisheries sector are from the OECD for 2008. Total Government financial transfers to the marine capture sector, at US$2,084 million, are quite high compared with other OECD countries as they are equivalent to 47% of the total landed value, while in the OECD as a whole they are equivalent to 20% of landed value. In the United States, most of the total Government financial transfer is for General Services (mostly

[57] NMFS (2012).

[58] OECD (2009b), p. 371.

[59] NMFS (2009), p. 7-8.

[60] International Commission for the Conservation of Atlantic Tunas (ICCAT); North Atlantic Salmon Conservation Organization (NASCO); Northwest Atlantic Fisheries Organization (NAFO); Inter-American Tropical Tuna Commission (IATTC); International Pacific Halibut Commission (IPHC), North Pacific Anadromous Fish Commission (NPAFC); Pacific Salmon Commission (PSC), Western and Central Pacific Fisheries Convention (WCPFC); and Commission for the Conservation of Antarctic Marine Living Resource.

[61] NMFS (2011c).

[62] 16 USC 1851 Sec 301(8).PL 94-265 as amended by PL 104-297, 109-479.

[63] 16 USC 1851 Sec 312(a).PL 94-265 as amended by PL 104-297, 109-479.

[64] 16 USC 1851 Sec 312(b).PL 94-265 as amended by PL 104-297, 109-479.

[65] OECD (2009b), p. 370.

enforcement and surveillance and research/management services). Direct payments and cost-reducing transfers are equivalent to 6% of the total landed value, which is the same as for the OECD as a whole.[66] Imports of most fishery products are duty free (Table AIII.1) but tariffs are charged on some (essentially a small number of processed products such as canned tuna, sardines and oysters, smoked salmon, and frozen crabmeat). These tariffs resulted in a transfer from consumers to the fishery sector of about US$68 million in 2007.[67]

63. Fishers are entitled to an income tax credit for most of the federal fuel tax they pay on the grounds that most of the tax is for the Highway Trust Fund (HTF) and fuel for fishing does not use the highways, just as other non-highway uses are also exempt from paying into the HTF. The current federal fuel tax is US$0.244 per gallon for diesel and US$0.184 per gallon for petrol. The tax credit is US$0.243 per gallon for diesel and US$0.183 per gallon for petrol, which represents the part of the tax that is for the highway use. The remaining US$0.001 goes to the Leaking Underground Storage Tank Trust Fund. Fishers may also be entitled to concessions from State and local fuel taxes which range from US$0.08 to US$0.32 per gallon in coastal States.[68]

(3) SERVICES

(i) Environmental services

(a) Market structure

64. The U.S. market for environmental services is mature; its growth has been heavily influenced by the development of environmental regulations during the 1960s to 1990s, both at federal and sub-federal level. It is also the largest single market for environmental services (Table IV.8).

Table IV.8
Market structure of environmental services

Water utilities and waste water treatment services	
U.S. share of the global market (2008)	40% of a US$212.6 billion market
Number of firms and employees (2010)	87,990 firms and 366,600 employees
Share of revenues of publicly owned water utilities companies (2010)	88%
Exports and imports (cross-border trade + affiliates sales) (2009)	US$0.32 billion and US$2.7 billion
Main private companies	American Water Works Inc. and E Town Waters (subsidiaries of Germany’s RWE); American States Water Company; Aqua America; California Water Services Group; Connecticut Water Inc.; United Waters (subsidiary of France's Suez); U.S. Filter (subsidiary of France's Veolia); Severn Trent Services (subsidiary of UK's Severn Trent Plc.); etc.
Level of regulation	Federal (Environmental Protection Agency) and subfederal (state public utility commissions)
Main regulations	Clean Water Act(1972); Water Quality Act (1987); Clean Water State Revolving Fund (1987); Drinking Water State Revolving Fund (1997)
Main objectives of the regulations	Quality and performance standards, environmental protection, investment funding, security, pricing (for investor-owned utilities and for all utilities in 12 states) and universal service
Solid and hazardous waste management services	
U.S. share of the global market (2008)	39%
Share of the private sector in the revenues	
Solid waste management industry (2010)	74%
Hazardous waste management industry (2010)	96%
Market size, number of firms, and employment (2010)	Solid waste: US$53.4 billion, 9,950 firms, and 278,000 employees; hazardous waste: US$9 billion, 480 firms, and 43,600 employees

Table IV.8 (cont'd)

[66] OECD (2012), p. 67.
[67] OECD (2012), p. 503.
[68] Martini (2012).

Volume produced (2009 and 2010)	Municipal solid waste: 249.86 million tonnes (2010); hazardous waste: 35.3 million tonnes (2009)
Public sector customer / private sector customer ratio (2010)	Solid waste 59%-41%; hazardous waste: 45%-55%
Concentration (2010)	Municipal solid waste sector: publicly traded investor-owned firms account for about 60% of municipal solid waste revenues. Two firms (Waste Management and Republic Services) generated over 60% of such revenues. Solid and hazardous waste sector: four companies (Waste Management Inc., Republic Services Inc., Covanta Holding Corporation, and Clean Harbors Inc.) account for about 65%, two firms (Waste Management Inc. and Republic Services Inc.) account for about 48%
Assets and annual sales of the top U.S.-based waste management firms, and remediation affiliates of foreign-owned firms (2008)	US$8.3 billion and US$5.9 billion
Sales of affiliates associated with direct investment, waste management, and remediation services (2010)	FDI in the United States: ..[a]; U.S. direct investment abroad: US$1.3 billion
Exports and imports (2009)	Solid waste management services: exports: US$0.15 billion; imports: US$0.7 billion; hazardous waste management services: exports: US$0.09 billion; imports: US$0.1 billion
Main private companies	Municipal solid waste segment: Waste Management Inc.; Allied Waste Industries; Republic Services; Onyx (subsidiary of France's Veolia). Incineration segment: Ogden Projects; Wheelabrator Technologies and American Ref-fuel. Hazardous waste segment: Clean Harbors Inc.; Onyx; Philip Services; Medical Waste Stericycle
Level of regulation	Federal (Environmental Protection Agency) and sub-federal (state and local government environmental agencies)
Main regulations	Solid Waste Disposal Act (1965); Pollution Prevention Act (1990); Resources Conservation and Recovery Act (1976); Hazardous and Solid Waste amendments (1984); Comprehensive Environmental Response, Compensation and Liability Act/"Superfund" (1980)
Main objectives of the regulations	Quality and performance standards, environmental protection, liabilities pricing, and universal service
Air and noise pollution abattement services	
Revenues (2010)	Engineering and consulting segment: US$1.7 billion; Analytical services segment US$0.06 billion (air pollution-related revenues only)
Main private companies	Babcok and Wilcox; Babcock Power; General Electric; Thermo Electron; Wheelabrator; ABB Environmental Systems (Switzerland); Alstom (France); Hamon Research Cottrell (Belgium); Hitz America (Japan); KWH (Germany); Marsulex Environmental Services (Canada); Mitsubishi Power Systems (Japan)
Level of regulation	Federal (Environmental Protection Agency) and sub-federal (state and local government environmental agencies)
Main regulations	Clean Air Act (1963) and its 1990 amendments; Air Quality Act (1967); Toxic Release Inventory (1986); Lead Phasedown Program (1982); Acid Rain Cap and Trade Program (1990); Noise control Act (1972); Occupational Safety and Health Act (1970); Aircraft Noise And Capacity Act (1990)
Main objectives of the regulations	Quality and performance standards, and environmental protection
Remediation and nature and landscape protection (NLP) services	
U.S. share of the global remediation and industrial services market (2010)	28.6% of a US$44.8 billion market
Revenues, number of firms and employment in remediation and industrial services (2010)	US$12.8 billion revenues, 2,060 firms, and 108,400 workers
Exportations and importations of remediation and industrial services (2009)	US$ 0.79 billion and US$ 0.5 billion
Main private companies	Shaw Environmental and Infrastructure Inc.; Bechtel Group Inc.; Parsons, Fluor Daniel Inc.; C2HM hill; URS Corp.; Washington Group International
Level of regulation	Federal (Environmental Protection Agency, U.S. army Corps of Engineers, U.S. Coast Guard, Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Housing and Urban Development and Interior); and sub-federal (state and local government environmental agencies)
Main regulations	Resources Conservation and Recovery Act (1976); Comprehensive Environmental Response; Compensation and Liability Act/CERCLA-"Superfund" (1980)
Main objectives of the regulations	Quality and performance standards, and environmental protection

.. Not available.

a Data on FDI in U.S. waste management and remediation services affiliates were supressed for the years 2007 through 2010 to avoid disclosure of information on individual firms.

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

65. The degree of private-sector involvement in the collective, network-based environmental services (water and waste-water management services, refuse disposal services) in the U.S. market remains relatively marginal as most consumers are served by publicly owned or cooperative utilities (Table IV.9).

Table IV.9
Private-sector involvement in water and waste water treatment services, 2012

	Private ownership	**BOO/BOT**	**Concession**	**Lease**	**Operation/ management contract**	**Outsourcing**
Main characteristics Duration	Indefinite	20-30 years	20-30 years	5-15 years	3-7 years	1-2 years
Ownership of assets	Private	Public	Public	Public	Public	Public
Source of capital investment	Private	Private	Private	Public	Public	Public
Scope of private-sector responsibilities	Entire system	Entire system (BOO); parts of the system (BOT)	Entire system	Entire system	Entire system	Parts of the system
Water utilities (number, population served, production, revenues)	50% of the total, (16% "for profit" utilities) serving 11% of the population 1.7 trillion gallons per year	..	..	..	..	..
	Private drinking-water business US$4.3 billion revenues		..	..	..	..
Waste water utilities (number, population served, production, revenues)	4,200, i.e. 20% of the total, serving 3% of the population	2,000 facilities operate under a public-private partnership; they generate revenue of US$1.5 billion annually				
Water and waste water utilities combined	Population receiving water services from a privately owned water utility or a municipal utility operating under a public private partnership: 73 million					
Solid waste management utilities	..					

.. Not available.

Source: National Association of Water Companies online information, "Private Water Service Providers Quick Facts". Viewed at: http://www.nawc.org/uploads/documents-and-publications/documents/document_ecf5b3ac-c222-4b6c-b99f-a0128ae1e9aa.pdf [3 May 2012].

(b) Trade regime

66. The U.S. trade regimes for environmental services appear very open. The United States has full GATS commitments on environmental services, as defined by the classic GATS classifications (which do not include the distribution of fresh/drinking water).[69] However for two subsectors, sewage services and refuse disposal services, those commitments are limited to services contracted by private industry (Table IV.10). U.S. free-trade agreements contain no reservations for national treatment with respect to environmental services. With respect to the market access obligation, the same modifications apply as in the GATS, for sewage and refuse disposal services contracted by private

[69] Distribution of fresh water is often considered as an environmental service and is delivered in bundle with waste water treatment, by the same utility, and with a single bill. However there are various views as to where water supply services should be classified. The environmental services category of the CPC provisions refers only to sewage services and adds that "collection, purification and distribution services of water are classified in subclass 18000 (Natural water)", the latter belonging to the goods section of the CPC. The latest version of the CPC (CPC 2) has included "water distribution services" under Section 8 ("Business and production services"). In classification discussions which took place in the Committee on Specific Commitments, a proposal to list water collection, purification and distribution under environmental services was opposed by several Members. On the other hand, relevant publications on environmental services tend to address both water supply and wastewater services, and references to water supply as an environmental service are found in several non-U.S. preferential trade agreements.

industry. Commitments by the United States in 1994 and 2012 under the WTO Government Procurement Agreement (GPA) are negatively listed and based on the MTN.GNS/W/120 list. They therefore include environmental services, subject to the reservations listed in annex 4 of the U.S. commitments. While environmental services are not mentioned explicitly in these reservations, the reservation on "public utilities services" cover some environmental services. The government procurement commitments under the various U.S. free-trade agreements echo this exclusion, though in most instances with slightly different wording.[70] The applied regime is very open, including for publicly contracted services, with numerous foreign firms present and treated according to the national treatment principle.

Table IV.10
Summarized trade regimes for environmental services

Subsectors[a]	GATS[b]	FTAs[c]	Applied regime
6A Sewage services contracted by private industry 6B Refuse disposal services contracted by private industry	1) 2) 3) none for MA and MT 4) unbound, except as indicated in the horizontal section for MA and none for MT	No restrictions on national treatment. Replicates GATS treatment for the market access obligation (whereby the scope of covered services is defined)[d]	No restrictions "There are no known measures that are imposed specifically on foreign providers of waste services industry"
6.C Sanitation and similar services 6.D Other environmental services (cleaning of exhaust gases, noise abatement services, nature and landscape services, other environmental services not elsewhere classified)	1) 2) 3) none for MA and MT 4) unbound, except as indicated in the horizontal section for MA and none for MT	No restrictions on national treatment. Replicates GATS treatment for the market access obligation (whereby the scope of covered services is defined)	No restrictions "The U.S. market for air pollution abatement services is open to imports as well as foreign investors. Numerous European, Canadian, and Japanese firms have acquired U.S. firms or established affiliates in the United States and some maintain manufacturing and engineering operations in the U.S. market" "The United States maintains no known trade restrictions specifically relating to foreign providers of remediation and nature and landscape protection services or relating to foreign investment in these industry segments"

a The order and structure of the subsectors follow the U.S. GATS commitments not the CPC.
b All U.S. environmental services commitments under the GATS are qualified by two footnotes: footnote 19 "In each of the following subsectors, U.S. commitments are limited to the following activities: implementation and installation of new or existing systems for environmental cleanup, remediation, prevention and monitoring; implementation of environmental quality control and pollution reduction services; maintenance and repair of environment-related systems and facilities not already covered by the US commitments on maintenance and repair of equipment; on-site environmental investigation, evaluation, monitoring; sample collection services; training on site or at the facility; consulting related to these areas"; footnote 20: Nothing in this offer related to transportation should be construed to supersede the existing U.S. commitments on transportation or related MFN exemptions (WTO document GATS/SC/90, 15 April 1994, p. 50).
c U.S. FTAs except the one with Jordan are negative listing agreements that are not immediately comparable to the GATS, which follows a positive approach for listing commitments. However, commitments subscribed in FTAs and in GATS are broadly similar and very liberal. For the purpose of the present table "FTAs" means: NAFTA, U.S.-Jordan, U.S.-Chile, U.S.-Singapore, U.S.-Australia, U.S.-Morocco, CAFTA-DR, U.S.-Bahrain, U.S.-Oman, U.S.-Peru, U.S.-Korea, and U.S.-Colombia.
d The precise text of the reservation by which U.S. GATS commitments with respect to the market access obligation are incorporated in the FTA, reads: "The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under article XVI of the GATS". In addition, the scope of the national treatment commitment for sewage and refuse disposal is not limited to privately contracted services.

Source: WTO Secretariat; USITC (2004), *Solid and Hazardous Waste Services: An Examination of U.S. and Foreign Markets*, pp. 3-11 and 3-12, April. Viewed at: http://www.usitc.gov/publications/332/pub3679.pdf; USITC (2005), *Air and Noise Pollution Abatement Services: An Examination of U.S. and Foreign Markets*, p. 4-12, April. Viewed at: http://www.usitc.gov/publications/docs/pubs/332/pub3761.pdf; and USITC (2004), *Remediation and Nature and Landscape Protection Services: An Examination of U.S. and Foreign Markets*, p. 3-17, October. Viewed at: http://www.usitc.gov/publications/332/pub3727.pdf.

[70] Identical to GATS "public utilities services for the agreement with Singapore, "utilities: all" in the FTAs with Australia, Bahrain, Chile, Morocco, Oman, Peru, the CAFTA-DR, and Colombia.

(ii) Financial services

(a) Overview of the sector

67. The financial services sector accounted for 8.5% of U.S. GDP in 2010, 47% of which was generated by banking activities, 33% by insurance, 16% by securities trading activities, and the rest by funds, trusts, and other financial vehicles.[71] Over the last decade, the U.S. has run trade surpluses in financial services and trade deficits in insurance. In 2010, exports of financial services, excluding insurance, amounted to US$66.4 billion, while imports amounted to US$13.8 billion. Also in 2010, exports of insurance services reached US$14.6 billion, while imports amounted to US$61.8 billion. The U.S. sells more financial services through companies' foreign affiliates than it buys from foreign companies' affiliates established in the United States. In 2009, sales of financial services, including insurance, to foreign persons by U.S. multinational corporations amounted to US$226 billion, while sales of financial services to U.S. persons by foreign multinational corporations were US$147 billion.[72]

68. There were 1,711 "large" commercial banks in the United States at end-March 2011, each with consolidated assets of US$300 million or more. Their total consolidated assets amounted to US$12 trillion, of which 87% were domestic assets.[73]

69. At end-March 2012, foreign banks from 57 countries and territories had offices in the United States.[74] The assets held by these offices totalled US$3.2 trillion (21.8% of total assets of the U.S. commercial banking system), while their deposits amounted to US$1.7 trillion (16.9% of total deposits in the U.S. commercial banking system). U.S. banking offices of foreign banks contributed 15.3% of total commercial bank lending at end March 2012.[75]

70. The U.S. insurance market is the world's largest, with gross insurance premiums of US$1.20 trillion in 2011, or 26.2% of the world market; of which US$537 billion were in life and health insurance, and US$667 billion in property and casualty insurance.[76] The United States is 14th in the world in terms of insurance premiums per capita, with US$3,846 per head in 2011. Insurance penetration (premiums as a percentage of GDP) was 8.1% in 2011.

71. The United States has the largest securities market in the world.[77] At end 2011, market capitalization was US$15.6 trillion, representing about 103% of U.S. GDP, while the value of shares traded in U.S. stock markets totalled US$30.8 trillion, about 204% of U.S. GDP.[78]

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[71] BEA online information, "Industry Economic Accounts". Viewed at: http://www.bea.gov/industry.

[72] BEA online information. Viewed at: http://www.bea.gov/; and Koncz-Bruner and Flatness (2011).

[73] Federal Reserve online information, "Statistical Release: Large Commercial Banks as of 31 March 2011". Viewed at: http://www.federalreserve.gov/releases/lbr/current/default.htm.

[74] See Federal Reserve online information, "U.S. Offices of Foreign Banking Organizations by Country, 31 March 2012". Viewed at: http://www.federalreserve.gov/releases/iba/201203/bycntry.htm.

[75] U.S. banking offices of foreign banks include foreign-owned banks and U.S. branches and agencies of foreign banks. See Federal Reserve online information, "Share Data for U.S. Offices of Foreign Banking Organizations". Viewed at: http://www.federalreserve.gov/releases/iba/fboshr.htm.

[76] Swiss Re (2012).

[77] McKinsey Global Institute (2011), Exhibit E2.

[78] See World Bank online information, "World Development Indicators". Viewed at: data.worldbank.org. Market capitalization is the market value of all domestic listed companies, and the value of shares traded is the annual total turnover of listed company shares. According to data provided by the U.S. Census Bureau, at the end of 2010, market capitalization in the United States represented about 32% of market capitalization in all stock markets around the world. See U.S. Census Bureau online information,

(b) Legislative and regulatory developments

72. The main regulatory reform since the last TPR of the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) (the Dodd-Frank Act), entered into force on 21 July 2010.[79] As stated in its introductory paragraph, the Act's objectives include promoting financial stability, ending "too big to fail", ending bailouts, protecting taxpayers, and protecting consumers from abusive financial services practices.[80] The Act does not introduce market access or national treatment limitations, but establishes a new and comprehensive regulatory framework and extends regulation over new markets, entities, and activities.

73. In total, the Dodd-Frank Act mandates 398 rulemaking requirements by 20 regulatory agencies, a process that is still on-going. As of 1 June 2012, 110 of the rulemaking requirements (27.6%) have resulted in finalized rules; rules have been proposed, but not yet finalized for another 144 (36.2%); and rules have not yet been proposed for the remaining 144 (36.2%).[81]

74. Section 173 of the Dodd-Frank Act (Access to United States financial market by foreign institutions) introduces modifications to sections 7(d)(3) and 7(e)(1) of the International Banking Act of 1978 and to section 15 of the Securities Exchange Act of 1934. The amended International Banking Act now explicitly requires the Board of Governors of the Federal Reserve System, when considering an application for establishment of a U.S. office of a foreign bank that presents a risk to the stability of the United States financial system, to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.[82] The new amendments also allow the Board to order the termination of the activities of U.S. offices of such foreign banks in the absence of these criteria. Similarly, the SEC is now required, when considering an application for establishment of a foreign broker or dealer that presents a risk to consider the same criteria regarding home country regulation. The SEC is also explicitly authorized to rescind the authorization of such foreign brokers or dealers if the home country authority has not taken the steps required.

75. Section 604(d) of the Dodd-Frank Act amends section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)), making it mandatory for the Federal Reserve Board, when considering a proposed acquisition, merger or consolidation, to "take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system".[83]

76. The Dodd-Frank Act introduces important changes in the U.S. financial services regulatory structure. It eliminates the Office of Thrift Supervision, whose functions have been transferred to the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Office of the

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"Statistical Abstract of the United States 2012, Table 1397: U.S. and Foreign Stock Markets-Market Capitalization and Value of Shares Traded: 2002 to 2010". Viewed at: http://www.census.gov/compendia/statab/).

[79] Library of Congress online information, "THOMAS Home: Bills, Resolutions: Bill Summary & Status : 111th Congress (2009-2010): H.R.4173: All Information". Viewed at http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&#major%20actions.

[80] Senate Committee on Banking, Housing, and Urban Affairs (undated).

[81] Davis Polk Dodd-Frank (2012).

[82] To see the other criteria applied to approve applications, see "International Banking Act of 1978", available at the FDIC website (http://www.fdic.gov/regulations/laws/rules/8000-4800.html) and the Securities Exchange Act of 1934, available at the SEC website (http://www.sec.gov/about/laws.shtml#secexact1934).

[83] For an example of the application of this provision, see FRB Order No. 2012-4 (9 May 2012).

Comptroller of the Currency (OCC).[84] The Act also establishes a Financial Stability Oversight Council (FSOC), which is aimed primarily at comprehensive macro-prudential oversight of the U.S. financial system, and which has therefore been mandated with monitoring, identifying, and addressing systemic risks posed by financial firms, products, and activities.[85] The FSOC, a type of "umbrella" regulatory agency, may make recommendations within its remit, but has no immediate enforcement powers.

77. The Act establishes several offices, committees, and bureaus within existing regulatory agencies: the Consumer Financial Protection Bureau (CFPB) (an independent bureau of the Federal Reserve System that includes an Office of Financial Education, Office of Fair Lending and Equal Opportunity, and Office of Financial Protection of Older Americans); the Office of the Investor Advocate (OIA); Office of Credit Ratings (OCR); and Investor Advisory Committee (IAC) (all within the Securities and Exchange Commission), and the Federal Insurance Office (FIO) and Office of Financial Research (OFR), both within the Treasury Department.

78. The Consumer Financial Protection Bureau is mandated to regulate the offering and provision of consumer financial products and services under federal consumer financial protection laws. In so doing, the Bureau will, *inter alia*, supervise covered entities (i.e. insured depository institutions and credit unions with assets greater than US$10 billion) for compliance with federal consumer financial protection laws and regulations, and take appropriate enforcement action to address violations, and issue new rules, orders, and guidance implementing federal consumer financial protection laws.[86]

79. The new Federal Insurance Office has been mandated to monitor much of the insurance industry, to recommend insurance regulation, and to coordinate federal efforts with regard to international prudential insurance matters. All lines of insurance will be under the purview of the new Office, except health insurance, certain long-term care insurance, and crop insurance.

80. In the case of derivatives reform, the Dodd-Frank Act gives the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) authority to regulate over-the-counter (OTC) derivatives, including the clearing, reporting, and trading of certain products and the entities that buy and sell them. Certain OTC derivatives will be required to be traded on regulated exchanges or trading platforms, and the trades will have to be submitted to regulated clearinghouses. Clearinghouses must submit proposals to regulators before accepting swaps or security-based swaps for clearing, and regulators will be required to evaluate which swaps and security-based swaps will be cleared centrally. In addition, regulators will have the authority to impose capital, margin, reporting, record-keeping, and conduct requirements on swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, to ensure, among other things, that they have adequate financial resources to meet their responsibilities. Banks that are insured depositary institutions will be required to spin-off their riskiest derivatives trading operations into affiliates if the banks wish to remain eligible for federal assistance, although they will be allowed to keep operations for interest rate swaps, foreign-exchange swaps, and gold and silver swaps.

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[84] The thrift charter is preserved, though.

[85] The FSOC, made up of ten voting members (nine federal financial regulatory agencies and an independent member with insurance expertise) and five non-voting members, is chaired by the Treasury Secretary. For further details, see U.S. Department of the Treasury online information, "Financial Stability Oversight Council". Viewed at: http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Financial%20 Stability%20Oversight%20Council.pdf.

[86] The Bureau will be led by a Director who will be appointed by the President and confirmed by the Senate for a five-year term. Although the Bureau will be housed within the Federal Reserve, it is independent and the Federal Reserve Board may not interfere with its functions or personnel.

81. As per Title IX, Subtitle C of the Dodd-Frank Act (Improvements to the regulation of credit rating agencies), credit rating agencies will be subject to additional regulatory oversight by the SEC. Nationally recognized statistical ratings organizations (NRSROs) will be required to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record. The SEC may de-register a credit rating agency if regulatory requirements are not met over time.[87]

(c) The "Volcker rule"

82. The Volcker rule, as embodied in Section 619 of the Dodd-Frank Act (Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds), generally contains two prohibitions.[88] It prohibits "banking entities" (insured depository institutions, bank holding companies, and their subsidiaries or affiliates) from engaging in short-term proprietary trading of any security, derivative, and certain other financial instruments for a banking entity's own account, subject to certain exemptions. In addition, it prohibits "banking entities" from acquiring or retaining any equity, partnership, or other ownership interest in or from sponsoring a hedge fund or private equity fund, subject to certain exemptions. The term "banking entities" includes foreign banks that maintain branches or agencies in the United States or that own U.S. banks or commercial lending companies in the United States. These banks, as well as their parent holding companies, are referred to in U.S. regulations as "foreign banking organizations".

Ban on "proprietary trading"

83. According to Section 619 of the Dodd-Frank Act, investments made "for the trading account" of a covered banking entity would be deemed proprietary trading and therefore prohibited.[89] However, there are exemptions. Section 619 specifically permits trading transactions (i) in government securities (e.g. securities issued by the U.S. government or a U.S. government agency, government-sponsored enterprises, and state and local governments); (ii) in connection with underwriting or market-making, on behalf of customers; and (iii) by an insurance company solely for the general account of the company. In addition, the Act permits certain risk-mitigating hedging, as well as proprietary trading occurring "solely outside of the United States" and conducted by a banking entity that is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States. However, the Act prohibits covered banking entities from engaging in any of these exempted transactions or activities if it would involve a material

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[87] See also "Proposed Rules for Nationally Recognized Statistical Rating Organizations", SEC, 17 CFR Parts 232, 240, and 249, and 249b Release No. 34-64514; File No. S7-18-11 RIN 3235-AL15.

[88] The implementing regulation has not been finalized at the time of writing. See Notice of Proposed Rulemaking on "Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds", Board of Governors of the Federal Reserve System Press Release, 11 October 2011. Viewed at: http://www.federalreserve.gov/newsevents/press/bcreg/20111011a.htm.

[89] According to the Dodd-Frank Act, the term "proprietary trading" means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may determine in the implementing regulation. The term "trading account" is defined by the Act as any account used for acquiring or taking positions in the securities and instruments described in the definition of "proprietary trading", principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may determine in the implementing regulation (Dodd-Frank Wall Street Reform and Consumer Protection Act. Viewed at: http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf).

conflict of interest between the entity and its clients, or result in a material exposure to high-risk assets or trading strategies, or pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States.

Ban on investment in or sponsorship of a fund

84. As noted, the Dodd-Frank Act prohibits banking entities from acquiring or retaining any ownership interest in or from sponsoring hedge funds or private equity funds. The Act defines a "hedge fund" and a "private equity fund" to include any issuer that would be considered an investment company under the Investment Company Act of 1940, except those under sections 3(c)(1) or 3(c)(7) of that Act.[90]

85. However, the Dodd-Frank Act allows a banking entity to organize and offer a hedge fund or private equity fund if: (i) it provides bona fide trust, fiduciary, or investment advisery services; (ii) the fund is organized and offered only in connection with such services and only to customers of such services of the banking entity; (iii) it does not have an ownership interest in the fund except for a de minimis investment; (iv) it does not guarantee, assume, or otherwise insure obligations or performance of the fund; (v) it does not share the same or similar name as the fund; (vi) no director or employee of the banking entity has an ownership interest in the fund; and (vii) it discloses, in writing, to investors in the fund that any losses in the fund are borne solely by the investors and not by the banking entity.

86. Despite the general prohibition, a banking entity may make a "de minimis" investment in a fund it advises, for the purpose of providing the fund sufficient initial equity to attract unaffiliated investors. This investment may not exceed 3% of total ownership interest of the fund within one year after the date of its establishment (the Board of Governors of the Federal Reserve may extend the period for two years), and must be "immaterial" to the banking entity, and in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3% of its Tier 1 capital.

(d) New regime for private fund advisers

87. Section 403 of the Dodd-Frank Act eliminated the "private adviser exemption" contained in section 203(b)(3) of the Advisers Act of 1940. The exemption allowed advisers with fewer than 15 clients to avoid registration with the SEC, and allowed those advisers to count each fund as a client, as opposed to each investor in a fund. In eliminating this exemption, the law generally extends registration requirements under the Advisers Act to almost all advisers to private funds (hedge funds and private equity funds). The final rules implementing this provision were released by the SEC on 22 June 2011, and advisers subject to the rules were required to register with the SEC by 30 March 2012.[91] Registration entails significant regulatory and compliance obligations.

88. The SEC's rules define three new exemptions from the Advisers Act registration requirements for (i) advisers solely to venture capital funds; (ii) advisers solely to private funds with less than US$150 million in assets under management in the United States; and (iii) certain foreign advisers without a place of business in the United States. To qualify for the latter, the final rules require that an adviser must comply with the following requirements: (a) have no place of business in the United States; (b) have, in total, less than 15 clients in the United States and investors in the United States in private funds advised by the adviser; (c) have less than US$25 million in aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the adviser; and (d) not hold itself out generally to the public in the

[90] See Investment Company Act of 1940. Viewed at: http://www.sec.gov/about/laws/ica40.pdf.
[91] Securities and Exchange Commission (2011).

United States as an investment adviser. Non-U.S. advisers may rely on the other two exemptions as well.

89. All advisers must provide information regarding their advisory business, including the types of clients, their employees, and their advisory activities, any business practices that may present significant conflicts of interest, their non-advisory activities, and their financial industry affiliations. Private fund advisers must provide additional information about each fund they advise.

(e) Systemically Important Financial Institutions (SIFIs)

90. Under Section 113 of the Dodd-Frank Act, the FSOC may determine that a U.S. or a foreign non-bank financial company should be subject to supervision by the Board of Governors of the Federal Reserve System and to prudential standards with respect to financial activities if the company's material financial distress or the nature or mix of its activities could pose a threat to the financial stability of the United States. Section 115 of the Act also subjects bank holding companies (U.S. and foreign) with more than US$50 billion in assets to enhanced supervision and prudential standards. The FSOC shall (a) give due regard to the principle of national treatment and equality of competitive opportunity; and (b) take into account the extent to which the foreign or foreign-based company is subject on a consolidated basis to home country standards that are comparable to those applied in the United States.

91. The FSOC issued a final rule and interpretative guidance regarding the application of Section 113 requirements on 3 April 2012.[92]

92. The FSOC must consider 11 factors in evaluating whether a non-bank financial company should be subject to enhanced supervision (Section 113(a)(2)). It translated those factors into six categories: size, interconnectedness, substitutability, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny. The first three relate to the potential impact of a company's financial distress on the broader economy; and the others relate to the vulnerability of a company to financial distress.

93. Its determination process consists of three stages: (i) narrowing the companies subject to review by applying thresholds related to size, interconnectedness, leverage, and liquidity risk and maturity mismatch[93]; (ii) analysing the threat that each identified company could pose to U.S. financial stability based on information available through existing public and regulatory sources, using the six-category framework described above; and (iii) identifying the companies that merit further review in the third stage. Companies will receive notice that they are being considered for a proposed determination and an opportunity to submit materials and further discuss with the FSOC. The FSOC will reconsider its designations annually.

[92] "Final Rule and Interpretive Guidance on the Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies". Viewed at: http://www.treasury.gov/initiatives/fsoc/Documents/Nonbank%20Designations%20-%20Final%20Rule%20and%20Guidance.pdf.

[93] Thus, a company will be subject to additional review if it meets both the size threshold (US$50 billion in total consolidated assets) and any one of the other thresholds (US$30 billion in gross notional credit default swaps outstanding for which a company is the reference entity; US$3.5 billion of derivative liabilities; US$20 billion in total debt outstanding; 15 to 1 leverage ratio of total consolidated assets to total equity; and 10% short-term debt ratio of total debt outstanding with a maturity of less than 12 months to total consolidated assets.

(f) Swap market reforms

94. Title VII of the Dodd-Frank Act establishes a comprehensive regulatory framework for swaps and securities-based swaps. It requires, *inter alia*, swap dealers to register with the CFTC and securities-based swap dealers to register with the SEC, and swaps and security-based swaps to be traded on an exchange and cleared through a central counterparty to reduce systemic risk. In addition, companies that use swaps will face new regulatory, business, and operational requirements as dealers, counterparties, and other swap market participants become subject to new clearing, margin and collateral requirements, record-keeping and reporting duties, and new trade execution alternatives.

95. Sections 722 and 772 under Title VII of the Dodd-Frank Act establish the territorial scope of CFTC and SEC jurisdiction over the swaps and security-based swaps market. Section 722(d) provides that the CFTC's jurisdiction will apply to activities outside the United States if those activities have "a direct and significant connection with activities in, or effect on, commerce of the United States". Section 772 provides that the SEC's regulations do not apply to any person insofar as such person transacts a business in security-based swaps outside the jurisdiction of the United States. Thus far, there has been little guidance from the CFTC and SEC on the cross-border application of swap market reforms, but the CFTC has indicated that it expects to provide a proposed rule and some interpretative guidance on the provision contained in Section 722(d) of Act soon.[94]

[94] U.S. Commodity Futures Trading Commission online information, "Remarks by CFTC's Chairman Gary Gensler on Derivatives and the Cross-Border Application of Dodd-Frank Swap Market Reforms", Institute of International Bankers' Membership Luncheon, 14 June 2012. Viewed at: http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-116.

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